TAXAND



TRANSFER PRICING GUIDE 2026

Your Global Tax Partner

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FOREWORD

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The Guide

The Taxand Transfer Pricing Guide is a critical resource for any multinational organisation seeking to create efficiencies in its strategic management of transfer pricing. A distinguishing factor of this guide is territory specific insight into the nuances that influence transfer pricing policy management and presents core recommendations for corporates to manage risks and align their strategies with evolving global standards.

This updated edition of the guide details the technical guidance from six continents compiled from the unmatched knowledge within Taxand's international network of advisors, who are able to comment with full objectivity due to their independence within our global network. The 2026 Guide also includes a new section on Financial Transactions.

Through application of these insights, readers stand to be equipped with the guidance to drive more effective strategies, while ensuring confidence that transfer pricing affairs are fully aligned to local compliance and regulatory requirements.

Global perspective, local knowledge

In an increasingly interconnected but volatile global economy, the complexities of transfer pricing management continue to challenge a number of multinational corporations operating across diverse jurisdictions. A critical aspect of transfer pricing is the adherence to local requirements and customary practices and the most effective planning relies on understanding the global picture. The intricacies of local regulations, economic environments, and enforcement practices necessitate a nuanced approach.

The essence of transfer pricing lies in the valuation of transactions between related entities within a multinational enterprise. These valuations must reflect arm's length conditions, ensuring that profits are allocated and taxed where economic activities and value creation occur. However, the application of transfer pricing principles is far from uniform across jurisdictions.

Economic benchmarks must be carefully assessed, with market-specific adjustments and local tax authorities' expectations considered. The approach and selection of comparables also vary, European and other jurisdictions may mainly consider private companies, while North American tax authorities typically emphasising reliance on audited financial information from publicly-listed companies. Also, guidance provided by Pilar One Amount B should be considered for distributors performing baseline marketing and distribution activities.

Preparedness is paramount

Although transfer pricing documentation is often viewed as a "mere" compliance exercise, the potential benefits of maintaining contemporaneous documentation cannot be overstated. To note just a few, doing so can offer a penalty protection in the event its transfer pricing results are challenged, the details of the analysis facilitate timely preparation of informational reporting that is required as part of most country's corporate tax filing package, and its existence can streamline the processes around an M&A or other investment life event.

The timings and formats of local file documentation are equally important and vary significantly between jurisdictions. Requirements range from the necessity to file with tax authorities directly to simply having the documentation on hand and readily available upon request. In some cases, corporates are not required to prepare it in advance at all. The increase of transfer pricing audits and court cases underpin the relevance of proper documentation. Our team at Global Taxand works seamlessly across jurisdictions to enable its clients to equip their business in navigating these myriad requirements and creating a bespoke "transfer pricing calendar" tailored to each company's unique needs.

Managing business change

Managing business change is a pivotal element of transfer pricing. A thoughtful approach to documenting changes in a business and the rationale for how a company has addressed such changes is essential.

This can include the economic and financial impacts of natural events, such as pandemics or natural disasters, or other global occurrences like wars, elections, inflation, tariffs, as well as local or regional recessions.

Capturing these changes in a business on a timely basis is crucial, as delays can result in the loss of important details. Moreover, ensuring that the implementation of transfer pricing policies in the face of such changes follows a consistent approach, aligned with the function and risk profile presented to tax authorities, is vital.

Taxand's Take

The OECD's Base Erosion and Profit Shifting (BEPS) initiative, particularly the Pillars, also have significant implications for existing transfer pricing policies. All multinationals must evaluate the potential impacts of countries implementing — or choosing not to implement — these guidelines.

The Taxand Transfer Pricing Guide provides a framework for understanding these developments and offers strategic recommendations for adapting and enhancing strategies that will strengthen business resilience, support profitability and maximise the positive attributes of an international corporate network.

Yours Truly

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ARGENTINA

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Overview

Bruchou & Funes de Rioja, Taxand Argentina

Bruchou & Funes de Rioja is a legal advisory firm based in the City of Buenos Aires which offers a full range of legal services. With respect to tax services, and in particular with transfer pricing services, the team can assist in every aspect of transfer pricing advisory. This includes, among others, compliance and reporting requirements, analysis, planning, strategy, disputes, and controversy resolutions.

Transfer Pricing Framework

Transactions subject to transfer pricing rules ("TP Rules") are governed by Argentine Income Tax Law, its Regulatory Decree, and General Resolutions issued by the Federal Tax Authority ("FTA").

Taxpayers subject to TP Rules are: (i) those who enter into transactions with non-Argentine related parties and (ii) those who enter into transactions with entities, among others, with companies domiciled, registered or located in low-tax or null-tax jurisdictions (whether or not related to the Argentine entities). Other specific transactions could also be subject to TP Rules (e.g., import and export operations with unrelated parties).

Argentine regulations not only establish the Transfer Pricing Methods ("TP Methods") included in the OECD Transfer Pricing Guidelines, but also regulates an additional method (the so-called "Sixth Method") that applies for certain transactions related to the export of quoted commodities.

Accepted Transfer Pricing Methodologies

Although the OECD Transfer Pricing Guidelines are not incorporated in Argentine regulations, they are used as recommendations or guidelines which may serve as source of interpretation.

For the purposes of conforming to the arm's length principle, the most appropriate TP Method should be used, understood as the one that best reflects the economic reality of the transaction under analysis. To such end, it should be considered the TP Method that: (i) has better compatibility with the business and commercial structures; (ii) has the best quality and quantity information available for its justification and application; (iii) considers the most appropriate degree of comparability of the related and unrelated transactions, and of the companies involved in such comparison; and (iv) requires the lowest number of adjustments to eliminate the differences between the facts and the situations compared.

Additionally, Argentine regulations provide for the application of the Sixth Method for transactions that involve (i) the import or export of quoted commodities; and (ii) the participation of an international intermediary that: (a) is related to the local agent; (b) is domiciled, registered or located in a non-cooperative or low-tax or null-tax jurisdiction; or (c) even if the international intermediary does not comply with (a) or (b), the export or import operation of commodities is entered into with related parties. The Sixth Method requires taxpayers to comply with the obligation of registering with the FTA all the agreements related to such operations. This registration should include the relevant characteristics of the agreements as well as, if applicable, the comparability differences that generate divergences with the relevant market quotation for the delivery date of the goods, or the elements considered for the formation of the premiums or discounts agreed upon over the quotation.

If the taxpayer fails to comply with such registration or the information in the agreement is not sufficient or not consistent, the Argentine source income will be determined considering the quoted value of the goods on the shipment loading date (including the corresponding comparability adjustments if applicable), rather than the quoted valued of the date of the agreement.

Finally, it is noted that the obligation to register these agreements applies to certain quoted commodities export operations entered into related and unrelated parties, regardless of the participation of an international intermediaries or not.

Transfer Pricing Documentation Requirements

Taxpayers subject to TP Rules must submit the following tax returns:

1) **Transfer Pricing Study (Local File):** This Report includes the justifications for the analysis of the operations subject to the TP Rules carried out.

2) **International Operations Reporting Regime (Form 2668)**: This Report should be submitted by taxpayers who were obliged to submit information related to international or transfer pricing operations in any of the two fiscal periods prior to the period being reported and to the extent certain thresholds are exceeded.

   A simplified International Operations Reporting Regime is also available for those taxpayers that are obliged to file the Transfer Pricing Study and/or Form 2668, to the extent certain requirements are met.

3) **Master File:** This Report must be submitted by taxpayers that are part of MNEs, when (i) the total consolidated annual income of the MNE group exceeds ARS 100,000,000,000 (approx. USD 66,666,666) in the fiscal period preceding to the one of the submission and (ii) the transactions entered into foreign related parties exceed, globally during the fiscal period, ARS 150,000,000 (approx. USD 100,000), or individually, ARS 15,000,000 (approx. USD 10,000). This Report includes general information about the MNEs group's composition.



4) **Country by Country Report ("CbC Report"):** Consists of an annual informative regime regarding the entities that are part of Multinational Enterprise ("MNE") Groups, as well as the fiscal jurisdictions in which they operate. MNE Groups whose total consolidated annual revenues are less than EUR 750,000,000 are excluded from this regime.

5) **Argentine resident entities that are part of MNE Groups Reporting Regime:** The Report includes information about the Ultimate Parent Company, the annual consolidated income obtained by the MNE Group, among other information.

Local Jurisdiction Benchmarks

Argentine regulations establish a preference for domestic comparable over foreign comparable. In this sense, domestic comparable, if any, should be considered as a priority in the analysis, to the extent that there are no significant differences between the comparable elements of the sample or that, if any, they do not affect the conditions analyzed, or adjustments can be made that allow their elimination and optimize the comparison.

In relation to accepted TP Methods in Argentine, it is generally preferred the application of CUP and/or TNMM method.

Argentine regulations establish that when there is more than one appropriate TP Method for the type of transaction being examined, it should be assessed using the interquartile range and median of the prices.

In these cases, if the consideration amount set falls within the interquartile range, such price will be considered as at arm's length.

There are many cases of transfer pricing being litigated before Argentine Courts. These cases generally involve the services of pharmaceutical, agro-export and automotive industries.

Focus on Financial Transactions

Under Argentine transfer pricing regulations, intercompany financial transactions must be analyzed by reference to the accurate delineation of the transaction and the arm's length principle. In particular, the Argentine rules require consideration of the conduct of the parties, the terms of the transaction, the underlying commercial and financial relationships, and the circumstances that best reflect the economic reality of the financing arrangement. For financial transactions, the local or tested party must be able to support, depending on its position, that the lender has the economic and financial capacity to grant the financing and control the associated risks, and that the borrower has the financial capacity to repay principal and interest and, where relevant, to obtain guarantees and comply with other obligations.

Argentine regulations also contain specific provisions on implicit group support and cash pooling or centralized financing arrangements. Where comparability is affected by implicit group support, the group's credit rating may be used as a reference to price the financial transaction where the required information is not otherwise available. However, a mere improvement in creditworthiness arising from group membership, absent a specific documented guarantee, should not give rise to remuneration for the related party. In cash pooling or centralized financing arrangements, the taxpayer must justify the need for the arrangement and the origin of the cash surplus, and the relevant financial transactions may need to be analyzed as closely linked.

Finally, the transfer pricing analysis operates alongside Argentine income tax rules on interest deductibility. Interest on financial debt, related updates and expenses arising from the creation, renewal or cancellation of the debt are deductible to the extent they comply with the arm's length principle as well as with the applicable statutory limits and conditions on interest deductibility (certain exceptions may apply as the case may be).

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

Argentine regulates the APA rules and the possibility of the taxpayer requesting its application to FTA. However, regulations are still pending.

Transfer Pricing Audits

Transfer Pricing audits are not so common in Argentina. However, when they occur, the FTA generally carries out close examination over the pharmaceutical, automotive and agro-export industries.

The Burden of Proof in Transfer Pricing: Theory versus Practice

The allocation of the burden of proof is pivotal in determining the outcome of disputes. In Argentina, the burden of proof in transfer pricing matters is, in principle, straightforward: the tax authorities bear the responsibility of demonstrating that the prices set by a taxpayer are not at arm's length. If a taxpayer fails to meet certain documentation obligations, or if the documentation is not sufficient or adequate, the burden of proof may shift to the taxpayer. Argentine law prescribes that taxpayers must maintain sufficient documentation to substantiate their transfer prices as well as comply with transfer pricing-related tax reporting regimes. The reversal of the burden of proof should only occur in cases of significant non-compliance, where the absence of key documentation constitutes a fundamental breach of administrative obligations.

Although transfer pricing tax audits are not so common in Argentina, in practice, rather than providing substantive evidence, the Argentine tax authorities often rely on assertions and positions that taxpayers must rebut. That is why Argentine taxpayers must ensure that their transfer pricing documentation is both robust and comprehensive. This also includes fulfilling the tax reporting regimes related to transfer pricing.

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While the OECD guidelines emphasize reasonableness and caution in making transfer pricing adjustments, the practical reality in Argentina demonstrates the necessity of taxpayers having high-quality documentation not only for fulfilling a compliance requirement but also as a strategy to minimize the risk of an unfavourable sentence before the Courts.

Transfer Pricing Penalties

- Formal penalties

Failure to comply with TP tax returns filings could result in the application, among other types of penalties, of the following ones:

- Up to ARS 15,000,000 (approx. USD 10,000) for reporting filings related to information about the MNE Group to which the entity is part as well as to inform the date in which the CBC Report has been filed by the designated entity.
- Up to ARS 67,500,000 (approx. 45,000 at OER) for the failure to submit the CbC Report or its late/ incomplete filing.
- Up to ARS 22,500,000 (approx. USD 15,000) for failure to comply with the FTA's demands for provision of complementary information about the CbC Report.
- Up to ARS 22,000,000 (approx. USD 14,666) for failure to comply with tax reporting regimes (including, the Local File, the International Operations Reporting Regime and Master File).
- Up to ARS 35,000,000 (approx. USD 23,333 at OER) for failure to comply with the FTA's demands for compliance with tax reporting obligations related to international operations. This fine could be increased up to 10 times of the maximum amount when taxpayers whose annual gross income is equal or grates than ARS 10,000,000,000 (approx. USD 6,666,666) fail to comply with the third of the FTA's demands.

- Transfer Pricing Adjustments

In the event that the deficiency assessment of TP Rules results in the non-payment (total or partial) of taxes, the FTA could claim the omitted taxes plus compensatory interest (currently, the monthly compensatory interest rate is fixed at 2.75%).

In the case of non-payment of taxes, the applicable penalty could be assessed at 200% of the amount of the omitted tax. When fraud is committed, a penalty of up to 600% may be applied. Additionally, the FTA might file criminal charges against the directors of the company, which can result in imprisonment for between 2 and 9 years.

Local Hot Topics and Recent Updates

We highlight the following Hot Topics that have been discussed in Argentina:

1) Cases related to commodities, and specially the presence of intermediaries in their transactions, or the application/ selection of transfer pricing methods.
2) The FTA has challenged the criteria of taxpayers for using multiple fiscal years to select the comparable of the transfer pricing report method. We emphasize that Argentine regulations do not provide for a certain criterion of years to make the report.
3) The FTA has challenged the differences in prices between locally sold products and those exported to affiliated foreign companies, to whom products were sold at a lower price than the local market. To make this audit, the FTA has based on the results of certain local entities, which were used to obtain comparable regarding the export prices challenged. In this regard, taxpayers have objected to being compared to the local entities.
4) Argentine Regulations establish a preference for domestic comparable over foreign comparable.

Documentation threshold

Master file	Transactions with related parties which globally during the fiscal period exceed ARS 150,000,000 (approx. USD 100,000) or, individually, ARS 15,000,000 (approx. USD 10,000); and The total consolidated annual income of the MNE Group exceeds ARS 100,000,000,000 (or USD 66,666,666) in the fiscal year preceding to the one the filing is made.
Local file	Eligible transactions exceed, globally during the fiscal period, ARS 150,000,000 (approx. USD 100,000) or, individually, ARS 15,000,000 (approx. USD 10,000)..
CbCR	Includes those MNEs whose total consolidated annual revenues are EUR 750,000,000 or more.

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Submission deadline

Master file	Within 12 months after the closing of the tax period.
Local file	Within 6 months after the closing of the tax period.
CbC Report	Within 12 months after the closing of the tax period of the UPE.

Penalty Provisions

Documentation – late filing provision	Up to ARS 22,000,000 (approx. USD 14,666) for late filing of tax reporting regimes (including, the Local File, the International Operations Regime and Master File). This fine is cumulative with another fine of ARS 35,000,000 (approx. USD 23,333) that applies to each failure to comply with the FTA's demands for compliance with informative regime. The last fine could be increased up to 10 times of the maximum amount when taxpayers whose annual gross income is equal or grates than ARS 10,000,000,000 (approx. USD 6,666,666) fail to comply with the third of the FTA's demands.
Tax return disclosure – late/ incomplete/no filing	
CbC Report – late/incomplete/no filing	Up to ARS 15,000,000 (approx. USD 10,000) failure to comply with the reporting filings related to information about the MNE Group to which the entity is part as well as to inform the date in which the CBC Report has been filed by the designated entity. This fine is cumulative with another fine of ARS 15,000,000 (approx. USD 10,000) that applies to the failure to comply with the FTA demands for compliance with CBC Report filing. Up to ARS 67,500,000 (approx. USD 45,000) for late or incomplete filing of CbC Report. This fine is cumulative with another fine of ARS 15,000,000 (approx. USD 10,000) that applies to the failure to comply with the FTA demands for compliance with CBC Report filing.Up to ARS 22,500,000 (approx. USD 15,000) for failure to comply with FTA's demands for provision of complementary information related to the CBC Report.



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Overview

Corrs Chambers Westgarth, Taxand Australia

Taxand Australia is the leading independent full service commercial law firm in Australia. Our team provides full service, end-to-end tax transactional support on domestic and cross-border mandates, starting with tax due diligence and structuring advice, through to legal documentation and post-merger implementation advice.

Taxand Australia provides general tax advisory services in relation to the application of Australian transfer pricing law and related international related party tax issues. Our pre-eminent tax controversy team advises on end-to-end tax controversies across the tax disputes life cycle ranging from tax authority engagement strategy, tax reviews, audits, objections, disputes, appeals and litigation. The team regularly advises on transfer pricing matters.

Transfer Pricing Framework

Australia has generally adopted the OECD approach to transfer pricing, including the application of the arm's length principle. Australian transfer pricing rules are set out in Division 815 of the Income Tax Assessment Act 1997 (Cth). Under those rules, where an entity obtains a transfer pricing benefit from conditions that operate between it and another entity in connection with their "commercial or financial relations", those actual conditions are taken not to operate and instead arm's length conditions are applied. In addition, Australian transfer pricing rules require the form of actual commercial relations between parties to be disregarded if they are inconsistent with the substance of those arrangements. Australian thin capitalization rules apply in addition to transfer pricing rules to reduce or further reduce debt deductions. Australia has also recently enacted debt deduction creation rules to deny debt deductions on certain related party transactions and refinancings (refer to further comments below).

An entity is required to disclose certain details of its international related party dealings in its corporate income tax return. Where the value of those dealings exceeds certain thresholds, an entity is required to prepare and file an International Dealings Schedule (the form of which is updated annually) with its income tax return that includes further details of those dealings (such as the extent to which transfer pricing documentation has been obtained and the degree to which it covers the dealings disclosed).

Accepted Transfer Pricing Methodologies

Australian transfer pricing rules require arm's length conditions to be identified by reference to OECD transfer pricing guidelines. Acceptable methods include the comparable uncontrolled price method, the resale price method, the cost plus method, the transactional net margin method and the profit split method. The Australian Taxation Office has published guidance regarding factors that should be considered when choosing an appropriate methodology.

Transfer Pricing Documentation Requirements

Australia has country-by-country (CBC) reporting obligations for entities that are CBC reporting entities. In general terms, a CBC reporting entity includes an entity that has annual global income of AUD 1 billion or more, or is a member of a group that has annual global income of AUD 1 billion or more.

Australian CBC reporting requirements include a CBC report, a master file and a local file that is submitted as an XML file with the Australian Taxation Office. A reporting concession may be available where a CBC report or master file is submitted in another country. Reports must generally be filed within 12 months of the end of the income year to which the reports relate.

The Australian local file may require the inclusion of further details to those that are required in other countries. All Australian entities (whether subject to CBC reporting or not) are effectively required to prepare valid transfer pricing documentation in respect of their international related party dealings by the time that the income tax return is due to be filed for that entity (refer below). Any transfer pricing adjustment that arises from a dealing that is not covered by transfer pricing documentation available at the due date for lodgement is subject to increased penalties. Australian transfer pricing documentation must address all requirements under Australian law to be valid. The documentation requirements are generally based on the OECD guidelines and allow the benchmarking methods permissible under those guidelines. There are additional obligations that must be addressed under Australian law (eg reconstruction of transactions is allowable in all circumstances and not just the exceptional circumstances under the OECD guidelines).

There are significant uplifts in penalties that apply to significant global entities (SGEs) if additional tax is imposed in relation to any transfer pricing benefit and for failure to lodge returns, notices or statements on time (refer below).

Entities are required to include disclosures in income tax returns relating to its international related party dealings. Detailed disclosures (including dealing value, transfer pricing methodology and level of documentation prepared) may be required where the value of the dealings exceeds AUD 2 million.

Local Jurisdiction Benchmarks

Australian transfer pricing benchmarking and documentation requirements are generally based on the OECD guidelines and allow the benchmarking methods permissible under those guidelines. As noted above, the circumstances in which a transaction can be reconstructed for the purpose of benchmarking is significantly expanded under Australian law. The Australian Taxation Office has sought to assert rights to reconstruct transactions and this approach has received a degree of endorsement by Australian courts.

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Focus on Financial Transactions – Australia

The Australian Taxation Office has a specific and increasingly intense focus on cross-border related party financing transactions.

That interest is centred on assessing the risk of compliance with the Australian transfer pricing, thin capitalisation, and interest withholding tax rules. The focus is on non-arm's length arrangements that result in excessive debt deductions in Australia (or less common, the reduction in income recognised in Australia). The combination of these provisions means that taxpayers can expect to be examined on all aspects of their intercompany financing arrangements, including the relevant interest rates, the quantum of debt, the type of funding obtained, and other associated terms or conditions of the debt.

The Australian Taxation Office has published substantial guidance on how it will review a taxpayer's compliance with these rules. Guidance regarding the application of Australia's transfer pricing laws sets out the factors and indicators relevant to considering the risk of the Australian Taxation Office applying compliance resources in relation to the financing arrangements. It does this by setting out a questionnaire-style self-assessment system that can be used by taxpayers to assess whether such arrangements would be considered higher risk and therefore likely to be reviewed by the Australian Taxation Office. This framework effectively requires a taxpayer to compare the conditions that actually exist in relation to the related party financing arrangement with the indicators set out in the guidance. Indicators include pricing, quantum, subordination, currency, security, hybrid arrangements and other features. Further guidance extends to the thin capitalisation rules, meaning taxpayers will also need to consider whether the amount of the relevant financing and applicable interest rate that applies to their cross-border financing arrangements meet arm's length conditions.

The Australian Taxation Office is expected to continue to dedicate significant resources in ensuring it has appropriately reviewed the intercompany financing arrangements of taxpayers against these rules and guidance.

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

Australia has a unilateral and bilateral advance pricing agreement program. An APA request will be considered having regard to the particular facts and circumstances, with certain factors relevant to the taxpayer being considered by the Australian Taxation Office. These include consistency with the OECD transfer pricing guidelines, the presence of complex transfer pricing issues, strong historical taxpayer compliance with tax laws, the proposed arrangement is under serious contemplation, and where there is a high probability of economic double taxation. There are also quantitative material thresholds, such as that the value of cross border dealings should be at least $5 million or 80% of a taxpayer's assessable income or deductible expenditure per annum.

Based on published statistics, the average length of time to negotiate an APA is approximately 2 years.

Transfer Pricing Audits

The Australian Taxation Office has an active and well resourced transfer pricing audit function and has litigated a number of transfer pricing disputes. Details of routine audit activities are not made public but the focus of its audit activity seems directed towards large multinational groups. The Australian Taxation Office has published statements that it is focussed upon cross border financing arrangements.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Australia, the onus of substantiating arm's length pricing of international related party dealings falls on the taxpayer where the pricing of those dealings has been challenged by the Australian Taxation Office.

Australian taxation law does not create an express obligation upon taxpayers to create specific records demonstrating their international related party dealings comply with the arm's length principle. However, there are separate statutory obligations on taxpayers to create and keep records to explain and substantiate all transactions that are relevant to their tax compliance obligations generally. This is separate to any CBC reporting obligations for entities that are part of significant multinational groups (such as SGEs). In the event of a dispute as to adequate compliance, the burden of proof rests with the taxpayer. It is therefore generally recommended that taxpayers prepare sufficient contemporaneous transfer pricing documentation that may be used to demonstrate compliance with the arm's length principle in the event of any inquiry by the Australian Taxation Office. As a practical matter, creating specific contemporaneous records may reduce the risk of tax audits and may also mitigate the impact of penalties in the event of a dispute that gives rise to an amended assessment for additional tax payable (refer below). The Australian Taxation Office has confirmed that it will follow as closely as possible the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration* and Australian transfer pricing rules are generally expected to be interpreted in accordance with these Guidelines.

In practice, taxpayers that meet or exceed certain value thresholds must disclose details of their international related party dealings in their annual corporate income tax return. The details that must be disclosed can include the type of transactions to which the taxpayer is a party, the value of the dealings, and extent to which the taxpayer has prepared transfer pricing documentation for those dealings (ie as a percentage) prior to its tax return being due. As such, the Australian Taxation Office is on notice of the degree to which certain taxpayers have complying transfer pricing documentation. Taxpayers that are able to disclose a higher percentage of compliant transfer pricing documentation may be, but not always, at lower risk of enquiries regarding transfer pricing.

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The consequence of failing to prepare complying transfer pricing documentation by the time a taxpayer must file its income tax return is that the taxpayer cannot take the position that the pricing of its international related party dealings was reasonably arguable. A position that is not reasonably arguable (eg an undocumented transfer pricing arrangement) is subject to a minimum penalty of 25% of the shortfall in tax payable. This penalty is doubled for SGEs. These rules, coupled with the onus of proof resting with the taxpayer, will generally see taxpayers ensure that they prepare Australian compliant transfer pricing documentation before the relevant corporate income tax return is lodged.

The Australian Taxation Office has increased its audit activity in respect of multinational groups in recent years and this audit activity has included transfer pricing reviews. This focus is likely to keep transfer pricing and transfer pricing documentation high on the agenda of any enquiries that the Australian Taxation Office makes (which may occur before the commencement of a formal audit).

Transfer Pricing Penalties

Penalties are imposed for a failure to comply with Australian transfer pricing rules. These penalties may take the form of an administrative penalty or prosecution of an offence. Where a failure to comply with transfer pricing rules results in a shortfall of tax, an administrative penalty equal to 25%-75% of the shortfall in tax may apply (plus a general interest charge of approximately 11% per annum on the amount underpaid). The Australian Taxation Office has the discretion, but not an obligation, to reduce penalties based on the particular circumstances. However, the administrative penalty would be a minimum of 25% of the shortfall where a taxpayer does not have complying transfer pricing documentation.

Penalty amounts are doubled for SGEs. An entity will be an SGE if it is a global parent entity with annual global income of AUD 1 billion or more, or is a member of group that is consolidated for accounting purposes where the global parent entity has annual global income of AUD 1 billion or more. In addition, there are also significantly increased penalties for SGEs where certain documents are not lodged on time (including income tax returns and CBC statements). These increased penalties may be between AUD 165,000 – 825,000, depending on the number of days after the due date that the documents are lodged.

Local Hot Topics and Recent Updates

- Australia has passed amendments to its thin capitalization rules which explicitly require the transfer pricing rules to be applied first prior to the thin capitalization rules (noting that the transfer pricing rules may have regard to both the interest rate applied and the quantum of debt loaned). The thin capitalization rules then apply to the remaining arm's length debt deductions (ie. the new fixed ratio test is not a 'safe harbor' where cross-border loans subject to transfer pricing are involved). This may result in deductions being denied under the transfer pricing rules before thin capitalization rules then apply.
- Australia has published revised guidance in respect of its views on pricing of inbound distribution arrangements. The guidance provides a framework used by the Australian Taxation Office to assess the transfer pricing risk of these arrangements, depending on the industry of and the EBIT margin % received by an inbound distributor. If a taxpayer is considered medium or high risk under the framework, they can expect their inbound distribution arrangements to be reviewed by the Australian Taxation Office.

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Documentation threshold

Master file	Group revenue of AUD 1 billion or more
Local file	Group revenue of AUD 1 billion or more
CbCR	Group revenue of AUD 1 billion or more

Submission deadline

Master file	Generally 12 months after income year end
Local file	As above
CbCR	As above

Penalty Provisions

Documentation – late filing provision	Up to AUD 825,000 (ie for SGEs)
Tax return disclosure – late/incomplete/no filing	Penalty depends on circumstances but may be up to AUD 825,000 plus potential further penalties calculated as a percentage of tax shortfall
CbCR – late/incomplete/no filing	Up to AUD 825,000



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Overview

LeitnerLeitner GmbH Wirtschaftsprüfer Steuerberater, Taxand Austria

Taxand Austria's experienced team consisting of transfer pricing specialists assist with all aspects of domestic and foreign transfer pricing obligations and documentation requirements, and with the planning and implementation of international value chains. We analyse the current situation, adapt existing transfer pricing systems or work with the client to develop recommendations for establishing a tax-optimised transfer pricing system that is designed take into account business parameters, reduce the risk of double taxation and prevent costly and time-consuming discussions with tax authorities. If needed, we also help defend existing intragroup transfer pricing mechanisms and systems.

Taxand Austria provides tax advisory services in the following fields:

- Update of existing/conceptualisation and implementation of BEPS-compliant transfer pricing systems and tax-optimised value chains,
- Creation of clear functional and risk structures, and optimisation of intragroup supply and service transactions,
- Analysis of the impact of changes on group structures (business restructuring),
- Development of/support with depicting the transfer price-specific aspects of intragroup supply and service transactions (including the development of intragroup supply, service, allocation and license agreements etc.),
- Intragroup financing, implementation of cash pools,
- Design of intragroup employee secondments,
- Efficient identification of transfer price risks and potentials for optimization,
- Tailored Quick Check for the rapid identification of potential transfer price risks,
- Conceptualisation and implementation of efficient and customised transfer price documentation models in accordance with legal requirements (centralised documentation approaches, master/local files, CbC reporting etc.),
- Advice for automation-supported tools or web-based solutions to ensure uniform documentation across countries,
- Support with audits so disputes may be settled amicably without the involvement of the courts,
- 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 pursuant to sec. 118 BAO (Federal Fiscal Code), and initiation of advance pricing agreements (APAs),
- Benchmarking studies (including interest and royalties),
- DAC 6 analysis,
- Advice regarding VAT, customs and foreign trade legislation in connection with transfer prices.

General: Transfer Pricing Framework

In Austria, no statutory provisions dealing specifically with intercompany pricing exist and any tax issues arising from transfer pricing have to be dealt with on the basis of general rules of Austrian income tax law. Therefore, the basic provision in Sec 6 para 6 Austrian Income Tax Act contains provisions based on the principle that prices between related persons must be at arm´s length. Furthermore, transfer pricing documentation obligations exist due to the Transfer Pricing Documentation Act ("Verrechnungspreisdokumentationsgesetz" or "VPDG") implemented in 2016.

However, transfer pricing guidelines published by the Austrian Ministry of Finance and updated in 2025 ensures the implementation of the OECD Guidelines (and any updates thereto) in Austria. From a legal point of view, the guidelines were published in the form of a ministerial decree and thus do not have the binding effect of a law.

Accepted Transfer Pricing Methodologies

Austria's transfer pricing guidelines are based on and refer to the OECD Guidelines and thereby follow the revised hierarchy of transfer pricing methods according to the OECD Guidelines. In line with the OECD Guidelines, the Austrian tax authorities must begin a transfer pricing examination from the perspective of the method selected by the taxpayer. The taxpayer, however, must be able to substantiate why the chosen method is appropriate in view of the relevant facts and circumstances. The Austrian tax authority accepts the five following methods (which are in line with the OECD):

- Comparable Uncontrolled Price Method (CUP)
- Resale Price Method
- Cost Plus Method
- Transactional Net Margin Method (TNMM)
- Profit Split Method

As the Austrian Transfer Pricing Guidelines are based on and refer to the OECD Guidelines, the principles and the methods set out in the OECD Guidelines are the only recognized methods in Austria. Nevertheless, a taxpayer may use a different method to set prices, provided that it can demonstrate that it meets the arm's length principle and is more appropriate to the facts of the case than one of the OECD methods.

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Regarding method selection, the Austrian Transfer Pricing Guidelines specify that the method that provides the highest certainty for determining an arm's length transfer price has to be chosen. As a consequence, the TNMM and the PSM are regarded as methods of last resort. However, if more than one method could be used and these methods are equally reliable, there is a preference for the standard methods and the CUP method over the other methods in Austria. There is no case law in Austria dealing with the selection and use of specific methods of transfer pricing.

Transfer Pricing Documentation Requirements

The Austrian government and tax authority fully followed Action 13 of the OECD BEPS Action Plan. This is implemented in the Austrian Transfer Pricing Documentation Act.

CbC-Report: Austria is requiring Austrian parented MNEs or a local subsidiary with a global consolidated group turnover of at least EUR 750 million in the previous year to file a Country-by-Country (CbC) report containing the information in Annex III of the OECD's BEPS Action 13 final recommendations. The CbC report has to be filed electronically via FinanzOnline in an XML format, which is very similar to the OECD XML format.

CbC-Report notification: Every Austrian group entity or Austrian branches of MNE groups with annual revenues exceeding EUR 750 million in the preceding fiscal year has to notify the tax authority which company will file the CbC-Report.

This CbCR notification was initially set to be made annually, no later than the end of the reporting fiscal year. However, the Austrian Transfer Pricing Guidelines states that a notification is only required if there are changes compared to the previous year's notification (e.g. if the ultimate parent company changes).

Master File and Local File: In general, all entities (including permanent establishments) belonging to an MNE group that are tax resident in Austria are requested to prepare a transfer pricing documentation including a Master File and a Local File in German or English language.

An entity will fall under the Master File and Local File documentation obligation if its turnover exceeded EUR 50 million in each of the two preceding years. However, a Master File must also be presented even if the Austrian entity will not exceed the revenue threshold but there is another group entity that must prepare a Master File.

Master File and Local File must be prepared no later than the statutory deadline for filing the corporate income tax return (31 March of the second year after the end of the reporting fiscal year if the taxpayer is represented by an Austrian tax advisor or 30 June of the first year after the end of the reporting fiscal year in other cases) and may only be requested by the tax authorities after such statutory deadline to be submitted within 30 days upon request from the tax authorities. Transfer pricing documentation is usually submitted to the tax authorities upon request during a tax audit.

For entities not exceeding the threshold of a turnover of EUR 50 million in each of the two preceding years, the entities would have to prepare a transfer pricing documentation based on the administrative guidelines. As such, documentation is required upon the tax authorities' request, though lacking any model/template. Formally, if documentation and/or supporting documents are not available in German, the tax authorities have the right to request a translation at the taxpayer's expense.

No other transfer pricing returns of forms are applicable.

Local Jurisdiction Benchmarks

The preparation of benchmark studies based on databases as Orbis, Amadeus, Ktmine, DealScan, S&P Credit Risk Pricing is accepted in Austria, if the requirements according to the Austrian Transfer Pricing Guidelines are fulfilled. In general, Austrian comparables should be included in the final set of comparables. However, the Austrian Ministry of Finance also accepts pan-European comparables. The Austrian Transfer Pricing Guidelines include specific requirements for the preparation of benchmark studies.

Focus on Financial Transactions":

Austria's transfer pricing guidelines largely follow the OECD-Guidelines and have recently incorporated the OECD's main statements on intra-group financial transactions. Financial transactions must be analyzed on the basis of accurate delineation and their economic rationale.

The arm's-length principle is central. In line with the OECD-Guidelines, Austria's transfer pricing guidelines may treat non-arm's-length loans as hidden profit distributions. Based on administrative practice and Supreme Court case law, indicators for non-recognition include missing agreements on repayment, interest due dates or credit limits, lack of collateral, and unusually low or long repayment terms.

For benchmarking financial transactions, the comparable uncontrolled price (CUP) method is preferred. General bank statements on potential interest rates are usually insufficient, whereas a specific bank-loan offer based on a thorough credit assessment can provide a reliable benchmark.

For intra-group guarantees, it is necessary to distinguish guarantees assumed for economic reasons, such as obtaining better loan terms, from those granted because of the corporate relationship. If an Austrian company assumes a guarantee for corporate reasons and is called upon, the resulting expense is not deductible under the Austrian Corporate Income Tax Act, as it is directly connected with non-taxable shareholding income.

Moreover, the Austrian Corporate Income Tax Act contains special deduction prohibitions that may further restrict the deductibility of intra-group interest expenses, irrespective of whether the arm's-length principle is met.

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

There is a unilateral advance ruling procedure in place in Austria, the so-called advance ruling or "Auskunftsbescheid". This procedure provides for the possibility to request a binding ruling on transfer pricing matters. Administrative fees of EUR 1,500 to EUR 20,000 (if part of a group of companies according to local accounting standards) will be charged for the processing of the application of unilateral APAs depending on the company's sales. Advance tax rulings are dealt with by the responsible tax office of the taxpayer. The APA request must be submitted electronically if the applicant has a domestic tax number. The application has to be processed within 2 months after submission.

In Austria, no statutory provisions dealing specifically with BAPA or multilateral APA exist. However, the new guidance on MAP and arbitration procedure published in 2022 includes details on bilateral/multilateral APA. Therefore, bilateral APAs should start with an informal discussion (prefiling meeting) prior to formal initiation of an APA. The prefiling meeting is intended to offer the taxpayer the opportunity to discuss, together with the competent authority the suitability of an APA in the specific case, the nature and scope of the available documentation, as well as a rough schedule. A request must be submitted by the taxpayer. Prior to conclusion of an APA, the taxpayer will receive a statement of the agreement reached from the authorities. If the taxpayer agrees, the APA will become binding for the competent authorities. In addition, there is also the option of a "roll-back", i.e. extending the solution obtained through the APA for periods prior to the APA by means of a MAP. Since only a few bilateral APAs are requested in Austria, the timing mainly depends on the other contracting state.

Transfer Pricing Audits

It is unusual for the tax authority to carry out an audit specifically in respect of transfer prices alone. However, experience shows that at the beginning of a tax audit, inspectors request a description of the transfer pricing system and a transfer pricing documentation. The availability of benchmark studies is usually expected. Typically, transfer prices represent a considerable part of a tax audit of Austrian-based MNEs or subsidiaries of MNEs in Austria.

The tax authority has special TP experts who retrace and review the correctness and comparability of transfer pricing documentation including benchmarking studies. The tax authorities have access to the Orbis database.

In tax audits, tax inspectors review especially the following intercompany transactions:

- Financial transactions (eg intercompany loans, cash pool)
- Licensing of trademarks and IP
- Provision of services
- Business restructurings

The Burden of Proof in Transfer Pricing: Theory versus Practice

The Austrian Transfer Pricing Documentation Act requires taxpayers to maintain adequate documentation to support their transfer pricing, including obligations for both a Master File and a Local File. When a taxpayer provides sufficient transfer pricing documentation, the responsibility falls on the tax authorities to prove that the taxpayer's transfer prices are not at arm's length. However, if a taxpayer fails to meet the documentation requirements, the burden of proof may shift to the taxpayer, as per statutory provisions for cross border transactions. In such cases, the tax authorities are also entitled to estimate the taxable result.

In practice, the allocation of the burden of proof does not always follow this legal framework. Rather than presenting substantial evidence, Austrian tax authorities sometimes rely on assertions or positions, effectively shifting the practical burden of proof onto the taxpayer. This is especially the case for financial transactions and licensing agreements.

Therefore, Austrian taxpayers must ensure their transfer pricing documentation is both thorough and comprehensive. This includes not only meeting the general documentation requirements but also providing clear evidence of the arm's length nature of their transactions, usually through benchmark studies. High-quality documentation is crucial in mitigating the risk of transfer pricing adjustments during tax audits.

Transfer Pricing Penalties

CbC-Report: A maximum penalty of EUR 50,000 and up to EUR 25,000 for gross negligence applies in case of non-timely or incomplete or incorrect filing of the CbC report.

There are no specific penalty provisions in case of non-timely filing or incomplete or incorrect filing of Master file or Local file. However, the Austrian Administrative Code requires the taxpayer to provide the tax authority with all relevant Information. If no Transfer pricing documentation is submitted, a fine of up to EUR 5,000 might be imposed and if willful tax evasion or tax fraud can be proven by the tax authority the fact of non-filing could aggravate the fine for such conduct. Additional penalties can arise in case of TP adjustments.

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Local Hot Topics and Recent Updates

Focus on Financial Transactions

Most recently, Austrian Tax officers challenge the advance of funds and further financial transactions within MNE groups more frequently. Therefore, clients are advised on the specifics of structuring such transactions and robust transfer pricing documentation (including specific benchmarking studies) is prepared taking into account the recommendations of new Chapter X OECD Guidelines in order to defend the proposed structure in future tax audits.

Transfer Pricing Documentation for SME advantageous

Within tax audit, entities not exceeding the threshold of a turnover of EUR 50 million in each of the two preceding years are regularly requested to submit a (subsidiary) transfer pricing documentation based on the administrative guidelines. To avoid inconvenient queries with an uncertain outcome by Austrian Tax officers, entities slightly not exceeding the thresholds are encouraged to consider the content requirements for Local Files as stipulated in the OECD Guidelines and voluntarily prepare sufficient transfer pricing documentation.

Multilateral Risk Assessment

Since July 2022, a procedural basis for the participation of the tax administration in the International Compliance Assurance Program ("ICAP") or European Trust and Cooperation Approach ("ETACA") for multilateral risk assessment. In accordance with the CbC reporting, the prerequisite for participation in the multilateral risk assessment is a group turnover of at least 750 million euros. The risk assessment is divided into three phases:

1) the selection phase, in which the ultimate parent entity applies for the procedure to the senior financial administration responsible for it,
2) the risk assessment phase and
3) the outcome phase, which ends with a report on the risk assessment ("outcome letter").

These procedures shall provide a certain degree of tax and planning certainty for multinational companies, although it is not legally binding and has no prejudicial effect on later assessments or subsequent mutual agreement procedures in Austria.

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Documentation threshold

Master file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
Local file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
CbCR	global consolidated group turnover of at least EUR 750 million in the previous year

Submission deadline

Master file	Only upon request
Local file	Only upon request
CbCR	12 months after the last day of the reporting fiscal year of the MNE group's ultimate parent company

Penalty Provisions

Documentation – late filing provision	no specific penalty provisions applicable
Tax return disclosure – late/incomplete/no filing	Assessment interest: in addition to the current annual rate of interest of the Austrian National Bank, an annual simple interest rate of 2% of the tax due Late filing penalty: 10% of the tax assessed may be charged by the tax office, unless the taxpayer can prove that the late filing was not his fault. If the taxpayer does not file a tax return, despite reminders from the tax authorities, the tax authorities may impose a penalty of up to EUR 5,000.
CbCR – late/incomplete/no filing	A maximum penalty of EUR 50,000 applies and up to EUR 25,000 for gross negligence with the CbC report.



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Overview

Arteo, Taxand Belgium

Arteo is a Brussels-based independent law firm founded in 2020 by the members of the tax department of a large, full-service Belgian law firm.

Arteo has developed strong expertise in matters involving transfer pricing, an evolving area in the Belgian tax market:

- Arteo regularly advises on transfer pricing issues and frequently assists clients in an increasing number of transfer pricing audit and litigation cases; Arteo's broad tax litigation experience is a key asset when dealing with transfer pricing issues;
- Arteo also has a substantial know-how in assisting clients in applying for advance tax rulings with respect to transfer pricing before the Belgian Ruling Commission (in collaboration with economists for the drafting of transfer pricing studies).

General: Transfer Pricing Framework

As a general principle, Belgium adheres to the arm's length criterion as proposed by the fiscal committee of the OECD. In 2004, Belgium explicitly introduced the arm's length principle into its domestic law (inspired by Article 9 of the OECD Model Convention).

The main transfer pricing adjustments are traditionally based on domestic law. Several articles of the Belgian Income Tax Code 1992 ("BITC") provide the Belgian tax authorities with a tool for scrutinizing intercompany transactions, among which:

- Art. 26 of the BITC: "abnormal or gratuitous benefits" granted by a Belgian enterprise to foreign affiliated companies are added to its taxable income;
- Art. 206/3, § 1, first indent, of the BITC: losses (whether current-year or carried forward) and tax attributes (e.g., dividend received deduction) cannot be offset against profits derived from "abnormal or gratuitous benefits" obtained from an enterprise with which the taxpayer has a direct or indirect relationship of interdependence. Such profit constitutes therefore a minimum taxable basis effectively subject to Belgian corporate income tax;
- Art. 55 of the BITC: interest is deductible as a business expense, provided the interest rate is fixed on an arm's length basis taking into account the risks relating to the operation, the financial position of the debtor and the duration of the loan;
- Art. 54 of the BITC: payments of interest, royalties and service fees made directly or indirectly to related tax haven beneficiaries are deductible only if the Belgian taxpayer proves that (i) the beneficiary is subject to an effective income tax charge equal to at least 50% of the tax that would have been due had it been established in Belgium or (ii) the payments correspond to genuine and sincere transactions and that they do not exceed normal limits.

Belgium has introduced the requirement to prepare and file transfer pricing documentation (see below), which is intended to enable the Belgian tax authorities to carry out a proper analysis of transfer pricing risks and to conduct a more effective audit.

Accepted Transfer Pricing Methodologies

As a general principle, Belgium follows the OECD transfer pricing guidelines (see Administrative Circular 2020/C/35 dated 25 February 2020).

There is no hierarchy among the transfer pricing methods, provided that the method chosen results in an arm's length outcome for the specific transaction. In practice, taxpayers usually use one of the five OECD transfer pricing methods.

Other transfer pricing methods (or a combination of transfer pricing methods) may also be acceptable depending on the case.

The Administrative Circular 2020/C/35 recognizes that pricing between related companies is not an exact science and that both the Belgian tax authorities and the taxpayer need to show flexibility and cooperation to arrive at an arm's length price.

Transfer Pricing Documentation Requirements

A Belgian entity of a multinational enterprise ("MNE") group is required to file a master file as well as a local file (statements 275 MF and 275 LF) if it exceeds one of the following thresholds in its stand-alone financial statements of the prior financial year:

- Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or
- Balance sheet total equal to or exceeding EUR 1 billion; or
- Average annual number of 100 or more FTEs.

The master file should be filed within 12 months of the last day of the reporting period of the MNE group. The local file must be filed annually as an attachment to the Belgian corporate income tax return (Art. 321/4 and 321/5 of the BITC).

A Belgian entity may also be required to file a country-by-country report ("CbCR") and/or CbCR notification form (statements 275 CBC and 275 CBC NOT) if it belongs to an MNE group having a gross consolidated revenue of at least EUR 750 million as reflected in the consolidated financial statements during the year preceding the reporting year.

The CbCR report must be filed within 12 months of the last day of the reporting period of the MNE group, unless the filing is done by a qualifying parent in its jurisdiction of residence. The CbCR notification form should be filed no later than the last day of the reporting period of the MNE group and only insofar as the information differs from that provided for the previous period (Art. 321/2 and 321/3 of the BITC).

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Three Royal Decrees enacted on 16 June 2024 have updated the transfer pricing documentation requirements in Belgium (content of the master file, local file and CbCR), with the aim of increasing transparency at the national and international levels and clarifying interpretation. These changes apply to qualifying taxpayers for fiscal years beginning on or after 1 January 2025.

The law of 8 January 2024 implementing the EU Directive 2021/2101 introduced the Belgian public country-by-country reporting ("PCbCR") requirements. The first Belgian PCbCR must be published for financial years starting on or after 22 June 2024. For companies with financial statements following the calendar year, the first reporting year will be the 2025 financial year and the first filing date, 31 December 2026. Belgian entities in scope must publish their PCbCR on their company website and file it with the National Bank of Belgium.

Local Jurisdiction Benchmarks

A comparability analysis is important for all transfer pricing methods used in order to assess whether related transactions comply with the arm's length principle. Benchmarking and the establishment of a transfer pricing policy are therefore recommended and constitute the basis for any justification of the prices used. In line with the OECD transfer pricing guidelines, the emphasis is more on the reliability of the comparability results than on the process to be followed. In practice, external comparables may be sought in publicly accessible data or commercial databases (from domestic and/or foreign information sources). The Belgian tax authorities accept pan-European benchmarks. In practice, the Belgian tax authorities consider that an update of the results obtained from the comparability analysis should be carried out every three years (except when facts and circumstances require an earlier update).

Focus on Financial Transactions

Under Belgian law, the tax authorities' approach to intercompany financing transactions is, as a rule, aligned with the OECD Transfer Pricing Guidelines. No specific guidance has been issued as such on intra-group transactions; however, the general transfer pricing circular (Administrative Circular 2020/C/35 dated 25 February 2020) addresses key financial transactions such as intra-group loans, guarantees and cash-pooling arrangements, broadly in line with the OECD guidance on financial transactions.

Audits of intra-group financing are common, carried out by the Special Tax Inspectorate, the Large Enterprises Unit (including the specialized International Tax Unit or Transfer Pricing Cell) or the SME Unit, and are increasingly driven by data mining, including the exploitation of transfer pricing forms, tax returns, financial statements and publicly available information. In practice, the authorities may sometimes challenge the commercial terms of a transaction without carrying out a full comparability analysis, which makes robust contemporaneous documentation essential to demonstrate the arm's-length nature of the financing – including through benchmarking studies and credit rating analyses where appropriate.

As mentioned above, specific provisions target the deductibility of non-arm's-length interest and of interest paid to related beneficiaries located in tax havens (Articles 54 and 55 of the BITC).

Finally, the transfer pricing analysis operates alongside the general rules on interest deductibility (notably Articles 49, 198, §1, 11° and 198/1 of the BITC), which may further restrict the deductibility of interest irrespective of arm's-length pricing – including through the ATAD EBITDA rule (cap at the higher of EUR 3 million or 30% of tax EBITDA).

Transfer pricing audits concerning intercompany financing transactions are regularly combined with audits of withholding taxes and the availability of exemptions or reductions claimed by the taxpayer.

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

It is common to apply to the Ruling Commission, an autonomous section of the tax authority, for a unilateral APA in the form of an advance tax ruling (officially named "advance decision in tax matters"). The process usually starts with a pre-filing phase, in which the envisaged structure is explained and discussed. In the second phase, a written ruling application is submitted in which the facts and circumstances and tax analysis are set out in detail (together with supporting documents, such as benchmarking studies), and the decision is rendered based on this application. The entire process generally takes four to six months. An anonymized version of the advance tax ruling is subsequently published. Unilateral APAs are in principle valid for a (renewable) period of three years.

Bilateral APAs are infrequent. Applications go to the tax authorities' International Relations Department and need to be submitted before the end of the first year intended to be covered. The International Relations Department coordinates applications with the other relevant jurisdictions. Bilateral APAs are not published. The time taken for the process varies and can extend over several years in complex files.

The procedures to obtain advance rulings and bilateral APAs entail no filing fees in Belgium.

Transfer Pricing Audits

Lately, tax auditors have been very much on the lookout for transfer pricing and international transactions generally. In recent years, the tax authorities have developed their data-mining capabilities to identify which individual taxpayers and groups of taxpayers are worth auditing; their algorithms are a closely held secret.

They are helped by a number of transfer pricing documentation requirements (namely master file, local file and CbCR reporting; see above) and a special schedule (statement 275 F) attached to the corporate income tax



return listing payments made directly or indirectly to entities established in tax havens.

There has been a substantial increase in transfer pricing litigation in Belgium as a consequence of the government's development of its transfer pricing unit, a specialist team within the federal tax authority. The transfer pricing unit controls transfer pricing arrangements of multinational companies as well as smaller international companies.

The audit usually begins with the reception of a standard transfer pricing questionnaire (that tends to become more tailor-made questionnaires in recent years) listing questions to be answered within 30 days. The questions relate to intra-group transactions, the company's overall business, functions, risks and assets (in particular intangible assets). In addition, detailed information regarding the existence of transfer pricing documentation and methodology is requested. The profile of the companies audited is diverse: industrial and trading companies, as well as holdings, or financing centres.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Belgium, the burden of proof in transfer pricing matters lies with the tax authorities. The tax authorities must demonstrate that the transfer pricing method used by the taxpayer in intra-group transactions deviates from the arm's length conditions (and more precisely that the prices applied by the taxpayer are outside the arm's length range). If the tax authorities are successful in challenging the transfer pricing method used by the taxpayer, they are authorized to substitute their method provided it is consistent with the OECD transfer pricing guidelines. Belgian courts have a rather strict approach to these principles. Taxpayers should however strictly abide by their reporting obligations in transfer pricing matters.

Transfer Pricing Penalties

Administrative fines can be imposed by the tax authorities for failure to comply with the transfer pricing documentation requirements (lump-sum fines ranging from EUR 1,250 to EUR 25,000) and/or in case of transfer pricing adjustments (ad valorem tax increases from 10% to 200%, depending on the seriousness of the infringement and the taxpayer's previous conduct). Also, the additional tax base determined by the tax authorities cannot be offset with tax losses and other tax attributes (except where no tax increase or a tax increase below 10% was imposed). Following a Program Law of 18 July 2025, the tax authorities are no longer entitled to impose the 10% penalty in cases of a first infringement committed in good faith.

Local Hot Topics and Recent Updates

On 20 September 2023, the General Court of the European Union ruled that the so-called Belgian regime of "excess profit tax rulings" constitutes an unlawful State aid scheme and dismissed the actions that were initiated by the Belgian State and 29 beneficiary companies.

These tax rulings were granted to Belgian subsidiaries and permanent establishments of multinational groups and exempted the so-called "excess" profits (i.e., profits exceeding the profit that would have been made by comparable standalone companies operating in similar circumstances) from corporate income tax, irrespective of whether the other State adjusted the taxable profit upwards. According to the Belgian tax authorities, these excess profits were the result of synergies, economies of scale or other advantages arising from being part of a multinational group, and were therefore not attributable to the Belgian entities in question.

With its judgements of 20 September 2023, the General Court reversed its prior decision in 2019 which ruled that the European Commission had erred in treating the different tax rulings granted as the implementation of a "scheme". An appeal (limited to points of law only) has been lodged before the Court of Justice in most of the cases.

In her opinion of 26 March 2026 (Joined Cases C-757/23 P and C-758/23 P), the Advocate General proposed that the European Court dismiss the appeals and confirm that the Belgian excess profit ruling practice constitutes unlawful State aid under EU law. If these appeals are dismissed, the beneficiaries of the excess profit tax rulings will have to refund definitively to the Belgian State the advantage they have derived from it.

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Documentation threshold

Master file	⁘ Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or ⁘ Balance sheet total equal to or exceeding EUR 1 billion; or ⁘ Average annual number of 100 or more FTEs
Local file	Same criteria as for the master file
CbCR	Gross consolidated revenue of at least EUR 750 million

Submission deadline

Master file	Within 12 months of the last day of the reporting period of the MNE group
Local file	Within the deadline for filing the corporate income tax return
CbCR	Within 12 months of the last day of the reporting period of the MNE group

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of EUR 25,000
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of EUR 1,250; ad valorem tax increase ranging from 10% to 200%
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 25,000



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Overview

Demarest, Taxand Brazil

Our team can offer the best legal advice on transfer pricing "TP" matters, especially regarding:

- Assessment of the application and respective impacts of TP rules in operations and transactions carried out and intended by the client.
- Legal consultation in administrative proceedings regarding tax authorities' audits on the correct application of TP rules.
- Litigation at the administrative and judicial levels to guarantee the authorities apply TP rules correctly on the client's operations and transactions.

General: Transfer Pricing Framework

On June 15, 2023, Law No. 14,596/23 was published, amending the Brazilian TP rules for calculating the Corporate Income Tax "IRPJ" and Social Contribution on Net Income "CSLL".

Law No. 14,596 resulted from the conversion into law of Provisional Measure No. 1,152/2022, enacted in late 2022 and entered into force on January 01, 2024, with some provisions applicable, optionally, as of 2023.

TP rules establish minimum amounts of taxable income and maximum amounts of deductible expenses "Benchmark" to calculate IRPJ/CSLL in transactions between related parties and parties that benefit from a more advantageous tax treatment.

The previous Brazilian TP rules currently in force – Law No. 9,430/1996 – were widely criticized for diverging from international practices adopted by many countries. This legislation even caused several discussions in the United States regarding the recovery of income taxes paid in Brazil.

The new rules amended the previous system by replacing fixed margins with comparability tests that best enforce the arm's length principle. This principle establishes that the Benchmark calculation must consider the relationships carried out between independent parties in comparable transactions.

The new TP rules still apply to transactions with related parties, parties residing in countries that do not tax income or levy taxes at a maximum rate lower than 17%, or parties that benefit from preferential tax systems. However, the definition of "related parties" was expanded to include all parties whose relationship of influence can, directly or indirectly, impact the transaction prices. The legislation also establishes a list of parties presumed to be related to the Brazilian taxpayer, as in the case of controlled and controlling companies.

Accepted Transfer Pricing Methodologies

In terms of application, the rules still require the establishment of the controlled transaction and its comparison with the Benchmark, in order to identify the need for adjustment in calculating IRPJ/CSLL.

A comparability test will be carried out to compare the terms and conditions of the controlled transaction with those established between unrelated parties. It will consider a series of factors, including the economic characteristics of the transactions and the applicable method and financial indicators. The following methods should be considered:

- PUC - Comparable Uncontrolled Prices
- RPM - Resale Price Method
- CPM – Cost Plus Method
- TNMM – Transactional Net Margin Method
- PSM - Profit Split Method
- Other Methods as established by the tax authorities

Also, Normative Ruling No. 2,161/23 provides for the guidelines of the Organization for Economic Co-operation and Development "OECD" as a subsidiary source of interpretation when "expressly approved by the Tax Authorities" and does not conflict with other rules on this matter.

Transfer Pricing Documentation Requirements

Law No. 14,596/23 only established that the tax authorities should determine how the information and other supporting documents would be provided. The Normative Ruling No. 2,161/23 defined that the taxpayer must submit:

i) **Country-by-Country Statement**, containing information on the global allocation of revenue and assets, the income tax paid by the multinational group to which it belongs, and indicators concerning the group's global economic activity. It must be submitted by the Brazilian entity (for tax purposes), which is the final controlling shareholder of a multinational group, including other specific provisions, annually and through the Income Tax Return "ECF".

ii) **Master File**, drafted at the group level, with information on the structure and activities of the multinational group, including intangibles and financial operations. It must be submitted by the taxpayers subject to TP rules (except those whose total amount in controlled transactions, before the TP adjustments, in the previous year, is less than BRL 15 million), within three months of the ECF's deadline for the respective fiscal year through the Tax Authorities' electronic portal (except for applications carried out in 2023 and 2024, when the deadline is the last business day of the following year).

iii) **Local File**, drafted at the company or country level with detailed information on controlled transactions. Tax authorities waived a significant part of the required information for taxpayers whose total amount in controlled transactions, before the TP adjustments in the previous year, is between BRL 15 million and BRL 500 million. It must be submitted by the taxpayers subject to TP rules (except those whose total amount in controlled transactions, before the TP adjustments, in the previous year, is less than BRL 15 million), with the same deadline as the Master File. It is important to mention that the Local File must include information on the following controlled transactions (the ones with the highest value):

a) **100%** of controlled transactions for the import and export of commodities;

b) **100%** of controlled transactions involving rights, business restructuring, cost contribution arrangements, financial operations, and transactions with intangibles; and

c) **80%** of the total amount of controlled transactions involving: (i) the import of goods (except for commodities); (ii) the export of goods (except for commodities); (iii) the import of services; and (iv) the export of services.

Local Jurisdiction Benchmarks

The benchmark calculation must consider comparable transactions between independent parties, allocating assets, risks, and functions between the companies involved. The preferred and recommended method is the Comparable Uncontrolled Price "CUP", which considers comparable prices in transactions between unrelated parties.

The assessment of the controlled import transaction must be based on its facts and circumstances and on the evidence of the parties' effective conduct and intentions to identify the relationships and their economic and financial characteristics.

Law No. 14,596/23 even allows disregarding or replacing the controlled transaction when it is concluded that unrelated parties would not have carried out the controlled transaction as established.

However, considering the news rules are mandatory as of January 2024, no precedents indicate the tax authorities' interpretation/application of such rules yet.

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

Law No. 14.596/23 introduced the APA into Brazilian legislation and changes to the Mutual Agreement Procedure "MAP", representing a significant step forward compared to the previous scenario in the quest to address the gaps and divergences found by the OECD from the perspectives of legal certainty and business predictability.

Although the Federal Revenue Office still needs to regulate the APA, it could serve as an alternative tool for taxpayers to define the transfer pricing methodology to be used for future transactions. The method adopted could be discussed, critical assumptions extended, and even renewed, with the possibility of discussing comparables, critical assumptions, and deadline extensions.

The regulation of the Brazilian APA is expected to value mutual trust between the parties and be practical in terms of negotiation, which will allow a genuine exchange of information and negotiation proposals, with concessions on both sides, preventing the APA from becoming a traditional consultation, with the establishment of a unilateral methodology.

Focus on Financial Transactions

Financial transactions between related parties are subject to the Danish arm's length principle under section 2 of the Danish Tax Assessment Act. The Danish Tax Agency's Legal Guidance states that this principle is to be interpreted in accordance with the arm's length principle in the OECD Model Tax Convention and the latest version of the OECD Transfer Pricing Guidelines. The Legal Guidance also contains specific guidance on financial transactions based on Chapter X of the OECD Transfer Pricing Guidelines.

In practice, we generally see significant attention from the Danish Tax Agency in relation to financial transactions, and financial transactions are often a key focus area in Danish transfer pricing audits.

For Danish transfer pricing purposes, controlled financial transactions must be accurately delineated by reference to the economically relevant characteristics of the transaction. These include the contractual terms, the functions performed, assets used and risks assumed by the parties, the characteristics of the financial product or service, the economic circumstances and the parties' business strategies. The Danish Tax Agency's Legal Guidance states that the transfer pricing documentation must address the purpose of the financial transaction, identify the group entities that make the significant decisions in relation to the transaction and analyse which entities exercise control over the economically relevant risks associated with the financial transaction.

A particular Danish feature is the interaction between the transfer pricing rules and the Danish rules on debt and interest deductibility. According to the Danish Tax Agency's Legal Guidance, based on a lex specialis principle, section 2 of the Danish Tax Assessment Act does not apply to the balance between debt and equity where that matter is governed by the thin capitalisation rules in section 11 of the Danish Corporation Tax Act. In addition, Denmark applies an asset-based interest limitation rule under section 11B and an EBITDA-based interest limitation rule under section 11C. These interest limitation rules may restrict the deductibility of financing expenses independently of the determination of an arm's length interest rate and other arm's length terms under section 2 of the Danish Tax Assessment Act.

For intra-group loans, the arm's length analysis should consider the perspectives and realistically available alternatives of both the borrower and the lender. Relevant factors include the purpose and amount of the financing, maturity, currency, security and seniority, the borrower's creditworthiness and the effect of group membership, as well as the functions performed, risks controlled and financial capacity to assume those risks by the lender. Cash pooling arrangements and financial guarantees are also subject to the arm's length principle. For cash pooling arrangements, the appropriate remuneration depends on the functions performed, assets used and risks assumed, while for financial guarantees it must also be considered whether the explicit guarantee provides a benefit beyond that resulting from implicit support or group membership.

Transfer Pricing Audits

Brazil's tax audits generally aim to verify taxpayers' conformity and compliance with tax legislation. This verification takes place by requesting documents and information sufficient to understand the calculation and payment of taxes. Regarding TP matters, the tax audits are, as a rule, related to tax audits of the calculation of IPRJ and CSLL, with no specific procedure concerning TP rules.

However, the provisions of Law No. 14,596/23 and IN No. 2,161/23 allow the conclusion that the Federal Revenue Service will adopt specific procedures to verify compliance of controlled operations with the new TP rules.

Transfer Pricing Penalties

Law No. 14,596/23 provides for different fines applicable according to the infraction, as indicated below:

- **Late filing:** 0.2%, per month or fraction, on the gross revenue for the period to which the obligation refers.
- **Data omission:** 5% on the transaction value or 0.2% on the consolidated revenue of the multinational group for the year prior to which the information refers.
- **Lack of compliance with filing rules:** 3% on the gross revenue for the period to which the obligation refers.
- **Refusal to provide information:** 5% on the transaction value.

The penalties above will be applied at a minimum of BRL 20,000 and a maximum of BRL 5 million.

Local Hot Topics and Recent Updates

The new TP rules still contain a few controversial aspects, such as:

- **Limits and uncertainties** involving the application of the OECD TP Guidelines and how the Tax Authorities should approve them, and significant compliance costs to draft the Master and Local files following the criteria established by the regulations;
- **Non-deduction of expenses** incurred with interest, "other expenses" outlined as shareholder activity, and royalties "when the deduction of the amounts results in double non-taxation";
- **Treatment of corporate reorganizations** (i.e., mergers, spin-offs, capital contributions, capital reductions, etc.) and application of Brazilian tax neutrality rules;
- **Legal nature of the Brazilian APA;** and
- **Deadlines** for compensating adjustments.

Besides, there are still some topics to be regulated by the Tax Authorities:

- Transactions with intangibles, intercompany services, cost contribution arrangements, business restructuring, and financial operations; and
- Further details on the APA request.

BRAZIL

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Documentation threshold

Master file	Over BRL 15 million
Local file	Between BRL 15 million and BRL 500 million
CbCR	N/A

Submission deadline

Master file	Within three months of the ECF's deadline for the respective fiscal year through the Tax Authorities' electronic portal (except for applications carried out in 2023 and 2024, when the deadline is the last business day of the following year)
Local file	Same as the Master file
CbCR	Annually and by means of the ECF

Penalty Provisions

Documentation – late filing provision	0.2%, per month or fraction, on the gross revenue for the period to which the obligation refers
Tax return disclosure – late/incomplete/no filing	5% on the transaction value or 0.2% on the consolidated revenue of the multinational group for the year prior to which the information refers
CbCR – late/incomplete/no filing	Fines applicable according to the type of infraction regarding the ECF



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CANADA

Overview

Borden Ladner Gervais LLP, Taxand Canada

Canada's largest law firm offers clients advice on all aspects of business law from coast to coast in every major city across the country. BLG's Tax Group provides advice on all varieties of taxes in Canada, including transfer pricing in an income tax context. In particular, members of BLG's Tax Group have advised clients on obtaining advance pricing agreements, preparing contemporaneous documentation, managing transfer pricing audits, and resolving controversies at various levels, including mutual agreement procedures and before the courts.

We work with Taxand group members who have in-house economics and valuation expertise to address client needs on issues requiring such specialized transfer pricing knowledge.

General : Transfer Pricing Framework

Canada's transfer pricing regime is contained in section 247 of the *Income Tax Act* (Canada) (ITA). Bill C-15, Budget 2025 Implementation Act, No. 1, received Royal Assent on March 26, 2026 and represents the most significant modernization of section 247 since its introduction. The new rules apply to taxation years and fiscal periods that begin after November 4, 2025.

The revised rule replaces the former two-track structure, which distinguished between repricing adjustments and the more restrictive statutory recharacterization rule. Under the new single operative adjustment rule, a transfer pricing adjustment may be made where an in-scope transaction or series has "actual conditions" that differ from "arm's length conditions".

The analysis is now expressly "delineation first". The transaction or series must be analyzed by reference to its economically relevant characteristics, including contractual terms, the actual conduct of the participants, functions performed, assets used, risks assumed, the characteristics of property or services, economic circumstances, business strategies, surrounding circumstances, industry practices, and the relationship of the functions performed to the wider generation of value by the multinational enterprise group.

The definition of arm's length conditions asks what the actual participants would have agreed to if they had been dealing at arm's length in comparable circumstances. This is a material change from the former framing, under which Canadian jurisprudence often placed significant weight on the legal rights and obligations created by the parties and treated the OECD Transfer Pricing Guidelines as useful but not controlling.

The revised legislation also requires section 247 to be applied in a manner that best achieves consistency with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, as adopted by the OECD Committee on Fiscal Affairs on January 7, 2022, subject to any later prescribed guidance.

What no longer applies in the same way: the former distinction between ordinary repricing and statutory recharacterization, the former statutory tax-benefit purpose condition for recharacterization, and the view that the OECD Guidelines are merely an external interpretive aid with no statutory role. The new framework does not mean that contracts are irrelevant. Rather, contracts remain important evidence, but must be tested against actual conduct, and the full set of economically relevant characteristics.

Accepted Transfer Pricing Methodologies

The Canadian statute still does not prescribe any particular method or hierarchy for determining and applying arm's-length terms and conditions. The appropriate method must be selected and applied in accordance with the revised section 247 framework and the OECD Guidelines. The Canada Revenue Agency (CRA) continues to recognize the traditional transaction methods and transactional profit methods commonly used internationally, including:

- comparable uncontrolled price "CUP" method;
- resale price method;
- cost-plus method;
- transactional net margin method; and
- transactional profit split method.

What still applies: method selection remains fact-specific and comparability-driven. Disputes will continue to turn on whether the selected method is the most appropriate method for the economically delineated transaction. What has changed is that the method selection and application should now be tied more directly to the statutory concepts of actual conditions, arm's length conditions and economically relevant characteristics.

Transfer Pricing Documentation Requirements

Canada continues not to have a formal master file/local file filing regime for ordinary transfer pricing documentation. However, the substantive contemporaneous documentation requirements in subsection 247(4) have been revised to align with the new analytical framework. Documentation should now address the economically relevant characteristics of the transaction or series, including group-wide context, realistic alternatives where relevant, and why the selected method is appropriate under the OECD Guidelines.

The documentation must be prepared or obtained by the taxpayer's documentation due date, generally the filing due date for the relevant tax return. For a corporation, this will generally be six months after taxation year-end. The documentation is not filed with the tax return. It must be provided to the CRA within 30 days after a written request. The former 90-day production period no longer applies for taxation years subject to the new rules.

Additional proposed legislation was released on July 23, 2026 (the "July 23, 2026 Draft Proposals"). The July 23, 2026 Draft Proposals would, if enacted as proposed, allow simplified contemporaneous documentation for certain qualifying taxpayers and transactions. The proposed simplified regime would apply to taxation years and fiscal periods beginning on or after January 1, 2026, and would be available by election filed by the documentation due date. As of the date of publication of this guide, this aspect remains draft legislation.

Under the July 2026 Draft Proposals, simplified documentation would be available in four categories:

- small taxpayers and partnerships meeting specified conditions, including a prior-year Canadian group revenue threshold of C$25 million or less and no specified intangible-property dispositions or royalty payments with non-arm's length non-residents;
- small tangible property transactions with non-arm's length non-residents where the gross amount paid or payable for the property is C$5 million or less;
- small intragroup services transactions with non-arm's length non-residents where the gross amount paid or payable for the services is C$2 million or less; and
- loans with non-arm's length non-residents where the gross amount of interest paid or payable on the loan is C$1 million or less.

The simplified regime should not be treated as a general safe harbour from transfer pricing scrutiny. It is proposed to provide penalty-protection documentation relief for qualifying transactions, not to displace the arm's length principle.

A Canadian taxpayer is obliged to file a Form T106 for each non-arm's length non-resident with whom the taxpayer has transacted during the year (subject to a de *minimus* exception). The Canadian taxpayer must also file a T106 Summary form annually summarizing all such transactions with all non-arm's-length non-residents during the year. These forms constitute the primary way in which the CRA is alerted to transactions of interest from a transfer pricing perspective.

Each late-filed T106 form is subject to a penalty of $25/day ($2,500 maximum) and a failure to file is penalized at $500 ($12,000 maximum), which is doubled ($1,000/month, $24,000 maximum) where the CRA has served a demand to file.

Local Jurisdiction Benchmarks

Identification of suitable comparables remains central to Canada's transfer pricing system. There are no legislative guidelines for establishing comparability, so determining appropriate comparables is an area of judgment on which taxpayers and the CRA frequently disagree. Foreign comparables may be acceptable, and the CRA has expressed the view that while domestic comparables would be assumed to be more reliable where the Canadian taxpayer is the tested party, foreign comparables meeting the same standards of comparability are valid.

What still applies: taxpayers may expect disagree with the CRA over the selection of comparables, adjustments, tested party, and use of current-year versus multi-year data. The CRA may continue to rely on information from other taxpayers that is not fully disclosed during the audit stage. What has changed is that comparability must now be assessed within the broader statutory framework of economically relevant characteristics and actual versus arm's length conditions.

Focus on Financial Transactions

The 2026 amendments are likely to be particularly significant for intercompany financial transactions. The revised legislation places greater emphasis on accurate delineation, economically relevant characteristics and the parties' actual conduct. As a result, taxpayers should be prepared to support not only the pricing of intercompany loans, guarantees and cash pooling arrangements, but also the amount of debt, allocation of financial risks and commercial rationale for the arrangement.

In practice, this will often require a detailed assessment of the borrower's creditworthiness, the effect of explicit or implicit group support, and whether the contractual allocation of risks is consistent with the parties' actual conduct. Particular attention should also be paid to treasury and cash pooling arrangements, as returns earned by treasury entities should reflect the functions performed, decision-making authority exercised and risks assumed. Compliance with Canada's thin capitalization and other interest deduction limitation rules does not eliminate the need to demonstrate that intercompany financial transactions satisfy the arm's length principle.

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

APAs remain available in Canada, and are frequently a cost-effective alternative to lengthy and expensive audit disputes. APAs may be unilateral, bilateral or multilateral. The CRA has a strong preference for bilateral or multilateral APAs.

Certain business restructuring transactions may not be suitable for the APA program. The typical term of an APA is 3 – 5 taxation years.

The APA process involves a pre-filing meeting with the CRA to discuss potential suitability. This is followed by the taxpayer making a formal request setting out the relevant taxpayers, transactions and years to be covered by the APA requested. If the CRA accepts the taxpayer's proposal, the taxpayer prepares the formal APA submission setting out the proposed transfer pricing methodology and underlying data, for the CRA team to review. There are usually a number of follow-up information requests for the taxpayer from the CRA before the final version is settled and executed, as well as negotiations with other relevant tax authorities for bilateral or multilateral APAs. Depending on the countries and

issues involved, two years is a common time-frame from start to finish.

Transfer Pricing Audits

The CRA regularly and aggressively conducts transfer pricing audits, which are extremely document-intensive and time-consuming to respond to. The CRA applies a "risk-based approach to file selection, proper assessment of the facts and circumstances relevant to OECD comparability factors, well-supported and documented audit files, and assessments that respect the arm's-length principle."

The audit process generally begins with a formal demand for the taxpayer's contemporaneous documentation. For taxation years subject to the new rules, the taxpayer must provide that documentation within 30 days of the request. The former 90-day response period should no longer be relied on. The CRA audit team will generally also seek oral interviews with various personnel within the multinational enterprise of which the Canadian taxpayer is a member, and (depending on the circumstances) site visits. Recent legislative changes have significantly expanded the CRA's powers to require oral interviews, and the CRA views this tool (and in particular functional interviews to determine how functions and risks are allocated within the MNE) as an essential element of the audit process.

It is essential for the taxpayer to assemble a team of internal and external resources to conduct the transfer pricing audit in an organized and effective manner, and to minimize the risk of the CRA audit team receiving misinformation that creates an unfavourable or misleading image with the CRA. This is generally achieved by establishing a single point of taxpayer contact with the CRA audit team, a process for handling the CRA audit team's requests, and identifying communications and analysis that are protected from disclosure under lawyer-client privilege.

Near the end of the audit, the CRA team leader will issue a "proposal letter" indicating the adjustments that the CRA intends to make and inviting final submissions in response (the usual response time offered is 30 days, which can often be lengthened if requested). Following that process, the taxpayer will generally receive a final letter stating what adjustments the CRA is making, followed by the issuance

of a formal notice of re-assessment. The taxpayer has 90 days from there to initiate the appeals process within the CRA Appeals branch by filing a Notice of Objection, with other potential recourse (i.e., MAP, litigation before the courts) potentially available. The taxpayer can usually obtain a copy of the auditor's T20 report and supporting working papers on request, which should be scrutinized for factual deficiencies.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In a typical Canadian civil case, the burden of proof rests with the party making the allegations, usually the plaintiff. If the plaintiff fails to establish the allegations, the case must be dismissed.

This principle is reversed in Canadian tax litigation. When the CRA makes allegations against a taxpayer, the responsibility to disprove the allegations often shifts to the taxpayer. This distinction stems from Canada's self-reporting tax system, as taxpayers are most familiar with their financial affairs to challenge the tax authority's assumptions.

Similarly, in Canadian transfer pricing disputes, the CRA has the authority to reassess a taxpayer's transfer pricing arrangements, and the burden of proof generally rests with the taxpayer to support its transfer pricing positions. The taxpayer must provide sufficient documentation and evidence to support their pricing methodology and ensure compliance with the arm's length principle.

The CRA relies on its Transfer Pricing Memoranda and OECD Guidelines to assess compliance, and taxpayers must be prepared to support their positions with robust contemporaneous documentation, expert analysis, and, where necessary, legal arguments. This has become even more important under the 2026 framework, which places greater emphasis on actual conduct, economically relevant characteristics and arm's length conditions. As a result, taxpayers should maintain contemporaneous evidence of the functions performed, assets used, risks assumed and business rationale underlying their arrangements, as these facts may be as important as the benchmarking analysis itself in defending against adjustments, penalties and interest.

Transfer Pricing Penalties

Transfer pricing penalties apply under s. 247(3) of the ITA in certain circumstances, serving as a deterrent to under-allocating income to Canada. The amount of the penalty is computed as 10% of the taxpayer's net adverse transfer pricing adjustments made by the CRA (not 10% of the increased tax resulting therefrom). As such, penalties can apply even if the taxpayer is in a loss position for the year and are onerous by international standards.

The penalty threshold has changed. For taxation years subject to the new rules, penalty consideration generally arises where the net adverse transfer pricing adjustment exceeds the lesser of C$10 million and 10% of the taxpayer's gross revenue for the year. The former C$5 million threshold no longer applies for taxation years subject to the enacted 2026 amendments. In this regard, the taxpayer's net transfer pricing adjustment for the year is defined to exclude those adjustments in respect of which the taxpayer made "reasonable efforts" to determine and use arm's-length prices and allocations – as such, "reasonable efforts" are a defence against penalties even where an adverse adjustment occurs. While

what constitutes such "reasonable efforts" is not set out in the statute (there are no safe harbours) and so must be determined in each case based on the taxpayer's particular circumstances, a taxpayer is deemed not to have made such reasonable efforts unless it prepares contemporaneous documentation within

6 months of each taxation year-end (a shorter time period than the 1 year applicable in many countries) that meets the substantive requirements in s. 247(4) of the ITA, and delivers it to the CRA within 30 days of a demand for it. Whenever the dollar threshold is met for transfer pricing adjustments, the CRA will frequently assess penalties on the basis that the taxpayer's contemporaneous documentation does not meet the required substantive standard. Such a penalty assessment requires approval from the CRA's internal Transfer Pricing Review Committee.

Where the July 23, 2026 Draft Proposals apply, qualifying taxpayers or transactions may be able to obtain penalty protection by satisfying the simplified documentation requirements, assuming the proposals are enacted as drafted.

Secondary adjustments also remain relevant. While not a penalty per se, when adverse transfer pricing adjustments are made to the Canadian taxpayer, there will usually be a "secondary adjustment" to reflect the value of the Canadian taxpayer having charged too little for goods and services it has delivered to, or paid too much for goods and services received from, a non-arm's-length non-resident. The amount of that secondary adjustment will usually be treated as a deemed dividend triggering non-resident withholding tax (25% unless reduced by a tax treaty), unless the non-resident has repatriated the relevant amount back to the Canadian taxpayer with the CRA's concurrence.

Local Hot Topics and Recent Updates

The June 2023 consultation paper is no longer merely a proposal. The core transfer pricing reforms were enacted when Bill C-15 received Royal Assent on March 26, 2026, and they apply to taxation years and fiscal periods beginning after November 4, 2025. The July 23, 2026 draft legislative package adds proposed simplified documentation rules and related regulations for specified low-value or small-taxpayer situations. Those July 2026 measures are not yet enacted as of this update.These changes are, in large part, a response to the CRA's unsuccessful attempt in the Cameco case (*Canada v. Cameco Corporation*, 2020 FCA 112, aff'g Cameco Corporation v. The Queen, 2018 TCC 195, leave to appeal to SCC refused), where the CRA sought unsuccessfully to apply the "recharacterization" rule in s.247(2)(b) and (d) of the ITA.

CANADA

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Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	€ 750M

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months from year-end

Penalty Provisions

Documentation – late filing provision	Not Applicable; however, absence/inadequacy of timely contemporaneous documentation exposes taxpayer to penalties if transfer pricing adjustments exceed prescribed threshold
Tax return disclosure – late/incomplete/no filing	Late filing penalty of 5% of taxes owing plus a further 1% per month late (maximum 12 months)
CbCR – late/incomplete/no filing	$500/month to a maximum of 24 months



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CHINA

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Overview

Hendersen, Taxand China

Hendersen is a boutique professional tax and accounting service firm established in 2004. With extensive exposures to world-class clients and hands-on experiences in various industrial business, our technical and industrial expertise as

well as practical experiences is simply among the top class in China. We have dedicated and experienced transfer pricing specialists, worldwide professional databases, close interaction with Taxand global transfer pricing network as well as strong connection with tax authorities. We always focus on clients' specific needs and aim to provide tailor-made solutions to our clients. All these enable us to provide top-quality transfer pricing services to our clients and be highly competitive in this special areas including conducting transfer pricing model and policy review, planning and restructuring, as well as transfer pricing risk and opportunity assessment; documentation client's transfer pricing policies and prepare supporting materials in a systematic manner to prepare for any checks from the tax authority, including preparation of transfer pricing contemporaneous documentation; providing transfer pricing audit defense support including risk management, documents preparation and negotiation with tax authority to achieve the best audit result; assisting in Advanced Pricing Arrangement ("APA") from pre-filing meeting, formal application, negotiation, to signing and execution of the APA; assisting the clients to review and structure intercompany transactions,in order to lower the overall tax burden on their China operations while in full compliance with China tax and transfer pricing regulations, etc.

General : Transfer Pricing Framework

Under article 110 of the Implementation Regulations of the Enterprise Income Tax Law (EITIR), the arm's length principle is defined as the principle adopted by unrelated parties when conducting business transactions based on fair transactional prices and normal business practices. Transfer pricing legislation is governed by Notice 42/2016 with the requirements of related party reporting and contemporaneous documentation. The State Administration of Taxation (SAT) issued Notice 64/2016 to improve the administration of APAs. In addition, Notice 6/2017 regulates the administration of Special Tax Investigation and Adjustment and Mutual Agreement Procedures and clarifies certain key transfer pricing issues, as well as the methodology and procedures for special tax audits and adjustments.

Accepted Transfer Pricing Methodologies

In addition to the traditional five transfer pricing methodologies recommended by the OECD principles, Notice 6/2017 introduced other methods, including asset valuation methods such as the cost method, market method, income method, etc., which are consistent with the arm's length principle as "supplementary methods".

There is no special order of the methods to be used. The taxpayer is given the right to choose any method or combination of the above methods as long as the method is reasonable and appropriate taking into account the factors such as type, nature of transactions and investigation results of the tax authority.

Transfer Pricing Documentation Requirements

In addition to the annual reporting forms on related party transactions, Notice 42/2016 introduces a three-tier documentation framework, as set out in the OECD's framework in BEPS Action 13.

Transfer pricing contemporaneous documentation consists of a Master File, a Local File and a Special Issue File.

Local entity whose annual related party transactions exceed one of the prescribed thresholds should prepare the local file. These thresholds are as follows:

- For tangible buy-and-sell related party transactions: RMB 200 million;
- For intangible buy-and-sell related party transactions: RMB 100 million;
- For all other related party transactions: RMB 40 million.

As for the Master File, the local entity shall submit the Master File if either of the following conditions is met:

- The local entity has overseas related party transactions, and the group's ultimate holding company has prepared a Master File; or
- The local entity has related party transactions exceeding RMB 1 billion during the year.

The Special Issue File is required for taxpayers engaging in a cost sharing agreement or falling under the thin capitalization requirement.

The CbCR forms are part of reporting forms on the transactions between related parties together with the annual enterprise income tax return. The CbC reporting forms are required from the Chinese resident enterprise if:

- it is the ultimate holding company of a group with consolidated revenues of over RMB 5.5 billion; or
- it is nominated as the CbCR entity.

Local Jurisdiction Benchmarks

Based on Notice 42/2016, a comparable analysis must be made in order to select reasonable transfer pricing methods. The following factors should be considered in the comparable analysis:

- characteristics of the assets or services transferred;
- functions, risks and assets of the parties involved;
- terms of contracts;
- economic environment; and
- business strategies.

For more detailed information on Chinese companies, such as segmented profit and loss statements, Chinese specific databases (in Chinese language) such as Wind or Tianxiang are used. Public information for companies listed in Shanghai, Shenzhen and Shenzhen small-medium size enterprises are used for Chinese comparables. For comparables worldwide, China Tax authorities usually would adopt the international database such as OSIRIS, as well as their internal database.

Taxpayers are expected to determine whether internal comparable information can be found within the company. If the information is unavailable, companies are expected to carry out an external comparable study using Chinese and/or foreign comparable companies.

Focus on Financial Transactions

Under Chinese tax and foreign exchange rules, virtually all cross-border related-party loans, whether inbound (foreign debt) or outbound (overseas lending), require mandatory registration or filing with the State Administration of Foreign Exchange (SAFE). An unregistered cross-border loan is void for foreign exchange purposes and no remittance of principal or interest can lawfully be made. This regulatory dimension is unique to China and means that the transfer pricing analysis of any cross-border intercompany loan must address foreign exchange compliance alongside the arm's length principle.

The quantum of related-party debt that benefits from tax-deductible interest is subject to two intersecting limits.

- First, China's thin capitalisation rules provide a safe harbour debt-to-equity ratio of 2:1 for non-financial enterprises and 5:1 for financial enterprises; interest on debt exceeding these ratios is non-deductible unless the taxpayer can demonstrate arm's length terms.
- Second, the PBOC's macro-prudential framework imposes a separate cross-border financing quota based on net assets multiplied by a macro-prudential parameter, which operates independently of the tax-law safe harbour.

Enterprises must satisfy both regimes to ensure both tax deductibility and foreign exchange compliance.

In practice, the STA requires that intercompany loans be benchmarked against comparable uncontrolled transactions, with a creditworthiness analysis of the borrower and interest rate support. Notice 42/2016 further requires taxpayers to report all related-party financial transactions, including loans, guarantees and cash pooling, in their annual related-party filings.

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

Article 42 of the Enterprise Income Tax Law (EITL) provides for the possibility of negotiation and entering into an APA with the tax authority. According to Notice 64/2016, APA candidates must meet all of the following requirements for 3 years prior to the application:

- the annual related party transactions must exceed RMB 40 million;
- they have reported related party transactions in their annual tax filings properly; and
- they have maintained the required contemporaneous documentation.

According to Notice 64/2016, an APA usually covers a period of 3 to 5 years following the year of application. Notice 64/2016 also allows an APA to apply retroactively to the year of application or previous years upon approval of the tax authority.

There is no filing fee for APAs in China. The applicant can submit application to the local tax bureau, or SAT if the APA involves more than one province or if it is a bilateral/multilateral APA. Negotiation and execution of an APA usually involves six stages, i.e. pre-filing meeting, formal application, examination and appraisal, negotiation signing of arrangements and supervision of implementation.

Transfer Pricing Audits

There is a 10-year statute of limitation for tax adjustments. This does not apply in cases of fraud, wilful default or negligence.

The transfer pricing audit process is generally initiated by a request for financial and management information such as statutory accounts, tax computation, pricing information, management accounts and transfer pricing documentation. Based on this information, the tax authority will carry out a review of the documents and decide if a more detailed review is required. A field visit will be carried out if it has been found necessary after review of the submitted information.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under the Corporate Income Tax Law of the PRC (Amended 2018), the Implementation Rules of the Corporate Income Tax Law (Amended 2024), the Law on the Administration of Tax Collection (2015 Revision), and the State Administration of Taxation's Announcement on Related Party Declarations and Contemporaneous Documentation, the burden of proof in transfer pricing cases rests primarily with the taxpayer. Companies engaged in cross-border transactions with

related parties must demonstrate compliance with the arm's length principle.

Taxpayers are responsible for preparing and maintaining transfer pricing documentation to support their intercompany transactions. This includes intercompany contracts, contemporaneous reports, transaction summaries, and relevant financial information. If a tax authority challenges a taxpayer's transfer pricing policy, the taxpayer must provide comprehensive documentation to prove that its transactions comply with the arm's length principle. Should the tax authority deem the policy unreasonable, it may make a special tax adjustment.

If the taxpayer disagrees with the adjustment, they bear the responsibility of providing relevant evidence. If the dispute persists, the taxpayer may request administrative reconsideration or pursue legal action in accordance with the law.

Transfer Pricing Penalties

Taxpayers who fail to comply with the requirements for providing information or provide false information or do not provide the infor-mation in time will be fined according to the relevant articles of the Administration of Tax Collection Law (TCAL). The penalty described in the TCAL could range from CNY 10,000 to CNY 50,000 in serious cases.

Penalty interest will generally be imposed on tax adjustments made under the EITL (including transfer pricing adjustment). The interest rate shall be calculated based on an RMB loan benchmarking rate published by the People's Bank of China plus 5%. The interest on underpaid taxes is on a daily basis, starting from 1 June of the tax year following the one to which the tax payment is related until the day the underpaid tax is settled.

In addition, if a taxpayer can provide contemporaneous documentation and/or other information/documents requested by the tax authority, the additional 5% surcharge may be waived.

The additional tax assessment, together with penalty interest (if any), should be -settled with the tax authority within the prescribed deadline, overdue payment would be subject to an additional 0.05% penalty interest per day.

Local Hot Topics and Recent Updates

Transfer pricing for MNCs remains under heightened scrutiny in China. The "Golden Tax Project Phase IV" has been fully implemented since 2025, significantly strengthening the tax authorities' data-driven review of related-party transactions through big data analytics and cross-agency information sharing.

In addition, China Customs has deployed the new "Smart Customs" National Risk Management System, which coordinates with tax authorities to monitor import transactions between related parties, creating a dual-agency review environment. MNCs must carefully balance tax and customs regulations when structuring intercompany pricing, as a low customs valuation for import duty purposes may conflict with arm's length pricing for income tax purposes. The Shenzhen Municipal Tax Bureau's cross-border compliance pilot programme has been expanded to additional cities including Shanghai, Guangzhou, and Chengdu, with plans for a national roll-out. Under this programme, tax authorities proactively review cross-border activities and provide feedback on risk levels, offering businesses greater certainty.

Looking ahead, the STA has signalled its intention to further align domestic transfer pricing rules with the OECD's Two-Pillar Solution. China is an active participant in the Inclusive Framework and has been consulting on the domestic legislative changes needed to implement the Global Anti-Base Erosion (GloBE) Rules (Pillar Two). While the exact implementation timeline remains under discussion, the STA has encouraged MNC groups to begin assessing the potential impact of a 15% global minimum tax on their China operations.

CHINA

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Documentation threshold

Master file	Related party transactions exceeding RMB 1 billion
Local file	Tangible buy-and-sell related party transactions RMB 200 million; intangible buy-and-sell related party transactions RMB 100 million; all other related party transactions RMB 40 million
CbCR	RMB 5.5 billion

Submission deadline

Master file	Within 12 months after the fiscal year-end
Local file	30 June of the following year
CbCR	31 May of the following year

Penalty Provisions

Documentation – late filing provision	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases
Tax return disclosure – late/incomplete/no filing	RMB 10,000 to RMB 50,000 in serious cases Late payment interest 0.05% per day
CbCR – late/incomplete/no filing	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases



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CROATIA

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Overview

LeitnerLeitner, Taxand Croatia

LeitnerLeitner Consulting d.o.o. is a consulting firm based in Zagreb, Croatia and offering a full range of services. We offer individual and innovative solutions for all questions around tax, accounting, payroll-related and financial advisory services.

Our services related to transfer pricing include all aspects of transfer pricing services, including compliance and reporting, analysis, tax planning and strategy and assistance during tax audits. We are focused on the preparation of customized transfer price documentation in compliance with local legislation.

General: Transfer Pricing Framework

In Croatia, transfer pricing documentation legislative framework is set out with the Profit Tax Act and the Profit Tax Regulations, as well as the Transfer Pricing Audit Manual (issued by the Ministry of Finance, with the latest version dated July 2019). In the area of transfer pricing, the legislative framework is explicitly aligned with the OECD Transfer Pricing Guidelines, which, as of 2026, are formally recognised as the normative reference standard. The legislation also provides for the application of alternative transfer pricing methods in cases where the standard methods are not applicable (Article 13 of the Corporate Income Tax Act), while placing additional emphasis on the obligation to prepare, maintain, update, and document transfer pricing documentation. The use of an arm´s length range or statistical measures is not proscribed in the domestic legislation. However, the use of interquartile range is accepted and used in practice.

Accepted Transfer Pricing Methodologies

In principle, the Comparable uncontrolled price method ("CUP") method is the preferred method by the Croatian Tax Authorities ("CTA") but because comparable uncontrolled transactions are difficult to find, in practice, Transactional net margin method ("TNMM") method is the most common transfer pricing method used.

The taxpayer is allowed to apply any other method as long as it can be demonstrated that it leads to an arm's length outcome. The most commonly used methods are CUP, mainly for financial transactions and license fees, and TNMM due to the ability to perform a benchmark with sufficient reliable comparable data. The profit split method is becoming more accepted by the authorities over time but in practice this method is felt to be complicated from a practical perspective.

Transfer Pricing Documentation Requirements

Entities required to prepare transfer pricing documentation in Croatia are companies that conduct transactions with foreign related parties and domestic related parties if one of the related parties is in a privileged tax position or has the right to carry forward tax losses from a previous period.

Taxpayers are required to prepare transfer pricing documentation but submit it only upon request of the tax authorities. The three-tier standardized approach as proposed by the OECD has been implemented in Croatia. There are no local guidelines summarizing the recommendations from BEPS Action 13, but the latter are followed by the competent tax authorities. In general, compliance with the recommendations of the BEPS Action 13 imply compliance with local rules. Also, there is no threshold below which the transaction does not fall under transfer pricing rules.

The transfer pricing documentation must be submitted in Croatian language.

The documents that must be submitted without specific request by a tax inspector are the notification and filing of a country-by-country report for MNE's that exceed the €750 million annual revenue threshold. Filing of a country-by-country report is only required if the ultimate parent entity or the surrogate parent entity is tax-resident in Croatia. Also, it is required to submit a "PD-IPO form" together with the corporate income tax return which includes an overview of transactions effected with related parties.

Local Jurisdiction Benchmarks

Benchmarking helps to demonstrate that transfer prices are set at arm's length. The CTA accepts pan-European benchmarks if they meet comparable search strategy standards set by the CTA. The CTA generally refers to multiple year data and the interquartile range in terms of benchmarking. In line with the OECD TP Guidelines, a financial update is to be conducted every year. In Croatia, domestic legislation does not explicitly require an annual renewal of the comparability analysis. In practice, a regular update of the financial data (2-year update period) has proven as accepted in practice.

Focus on Financial Transactions

Croatia only has safe harbors for financial transactions. The interest rate is prescribed by the Ministry of Finance. By way of derogation from this rule, the taxpayer may determine the interest according to the conditions and using the TP method provided in Article 13 of the Profit Tax Act, and on the condition that this method is applied for all agreements.

The tax authorities make no distinction between interest on intercompany loans and interest under cash pooling arrangements, unless the taxpayer applies an alternative method to substantiate that the interest rate complies with the arm's length principle.

Financial transactions are not necessarily accompanied by detailed descriptions and a functional analysis, as the arm's length nature of intercompany loans is generally demonstrated through the PD and PD-IPO forms (Tax return and the Form for IC transactions).

CROATIA

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

The Profit Tax Act as of January 1, 2017, provides the option to enter into APA's through which taxpayers can agree on the method of determining transfer prices with the Tax Administration ("TA").The following fees apply: EUR 2,000 for taxpayers with a revenue of up to EUR 400,000, EUR 4,000 for a taxpayer with a revenue between EUR 400,000 and 2.65 million, and EUR 6,600 for a taxpayer with revenue exceeding EUR 2.65 million. In case of a BAPA, there is additional fee of EUR 6,600, for Multilateral APA - of EUR 13,200.

There is no prescribed deadline for APA. In practice, it takes more than one year to conclude an APA.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In the Croatian tax system, the allocation of the burden of proof plays a crucial role in resolving disputes related to transfer pricing. In general, tax authorities are responsible for proving that the prices set by a taxpayer do not comply with the arm's length principle. However, taxpayers are expected to demonstrate, both before and at the time of a controlled transaction, that they have made reasonable efforts to set the price according to this principle, based on the information available to them at that time. If, by the end of the tax period, a taxpayer determines that their pricing does not align with the arm's length principle, they are required to make a compensatory adjustment to bring it into compliance (Profit Tax Ordinance, Article 40).

In practice, the situation can become more complex when it comes to intra-group services, as Croatian tax authorities often focus on proving that services were actually performed and provided economic benefit to the taxpayer. In these cases, the benefit test is applied, requiring taxpayers to demonstrate that the received services were necessary for their operations and priced in line with what would be expected in an independent transaction. To support this, taxpayers typically rely on documentation such as **contracts, monthly invoices, service specifications, cost allocation calculations and keys, travel orders, and other relevant records**. Collecting a broad range of supporting evidence is crucial in demonstrating that the services were genuinely performed and that the costs were allocated in a reasonable manner.

If a taxpayer fails to fulfill their documentation obligations, the burden of proof may shift to them, as outlined by legal provisions. Croatian law mandates that taxpayers maintain proper documentation (Local file) to substantiate their transfer prices, as set out in the Profit Tax Ordinance. The shift in the burden of proof is only meant to occur in cases of significant non-compliance, where a lack of key documentation is viewed as a violation of administrative duties.

In such situations, taxpayers often find themselves on the defensive, having to provide detailed evidence, such as contracts, reports, and other documentation, to prove that the services were performed and that the pricing was justified. This puts even more importance on maintaining thorough and transparent transfer pricing documentation. It is not enough to simply comply with regulatory requirements—businesses must proactively demonstrate the legitimacy and benefit of their intra-group services, to avoid an unfavorable shift in the burden of proof.

Transfer Pricing Audits

Taxpayers are required to prepare transfer pricing documentation but submit it only upon request of the tax authorities. During a tax audit, the TA usually provides for 8 plus days for submission of the information requested. In case of transfer pricing documentation, this deadline is usually extended to 30 days, though this extension is not covered by laws and is upon discretion of the tax inspector.

Transfer Pricing Penalties

In Croatia, there are no specific penalties if the obligation for transfer pricing documentation is not met. Since transfer prices are subject to corporate income tax audits, general penalties are applicable. A penalty of EUR 260 to 26,540 can be imposed if the corporate income tax base is not in line with the legal rules. In addition, higher fines are possible for repeated offences.

Local Hot Topics and Recent Updates

In Croatia it seems that the CTA over the last year have had a strong focus on requesting transfer pricing documentation (Local file) and financial transactions and the application of arm-length interest rates.

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Documentation threshold

Master file	N/A
Local file	N/A
CbCR	€750 million

Submission deadline

Master file	Upon request
Local file	Upon request
CbCR	Within 12 months from the last day of the reporting tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	€260 to 26,540
CbCR – late/incomplete/no filing	N/A



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Overview

STI Taxand, Taxand Cyprus

STI Taxand is a tax law firm offering comprehensive legal services focused on taxation matters. This includes advising clients on tax planning, compliance, and disputes. Services cover income tax, corporate tax, international taxation, tax treaties, transfer pricing, Pillar Two and assistance with audits. Expertise in navigating complex tax codes and providing strategic counsel to minimise liabilities is a key aspect of our offerings. We also represent clients in negotiations with tax authorities and handle litigation if disputes arise.

With respect to transfer pricing, we provide guidance on strategic advisory, pricing policies, documentation, implementation, and compliance. We assist in developing and implementing strategies that align with regulatory requirements, mitigate risks, and optimise tax positions. This includes preparing transfer pricing documentation, conducting benchmarking analyses, planning and strategy, and supporting clients in transfer pricing audits and disputes. More specifically:

- Intra-group services or sale of goods pricing: advising on the pricing of services and products provided by one entity to another within the same group.
- Financial transactions transfer pricing: Analysing and advising on the transfer pricing implications of financial transactions, including intercompany loans, cash pooling and guarantees.
- Intellectual property valuations and pricing royalty rates: assessing the value of intellectual property for accurate pricing.
- Business restructurings: providing guidance on transfer pricing considerations during business restructurings, including the transfer of functions, risks, and assets (such as intangibles, or a portfolio of financial assets) among group entities.
- Assistance in tax controversy matters: supporting multinational enterprises in tax disputes, including obtaining Advance Pricing Agreements ("APAs") and Mutual Agreement Procedure ("MAP") agreements.

General: Transfer Pricing Framework

With effect from 1 January 2003, article 33 of the Income Tax Law of 2002, N118(I), as amended ("ITL"), incorporates the arm's length principle ("ALP") and is in line with Article 9 of the OECD Model. Further, with effect from 1 January 2022, ITL provides for specific documentation requirements that generally follow Chapter V of the OECD Transfer Pricing Guidelines ("OECD Guidelines") for all Cypriot taxpayers entering into controlled transactions unless such taxpayers fall under the documentation exemption threshold. It should be noted that the OECD Guidelines are expressly referred to by the ITL for interpretation purposes, ensuring that the domestic arm's length standard is interpreted consistently with Cyprus's double tax treaties, which follow the OECD Model.

The term "controlled transactions" refers to transactions falling within the scope of article 33 of the ITL. Under section 33(1), the transfer pricing rules apply where an enterprise participates, directly or indirectly, in the management, control or capital of another enterprise, or where the same persons participate in the management, control or capital of two or more enterprises, and where the conditions between them differ from those that would be agreed between independent enterprises. In addition, under section 33(2), the transfer pricing rules also apply to transactions between associated (connected) persons. Connected persons are defined in section 33(3) as persons connected through relationships including direct or indirect ownership or entitlement to at least 25% of the voting rights, share capital or income, as well as family, partnership, aggregation and acting-together rules.

Accepted Transfer Pricing Methodologies

Given that the OECD Guidelines have been legislatively incorporated into the ITL, all transfer pricing methods approved by the OECD should be equally applicable.

Considering that the ITL does not provide for a hierarchy between the five OECD-approved methods, the guidance provided in the OECD Guidelines with respect to the selection of the most appropriate transfer pricing method to the circumstances of the case should be followed. Notably, Cypriot taxpayers should provide justification for why the selected method is deemed suitable, taking into account the pertinent facts and circumstances. In our experience, while the Cyprus Tax Department ("CTD"), expresses a preference for the CUP method, the practical difficulty of identifying reliable comparables means the TNMM is the method most frequently applied.

Transfer Pricing Documentation Requirements

The CTD requires taxpayers to be able to substantiate all related party/intercompany transactions in transfer pricing documentation.

For tax years up to and including 2025, pursuant to an announcement issued on 1 February 2024 by the Ministry of Finance and the CTD, Cypriot taxpayers are required to prepare a Cyprus local file where the aggregate arm's length value of controlled transactions exceeds EUR 5,000,000 for intragroup financing transactions or EUR 1,000,000 for each of the other transaction categories set out in the Summary Information Table:

1) sale/purchase of goods;
2) provision/receipt of services;
3) financing transactions;
4) receipt/payment of IP licensing/royalties; and
5) others.

These thresholds apply retroactively from 1 January 2022.

Following the enactment of the tax reform, effective from 1 January 2026, revised thresholds apply for tax

years 2026 onwards. The threshold for intragroup financing transactions has increased to EUR 10,000,000, the threshold for transactions involving the sale of goods has increased to EUR 5,000,000, and the threshold for all other categories of controlled transactions (i.e. services, IP licensing/royalties and other transactions) has increased to EUR 2,500,000.

Therefore, Cypriot taxpayers involved in controlled transactions are required to prepare a local file unless they fall below the relevant documentation exemption threshold. Taxpayers below this threshold remain subject to the arm's length principle; however, they are relieved from the obligation to prepare a full local file. The content of the local file is generally aligned with Chapter V of the OECD Transfer Pricing Guidelines.

A person holding a practising certificate from ICPAC or any other recognised institute of certified accountants in Cyprus should conduct a Quality Assurance Review for the local file. The local file must be prepared by the deadline for submitting the Income Tax Return for the relevant tax year. Following preparation, the taxpayer must submit the local file to the tax authorities within 60 days of request.

Under the Assessment and Collection of Taxes Law (1978, 4/78), as amended ("ACTL"), failure to submit the local file after receiving a request from the CTD will result in penalties ranging from EUR 5,000 to EUR 20,000. Finally, Cypriot taxpayers must also file the summary information table ("SIT") by the submission deadline of the tax return of the specific year of assessment. Failure to submit the SIT, incurs a penalty of EUR 500.

With respect to the master file, the obligation to prepare and maintain a master file applies exclusively to Cypriot taxpayers who serve as the ultimate parent or surrogate parent entity for a multinational group subject to Country-by-Country reporting.

All other entities are exempt from this requirement. Like with the local file, the content of the master file is generally aligned with Chapter V of the OECD Guidelines, and the taxpayer must provide and submit the master file to the tax authorities within 60 days upon request. Failure to submit the master file after receiving a request from the CTD will result in penalties ranging from EUR 5,000 to EUR 20,000.

Local Jurisdiction Benchmarks

The CTD considers local and pan-European benchmarks acceptable, given that they adhere to comparable search strategy standards of the OECD Guidelines. Generally, the CTD relies on contemporaneous and multiple-year data and uses the interquartile range to enhance the reliability of the results from benchmarking. Importantly, the ITL provides that the local file should be updated on a yearly basis, and any significant changes in the market conditions that may impact the information and data should be documented in the local file.

Focus on Financial Transactions

Under Article 33 of the ITL and Circular 7/2023, the CTD aligns its evaluation of intra-group financial transactions with Chapter X of the OECD Guidelines. The assessment requires an accurate delineation of the transaction to determine whether a financing arrangement should be characterized as debt or equity. This involves evaluating the commercial rationale of the transaction, the borrower's creditworthiness and financial capacity to service the debt, and the realistic alternatives available to both parties. To support the arm's length nature of the pricing, taxpayers must perform a detailed credit rating analysis of the borrower and benchmark the interest rates and terms against comparable uncontrolled transactions. In addition, following the abolition of the back-to-back financing circular with effect from 1 January 2022, the CTD requires a full functional and risk analysis for financing entities.

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

Cypriot taxpayers have the option to present APAs to the CTD to pre-determine pricing methodologies. These APAs can be applied unilaterally, bilaterally, or multilaterally and remain valid for a duration of up to four years. The APAs may concern both the methodology as well as the actual pricing.

Transfer Pricing Audits

Random transfer pricing audits can be conducted by the CTD, and all Cypriot taxpayers are subject to audit for any open tax year (the ordinary statute of limitation is six years but extends (to twelve years) in cases of fraud or willful default). In identifying areas of interest, the SIT serves as a risk assessment tool for the CTD in selecting the taxpayers for transfer pricing audit. This is because the SIT includes various useful information, such as an overview of the controlled transactions, specifying the counterparties' identity, their tax residency jurisdiction, and describing the nature of the controlled transactions (i.e. services, intangibles, financial transactions, sale of goods, and other).

Additionally, the corresponding values of these controlled transactions should be explicitly stated. Hence, tax inspectors are inclined to incorporate the SIT into their criteria for selecting taxpayers for audits, recognizing the significant role these factors play in the selection process. Currently, there seems to be more attention on financial transactions, in particular to intra-group loans.

The Burden of Proof in Transfer Pricing: Theory versus Practice in Cyprus

Under Article 33 of the ITL, taxpayers are required to comply with the arm's length principle, and also to maintain transfer pricing documentation for transactions that fall under specified categories and exceed certain thresholds or would have exceeded those thresholds if the transactions were conducted at arm's length. When taxpayers meet

these documentation requirements, the burden of proof primarily rests with the tax authorities to demonstrate that the transactions are not conducted at arm's length.

However, if taxpayers fail to meet the minimum documentation requirements, the burden of proof shifts to them. In such cases, it becomes the taxpayer's responsibility to substantiate that the pricing of intragroup transactions adheres to the arm's length principle.

It is worth noting that the first deadline for preparing transfer pricing reports and submitting the SIT, under the ITL, is 31 May 2025. As a result, there have been relatively few transfer pricing disputes thus far. In time, we will see how the burden of proof evolves in practice and whether it aligns with the theoretical framework outlined by the law.

Additionally, Circular 6/2023, published on 6 July 2023, outlines the measures to be taken if transactions fall below the established thresholds, offering simplification options. The circular specifies that, even for transactions below the threshold, taxpayers should either maintain simplified documentation to demonstrate arm's length pricing or apply the safe harbour rules. This further underscores that, under Cyprus' legal framework, the burden of proof lies with the taxpayer in the absence of contemporaneous transfer pricing documentation.

Transfer Pricing Penalties

In addition to the penalties noted above, the ACTL outlines penalties for any additional taxes resulting from transfer pricing adjustments. Specifically, if the temporary income declared (including any revised estimated returns) is lower than 75% of the income as finally determined and shown in the tax return filed by the taxpayer or amended by the CTD by issuing additional assessment, in addition to the balance of the tax due an additional amount of tax equal to 10% is also payable. Further, interest is imposed where the tax due is not paid by the prescribed dates, either when the payment is due under a self-assessment or when the payment is due on the basis of an assessment raised by the CTD. Finally, in case a person fails to pay the tax due by the due date or within the period prescribed in a notice issued by the CTD, there is an additional penalty equal to 5% of the tax due.

Local Hot Topics and Recent Updates

In Cyprus, it seems that the CTD has focused strongly on financial transactions and the evaluation of arm's length interest rates over the last few years. Nevertheless, considering the implementation of the new documentation requirements and the annual submission of the SIT, it is anticipated that the scope of transfer pricing audits will extend to encompass additional controlled transaction types.

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Documentation threshold

Master file	Consolidated revenue exceeding EUR 750 million
Local file	Cumulatively, per category (as defined in the SIT) exceeds the arm's length amount of EUR 5,000,000 for intragroup financing transactions and EUR 1,000,000 for all other transaction categories per tax year up to and including 2025. From 2026 onwards cumulatively, per category (as defined in the SIT) exceeds the arm's length amount of EUR 10,000,000 for intragroup financing transactions, EUR 5,000,000 for sale of goods and EUR 2,500,000 for all other transactions per tax year.
CbCR	Consolidated revenue exceeding EUR 750 million

Submission deadline

Master file	To be submitted to the CTD upon request within 60 days.
Local file	Local file to be submitted to the CTD upon request within 60 days. Further, the local file should be readied by the deadline for submitting the Income Tax Return for the relevant tax year.
CbCR	Submission to the CTD must occur within 12 months following the conclusion of the MNE group's reporting fiscal year.

Penalty Provisions

Local file and master file	Ranging from EUR 5,000 to EUR 20,000
Tax return disclosure – late/incomplete/no filing	EUR 100 and penalties imposed under ACTL noted above
CbCR – late/incomplete/no filing	Ranging from EUR 500 to EUR 20,000
SIT	EUR 500 for late submission



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CZECH REPUBLIC

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Overview

LeitnerLeitner Tax s.r.o., Taxand Czech Republic

LeitnerLeitner Tax s.r.o. provides the full scope of transfer pricing services such as compliance and reporting, analysis, planning, strategy and tax audits. We can help you with the setup and the implementation of business models and group transactions. We will prepare transfer pricing documentation including the benchmark studies or submit a request for a binding ruling to the Czech tax authorities. Our experts with many years of experience will support you in the negotiations with the tax authorities. In addition, we can assist you with transfer pricing audits, with Mutual Agreements Procedures and with concluding bilateral or multilateral APAs in the Czech Republic.

General : Transfer Pricing Framework

The arm's-length principle is governed by Section 23/7 of the Czech Income Taxes Act. In general, the transactions between related parties should be set up at arm's length. If the prices agreed between related parties differ from the prices which would be agreed between independent parties under the same or similar conditions and the difference between the prices is not reasonably justified, the tax base can be adjusted by the difference.

The Czech General Financial Directorate has published Transfer pricing guidance (Decree D-34) that refers to the OECD Transfer Pricing Guidelines. In addition, the Czech Ministry of Finance has published the guidance on the recommended scope of transfer pricing documentation (Decree D-334).

The transfer pricing rules and arm's length principle in the Czech Republic are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in the Czech Income Taxes Act. Based on the Decree-34, the OECD Guidelines are regarded as internationally accepted guidance providing explanation and clarification of the arm's length principle. In line with the OECD Guidelines, the Czech tax authorities accept using the 5 basic methods.

When selecting an appropriate method, it is recommended to proceed from the CUP method, through other traditional transactional methods, to transactional profit methods. The taxpayer is allowed to apply any method or its combination as long as it can be demonstrated that it leads to a proper arm's length setup.

Transfer Pricing Documentation Requirements

The transfer pricing documentation is not obligatory in the Czech Republic but is highly recommended. The documentation should be provided by the taxpayers during a tax audit or when applying for a binding ruling (APA) or MAP.

In addition, selected taxpayers are required to complete an Attachment to the Corporate Income Tax Return, which contains details about transactions with related parties. This includes items such as the name of the related party, the volume of the transaction, and the types of transactions carried out in the respective taxable period.

Multinational enterprises must prepare a country-by-country report, containing information on the worldwide distribution of their revenue, taxes, etc., if the consolidated group turnover amounted to EUR 750 million or more in the previous fiscal year.

Local Jurisdiction Benchmarks

Benchmarking is a key instrument to demonstrate that transfer prices are at arm´s length. There is preference to use domestic comparables and if no sufficient number of domestic comparables is available, foreign comparables are used. In practice, the geographic region used for most comparability studies are mainly EU or all European countries.

There is no preference to use a specific database in the Czech Republic, however the Czech tax authorities use the TP Catalyst database. The search strategy is recommended to be renewed at least every 3 years and at the same time the arm´s length price range observed for selected independent entities should be updated annually.

The internal CUPS are generally acceptable (if available).

Focus on Financial Transactions

In the Czech Republic, intercompany financing is reviewed under the gen-eral arm's length principle and in line with the OECD approach, with focus on identifying the actual economic substance of the transaction and on as-sessing the economically relevant characteristics of the arrangement. In practice, taxpayers should be able to support both the commercial rationale for the financing and the arm's length nature of its terms, including the analysis of functions performed, assets used and risks assumed.

For loans, particular emphasis is placed on assessing the borrower's credit-worthiness, including the use of the borrower's credit rating or, where rele-vant, the credit rating of the debt instrument. The analysis should also con-sider the impact of group membership and implicit support, together with market-based benchmarking of the interest rate and other financing terms. Cash pooling and treasury arrangements should be analysed based on the actual role of each participating entity and the allocation of benefits among the participants should reflect the functions performed and risks assumed in the arrangement.

Under Czech income tax rules, a loan granted by a Czech tax non-resident or shareholder may, under certain statutory conditions, bear an interest rate below the arm's length level, including a 0% interest rate, without triggering a tax base adjustment under the general transfer pricing rule. However, based on the interpretation of the Czech General Financial Directorate, such arrangements may fall within the DAC6 hallmark relating to unilateral safe harbour rules and should therefore be assessed from a DAC6 reporting per-spective.

Even where the pricing is set at arm's length, Czech tax deductibility rules may further limit interest expenses, in particular under the Czech thin capi-talisation rules and the ATAD-based interest limitation rules.

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

Czech tax law provides for a possibility to conclude APAs as an instrument eliminating disputes between tax administration and taxpayers in respect of transfer pricing. In the Czech Republic, APAs are regulated in sections 38nc and 38nd of Czech Income Taxes Act and in Decree D-32. The fee for filing an application is CZK 10,000 (approx. EUR 400).

Based on the Czech tax law, the Czech tax authorities approve the proposed transfer pricing method or the methodology of profit allocation to a permanent establishment.

The APAs (both unilateral or bilateral) are in the form of a binding ruling and are valid for up to 3 years. The requirements for both APAs are in general the same. The unilateral APA is usually completed within approx. three to six months from filing, while bilateral APA (BAPA) can take approximately up to two years.

Transfer Pricing Audits

The Czech tax authorities can carry out tax audits on a random basis and do not conduct audits on a regular basis. However, transfer pricing is currently the frequent subject of tax audit in the Czech Republic, especially in respect of loss-making companies.

The Czech tax authorities have broad experience with TP audits of contractual manufacturers/service providers with limited risks and they are increasing their experience with international MAP and BAPA procedures. The loss-making entities are of particular interest and a typical area of focus of the Czech tax authorities is the functional and risk analysis.

Regarding the intercompany services, the Czech tax authorities focus on three-tier testing: i) the substance test (if the services were actually received), ii) the benefit test (if the recipient has benefited from receiving the service), and iii) the arm's length test. The arm's length prices are tested only if both substance and benefit tests are confirmed. In addition, failing to prove substance and benefit test leads to tax non-deductibility of the costs plus an additional CIT and VAT liability assessed by the Czech tax authorities.

The Burden of Proof in Transfer Pricing: Theory versus Practice

The burden of proof in transfer pricing plays a crucial role in tax audits and disputes between taxpayers and the tax administration. According to the general principles of tax procedure, the tax administration has the right to request additional information necessary for the correct assessment of the tax and, in case of further doubt, the obligation to prove facts that refute the credibility of this information and the underlying documents.

In Czech law, this concept is covered by Section 92(2) to (5) of Act No. 280/2009 Coll., the Tax Code, which states that if the tax administrator requests additional information or proof of facts, the taxpayer is obliged to respond to these requests accordingly. Although there is no official obligation to prepare or publish transfer pricing documentation in the Czech Republic, the taxpayer must always be able to prove, upon request by the tax administrator, how it determined the prices between related parties and provide the documents on which it based its conclusion. Once the documentation has been provided, the burden of proof shifts to the tax administrator, who must provide a duly substantiated reason for doubting the accuracy or completeness of the information provided.

In practice the tax administration already requires the taxpayer to provide details of the economic context of the transactions in information requests, thereby indirectly forcing the taxpayer to cooperate to a similar extent as the taxpayer who bears the burden of proof. Therefore, the voluntary maintenance of high quality and detailed transfer pricing documentation is key to managing risk and avoiding potential disputes with the tax authorities.

Transfer Pricing Penalties

No penalties are imposed for lack of having a transfer pricing documentation, as the documentation is not obligatory in the Czech Republic.

Fines up to a maximum of CZK 600,000 (approx. EUR 24,000) for non-compliance with the CbCR notification obligations, alternatively up to a maximum of CZK 1,500,000 (approx. EUR 60,000) for non-compliance with the CbCR obligations can be imposed by the Czech tax authorities.

CZECH REPUBLIC

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Local Hot Topics and Recent Updates

The Czech tax authorities continue to increase their use of information reported in the corporate income tax return attachment, Country-by-Country Reporting (CbCR) and international exchange of information for transfer pricing risk assessment. In practice, particular attention is paid to loss-making entities, business restructurings, financing transactions and intra-group services.

Recent case law of the Czech Supreme Administrative Court has confirmed that transfer pricing implications may also arise from strategic decisions made at group level, even where no formal intercompany agreement exists. The key question is how such decision affects the economic relationship between the related parties. Where a Czech subsidiary, particularly a limited-risk manufacturer, bears costs, risks or losses connected with a group-driven change in its business and the related benefits accrue mainly to the group, it should be assessed whether an independent party would have accepted such allocation without adequate compensation.

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	Turnover € 750 million

Submission deadline

Master file	N/A
Local file	N/A
CbCR	Submission within 12 months after the end tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Fines up to CZK 300,000 (approx. EUR 12,000).
CbCR – late/incomplete/no filing	Fines up to a maximum of CZK 600,000 (approx. EUR 24,000) for non-compliance with the CbC notification obligations
	Fines up to a maximum of CZK 1,500,000 (approx. EUR 60,000) for non-compliance with the CbC reporting obligations



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DENMARK

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Overview

Bech-Bruun, Taxand Denmark

Bech-Bruun is a full-service law firm based in Copenhagen and Aarhus and deals with both domestic and cross-border matters. Bech-Bruun's tax department advises on all aspects of corporate tax and is one of the leading tax teams in Denmark. Our advisers are highly specialized in transfer pricing matters, and their expertise extends to all matters regarding intragroup transactions, including compliance and reporting, planning and strategy, and disputes.

General: Transfer Pricing Framework

The OECD Transfer Pricing Guidelines have a significant impact on how Danish transfer pricing regulations are interpreted. Article 9 of the OECD Model Convention serves as the fundamental framework for transfer pricing standards within Danish legislation.

Central to the Danish transfer pricing rules is the concept of ''arm's-length'' transactions. The legal framework of the arm's-length principle in Danish tax law is found in section 2 of the Tax Assessment Act. This provision states that:

Taxpayers:

- over whom natural or legal persons exercise a controlling influence (i.e., directly or indirectly own more than 50% of the share capital or control more than 50% of the voting rights in another entity),
- who exercise a controlling influence over legal persons,
- who are associated with a legal person,
- who have a permanent establishment abroad,
- who are foreign natural or legal persons with a permanent establishment in Denmark, or
- who are foreign natural or legal persons with hydrocarbon-related business as defined in the Hydrocarbon Tax Act section 21 (1) and (4)

shall, for the purpose of determining their income for tax and dividend purposes, use prices and terms in relation to commercial or financial transactions with the parties specified above (controlled transactions) that are equivalent to those that could have been obtained had the transactions been conducted between independent parties.

Transactions between companies meeting the above-mentioned tests are referred to as controlled transactions. The rules contained in section 2 of the Tax Assessment Act not only apply to transactions between Danish and foreign companies but also to transactions between a Danish head office and its foreign permanent establishment, as well as to transactions between two or more Danish companies.

Pillar one – Amount B – OECD

For income years beginning on or after 1 January 2025, where prices for qualifying distribution transactions have been determined in accordance with the OECD's simplified and streamlined approach (Amount B) in a jurisdiction listed in section 2B(3) of the Danish Tax Assessment Act that permits the application of the approach, such prices are, provided that the conditions in section 2B(2) are met, deemed to be in accordance with section 2 of the Danish Tax Assessment Act.

Accepted Transfer Pricing Methodologies

As outlined in the Danish Legal Tax Guide provided by the Danish Tax Agency, the assessment of pricing and contractual terms by the Danish Tax Agency should align with the OECD Guidelines. This aligns with the underlying legislative historical development of Danish transfer pricing regulations. The OECD Guidelines are, however, not directly incorporated into Danish tax law, but the Danish Parliament, relying on the principles set forth by the OECD Guidelines, harmonized Danish transfer pricing provisions with those of the OECD.

To determine whether prices and terms meet the arm's-length standard according to section 2 of the Tax Assessment Act, the Danish Tax Agency generally applies the methods described in chapters II and III of the OECD Guidelines.

The Danish Tax Agency indicated in the Legal Tax Guide that other approaches may be accepted provided that they are duly justified and that the price set is compliant with the arm's length principle.

The choice of the most appropriate transfer pricing method depends on:

1) The strengths and weaknesses of each method concerning the pricing of the specified controlled transaction.
2) The availability of information regarding internal or external comparable transactions, as required to apply the methods.
3) The identified key comparability factors for the controlled transaction and the ability to make adjustments for any differences.

Transfer Pricing Documentation Requirements

Denmark has a statutory documentation and reporting requirement regarding transfer pricing between related entities.

In accordance with section 38 of the Tax Control Act, taxpayers are required to provide comprehensive information regarding the nature and extent of controlled transactions in their tax return. Additionally, they must indicate in their tax return whether they are subject to the transfer pricing provisions.

Taxpayers subject to transfer pricing documentation are required to provide information on the commercial operations of their group, a detailed description of the controlled transactions, any comparability analyses

conducted, the adherence to the arm's-length standard, and copies of all material-controlled agreements to which the taxpayer is a party.

It is important to note that the Danish documentation requirements apply to several types of entities, including Danish subsidiaries, branches, and permanent establishments.

However, different transfer pricing documentation rules and deadlines apply depending on whether a company is considered a small and medium sized business (SME).

Small and medium sized businesses

Taxpayers who alone or on a consolidated group basis have

- less than 250 employees

and either

1) a balance sheet total of less than DKK 195 million (approx. EUR 26 million)

or

2) a yearly turnover of less than DKK 391 million (approx. EUR 52 million)

are subject to the Danish limited transfer pricing documentation rules.

A consolidated group includes companies where the same shareholders directly or indirectly hold more than 50% of the shares or the voting rights (controlling influence cf. above).

If the taxpayer alone or on a consolidated group basis falls within the scope of the limited transfer pricing documentation rules, the taxpayer shall only prepare, maintain, and submit documentation if they are involved in:

1) Controlled transactions with individuals and legal persons resident in a country with which Denmark has not concluded an income tax treaty that includes a transfer pricing provision, and which is not a member of the EU or EEA;

2) Controlled transactions with a permanent establishment located in a country with which Denmark has not concluded an income tax treaty that includes a transfer pricing provision and which is not a member of the EU or EEA; and

3) Controlled transactions with a permanent establishment in Denmark provided the taxpayer is resident in a country with which Denmark has not concluded an income tax treaty that includes a transfer pricing provision and which is not a member of the EU or EEA.

The documentation requirements in relation to the limited transfer pricing documentation are generally similar to the requirements in relation to the full scope transfer pricing documentation as detailed below. However, it is essential to note that the obligation to submit transfer pricing documentation only applies to the abovementioned specified controlled transactions.

While small and medium businesses are typically exempt from the documentation requirements it is important to emphasize that all intra-company transactions must comply with the arm's-length principle.

The Danish Tax Agency has the authority, during a tax audit, to request that the taxpayer substantiate that the prices and terms for a transaction not subject to formal documentation requirements have indeed been determined in accordance with the arm's-length principle.

Large businesses:

Taxpayers that do not meet the thresholds for the limited documentation rules are subject to the full-scope documentation rules.

If the taxpayer alone or on a consolidated group basis falls within the scope of the full scope transfer pricing documentation rules, the taxpayer shall prepare, maintain, and submit documentation if they are involved in the following transactions:

1) One party to the controlled transaction is a foreign individual or legal entity, cf. the Danish Tax Control Act, section 37(4), or constitutes a permanent establishment located in the Faroe Islands, Greenland, or a foreign state, including under the provisions of a double taxation treaty. However, the written documentation does not need to be prepared if all parties to the controlled transaction are permanent establishments in Denmark of companies located in the Faroe Islands, Greenland, or a foreign state, including under the provisions of a double taxation treaty, or head offices of companies resident in Denmark.

2) One party to the controlled transaction is taxed under the Tonnage Tax Act unless all parties to the controlled transaction are taxed under the Tonnage Tax Act. The written documentation must also be prepared where the taxpayer calculates income covered by the Danish Tonnage Taxation Act, section 13(2).

3) One party to the controlled transaction is taxed under the Hydrocarbon Tax Act unless all parties to the controlled transaction are taxed under the Hydrocarbon Tax Act.

4) One party to the controlled transaction is subject to the Corporation Tax Act, section 1(1)(3), unless all parties to the controlled transaction are subject to the Corporation Tax Act, section 1(1)(3).

5) One party to the controlled transaction is subject to the Corporation Tax Act, section 17 A, unless all parties to the controlled transaction are subject to the Corporation Tax Act, section 17 A.

6) One party to the controlled transaction is subject to the Corporation Tax Act, section 1(1)(6).

7) One party to the controlled transaction is covered by the Corporation Tax Act, section 3.

8) Where the taxpayer's income is to be calculated in accordance with the Withholding Tax Act, section 2(8), the Corporation Tax Act, section 2(7), or the Corporation Tax Act, section 8(6).

As per point 1 above, it is specified that cross-border transactions need to be detailed in the transfer pricing documentation as well as some domestic controlled.

Transfer pricing documentation exemptions from income year 2025

Effective from income year 2025, new exemptions from the Danish transfer pricing documentation requirements apply. A taxpayer is not required to prepare written transfer pricing documentation for the following categories of controlled transactions:

Low-volume controlled transactions

Controlled transactions are exempt where, during the income year:

- the taxpayer's aggregate controlled transactions, excluding receivables and debt, amount to less than DKK 5 million; and
- the taxpayer's aggregate controlled receivables and debt at the end of the income year amount to less than DKK 50 million.

For purposes of these thresholds, only controlled transactions, receivables and debt that would otherwise be subject to the Danish transfer pricing documentation requirements are taken into account.

The exemption does not apply to controlled transactions involving intangible assets within the meaning of section 40 of the Danish Tax Depreciation Act.

Nor does it apply where the counterparty is resident or situated in a jurisdiction outside the EU/EEA that is not required to exchange information with the Danish tax authorities under an agreement on mutual assistance in tax matters.

Cash dividends, grants and similar payments

Controlled transactions consisting of dividends, grants and similar payments, provided that they are paid in cash.

Certain transactions involving underlying subsidiaries subject to joint control

Controlled transactions with an underlying subsidiary where the taxpayer participates in an agreement on the exercise of joint control over that underlying subsidiary, and where the taxpayer, together with group-related parties:

- owns less than 5% of the share capital; and
- controls less than 5% of the voting rights.

The exemption applies only where the transactions are not carried out as part of the joint control arrangement.

The same applies to controlled transactions between taxable underlying subsidiaries and the participants in such joint control arrangements.

Certain transactions involving participants taxed under special investment return regimes

Controlled transactions with participants in a legal entity are exempt where those participants calculate their taxable return under section 13 F of the Danish Corporation Tax Act or section 14 of the Danish Pension Investment Returns Tax Act, provided that the taxpayer is an underlying subsidiary owned by that legal entity and the legal entity is not a separate taxable entity.

The same applies to a taxable participant's controlled transactions with underlying subsidiaries where the participant calculates its taxable return under section 13 F of the Danish Corporation Tax Act.

Immaterial controlled transactions

Other controlled transactions that are immaterial in terms of both scope and frequency.

Documentation requirements:

According to Executive Order No. 883 of 24 June 2025, the transfer pricing documentation must contain two parts: the Master File and the country-specific reporting Local file.

Both the Local file and the Master File requirements align with Annexes I and II to Chapter V of the OECD Guidelines.

Deadlines:

Transfer pricing documentation, whether limited or full scope, needs to be submitted digitally to the Danish Tax Agency within 60 days following the corporate tax return deadline.

If a company uses the calendar year as its fiscal year (from 1 January to 31 December), the corporate tax return must be filed by 30 June of the year immediately following the relevant income year. The tax return for the income year 2026 should therefore be submitted by 30 June 2027.

Consequently, for companies using the calendar year as their fiscal year, the deadline for submitting transfer pricing documentation is 29 August in the income year following the relevant income year.

The documentation must be submitted through the company's E-tax system, known as "TastSelv-Erhverv." Failure to submit adequate transfer pricing documentation to the Danish Tax Agency within the deadline as a starting point result in penalties ranging from EUR 15,000 to EUR 30,000, plus an additional 10% of any potential income increase.

It is generally not possible to obtain an extension of the deadline for filing the transfer pricing documentation. However, if the deadline for filing the tax information form is extended, the deadline for fling the transfer pricing documentation is extended correspondingly.



However, it is under specific circumstances possible to submit the Master File from the previous income year as preliminary documentation.

The documentation may be prepared in either the Danish, Norwegian, Swedish, or English language.

Country-by-country reporting (CbCR):

Danish businesses that are either the ultimate parent company or the surrogate parent entity of a group subject to CbCR must submit a CbCR to the Danish Tax Agency.

According to section 48 of the Danish Tax Control Act, a Danish ultimate parent company of a multinational group must submit a CbCR if the group on a consolidated basis has a turnover of more than EUR 750.4 million in the income year prior to the relevant reporting year.

The deadline for submitting the CbCR is 12 months after the last day of the income year concerned.

A Danish group company that is not the ultimate parent company of a multinational group (surrogate parent entity), is required to submit a CbCR if the company is tax resident in Denmark and if the following conditions are met:

1) The ultimate parent company is not obligated to file a CbCR in the country where it is domiciled.
2) There is no automatic exchange of CbCR since there is no agreement between the competent authorities in Denmark and the jurisdiction where the ultimate parent company is domiciled, even though there is an international agreement on the exchange of tax information.
3) There is a systematic error regarding the jurisdiction where the ultimate parent company is domiciled, and the Danish Tax Agency has informed the Danish surrogate parent entity of this.

However, a Danish group company is not obligated to file a CbCR to the Danish Tax Agency if the multinational group files a CbCR to the competent tax authorities through another surrogate parent entity. The following conditions must be met:

1) The country where the surrogate parent entity is domiciled requires submitting of CbCR.
2) The country where the surrogate parent entity is domiciled has entered into an international agreement with Denmark on the automatic exchange of CbCR.
3) There is no systematic error regarding the jurisdiction where the surrogate parent entity is domiciled, or the Danish Tax Agency has not informed the Danish group company of this.
4) The jurisdiction where the surrogate parent entity is domiciled has received a message from another group company, which is tax resident in the same jurisdiction as the surrogate parent entity, stating that the group company is considered the surrogate parent entity.
5) The group company has informed the Danish Tax Agency that it is obligated to file a CbCR.

Local Jurisdiction Benchmarks

On 30 November 2021, Act no. 2194 introduced a relatively minor change to section 39(4), first sentence of the Danish Tax Control Act concerning the preparation of database studies. However, this seemingly minor amendment has significant implications for how taxpayers should approach their transfer pricing documentation.

The amendment now requires that taxpayers must incorporate benchmark studies into their transfer pricing documentation to substantiate the comparability analysis. Failure to include benchmark studies in the documentation could result in the Danish Tax Authority deeming the documentation insufficient. This exposes the taxpayer to potential penalties and discretionary arm's length adjustments, with a reversed burden of proof.

This provision became effective starting from the 2022 income year, impacting transfer pricing documentation submissions to the Danish Tax Agency for the first time in 2023.

According to section 7 of the Executive Order No. 883, a benchmark study should encompass the following elements:

1) Identification and determination of the controlled transaction or activity and the selection of the transfer pricing methodology, including Profit Level Indicator (PLI).
2) An outlined selection process, which involves both quantitative and qualitative selection criteria.
3) The incorporation of comparability adjustments.
4) The utilization of statistical methodologies.

Focus on Financial Transactions

Financial transactions between related parties are subject to the Danish arm's length principle under section 2 of the Danish Tax Assessment Act. The Danish Tax Agency's Legal Guidance states that this principle is to be interpreted in accordance with the arm's length principle in the OECD Model Tax Convention and the latest version of the OECD Transfer Pricing Guidelines. The Legal Guidance also contains specific guidance on financial transactions based on Chapter X of the OECD Transfer Pricing Guidelines.

In practice, we generally see significant attention from the Danish Tax Agency in relation to financial transactions, and financial transactions are often a key focus area in Danish transfer pricing audits.

For Danish transfer pricing purposes, controlled financial transactions must be accurately delineated by reference to the economically relevant characteristics of the transaction. These include the contractual terms, the functions performed, assets used and risks assumed by the parties, the characteristics of the financial product or service, the economic circumstances and the parties' business strategies. The Danish Tax Agency's Legal Guidance states that the transfer

pricing documentation must address the purpose of the financial transaction, identify the group entities that make the significant decisions in relation to the transaction and analyse which entities exercise control over the economically relevant risks associated with the financial transaction.

A particular Danish feature is the interaction between the transfer pricing rules and the Danish rules on debt and interest deductibility. According to the Danish Tax Agency's Legal Guidance, based on a lex specialis principle, section 2 of the Danish Tax Assessment Act does not apply to the balance between debt and equity where that matter is governed by the thin capitalisation rules in section 11 of the Danish Corporation Tax Act. In addition, Denmark applies an asset-based interest limitation rule under section 11B and an EBITDA-based interest limitation rule under section 11C. These interest limitation rules may restrict the deductibility of financing expenses independently of the determination of an arm's length interest rate and other arm's length terms under section 2 of the Danish Tax Assessment Act.

For intra-group loans, the arm's length analysis should consider the perspectives and realistically available alternatives of both the borrower and the lender. Relevant factors include the purpose and amount of the financing, maturity, currency, security and seniority, the borrower's creditworthiness and the effect of group membership, as well as the functions performed, risks controlled and financial capacity to assume those risks by the lender. Cash pooling arrangements and financial guarantees are also subject to the arm's length principle. For cash pooling arrangements, the appropriate remuneration depends on the functions performed, assets used and risks assumed, while for financial guarantees it must also be considered whether the explicit guarantee provides a benefit beyond that resulting from implicit support or group membership.

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

In Denmark, it is in theory possible to obtain a unilateral Advance Pricing Agreement in the form of a binding tax ruling. However, in practice the authorities are not interested in unilateral agreements.

Under Danish legislation initiation of a bilateral Advance Pricing Agreement procedure can be requested by and reached based on provisions in Danish treaties equivalent to Article 25 of the OECD Model Convention (Mutual Agreement Procedure).

The Danish competent authority can thus enter into a mutual agreement with the competent authority in another treaty state.

Transfer Pricing Audits

There are no specific audit procedures or guidelines that provide the Danish Tax Agency with details of controlled transactions concerning group companies. While the Danish Legal Tax Guide includes a dedicated section on transfer pricing matters, it does not offer a comprehensive guide.

To determine the need for a transfer pricing audit, the Danish Tax Agency may depend on the information provided in the tax return concerning controlled transactions.

In general, an audit must be finalized no later than six years after the end of the income year during which the controlled transaction took place.

Burden of Proof in Transfer Pricing: Theory versus Practice

A series of rulings from the Supreme Court make it very clear that the mandatory transfer pricing documentation is of great importance in practice for the burden of proof.

When the taxpayer has prepared sufficient transfer pricing documentation, the Ministry of Taxation must, in principle, demonstrate that the taxable income is not in accordance with what could have been achieved if the transactions had been concluded between independent parties. Conversely, the tax agency has direct authority to determine the income based on an estimate if the mandatory transfer pricing documentation is inadequate. Any estimate must be justified and based on the information to which the tax authority has reasonable access. Thus, among practitioners, such estimate is often referred to as an "discretionary assessment".

It is the tax authorities that must demonstrate that transfer pricing documentation is so deficient that it must be equated with a lack of documentation.

- For example, the Supreme Court in its ruling of January 31, 2019 (UfR 2019.1446) established that transfer pricing documentation, which is so significantly deficient that it does not provide the tax authorities with a sufficient basis to assess whether the arm's length principle is adhered to, must be equated with a lack of documentation.
- Furthermore, the Supreme Court in its ruling of June 25, 2020 (UfR 2020.3156) established that the fact that the tax authorities disagree with or raise justified doubts about the comparability analysis does not in itself mean that the documentation is significantly deficient.

As indicated above, case law shows that taxpayers who have prepared and submitted sufficient transfer pricing documentation are in a strong position in disputes. Consequently, high-quality documentation undoubtedly helps mitigate the risk of an unfavourable shift in the burden of proof.

Transfer Pricing Penalties

Failure to submit sufficient transfer pricing documentation to the Danish Tax Agency within the deadline (cf. above) as a starting point result in penalties ranging from EUR 15,000 to EUR 30,000, plus an additional 10% of any potential income increase.

DENMARK

Local Hot Topics and Recent Updates

In 2021, Denmark implemented stricter regulations regarding transfer pricing documentation. These new provisions entail the mandatory submission of comprehensive transfer pricing documentation, including a Master File and one or more Local Files. The deadline for filing requires that the transfer pricing documentation is submitted within 60 days following the company's income tax return deadline.

Furthermore, intercompany agreements and benchmarking studies that support the transfer pricing methods applied by the company are now also expected to be included when filing the transfer pricing documentation. These new requirements represent a significant difference from the previous Danish regulations, where the completion of transfer pricing documentation was only necessary at the time of filing the corporate income tax return and was only to be submitted to the Danish Tax Agency upon request.

Non-compliance with the transfer pricing documentation rules will lead to penalties, cf. further above.

It is our experience that the penalty will be automatically imposed on companies and legal entities that fail to submit their transfer pricing documentation within the designated submission deadline. In addition, we have observed that the Danish Tax Agency has started investigating companies that have not submitted their transfer pricing documentation within the deadline, which thus will be subject to a transfer pricing audit.

With the Danish Tax Agency gaining access to a broader array of information, the Agency's scrutiny has become more focused. Heightened scrutiny on financial transactions, mergers and acquisitions, as well as restructurings has been noted. As a result, the Danish Tax Agency is now examining a diverse range of transactions more closely.

Companies engaged in financial transactions or restructurings should be cognizant that these activities may attract further scrutiny. Notably, the Danish Tax Agency is actively seeking to impose taxes if there may have been a "transfer of something of value." This concept is broad and can present challenges in compliance. Therefore, it is crucial to maintain comprehensive documentation detailing the relevant functions, assets and risks, as well as the arm's-length basis of such transactions. Finally, companies should recognize that group entities in Denmark must adhere to the transfer pricing documentation submission requirement because the group (not the local entity) meets the threshold for preparing transfer pricing documentation.

DENMARK

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Documentation threshold

Limited documentation requirements (Local File + Master File)	Alone or consolidated group basis has less than 250 employees and either a balance sheet total of less than DKK 195 million (approx. EUR 26 million) or a yearly turnover of less than DKK 391 million (approx. EUR 52 million)
Full scope documentation requirements (Local File + Master File)	Taxpayers that do not meet the thresholds for the limited documentation rules are subject to the full-scope documentation rules.
CbCR	Consolidated group turnover over DKK 5.6 billion

Submission deadline

Limited documentation (Local File + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
Full scope documentation (Local Lile + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
CbCR report CBCR notification	12 months after the last day of the income year in question.

Penalty Provisions

Documentation – late filing, incomplete or no filing	A penalty of DKK 250,000 (approx. EUR 33,500) may be imposed
Reduced penalty in case of subsequent satisfactory documentation	A penalty of DKK 125,000 (approx. EUR 16,740) may be imposed
Increased penalty in case of an increase in income	An additional penalty of 10% of the income increase, may be imposed
CbCR – late/incomplete/no filing	A penalty may be imposed. The amount of the penalty will be determined on a case-specific assessment.



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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.

ESTONIA

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 § 54² 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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Overview

Borenius, Taxand Finland

Borenius is a leading Finnish law firm headquartered in Helsinki.

Borenius' top-ranked tax practice provides high-quality tax services that cover both domestic and international taxation. Our versatile team focuses on delivering high-quality integrated tax advice independent from audit work to corporate entities, associations, authorities, and private individuals.

As part of its offering, Borenius provides full range of transfer pricing services with focus on advisory, planning and tax dispute resolution. Our transfer pricing services include:

- planning, adjusting and implementing transfer pricing models and strategy;
- advising in transfer pricing model changes and related party restructuring;
- assisting in transfer pricing controversy throughout the process;
- assisting in MAP and APA processes, as well as domestic pre-emptive processes; and
- assisting in transfer pricing related reporting obligations.

General : Transfer Pricing Framework

Finland's transfer pricing regulation and tax practice generally follow the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines"), however OECD Guidelines are not directly adopted in the legislation. The Finnish documentation rules also conform to the principles established in the Code of Conduct for Transfer Pricing Documentation in the European Union.

The Finnish Act on Tax Assessment [1558/1995] ("ATA") contains provisions concerning the arm's length principle, as well as the transfer pricing documentation that have been in effect since 1 January 2007. The provisions concerning transfer pricing documentation were revised based on BEPS Action 13, applying from 2017 onwards. Additionally, the Finnish Tax Administration has published guidelines dealing specifically with transfer pricing documentation.

Section 31 of the ATA enacts the arm's length principle for related party transactions. It applies where a taxpayer and a related party have agreed on or defined terms that are different from what would have been agreed upon by independent parties, and, in consequence, the taxable income of the taxpayer is less or the taxpayer's loss is more than what it would have been using arm's length terms. Where the rule applies, the taxable income can be increased to the amount that it would have been, if the terms had been the same as would have been agreed upon by independent parties.

Accepted Transfer Pricing Methodologies

In Finland the transfer pricing methods are applied in line with the OECD Guidelines. As the OECD Guidelines state, the transfer pricing method selected should be the most appropriate method in the circumstances of the case, i.e., there is no direct hierarchy in applying the methods. However, where a traditional transfer pricing method (comparable uncontrolled price ("CUP"), resale price or cost plus) and a transactional profit method (profit split or transactional net margin method) are both equally valid in the circumstances, the traditional method is seen as preferable. Further, the CUP method is considered preferable, when applicable, because it is deemed to best correspond to the arm's length principle.

The taxpayer is allowed to also apply any other method if it can be demonstrated that it leads to an arm's length outcome. This is typically relevant especially in connection with related party restructurings described in Chapter IX of the OECD Guidelines.

Transfer Pricing Documentation Requirements

Finnish companies and branches are obliged to prepare transfer pricing documentation, including Master File and Local File, on the transfer pricing applied in transactions with foreign related parties.

Documentation on a group level, i.e., Master File, is not required if the transaction amount between the taxpayer and every associated enterprise in a group falls below EUR 500,000. Further, in case the total transactions between two parties during a fiscal year remain below EUR 500,000, the taxpayer is subject to lighter Local File documentation requirements, essentially allowing documentation without functional and economic analyses.

Further, relief from the transfer pricing documentation requirement applies to small- and medium-sized enterprises. These enterprises do not need to prepare transfer pricing documentation, although they are required to comply with the arm's length principle. The definition of "small- and medium-sized enterprise" is as follows:

- The company has less than 250 employees.
- The company's turnover does not exceed EUR 50 million or its balance sheet does not exceed EUR 43 million.
- The company meets the criteria of small and medium-sized enterprises under the European Commission's recommendation 2003/361/EC.

Documentation may be prepared and submitted in Finnish, Swedish or English. If considered necessary by the Finnish Tax Administration, taxpayers must present a Finnish or Swedish summary translation of documentation written in English.

Although the content of the documentation is codified in the ATA in line with BEPS Action 13 and Annexes to Chapter V of the OECD Guidelines, the structure of the documentation is not regulated.

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The documentation must be submitted within 60 days to the Finnish Tax Administration ("FTA") only after a specific documentation request. However, the documentation must not be presented earlier than 6 months after the end of a financial year.

Local Jurisdiction Benchmarks

FTA generally accepts pan-European benchmarks if they meet comparable search strategy standards set by the FTA. The standards include, e.g., preference for Nordic and North-European comparables, sufficient financial screening as well as use of multi-year data and interquartile range.

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 is typically updated every 3 years. The 3 years interval is also in line with the guidelines of the FTA dealing with transfer pricing documentation.

In addition to benchmarking studies, internal CUPs and other sources of comparable information are accepted as basis for comparable data.

Focus on Financial Transactions

Finland's transfer pricing framework for intercompany financial transactions closely adheres to the OECD Guidelines, including the specific guidance on financial transactions set out in OECD Chapter 10. The transfer pricing process begins with the delineation of the transaction in order to establish its actual substance, identifying the relevant economic and financial relationships and the economically significant characteristics affecting them. The starting point is the separate entity principle, whereby each group company is assessed as an independent actor. However, when determining creditworthiness, the effect of implicit group support must also be taken into account. The arm's length nature of financial transactions is typically verified by benchmarking against comparable transactions between independent parties.

The FTA's guidance reflecting the OECD Chapter 10 framework underlines that the treasury function must be assessed based on its substance rather than legal form. Transfer pricing policies cannot rely on an activity simply being referred to generically as a treasury function, as all transfer pricing outcomes must be supported by the functional analysis as well as the decision making and risk assumption capacity of each entity. This means that entities performing limited financial intermediation roles should only be entitled to a routine return, while the assumption of substantive financial risks and returns requires demonstrable decision-making capability and capital t risk.

Careful documentation of transactions is particularly important in the pricing of financial transactions, so that the arm's length nature of the pricing can be verified retrospectively. MNEs should ensure that their intragroup financing arrangements are reviewed under both the transfer pricing rules and the domestic interest deduction limitations and other provisions applicable. All transfer pricing naturally operates alongside Finland's domestic tax rules, which may often be the key limiting factor in intra-group financing arrangements. Pre-emptive proceedings are commonly used to manage the tax risks related to financial transactions.

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

There are no domestic rules concerning (B)APAs in Finland. However, APA process may be initiated under Mutual Agreement Procedure ("MAP") article included in a tax treaty or the EU Arbitration Convention. Therefore, the rules and limitations applicable to each APA may differ.

In general, APA procedures are relatively common in Finland. The FTA has highly skilled Competent Authorities that routinely work with their cross-border colleagues in negotiating APAs and MAPs concerning Finnish taxpayers. Further to formal APAs, FTA has introduced cross-border dialogue as a more flexible and informal alternative to an APA, which is in practice a formal discussion between the tax authorities of the relevant jurisdictions as well as the taxpayer seeking to address and resolve a specific transfer pricing issue. To conclude, multi-national entities should strongly consider including APAs in their toolbox when seeking tax certainty on Finnish transfer pricing matters. As of today, FTA does not levy a fee for an APA or MAP, further increasing their applicability on also tax issues with more limited financial interest.

Further to the cross-border proceedings, a taxpayer may also request a binding advance ruling about income taxation in general, including transfer pricing questions. As an alternative to the advance ruling procedure, companies can opt for a pre-emptive discussion with the tax administration regarding challenging tax questions, including transfer pricing questions.

The purpose of a pre-emptive discussion is to increase the predictability of the taxpayer's taxation and provide the taxpayer with guidance before the execution of arrangements involving tax questions that are subject to interpretation. Pre-emptive discussions are free of charge for the taxpayer. The tax administration can give statements on transfer pricing issues from a Finnish perspective through this procedure, should the matter not require an advance ruling. In practice, pre-emptive discussions have proved to be a highly useful tool for resolving complex transfer pricing issues prior to their execution, including e.g. valuations.



Transfer Pricing Audits

In the recent years FTA has mostly followed a pre-emptive and collaborative approach to transfer pricing matters instead of retroactive transfer pricing audits. FTA has indicated shift of emphasis towards APA's and pre-emptive discussions and encourages taxpayers to resolve their transfer pricing issues through these processes.

However, in 2026 there have been signs of the FTA ramping up its transfer pricing audit activity. The risk assessment and audit target selection is typically carried out through transfer pricing compliance monitoring, including transfer pricing documentation discussed above as well as transfer pricing related information disclosed on the CIT return. Additionally, FTA has highly sophisticated tools to analyse big data to discover potential changes in profit levels of taxpayers or volumes of the business. Instead of a full transfer pricing audit FTA may also execute a control visit to analyse transfer pricing of a taxpayer. Transfer pricing may also be an item included in a standard tax audit initially focusing on other area of tax.

The Burden of Proof in Transfer Pricing: Theory versus Practice

As a main rule in Finnish tax practice, the burden of proof resides with the FTA to demonstrate that there is a significant deviation by the taxpayer from the arm's length principle. ATA has a special provision stipulating that the party that can best provide the required evidence should provide it. Considering a taxpayer's broad duty to provide additional information, in practice, the burden of proof rests with the taxpayer.

If the FTA questions the arm's length nature of a transaction, the taxpayer is typically required to provide evidence to refute the allegations. However, this requirement does not extend to proving a negative, such as demonstrating that a specific event has not occurred and this remains the FTA's responsibility to prove. This aspect is particularly relevant in disputes concerning alleged business restructurings, where the FTA may argue that something of value has exited Finland.

Transfer Pricing Penalties

The tax administration may impose a punitive tax increase as a result of a fault committed by the taxpayer, either with regard to the tax assessment procedure in general or to transfer pricing documentation.

Special penalties relating to transfer pricing documentation are set out in Section 32(1)(2) and 32a(8) of the ATA. A maximum tax increase of EUR 25,000 may be imposed if the transfer pricing documentation or requested additional information is not submitted within the time limit, or the documentation or information submitted are essentially incomplete. However, given the 60-day submission window documentation related penalties are rare in practice.

In addition, the ordinary tax penalties (i.e., tax increases), are typically imposed in connection with transfer pricing related reassessments. A punitive tax increase can amount to as much as 10% of the adjusted income. If the punitive tax increase cannot be calculated based on the adjusted income, the increase can amount to up to 50% of the increased tax.

Local Hot Topics and Recent Updates

The domestic Finnish transfer pricing adjustment rule was revised at the beginning of 2022 to align with the OECD Guidelines, as the statute was interpreted more narrowly

in case law previously. In practice, the revision broadened FTA's ability to re-characterise or disregard related party transactions. The impact to tax practice is not yet clear, as there is no published case law regarding the new provisions, however, the recent pick-up in audit activity indicates that transfer pricing litigations can be expected to be increased in the near future.

Business restructurings between related parties have remained a priority for the FTA. Recently, the FTA has been particularly active in monitoring the transfer pricing aspects of various business restructurings, especially those involving

intangibles. Case law from the Supreme Administrative Court has confirmed Finland's alignment with the principles outlined in Chapter IX of the OECD Guidelines in this respect.

Finland is a remarkably active APA/MAP player and has a broad range of concluded and pending processes with other jurisdictions. Combined with the frequent use of pre-emptive discussions, the pre-emptive processes have assumed a primary role in resolving transfer pricing issues. We have good experiences from utilising said processes for the benefit of Finnish taxpayers, and strongly recommend considering these in connection to broad range of Finnish tax and transfer pricing matters.

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Documentation threshold

Master file	Documentation obligation can apply if the total value of taxpayers' cross-border related party transactions exceeds EUR 500,000 during the financial year. Please refer to section *Transfer Pricing Documentation Requirements* above for details
Local file	No des minimis threshold based on volume of related party transactions. However, if the total value of cross-border related party transactions between two parties does not exceed EUR 500,000 during the financial year, documentation omitting the functional and comparability analysis as well as method selection is allowed. Please refer to section *Transfer Pricing Documentation Requirements* above for details.
CbCR	CbCR obligation in Finland applies if the group revenue exceeds EUR 750 million in the financial year immediately preceding the reporting year.

Submission deadline

Master file	60 days from request
Local file	60 days from request
CbCR	12 months from the end of reporting year.

Penalty Provisions

Documentation – late filing provision	Up to EUR 25,000
Tax return disclosure – late/incomplete/no filing	Minimum of EUR 150 assuming no impact on taxable income.
CbCR – late/incomplete/no filing	Up to EUR 25,000



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Overview

Arsene, Taxand France

Arsene's Transfer Pricing and Business Structuring team is composed of thirty lawyers and economists, including four partners. Arsene's expertise covers all issues relating to intragroup transactions, including design and implementation of transfer pricing policies, (re)structuring of activities and transactions, economic analyses (including benchmarking studies and valuation of assets or activities), legal and transfer pricing documentation, compliance, assistance to tax audit, litigation, mutual agreement procedure, advance pricing agreement procedure.

General : Transfer Pricing Framework

The arm's length principle as defined by the OECD and the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations are recognised and applied in France.

Article 57 of the French Tax Code "FTC" allows the French Tax Authorities "FTA" to reassess the taxable result declared by entities when they are involved in transactions with related parties that have not been made at arm's length.

The FTA have issued administrative comments (BOFiP database) to clarify their position and provide recommendations on specific topics (e.g., financial transactions).

Furthermore, a guide on transfer pricing for small and medium-sized enterprises ("SMEs") has been issued by the FTA in a view to help SMEs to understand the applicable transfer pricing standards and the FTA's expectations in terms of transfer pricing policies and compliance.

Finally, it is important to note that transfer pricing standards are also used by the FTA to audit domestic transactions between French related entities. In this regard, certain exceptions to the arm's length principle are allowed for transactions between entities belonging to the same tax consolidation group.

Accepted Transfer Pricing Methodologies

There is no specific French legislation or regulation on transfer pricing methodologies and French transfer pricing standards are based on OECD methodologies (i.e., CUP, Resale Price, Cost Plus, Transactional Net Margin Method and Profit Split).

French administrative comments indicate that OECD-based methodologies are most commonly applied, but that other approaches may be accepted provided that they are duly justified and that the price set is compliant with the arm's length principle.

There is no preferred method. Nevertheless, the CUP method is considered the most reliable method when it can be reliably applied, and certain methods have been confirmed as appropriate by case law in certain cases.

Transfer Pricing Documentation Requirements

Transfer pricing documentation requirements are based on the OECD Transfer Pricing Guidelines. Article L.13 AA and L.13 AB of the French Tax Procedure Code "FTPC" require the transfer pricing documentation, including a Master file and a Local file report, to be made available to the FTA from the start of the tax audit or at the latest 30 days upon formal request from the tax authorities (can be extended by a further 30 days).

The content of the Master file and Local file reports is broadly in line with OECD standards and is detailed in administrative comments issued by the FTA.

Transfer pricing documentation requirements apply to French entities, if (i) themselves, (ii) an entity owning them directly or indirectly (majority ownership), (iii) a direct or indirect subsidiary (majority ownership) or (iv) another entity belonging to the same the French tax consolidation group has revenues or gross assets above € 150 million (for fiscal years starting on or after January 1st, 2024) or above € 400 million (for previous fiscal years).

The FTA has specified in their administrative comments that only cross-border transactions with related entities higher than €100,000 per type of transactions for a given fiscal year should be documented.

In practice, since TP documentation is always requested by the FTA at the beginning of the tax audit, it is strongly recommended that transfer pricing documentation also be prepared for taxpayers who do not meet the above criteria.

In addition to transfer pricing documentation, taxpayers may be required to file a transfer pricing return. Article 223 quinquies B of the FTC states that a "simplified" transfer pricing documentation is mandatory for entities with a turnover or gross assets value in excess of €50 million. It is based on a dedicated form delivered by the FTA (form 2257-SD). The 2257-SD form must be submitted within six months following the corporate income tax return filing deadline.

Finally, Country-by-Country Reporting "CbCR" requirements have been adopted by the French legislation and are governed by Article 223 quinquies C of the FTC. CbCR requirements are in line with OECD standards.

Local Jurisdiction Benchmarks

French benchmark requirements follow OECD principles. The taxpayer must provide a benchmarking study most likely to justify the arm's length character of the transaction to which the study relates. Contemporaneous benchmarks are requested, meaning that the benchmarking study should be fully reviewed every three years and financial data of comparable companies (when applicable) should be updated every year.



In this regard, it is strongly recommended to first assess whether internal comparables can be used (in any case, it is important to justify for which reasons they may be rejected).

Comparability adjustments are accepted provided that they result in making comparables more relevant for the transaction to be documented.

As far as searches for comparable companies are concerned, regional benchmarks may be accepted provided that it can be demonstrated that there are no differences between the markets in which the comparable companies operate, or that differences have no impact on the profit level indicator.

Focus on financial transactions

Under French law, the tax authorities' specific guidance on intercompany financial transactions places strong emphasis on the accurate delineation and economic justification of the transaction. More specifically, the tax authorities and case law require that intercompany financial transactions be assessed by reference to the interest of the beneficiary entity: the transaction must satisfy a real economic need and correspond to what an independent enterprise would have agreed to under comparable circumstances. This entails a detailed creditworthiness analysis of the borrower (often through a stand alone credit rating approach), verification that the quantum of debt is consistent with what the borrower could have obtained on the market, and benchmarking of the interest rate and other financial terms against comparable uncontrolled transactions.

In addition, the French tax authorities' doctrine—reflecting the OECD 2020 guidance—requires a close examination of treasury functions and substance within the group: entities performing limited financial intermediation functions (e.g. cash pooling leaders without decision-making capacity) should only earn a routine return, whereas the assumption of financial risks (e.g. funding risk) must be supported by actual decision-making capability and capital at risk.

Finally, this transfer pricing analysis operates alongside specific French rules on financial expenses (notably Articles 39 and 212 of the French Tax Code), which may further restrict the deductibility of intragroup interest irrespective of arm's length pricing.

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

APAs may be unilateral, bilateral, or even multilateral. They are based on tax treaties concluded between France and other jurisdictions, which means that this procedure is only available with jurisdictions having concluded a tax treaty with France and containing a provision similar to Article 25 of the OECD Model Tax Convention on Income and Capital.

The competent authority is the Bureau de Prévention et résolution des différends internationaux (SJCF-4B). No filing fees are due for this procedure.

The agreement comes into force on the date agreed by the parties, and the duration of the agreement is set as part of the negotiation procedure. It may not be less than 3 years or more than 5 years. The FTA updated their administrative doctrine in January 2025, introducing a retroactive extension to the APA (if requested by the taxpayer), which cannot exceed 3 years.

Transfer Pricing Audits

Transfer pricing audits are always part of a tax audit, and there is no audit focusing solely on transfer pricing issues. In practice, transfer pricing is systematically audited, and transfer pricing documentation systematically requested by the FTA in the first questionnaires at the beginning of the tax audit.

Transfer pricing issues may be dealt with directly by the tax inspector, or the tax inspector may request assistance from the tax authorities' team of transfer pricing consultants.

Burden of Proof in Transfer Pricing: Theory versus Practice

For fiscal years starting as from January 1st, 2024, the transfer pricing documentation becomes binding for the taxpayer, meaning that any deviation from the methods set out in the documentation that results in a lower taxable result is presumed to constitute a transfer of profits, unless the taxpayer can prove otherwise, by any means.

Provided the taxpayer complies with documentation requirements and that the transfer pricing policy has been properly implemented, in theory, the FTA must then establish—typically through a comparability analysis—that a material discrepancy exists between the prices applied by the taxpayer and those expected under the arm's length principle, as required under Article 57 of the French Tax Code.

In practice, however, the FTA has increasingly been challenging the functional profiles of the related parties involved in transactions with French taxpayers. Rather than focusing on the economic analyses provided by taxpayers, the FTA often questions the economic reality of the transactions and the substance of the entities involved. Moreover, the FTA increasingly rely on international administrative assistance mechanisms under bilateral tax treaties to support their position in transfer pricing assessments.

This shift in approach effectively places the burden of proof on the taxpayer to substantiate the actual economic substance of the transactions and the allocation of roles and responsibilities within the group. As a result, French taxpayers are increasingly required to provide supplementary materials—such as internal emails, job descriptions, and other supporting documents—evidencing the actual allocation of roles and responsibility and supporting the functional analysis and conclusions reached from the said analysis.

This trend emphasizes the importance of not only meeting formal documentation requirements but also being prepared to substantiate the economic substance of intercompany transactions. Therefore, in some cases, beyond the standard documentation package, it may be crucial for taxpayers to have backup documentation (e.g., internal communications, evidence of decision-making processes, operational reports, etc.) ready to support the economic reality of their transfer pricing arrangements. For complex organizations or high-stakes transactions, the use of APAs could help mitigate future risks and facilitate smoother audits.

Transfer Pricing Penalties

Where the audited taxpayer fails to produce the required documentation, or produces partial documentation, within 30 days of receiving formal notice from the FTA (or within the period duly extended), it is liable to the penalties provided for in Article 1735 ter of the FTC.

The penalties are decided by the FTA and they depend on the seriousness of the infringement. In particular, the penalties may be the higher of the following two amounts:

- 0.5% of the amount of the transactions for which no or partial documentation has been provided.
- 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided.

In any case, the penalties cannot be less than €50,000 (for fiscal years starting on or after January 1st, 2024) or €10,000 for previous fiscal years) and they apply to each of the fiscal years covered by the tax audit.

As far as the transfer pricing return is concerned, in the event of failure to file a return and in the event of omissions or inaccuracies, the penalties provided for in Article 1729 B of the FTC are as follows:

- failure to file the 2257-SD form: penalties of €150.
- omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.

As far as CbCR is concerned, penalties up to €100,000 may be imposed by the FTA in the event of failure to file the CbCR.

Local Hot Topics and Recent Updates

"Roll-back" for APA

In January 2025, the BOFIP officially introduced a retroactive extension to the scope of the APA. The APA may cover past fiscal years ("roll-back") notably in cases where a transfer pricing reassessment has been notified by one or both States (for a BAPA).

The retroactive extension of the agreement will then allow for the resolution of double taxation without initiating a mutual agreement procedure. However, this extension period may not exceed 3 years.

Transfer Pricing documentation requirements

The threshold for transfer pricing documentation requirements was lowered from €400 million to €150 million for fiscal years starting on or after January 1st, 2024. In addition, the minimum amount of penalties for failure to provide the transfer pricing documentation was increased from €10,000 to €50,000.

Enforceability of transfer pricing documentation

Under the new rule, transfer pricing documentation is now binding for the taxpayer and any deviation from the methods set out in the documentation that results in a lower taxable result is presumed to constitute a transfer of profits, unless the taxpayer demonstrates, by any means, the absence of a transfer of profits.

Increase in the limitation period for the disposal of some intangible assets

The French Government decided to extend the period within which the FTA can reassess taxpayers' taxable result beyond the common statute of limitations for transfers of hard-to-value intangible assets (6 years vs. 3 years).

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Documentation threshold

Master file	Revenues or gross assets above €150 million (€400 million for fiscal years starting up to December 31st, 2023) for the relevant fiscal year (taxpayer or shareholder or subsidiary).
Local file	
CbCR	Annual consolidated group revenues above €750 million in the immediately preceding fiscal year.

Submission deadline

Master file	Should be available at the start of the tax audit and provided upon request.
Local file	
CbCR	No later than 12 months after the last day of the reporting fiscal year of the MNE group.

Penalty provisions

Documentation – late filing/late provision	The highest of the following amounts: ⁘ 0.5% of the amount of the transactions for which no or partial documentation has been provided. ⁘ 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided. ⁘ €50,000 per audited fiscal year (€10,000 for fiscal years starting up to December 31st, 2023).
Tax return disclosure - late/ incomplete/no filing	Transfer pricing return (form 2257-SD): ⁘ failure to file the 2257-SD form: penalties of €150. ⁘ omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.
CbCR – late/ incomplete/no filing	Penalties up to €100,000.



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Overview

Flick Gocke Schaumburg, Taxand Germany

Flick Gocke Schaumburg has been dedicated to tax-focused legal advice for more than 50 years and has numerous offices in Germany. Our firm was one of the first law firms in Germany to focus intensively on international tax law and international transfer pricing. Our transfer pricing expertise includes the planning, implementation, documentation and defence of transfer pricing systems as well as the conduct of mutual agreement procedures (MAPs), bilateral advance pricing agreements (bilateral APAs) and tax court proceedings, in particular. Through this focus, we have gained expertise that ensures comprehensive advice at the highest professional level for our clients. Our clients are domestic and foreign parented corporate groups as well as internationally active family-owned and medium-sized companies.

General : Transfer Pricing Framework

The arm's length principle is enshrined in Section 1 of the German Foreign Tax Act (hereinafter referred to as "FTA"). Furthermore, the legal framework for transfer pricing in Germany is supplemented by various decree laws and administrative guidelines published by the German Federal Ministry of Finance (e.g. concerning business restructurings). For instance, Section 1(5) FTA contains rules specifically dealing with the attribution of profits among permanent establishments and the head office and with intracompany dealings, transposing the Authorised OECD Approach (AOA) into domestic tax law. These rules are supplemented by a Decree Law on the Profit Allocation of Branches and Administrative Guidance on the profit allocation of permanent establishments. Also, Section 1(3b) FTA specifically deals with the transfer pricing implications on business restructurings, which is supplemented by a recently amended Decree Law on the Transfer of Functions. In addition, the administrative guidelines issued by the German Federal Ministry of Finance, which were last updated on 12 December 2024, are of practical importance. The administrative guidelines contain a reference to the OECD Transfer Pricing Guidelines for further explanations, e.g. with regard to financial transactions and the transfer of business functions, and they refer to relevant case law.

The general transfer pricing documentation requirements are laid down in Section 90(3) of the German Fiscal Code (hereinafter referred to as "GFC"), the Decree Law on the Documentation of Income Allocation, and Section 38a GFC. Administrative guidance on documentation requirements and taxpayers' duties of cooperation was issued on 3 December 2020.

Section 89a GFC was introduced in 2021 to stipulate a domestic legal basis for advance pricing agreements (bilateral APAs).

Following the update of the OECD Transfer Pricing Guidelines (hereinafter referred to as "OECD Guidelines") in January 2022, an update of the Administrative Guidance on Transfer Pricing was first published on 6 June 2023 and then again updated on 12 December 2024. The German tax authorities not only refer to the OECD Guidelines but have explicitly adopted the OECD Guidelines' view by attaching the OECD Guidelines as an annex to this Administrative Guidance on Transfer Pricing (see above).

Accepted Transfer Pricing Methodologies

Based on Section 1(3) FTA and the Administrative Guidance on Transfer Pricing, the OECD Guidelines are considered as internationally accepted guidance providing explanation and clarification of the arm's-length principle and its application. In essence, Section 1(3) FTA specifies that a transfer price and the other conditions of an intercompany transaction must be determined in accordance with the arm's-length principle and that the actual circumstances of the relevant transaction are decisive. Section 1(3) FTA applies the most appropriate method as a criterion for the selection of the applicable transfer pricing method.

Moreover, Section 1(3) FTA and the Administrative Guidance on Transfer Pricing stipulate use of the income-based valuation methods and the discounted cash flow methods, which are based on the discounted value of the projected future income streams or cash flows for the subject of valuation, as recognized methods.

Section 1(3) FTA and the Administrative Guidance on Transfer Pricing additionally provide the hypothetical arm's-length test. If no comparable values from transactions between unrelated parties can be identified, a hypothetical arm's-length comparison must be applied to determine the arm's-length price on the basis of economically recognized valuation methods. When applying the hypothetical arm's-length test, the minimum price of the service provider or licensor and the maximum price of the service recipient or licensee regularly results in a "consensus" range, whereas the median value of the settlement range is to be taken as a basis if the taxpayer does not credibly demonstrate that another value within the "consensus" range complies with the arm's-length principle. In the view taken by the German tax authorities, the hypothetical arm's-length test prevails over the other transfer pricing methods in the licensing of IP. The concept of the hypothetical arm's-length test is problematic because it opens the door to arbitrary results during tax audits.

For financing transactions, the CUP method or the cost of funds method is normally regarded as the most appropriate. From the 2024 assessment period onwards, financing transactions are subject to the specific provisions of Section 1(3d) and (3e) of the FTC. According to Section 1(3d) FTC, the expenses arising from the financing transaction (in particular loans) in Germany may not be deducted as business expenses if the taxpayer cannot credibly demonstrate that he would have been able to service the debt for the entire term from the outset, that he economically needs the financing and that he is using it for business purposes. The same applies if the agreed interest rate exceeds the interest rate based on a group rating.



According to Section 1(3e) FTA, an activity is generally considered to be of a low-risk nature if it is about arranging or passing on a financing transaction within a multinational group of companies. Such a low-risk service is also generally assumed if a company performs cash management (e.g. liquidity management, financial risk management) for other companies in the group or acts as a financing company.

Transfer Pricing Documentation Requirements

The general transfer pricing documentation requirements are laid down in Section 90(3) GFC, the Decree Law on the Documentation of Income Allocation, and the Administrative Guidance on Documentation. A Local File has to be prepared by a German taxpayer (i.e. subject to unlimited and limited tax liability in Germany) if the threshold for remuneration for supply of goods exceeds EUR 6 million or the total remuneration from other services exceeds EUR 600,000 (combined view of all group companies). A Master File has to be prepared by a German taxpayer that belongs to a multinational group and has stand-alone revenues of at least EUR 100 million in the previous fiscal year. Until 2024, Local Files and the Master File usually had to be submitted only during a tax audit and only upon request by German tax authorities and within a period of 60 days. As of 2025, a transaction matrix must be prepared. The transaction matrix and the Master File must be "proactively" submitted within 30 days of receipt of the announcement of the tax audit. The Local File must be submitted to the German tax authorities within 30 days upon request. Also, the tax authorities may request submission of transfer pricing documentation outside of a tax audit at any time.

In principle, there is no obligation to prepare contemporaneous documentation, with an exception for extraordinary transactions. For example, extraordinary transactions include the conclusion and amendment of long-term agreements having a significant impact on the income generated therefrom with related parties, and any business restructurings.

Furthermore, Section 12 of the Tax Havens Prevention Act stipulates an increased obligation to electronically provide documentation within 12 months after the end of the fiscal year, which exceeds the regular transfer pricing documentation requirements vis-à-vis tax jurisdictions that qualify as non-cooperative.

According to Section 138a GFC, German-based companies are subject to country-by-country (hereinafter referred to as "CbC") reporting requirements if they prepare consolidated financial statements and their consolidated revenues in the previous year are equal to at least EUR 750 million. All businesses subject to CbC reporting requirements have to prepare and file a CbC report to the German Federal Central Tax Office one year after the end of the fiscal year for which the CbC report is generated.

Local Jurisdiction Benchmarks

Benchmarking helps to demonstrate that transfer prices are at arm's length. German taxpayers that use benchmark studies for this purpose must comprehensively disclose the search process, including the definition of the applied search strategy to identify potential comparable companies, the search result and the selection process. The entire search process must be transparent and, at the time of a tax audit, verifiable. Moreover, the configuration of the database with which the search process was conducted must be comprehensively documented.

Focus on Financial Transactions

German TP rules and the German tax authorities' administrative guidance on intercompany financial transactions places strong emphasis on the accurate delineation and economic justification of the transaction and on the consideration of a group credit rating and debt capacity analysis. The financial transaction must satisfy a real economic need and correspond to what an independent enterprise would have agreed to under comparable circumstances. This entails a comprehensive creditworthiness analysis of the borrower including any implicit support to rebuke the decisiveness of the group credit rating, verification of the borrower's capacity to be able to repay the principal amount and interest, and the determination of the interest rate (e.g. using internal comparables or benchmarking of the interest rate against comparable uncontrolled transactions, such as bonds or loans).

In addition, the German TP rules—reflecting the OECD 2020 guidance—require a close examination of treasury functions and substance within the group: entities performing limited financial intermediation functions (e.g. financing companies or cash pooling leaders without demonstrable decision-making capacity) should only earn a routine return.

APAs and Bilateral APAs

Since 2021, Section 89a GFC regulates the availability and access to APA proceedings, the resolution of APA cases and implementation of APAs reached. On 26 June 2024, the German tax authorities have updated their administrative guidelines on Sec. 89a GFC. An APA procedure is possible in Germany only if there is a risk of double taxation regarding the specific facts of the case and it is likely that double taxation will be avoided through the APA procedure and a consensual agreement interpretation will be reached with the competent authority of the other contracting state. For an APA proceeding to be initiated, the taxpayer must make a formal request and a pre-filing meeting must be held with the German competent authority.



The German APA procedure is then limited to a certain period of validity, which in general should not exceed five (5) years. Once an APA has been concluded, subsequent renewals are possible. In addition, the German APA procedure enables the German taxpayer to request a retroactive application of the APA to previous tax years ("rollback"). In practice, the entire APA procedure might take two to four years. The German tax authorities charge a fee of EUR 30,000 for each APA request and EUR 15,000 for each renewal of an APA request in transfer pricing matters. If the German APA procedure relates to matters other than transfer prices, the fee charged by the German tax authorities is reduced to EUR 7,500 (first application) and to EUR 3,750 (renewal).

Transfer Pricing Audits

Based on the taxpayer's comprehensive transfer pricing documentation the tax auditor selects those transactions that may require an in-depth examination. Since 2025, tax authorities first analyse the transaction matrix and then request further documentation with regard to specific transactions or the comprehensive transfer pricing documentation.

German tax auditors are likely to examine in detail the following situations:

- when the profitability of non-German subsidiaries has increased significantly;
- when the German taxpayer has entertained a transfer of functions involving substantial operations (e.g. the conversion of fully-fledged distributors into limited-risk distributors, sales agents, or commissionaires for a related person that may operate as a principal);
- when the German taxpayer's income has declined sharply or the German taxpayer has suffered permanent losses;
- when the German taxpayer has carried out intercompany transactions with related parties situated in low-tax countries;
- when the German taxpayer has applied the TNMM and year-end adjustments; and
- when the taxpayer has carried out corresponding or secondary adjustments.

From a transaction perspective, German tax auditors commonly focus on the following types of controlled transactions:

- licensing of IP;
- provision of intragroup services;
- financing transactions (e.g. shareholder loans, cash-pooling, factoring);
- business restructuring;
- distribution and procurement functions.

In addition, German tax auditors are increasingly focusing on issues related to transfer pricing, such as withholding taxes, creation of permanent establishments, the effective place of management and the general anti-abuse rule.

Burden of Proof in Transfer Pricing: Theory versus Practice

In Germany the burden of proof in transfer pricing matters is as follows: The tax authorities are required to investigate the facts of the case and they bear the responsibility of demonstrating that the prices set by a taxpayer are not

at arm's length. However, taxpayers have obligations to cooperate and to provide information and documentation, particularly in tax audits and in matters relating to foreign countries. If taxpayers fail to comply, the level of evidence required by the tax authorities may be reduced. In particular, if a taxpayer fails to comply with the transfer pricing documentation requirements, the German tax authorities may rebuttably presume that the income generated in Germany is higher; if income can be determined only within a certain range, this range may be used to the detriment of the taxpayer. The reversal of the burden of proof applies only if no transfer pricing documentation is submitted or if the documentation submitted is 'unusable', whereby the term 'unusable' is prone to dispute.

In practice, the German tax authorities often complain about the taxpayers' transfer pricing documentation and argue that it is too vague or incomplete, with the result that taxpayers have to demonstrate the appropriateness of the transfer prices by means of additional information. Consequently, the burden of proof is effectively shifted to the taxpayer in many cases.

Transfer Pricing Penalties

If the German taxpayer does not submit comprehensive transfer pricing documentation or if the transfer pricing documentation submitted is mostly "unusable" for the tax authorities, it is rebuttably presumed that the taxable income of the taxpayer is higher than the declared income. If the German taxpayer is able to rebut the presumption and can demonstrate compliance with the arm's-length principle, the German tax authorities will impose a penalty of EUR 5,000 in any case; this also applies if the transaction matrix is not submitted. If the German taxpayer is unable to rebut the presumption, the penalty imposed by the German tax authorities amounts to at least 5% but not more than 10% of the income adjustment.

If the transfer pricing documentation is submitted late, the penalty is EUR 100 per day that the German taxpayer is late and can amount up to EUR 1,000,000.

Any failure to provide information or documents within an appropriate time frame that has been requested by the German tax authorities during a tax audit can trigger a penalty of up to EUR 250,000 per event of non-compliance pursuant to Section 146(2c), 200(1) GFC.

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Local Hot Topics and Recent Updates

Transfer pricing (and its documentation) is subject to aggressive tax audits in Germany. Taxpayers have to deal with ever increasing and complex documentation requirements and obligations to submit documents and data. In particular, based on recent case law tax auditors are increasingly demanding submission of (TP related) emails and messages. Providing and selecting such information can require an immense amount of effort. Moreover, German tax authorities demand access to information located abroad allowing the scrutiny of transfer pricing.

Given the recent legislative focus on financial transactions implies that tax audits are putting a particular emphasis on this area.

Also, taxpayers are increasingly being confronted with requests for the international exchange of information, as well as with the cross-checking of information against CbCR and DAC6 filings. The first-time application of Pillar II has also brought with it the need to reconcile this data from a transfer pricing perspective.

Furthermore, the taxpayer is obliged to document the appropriateness of the applied transfer pricing method. The German tax authorities have the discretion to choose an alternative transfer pricing method if they consider it more appropriate. It is highly doubtful that such an approach would be accepted by the tax authorities of the respective foreign-related party. This will result in an increasing number of double taxation cases leading to costly and time-consuming MAPs or litigation.

Documentation threshold

Master file	Turnover EUR 100 million of individual entity, i.e. no group perspective
Local file	Remuneration for supply of goods exceeds EUR 6 million or the total remuneration from other services exceeds EUR 600,000
Enhanced TP Documentation	Any transactions involving non-cooperative tax jurisdictions
CbCR	Turnover EUR 750 million

Submission deadline

Master file	Submission within 30 days after receipt of the announcement of the tax audit.
Transaction Matrix	Submission within 30 days after receipt of the announcement of the tax audit.
Local File	Submission upon request within 30 days.
Enhanced TP documentation	12 months after the end of the fiscal year
CbCR	Submission within 12 months after end of the tax year

Penalty Provisions

Documentation – late filing provision	Penalties up to EUR 1,000,000
Tax audit – lateness in cooperation	Penalties up to EUR 250,000
Tax return disclosure – late/incomplete/no filing	Penalties up to EUR 25,000
CbCR – late/incomplete/no filing	Penalties up to EUR 10,000

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Overview

Zepos & Yannopoulos firm (Taxand Greece) has a top-tier tax practice—consisting of a team of over 40 experts with academic backgrounds in law, economics and accounting—which is ideally positioned to help clients address the challenges created by this environment. Combining the transactional expertise of a leading, internationally-oriented, law firm with the experience in tax and accountancy services, Zepos & Yannopoulos firm offers its clients comprehensive solutions for complying, creating added value through managing tax impact, and understanding the critical tax considerations of innovative transactions.

Regarding the transfer pricing field, the services span the following areas:

- Preparation and review of the full scope of the transfer pricing documentation files for Greek compliance purposes. Further, assistance with the preparation and submission to the tax authorities of the Summary Information Table ("SIT") and the CbCR notification.
- Planning and optimization of intra-group transactions and transfer pricing models, with a particular focus on business restructurings and related concerns.
- Negotiation of Advance Pricing Agreements ("APAs"), including rulings for local service centers (formerly known as Law 89 entities)
- Assistance during tax and transfer pricing audits
- Representation in domestic or cross-border dispute resolution procedures
- Valuation of Intellectual Property ("IP") and companies for transfer pricing and transactional purposes

General : Transfer Pricing Framework

Greek transfer pricing legislation is aligned with article 9 of the OECD Model Tax Convention and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) currently in force. The OECD Guidelines mainly revolve around the application of the "arm's length principle", which is the international consensus on the valuation of transactions between associated enterprises for tax purposes.

The arm's length principle is captured in the context of article 50 of the Greek Income Tax Code (GITC - L. 4172/2013), according to which, in the event that a transaction between a Greek entity and its affiliated persons is deemed to have been concluded at economic or commercial terms which differ from those that would have been concluded between independent parties (i.e. at arm's length), then the taxable profits of such entity will have to be adjusted in order to reflect under arm's length terms. Furthermore, the above adjustments are applicable only to the extent that the taxable results of the taxpayer are not decreased from the application of the arm's length principle i.e. downward adjustments are not commonplace.

Further to the above, a recent addition to the Greek Income Tax Code enabled Greek entities to apply for a reverse adjustment to their taxable results in cases where the taxable profits of a Greek related entity were adjusted (i.e. increased) within the context of a tax audit and deriving from an inter-company arrangement between said enterprises.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are incorporated in Greek legislation. Ministerial Decision 1097/2014, as further amended by Ministerial Decision 1144/2014, also makes reference to the acceptable TP documentation methods used in the economic analysis to support and substantiate the arm's length nature of the pricing policies in place.

In line with the OECD Guidelines, the traditional transaction methods are preferred, where especially CUP is considered to be the most accurate method.

The selection of the most appropriate TP documentation method for each transaction under scope should be accompanied by a detailed description of the evaluation process carried out which led to the proper justification of such selection.

The Greek TP legislation does not provide any safe harbor rules for the documentation of any type of transaction. Therefore, reference to a profit margin determined within the context of a simplified approach (e.g. low value-adding intra-group services profit markup) are not generally acceptable in a potential tax audit.

Transfer Pricing Documentation Requirements

According to article 21 of the Greek Code of Tax Procedures (GCTP - L. 4987/2022, which was set out on 4 November 2022 replacing L. 4174/2013), entities operating in Greece, are required to prepare transfer pricing documentation to support the arm's length nature of their transactions with both domestic and foreign affiliated entities & foreign permanent establishments. The above obligation is also applicable for Greek permanent establishments of foreign entities regarding their transactions with affiliated persons, as well as with their head office.

Certain thresholds are in place, i.e., for entities with a total annual turnover which is equal or lower than € 5,000,000, a TP documentation requirement is in place in the event that the total value of their annual inter-company transactions exceeds the amount of € 100,000 for the year under review. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total inter-company transactions.



For each fiscal year, taxpayers falling within the above annual thresholds are required to prepare the following:

- A TP documentation file including the content instructed by the OECD TP Guidelines, and
- A Summary Information Table (SIT) which contains core information regarding the company and the group in which it belongs, transaction amounts, applicable TP methods, contracting parties, functions performed etc.

Both the TP file and the SIT are prepared within the lawful deadline for the filing of the entity's annual Corporate Income Tax (CIT) return for the year under review, which normally expires on the last day of the sixth month following the end of the fiscal year. In case than an extension to the above CIT deadline is granted by the tax authorities, the TP documentation timeframe is also extended accordingly.

The TP documentation file may be prepared and kept by the taxpayer in an internationally acceptable language (e.g. in English). However, in the event of a tax audit, a translation into Greek should be performed and provided to the auditing authority within 30 days upon an official request.

Information included in the SIT is compiled using specific application tools developed by the Greek Ministry of Finance. Data is submitted electronically to the General Secretariat of Informational Systems of the Ministry of Finance through a separate application interface within the Greek tax authorities' electronic platform (TaxisNet).

Pursuant to L. 4484/2017, Greece transposed EU Directive (EU) 2016/881, introducing the automatic exchange of Country-by-Country (CbC) reports within the EU, into its domestic legislation. In addition, according to L. 4490/2017, Greece ratified the OECD Multilateral Competent Authority Arrangement, facilitating the exchange of financial information in tax matters among a total of 61 jurisdictions.

Multinational groups realizing total annual consolidated revenues exceeding € 750 million are required to submit a CbC report on an annual basis, providing tax authorities with information on revenue, profit before income tax, income tax paid and other details regarding the allocation of the group profits in different jurisdictions. The CbC report also provides information on which group entity is operating in a particular tax jurisdiction and the business activities in which each entity is engaged in.

A Greek entity may be designated to prepare and submit a CbC Report for the group in Greece (i.e. act as the group's reporting entity) under certain conditions; e.g., if it is the ultimate parent entity or a surrogate parent entity of the group. If acting as the reporting entity, the Greek entity should file the report before the Greek tax authorities ("GTA") within 12 months from the end of the reporting fiscal year.

A Greek entity of a multinational group which is not obliged to file the CbC report for the group, should still notify the GTA of the identity of the group's reporting entity and its tax jurisdiction by the end of the reporting fiscal year.

Local Jurisdiction Benchmarks

The selection of comparables for the purposes of the economic analysis is subject to specific comparability criteria, mainly set out in Ministerial Decisions 1142/2015 and 1227/2015.

In particular, the use of external databases is allowable, provided that specific reference of the database name & version is made in the TP file. Comparability search studies should be performed using versions made available not earlier than two months before the end of the relevant fiscal year and not later than the deadline for the submission of the SIT. In practice, this implies a timeframe typically of 8 months. Two months before the year-end until six months after the year-end which is the initial deadline for the submission of the SIT. However, if an extension is granted for the submission of the SIT, this timeframe is extended as well. For example, if year-end is 31/12/2023, the acceptable releases are from November 2023 to June 2024. If the deadline for the SIT is extended to July 2024, then the timeframe for the benchmarking studies is also extended.

Greek taxpayers may use the benchmarking studies for a total of 2 consecutive years after the year that the original benchmarking study has been prepared, by updating the financial results of the initial study to the last 3-year period. The use of updated benchmarking studies is acceptable only if the taxpayer's operations & functional profile has remained unchanged and the original study sample is verified to remain comparable and reflect uncontrolled transactions. In every case, a new full search for comparables should be performed at least once every three years.

Focus on Financial Transactions

Under Greek transfer pricing rules, there is no standalone domestic guidance specifically dedicated to intercompany financial transactions. However, the general arm's length principle applies to intragroup loans, bond loans, guarantees, cash pooling and other financing arrangements and is interpreted in line with the OECD Transfer Pricing Guidelines. In practice, the analysis should cover the accurate delineation of the transaction, the borrower's creditworthiness and repayment capacity, the commercial rationale of the funding, and the key financial terms, such as amount, maturity, currency, security and subordination. From a practical audit perspective, Greek tax authorities in most cases review intragroup interest rates by reference to Bank of Greece statistics on interest rates for loans to non-financial corporations. Therefore, even where broader market benchmarking is prepared, it is important that the applied interest rate can be reconciled, to the extent possible, with the Greek banking market data that the tax authorities are likely to use as a reference point.

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

The Tax Procedures Code (Law 4174/2013) includes the possibility of an advance pricing agreement (APA) with the tax authorities. This agreement is made in advance and determines the transfer pricing methodology to be used in setting the prices for cross-border intercompany transactions along with the critical assumptions, under which such methodology will remain valid. An APA term cannot exceed four (4) years. The option of a preliminary cycle of discussions with tax authorities, with a view to obtaining their input on the possible outcome of an intended APA application, is provided to the taxpayer.

Greece now provides for the roll-back of bilateral or multilateral APAs in cases where the relevant facts and circumstances in the earlier fiscal years are the same. Taxpayers filing for an APA may submit a relevant roll-back request, provided that the earlier fiscal years have not been time-barred and that there is no tax audit mandate communicated to the taxpayer with respect to the relevant fiscal years. It should be noted that, as set out by the legislature, the roll-back request shall not impair the tax auditors from performing a tax audit on such fiscal years, and the APA may not be rolled back to the extent that a final assessment is issued in this respect.

The APA may be revised, revoked or cancelled in the case where the taxpayer does not comply with the terms or responsibilities arising therefrom or the critical assumptions change or are proved incorrect or in the case of a different outcome arising in the context of the mutual agreement procedure pursuant to the relevant bilateral tax treaty or in the context of the convention of the member states of the European Union on the correction of profits of associated enterprises.

Finally, Ministerial Decision 1107/2023 by the General Secretariat of Public Revenue provides clarifications and guidance for the application of the APA procedure.

Transfer Pricing Audits

The GTA conduct audit examinations at random and all companies are subject to audit for any open period. Starting from tax year 2014 onwards, the provisions of L. 4174/2013 apply in relation to Statute of Limitation period ("SoL"). Said rules provide in principle for a SoL of 5 years following the end of the year within which the CIT return of the FY concerned must be filed, resulting to 6 years following each fiscal year-end (standard SoL).

The TP file is prepared and kept within the company's premises along with its accounting books & records. In the event of a tax audit, the TP file should be provided to the tax auditors within 30 days from the date of receiving the relevant request in written form.

The Burden of Proof in Transfer Pricing: Theory versus Practice

The Greek Income Tax Code (Law No. 4172/2013) in conjunction with the Tax Procedure Code (Law No. 5104/2024) provide that the taxpayer must maintain sufficient documentation to substantiate that the prices of its intra-group transactions are at arm's length. The Greek administration has issued detailed guidelines on the substantiation of the intra-group transaction in line with the OECD guidelines (Circular POL. 1097/9.4.2014 and POL. 1142/2.7.2015). As long as the taxpayer maintains a TP documentation (master file and local file) that has been produced in line with the above guidelines, the tax authorities bear the responsibility of demonstrating that the prices set by a taxpayer are not at arm's length. The rejection of the TP documentation by the audit tax authority should be based on specific and well-founded justifications. In addition, the tax audit authority should prove that the prices determined on the basis of its own assessment are at arm's length too. If the taxpayer does not maintain adequate TP documentation, the burden of proof will shift in essence to the taxpayer.

Where a corrective tax assessment has been issued and the taxpayer files an appeal against it (in tax litigation proceedings before the administrative courts), each party has the burden to prove any facts it has invoked and support the argumentation it has raised, unless otherwise provided by law. The other party shall have the right to submit evidence in rebuttal. If the court does not have enough evidence, it may issue a preliminary ruling ordering a re-audit or supplementary audit with a limited scope, which is carried out by the tax authority.

In practice, the Greek tax authorities often rely on general and unfounded allegations thereby shifting the practical burden of proof onto the taxpayer. However, the Greek administrative courts have repeatedly adjudicated that where the taxpayer maintains adequate TP documentation, the audit tax authority has the obligation to provide full and adequate justification for its findings with respect to rejection of the taxpayer's documentation, whereas it also bears the burden of proving its own analysis. As an example, the Greek administrative courts have multiple times annulled corrective tax assessments issued by a Greek audit authority on the basis that the rejection of the comparables chosen by the taxpayer is generic and inconclusive (lack of reasoning).



Based on the above, the burden of proof lies primarily with the taxpayers. In that regard, it is of imperative importance that the Greek taxpayers ensure that their TP documentation is not only in line with the formal requirements prescribed by the law and the relevant administrative guidelines, but also robust, comprehensive and reasonable.

Transfer Pricing Penalties

The penalties for non-compliance with domestic TP documentation & CbC Reporting requirements are summarized in the following table, as set out in the Greek tax legislation:

TP File

In the case of failure to provide the transfer pricing file to the tax authorities within 30 days upon an official request, a penalty of EUR 5,000 applies, which is increased to EUR 10,000 if the file is provided after 60 days, and to EUR 20,000 if the file is provided after 90 days or if it is not provided at all.

Summary Information Table

- In case of late filing of Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions.
- In case of late filing of an amended Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions, imposed only if the total revisions exceed the amount of € 200,000.
- In case of non-filing of a Summary Information Table, a penalty of € 2,500 to € 10,000 applies.
- In case of filing of an inaccurate Summary Information Table, a penalty of € 500 to € 2,000 applies, calculated as 1/1,000 of the company's inter-company transactions, imposed only if the total inaccurate information exceeds 10% of the company's total inter-company transactions.

Country by Country report

In case of late or non-accurate filing of CbC Report, a penalty of € 10,000 is imposed, whereas in case of non-filing the penalty is increased to € 20,000.

Local Hot Topics and Recent Updates

Ministerial Decision A. 1107/2023 issued and in force as of 28 July 2023 abolished the previous Ministerial Decision governing the APA process that was issued back in 2013 (i.e. POL 1284/2013). However, there are no specific case studies or recent updates of note.

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Documentation threshold

Master file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
Local file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
CbCR	Turnover EUR 750 million

Submission deadline

Master file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Local file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Summary Information Table	Submission until the deadline for the Corporate Income Tax returns, normally until the last day of the sixth month following the end of the fiscal year
CbCR & CBCR notification	Submission of the CBCR within 12 months after the end of the tax year under review. Notification must be submitted by the end of the reporting fiscal year.

Penalty Provisions

Please see the above remarks.



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Overview

LeitnerLeitner Tax | Audit | Advisory, Taxand (Hungary)

Our tax consulting company located in Budapest, Hungary, provides our clients with complex, personalized, high quality transfer pricing professional support and security. The transfer pricing expertise, combined with the full-service coverage in all tax areas, accounting and legal topics is a guarantee for our clients to achieve tailor-made best assistance. Our full services in the field of transfer pricing covers the following:

- transfer pricing consultancy services
- transfer pricing expert activity: planning of intercompany transfer pricing structures, preparation and introduction of policies
- preparing, reviewing, updating transfer pricing documentation (Local Files and Master Files)
- preparing, reviewing database search, benchmark analysis
- preparation of the requests, representation in advanced pricing arrangement (APA) procedures
- representation in mutual agreement procedures (MAP)
- country by country reporting (CbCR) advisory services
- representation in transfer pricing audits and remedy procedures

General: Transfer Pricing Framework

The Hungarian legislation applies the Arm's Length Principle as an essence of transfer pricing; and the Hungarian Corporate Income Tax Act refers to the OECD Transfer Pricing Guidelines (TP Guidelines). Though the TP Guidelines are not legally binding in Hungary, the Hungarian transfer pricing regulations are based on the TP Guidelines. The main rules of the Hungarian transfer pricing are provided in the Corporate Income Tax Act, in the Decree of the Ministry of Finance on the transfer pricing documentation and in the Act on the International Administrative Cooperation in the field of taxes and other duties. In general, the transfer pricing requirements also apply not only to cross-border relations but equally to domestic transactions. In Hungary, the transfer pricing documentation is mandatory.

Accepted Transfer Pricing Methodologies

In accordance with the TP Guidelines, the domestic law defines the methods that can be used when determining the arm's length price (CUP, RSP, CPM, TNMM, PSM - methods designated by law). Based on the domestic legislation, the arm's length price shall be determined applying one of the methods listed by the law, or by an "other method" -this latter however requires specific and explicit explanation and reasoning for the elimination of the traditional methods. The Hungarian legislation; otherwise, does not determine the hierarchy of the methods, only the "other method" may be used only if the arm's length price cannot be determined by none of methods designated by law.

Transfer Pricing Documentation Requirements for 2026

From the 2026 tax year, Hungarian transfer pricing documentation is governed by the new Decree No. 45/2025 (XII. 23.) NGM on transfer pricing documentation and transfer pricing data reporting. The Hungarian documentation package continues to follow the OECD three-tier approach and consists of a Master file, Local file(s) prepared on a transactional basis, and, where applicable, Country-by-Country Reporting. The new decree more closely integrates documentation and tax return data reporting and introduces stricter content, benchmarking, segmentation and benefit-test requirements.

As a general rule, if a Hungarian taxpayer is required to prepare a Local file for at least one related-party transaction, transfer pricing documentation must be prepared unless a specific exemption applies. Exemptions continue to be available, for example, for small companies, certain non-profit organisations, state-controlled entities and transactions covered by a valid APA. However, exemption from formal documentation does not mean exemption from the arm's length principle, and taxpayers should still be able to substantiate their pricing in case of an audit.

For 2026, the general Local file and transfer pricing data reporting threshold increases to HUF 150 million (appr. EUR 420 thousand) per related-party transaction, determined on an annual net basis and taking into account the aggregation rules for similar transactions.

A new Master file exemption is also introduced: the Master file is not required if the taxpayer's total related-party transactions do not exceed HUF 500 million (appr. EUR 1,400 thousand) in the tax year. Certain cost recharges and simplified transactions may be subject to separate rules, but the arm's length principle remains applicable in all cases.

The CbCR threshold remains EUR 750 million consolidated group revenue in the financial year preceding the reporting year. Hungarian constituent entities of groups exceeding this threshold may have CbCR filing or notification obligations, depending on their role within the group and the availability of exchange-of-information arrangements.

The Local file must be prepared by the filing deadline of the annual corporate income tax return, i.e. generally within 150 days following the end of the tax year. The transfer pricing documentation is not submitted automatically with the corporate income tax return; however, detailed related-party transaction data must be disclosed in the return. The Local file, supporting calculations and benchmark materials should therefore be finalised before filing to ensure consistency with the reported data.

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Upon request by the Hungarian Tax Authority, the transfer pricing documentation must be made available within three working days. As the corporate income tax return now contains detailed transaction-level transfer pricing disclosure, inconsistencies between the Local file, benchmark study, financial statements and tax return data can be identified more easily and may trigger further questions or an audit.

The Master file should be available by the deadline for preparing the Master file for the ultimate parent company of the group, but not later than the end of the year following the tax year. For 2026, taxpayers should also verify whether the Master file reflects the Hungarian requirements and whether the new HUF 500 million exemption is available. Where the Master file is required, it should be consistent with the Local file, the group structure, value chain, intangible ownership and intercompany financial arrangements disclosed locally.

The CbCR, if applicable, must be submitted within 12 months following the end of the reporting period. Hungarian entities belonging to a group above the CbCR threshold also have a notification obligation, the deadline for which is the last day of the financial year of the multinational enterprise group. Transfer pricing documentation may be prepared in Hungarian, English or German, and taxpayers should retain the documentation and supporting evidence in a form that allows prompt submission and full traceability during an audit.

Local Jurisdiction Benchmarks

The Hungarian rules follow the guidance in Chapter III of the OECD Transfer Pricing Guidelines regarding benchmark studies.

Internal CUPs are acceptable in Hungary. Moreover, if there is internal comparable data available, it precedes data from an external source, as internal comparable data provides the highest level of comparison. In the absence of internal comparable data, a benchmark study is required in order to determine the arm's length price of the controlled transaction.

The arm's length price is usually determined using the TNMM and with the use of a business database containing company-level data, but - if the available data allows - the CUP (with the application of internal comparables or with the use of a database containing comparables, mainly for financial transactions and license fees) and the CPM are used.

Database regarding comparable products or services, furthermore database regarding comparable enterprises can be applied.

Companies are required to use databases that are publicly available or accessible or can be verified by the Hungarian Tax Authority. Strict documentary requirements apply to the database search support (e.g. saving search information, webpage screen-shots).

A database search of companies selected as comparable should be prepared every 3rd year. The result of the benchmark study must be updated annually i.e. the 2 years in between.

From 2026, the new Hungarian Transfer Pricing Decree sets out a mandatory geographic hierarchy for database benchmarking. If the tested party is a Hungarian entity, the search should first focus on Hungarian comparable companies. If the Hungarian sample is insufficient, the search may be extended to the other Visegrád countries, i.e. the Czech Republic, Poland and Slovakia. If this still does not provide a sufficiently reliable sample, the scope may be extended to selected Central and Eastern European countries, namely Bulgaria, Estonia, Croatia, Latvia, Lithuania, Romania and Slovenia, and subsequently to the Member States of the European Union. Wider regional searches should be used only if the previous geographic levels do not result in an adequate set of comparables.

The latest available version of the database should be applied. The basis of calculations shall be the data of the latest financial years that are available, typically of the latest three years (multiannual analysis), pooled method is preferred.

In case of the company group-level benchmark, we suggest supporting and supplementing it with a local database search to be accepted by the Hungarian Tax Authority as this is safer for the Hungarian entity and is more personalized from its point of view.

Focus on Financial Transactions

Hungarian tax audits increasingly focus on related-party financial transactions, particularly intercompany loans, cash-pool arrangements and financial guarantees.

In the absence of detailed domestic rules, the OECD Transfer Pricing Guidelines serve as the primary reference for assessing arm's length conditions.

Tax authorities place growing emphasis on the alignment of contractual terms with the actual conduct of the parties, especially regarding treasury functions, risk allocation and cash-pool structures.

Robust transfer pricing documentation remains essential to mitigate potential tax risks.

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

In Hungary, unilateral and bilateral / multilateral APAs are also available. The Ministry of Finance approves the procedure for establishing the arm's length price (practical application of the transfer pricing method), the facts and circumstances based on which it is determined, and, if possible, the arm's length price or price range.



The request shall be submitted before the conclusion of the contract (or other transaction). Or a request for an APA may be submitted after the date of conclusion of the contract if the contract is performed in a continuous manner. This means that the contract is concluded for a minimum term of six months, and a) under which at least one performance takes place every other month, or b) under which one of the parties maintain specific credit facilities in favour of the other party during the contract, or c) that contains the requirement of continuous availability for either of the parties.

The application for establishing the arm's length price shall be submitted by way of electronic means using the electronic form designed for this purpose.

The binding power of the resolution establishing the arm's length price shall be determined for a fixed period of at least three, but no longer than five years. The starting date of the effect of the resolution shall be established based on applications, but it shall not be earlier than the first day of the tax year when the application was submitted, nor later than the first day of the tax year following the date when the resolution becomes final. If requested by the taxpayer, in bilateral or multilateral proceedings, in case the competent authorities so agree, the binding force of the resolution may cover the tax years before the submission year provided that these tax years a) are not closed by a tax authority audit, b) have not been expired; and c) are not affected by an audit in progress, which results in a period closed by an audit, at the time when competent authorities conclude their agreement.

For unilateral APA, the procedural fee payable amounts to HUF 10 million (approx. 28,000 EUR). For bilateral or multilateral APA, the fee is HUF 14 million (approx. 40,000 EUR). The fees for modification or extension of the APA resolution are half of the original fee.

The APA process should officially be finished within 120 days, but it can be extended 2 times for 90 days. In case of bilateral or multilateral APAs, and the MAP with the foreign competent tax authority shall be closed within 2 years, but it can be extended by one year.

Transfer Pricing Audits in 2026

Transfer pricing remains a priority audit area for the Hungarian Tax Authority in 2026. Audit selection is now increasingly data-driven and based on the combined analysis of transfer pricing data reporting in the corporate income tax return, online invoice data, financial statements, CbCR information and international exchange of information. By 2026, the tax authority has several years of structured transfer pricing data available, allowing it to identify changes in profitability, unusual transaction classifications, inconsistencies between the Local File and the tax return disclosure, and other risk indicators before requesting the transfer pricing documentation.

In 2026, the focus of transfer pricing audits goes beyond the mere existence of documentation. The tax authority is expected to examine whether the reported transaction values, selected transfer pricing methods, tested parties, profitability indicators and benchmark results are consistent across all available data sources. Particular attention should be paid to routine manufacturers, distributors and service providers that are loss-making or achieve very low margins, as well as to cases where profitability declines compared with earlier years.

Key audit triggers include inconsistencies between the transfer pricing data reporting and the Local File, insufficiently segmented profit and loss statements, pricing close to or outside the interquartile range, weak functional analyses, missing or generic benefit tests for intra-group services, significant management fees, financial transactions, cash-pooling, guarantees, loans and transactions involving intangibles.

The mandatory median adjustment rule also increases audit exposure, as pricing outside the arm's length range may result in adjustment to the median rather than to the nearest point of the range.

For 2026, audit readiness should therefore be addressed before the corporate income tax return is filed. Companies should reconcile the transfer pricing data reporting with the Local File, update benchmark studies and financial analyses, prepare transaction-level segmentation, document the actual benefit of services with concrete evidence, and ensure that contracts, invoices, accounting records and functional analyses are aligned. Priority sectors and structures expected to receive increased attention include automotive, construction, chemical industry, IT/software development, cross-border structures, transactions involving intangibles and intra-group financing arrangements.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Beyond the formal approach, in terms of content, the legal requirement of preparing transfer pricing documentation is a rule that imposes a burden of proof. The fundamental and essential starting point is that in case of undertakings subject to transfer pricing documentation obligation, the burden of proving compliance with the arm's length principle lies with the undertaking. Thus, the preparation of transfer pricing documentation is a necessary, but not sufficient, requirement for businesses.

Transfer pricing documentation is an administrative obligation, but it is by no means an end in itself. The role of transfer pricing documentation is crucial. If properly prepared, it is a protective shield for the business.

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Businesses should strive to have transfer pricing documentation of adequate quality. Good transfer pricing documentation is: accurate, relevant explains and documents the facts in sufficient depth, reproducible, quality over quantity and follows the principle of uniqueness. In all cases, the principle of individual evaluation must be followed. Transfer pricing documentations and benchmark studies prepared on an assembly line are dangerous. Moreover, transfer pricing documentations prepared at group level without localization generate significant transfer pricing risks for the Hungarian company. The transfer pricing documentations and benchmark studies prepared specifically for the Hungarian market are the ones that can guarantee the appropriate security for the domestic entities.

Transfer pricing documentations are the starting point for tax audits; its appropriate quality can help the business provide evidence and thus protect from legal consequences. Not only can a default penalty be imposed for the lack of transfer pricing documentations, but those affected can also be fined tens to hundreds of millions of Hungarian forints for incorrectly or poorly prepared documents. Moreover, deficiencies in the documentations may give authorities the opportunity to question pricing, which could even have unpredictable financial consequences.

We are already at the era of AI, thus specific and standardized data about transfer pricing, enables the tax authorities for improved risk assessment and focusing on deficient transfer pricing practices. This also brings businesses into action, whose essential purpose is to be prepared for such the increasing tax authority attention and use the burden of proof as a tool.

Transfer Pricing Penalties

In case of non-compliance with the transfer pricing documentation, a penalty of up to HUF 5 million (approx. EUR 14,000) may be levied per transaction per year. In recurring cases, a penalty of up to HUF 10 million (approx. EUR 28,000) may be imposed also per transaction per year. If the CbC report is incomplete or contains inaccurate information or it is submitted after the expiration of the statutory deadline, a penalty of up to HUF 20 million (approx. EUR 56,000) may be imposed. The same CbCR penalty is also applicable fo the lack or incomplete notification as well.

In case of any discrepancies identified in transfer prices by the tax authorities resulting in the correction of the corporate income tax base, the adjustment may be subject to a corporate income tax of 9% over the profit and the local business tax of 2% over an adjusted turnover. In addition, a penalty of up to 50% of the tax deficiency amount and late payment interest calculated at the Central Bank base rate and increased by 5% may be imposed.

Local Hot Topics and Recent Updates 2026

Since the introduction of the stricter Hungarian transfer pricing rules from the 2022 tax year, transfer pricing compliance has become a key audit and risk area in Hungary. The detailed transactional reporting in the annual corporate income tax return, the mandatory median adjustment rule, the increased documentation penalties and the tax authority's expanding data analytics capabilities all require companies to apply a more disciplined, well-documented and locally substantiated transfer pricing approach in 2026.

Transfer pricing reporting in the annual corporate income tax return

The transfer pricing data reporting obligation introduced for the 2022 tax year remains one of the most important compliance developments. Taxpayers must disclose detailed transfer pricing and related-party transaction data in the annual corporate income tax return in connection with the determination of arm's length prices. This transaction-level reporting effectively links the corporate income tax return with the transfer pricing documentation and makes timely, accurate and internally consistent documentation essential.

The reported data provides the Hungarian Tax Authority with additional information for risk analysis, allowing it to identify unusual margins, inconsistent classifications, missing documentation, related-party transactions with loss-making or low-profit entities, and other potential transfer pricing risk indicators more efficiently.

By 2026, the structured data collected through these transfer pricing reports has created a substantial database for the Hungarian Tax Authority. This enables more targeted audit selection and supports the continuous improvement of risk assessment methods. As a result, multinational and domestic groups should expect more focused tax authority questions and should ensure that their transfer pricing positions, benchmark studies, contractual background and financial data are fully aligned.

In this environment, careful preparation of transfer pricing documentation and benchmarking is no longer only a formal requirement, but a key risk management tool. This is especially relevant in Hungary, where penalties remain high and the compliance expectations are stricter than in many comparable jurisdictions.

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Preparation for the new Transfer Pricing Decree

The new Hungarian Transfer Pricing Decree applicable from the 2026 tax year represents a major change in the local compliance framework. It brings several tax authority expectations into binding legislation and requires taxpayers to review not only the formal content of their transfer pricing documentation, but also the underlying data, segmentation logic, benchmark approach and transaction-level analysis.

Companies should prepare for the new decree by reviewing whether their Hungarian Local Files are sufficiently localised and whether the benchmark studies follow the Hungarian comparability expectations. Particular attention should be paid to the geographic hierarchy of comparable companies, the exclusion of loss-making comparables where required, the use of corporate-level financial data, and the full traceability of profitability indicators to the statutory accounts.

The new rules also increase the importance of segmented profit and loss statements, financial reconciliation and transaction-level testing. Intra-group services will require a more robust benefit test, while transactions involving intangibles should be supported by a detailed DEMPE analysis. Groups relying on centrally prepared documentation should therefore assess whether the group-level materials can be adapted to meet Hungarian requirements or whether additional local analyses are needed.

Tax audit trends

Transfer pricing remains a priority audit area for the Hungarian Tax Authority in 2026. Audit selection is increasingly data-driven and is based on the combined analysis of transfer pricing data reporting, online invoice data, financial statements, CbCR information and international information exchange. As the tax authority now has several years of structured transfer pricing data available, it can identify year-on-year changes, unusual margins and inconsistencies before requesting the Local File.

In practice, the most important audit triggers include inconsistencies between the corporate income tax return reporting and the Local File, loss-making or very low-margin routine manufacturers, distributors and service providers, significant management fees, weak benefit tests, insufficiently segmented results, financial transactions and transactions involving intangibles. Pricing close to the edge of the interquartile range may also create risk, given the strict median adjustment rule.

For 2026, taxpayers should therefore focus on audit readiness before filing the corporate income tax return. This includes reconciling the reported transfer pricing data with the Local File, updating benchmarks and financial analyses, documenting the business rationale and actual benefit of services, and ensuring that contracts, invoices, accounting data and functional analyses tell the same story. A proactive review before the filing deadline can significantly reduce the risk of questions, adjustments and penalties during a later audit.

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Documentation threshold

Master file	2026: Master file exemption if total related-party transactions do not exceed HUF 500 million (appr. EUR 1,400 thousand).
Local file	2026: HUF 150 million (appr. EUR 420 thousand) for Local file and data reporting.
CbCR	2026: EUR 750 million consolidated group revenue threshold; for Hungarian public CbCR purposes, HUF 275 billion may apply where relevant.

Submission deadline

Master file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: until the deadline for preparing the MF for the ultimate parent company of the group, but not later than the end of the year following the tax year
Local file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: by the submission of the yearly corporate income tax return, which deadline is 150 days following the tax year
CbCR	Submission and preparation: within 12 months following the end the reporting period

Penalty Provisions

Documentation – late filing provision	up to HUF 5 million (~ EUR 14,000), in recurring cases up to HUF 10 million (~ EUR 28,000) / per transaction per year
Tax return disclosure – late/incomplete/no filing	up to HUF 1 million (~ EUR 2,800) per return
CbCR – late/incomplete/no filing	up to HUF 20 million (approx. EUR 56,000) – also in the event of a violation of the notification obligation



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Overview

Economic Laws Practice, Taxand India

Economic Laws Practice is a leading full-service law firm in India and assists in planning, streamlining, managing, and solving complex transfer pricing issues to mitigate transfer pricing risk and aligning it with the client's global business operations and objectives. Services include strategic advice on the remuneration model that aligns with value chains, providing solution-based economic analysis, and documenting positions to support regulatory requirements, resolving disputes and gaining tax certainty. We have outlined below transfer pricing engagements / analysis carried out by us:

- Transfer pricing study and documentation;
- Inter-company transfer pricing policies for tangible goods, intangibles and services;
- Transfer pricing planning Services and litigation;
- Supply chain advisory.

General : Transfer Pricing Framework

The Transfer Pricing "TP" Regulations were introduced in India in the year 2001, in order to prevent erosion of Indian tax base. The Indian TP Regulations are contained in Chapter X of the Income-tax Act, 2025 "IT Act" under the title "Special Provisions relating to avoidance of tax". The Indian TP Regulations recognize the "arm's length principle" and require income from an international transaction to be computed having regard to the arm's length price. Further, India TP regulations have evolved over the years and various provisions / concepts were introduced in order to align the same with global developments such as:

- Introduction to Advance Pricing Agreement in 2012;
- Safe Harbour Rules - the Central Board of Direct Taxes "CBDT" was empowered to make Safe Harbour Rules vide Finance Act 2009 and the same were introduced / notified in the year 2013
- Framework for use of multiple year data and range concept in benchmarking analysis
- Three tier TP documentation structure as per BEPS (Base Erosion and Profit Shifting) Action Plan 13 in 2016;
- Secondary adjustment provisions and limiting interest deduction for thinly capitalized companies in 2017

The TP legislation in India is broadly based on the OECD TP Guidelines including the contents of the three-tier TP documentation structure, transfer pricing methods etc. Though OECD Guidelines are not directly applicable, both the taxpayers and the Revenue authorities have placed reliance on the OECD TP guidelines especially in cases where guidance is not available under the domestic legislation.

Accepted Transfer Pricing Methodologies

As per India TP Regulations, six methods are prescribed for determining the arm's length price of an international transaction. The said six prescribed methods under the India TP Regulations are as under:

- Comparable Uncontrolled Price "CUP"
- Resale Price Method "RPM"
- Cost Plus Method "CPM"
- Profit Split Method "PSM"
- Transactional Net Margin Method "TNMM"
- Other Method – This method has been prescribed by the CBDT as any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transactions, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

Further, there is no hierarchy in selection from the above-mentioned methods and the most appropriate method can be selected for determining the arm's length price of the international transaction considering the Functions, Asset & Risk Analysis of the Associated Enterprises "AE".

Transfer Pricing Documentation Requirements

The taxpayers who have entered into international transactions with their AE have to obtain a report, certified from an Accountant (being an independent Chartered

Accountant), in prescribed Form no. 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27] wherein Chartered Accountant has to certify inter alia the nature, quantum, arm's length value and the method considered to be the most appropriate method of such international transaction. Taxpayers have to electronically file the Form no. 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27] certified by an Accountant before the due date i.e. 31st October.

As per India TP Regulations, mandatory TP documentation as prescribed under the Income-tax Rules, 2026, is required to be maintained by the taxpayers where the aggregate value of international transactions with their AE exceeds INR 10 million. The documentation is required to be submitted only when the same is called for by the tax authorities.

Master File is required to be electronically filed in Form no. 3CEAA [Form No. 56 applicable from TY 2026-27] where the aggregate value of international transactions of the enterprise with its AE exceeds INR 500 million (INR 100 million in case of intangible related transactions) during the relevant accounting year and the consolidated global turnover of the International Group "IG" exceeds INR 5 billion. The due date of filing Form no. 3CEAA [Form No. 56 applicable from TY 2026-27] is 30th November.

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Country by Country Reporting "CbCR" provisions are applicable where the annual consolidated group revenue of the IG in the immediately preceding accounting year is more than INR 64 billion. CbCR requirements are to be complied with in India if the Ultimate Parent Entity "UPE" of the IG is resident in India or where the IG has designated an alternate reporting entity for the purposes of filing CbCR in India. The due date for filing CbCR in the prescribed Form no. 3CEAD [Form No. 59 applicable from TY 2026-27] in India is 12 months from the end of reporting accounting year of the UPE preparing consolidated financial statements.

CbCR filing requirements are also triggered in India if:

- the UPE of the IG is a resident of a country with whom India does not have an agreement for exchange of the CbCR; or
- the UPE of the IG is not obligated to file CbCR in its jurisdiction; or
- there has been a systematic failure on part of the UPEs jurisdiction to share information and such failure has been intimated to the Indian entity

Local Jurisdiction Benchmarks

Under India TP Regulations, benchmarking exercise is required to evaluate the arm's length nature of the international transaction. A local benchmark is generally preferred. However, in certain situations wherein the tested party is the entity outside India, selecting global benchmark may be used as the same may be more beneficial. Benchmarking analysis may be challenged by the tax authorities on account of comparability analysis and use of appropriate filters if comparable benchmarks include loss-making entities, high margin entities, high value intangibles, etc. Further, internal comparables are acceptable to the tax authorities.

Focus on Financial Transactions: Classification of CCDs and Hybrid Instruments

The characterization of compulsorily convertible debentures (CCDs) and other hybrid financial instruments as debt or equity continues to be a contentious issue in transfer pricing and tax assessments. Given that such instruments possess characteristics of both debt and equity, their classification directly impacts the deductibility of interest, transfer pricing outcomes, and the overall tax treatment of returns. Tax authorities have increasingly sought to recharacterize CCDs, which are legally structured as debt instruments, as equity by relying on factors such as mandatory conversion features, accounting treatment under accounting standards, economic substance, or the broader funding arrangement. Such recharacterization may result in the denial of interest deductions, benchmarking of the equity component at nil, and consequential transfer pricing adjustments.

The recent decision in Goldman Sachs (India) Finance Pvt. Ltd. provides guidance on this issue. The tax authorities held that the accounting presentation of CCDs as a compound financial instrument under accounting standards cannot determine their tax characterization. The legal rights and obligations arising from the instrument, rather than its accounting treatment, are relevant for tax purposes. Accordingly, the tax authorities observed that until the actual conversion of CCDs into equity shares, the instrument continues to retain the character of debt and does not assume the nature of equity merely because it contains a mandatory conversion feature.

The tax authorities further held that the Tax Officer was not justified in bifurcating the CCDs into debt and equity components based solely on the accounting treatment and benchmarking the interest attributable to the alleged equity component at nil. While the tax authorities remanded the benchmarking exercise for fresh determination of the arm's length interest, it categorically rejected the proposition that interest on CCDs is inherently non-deductible merely because the instrument is compulsorily convertible. It also deleted the disallowance, reaffirming that interest on CCDs remains allowable so long as the debentures have not been converted into equity.

The ruling reinforces the principle that tax authorities cannot disregard the legal character of a financing instrument solely on the basis of accounting standards or economic perceptions. Any recharacterization of CCDs must be supported by the governing legal documentation and applicable tax provisions, rather than the accounting classification adopted for financial reporting purposes.

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

APA is an agreement between the tax administration and taxpayer, which determines, in advance, the arm's length price or specifies the manner of the determination of arm's length price (or both), in relation to an international transaction.

The APA programme was introduced in India in the Finance Act, 2012 and seeks to provide certainty for 5 prospective years with a roll back option for 4 previous years. Taxpayers can opt for unilateral, bilateral or a multilateral APA and there are no thresholds on the value of international transactions for the Taxpayers to opt for APAs. Any taxpayer who has undertaken an international transaction or is contemplating to undertake an international transaction is eligible to file for an APA. The APA Rules provide for a preliminary consultation before formally lodging an APA application. In such consultation, the taxpayer and the APA team will discuss and clarify the scope of the APA, the transfer pricing issues involved and whether an APA can be executed or not. An application for a unilateral agreement should be made to the Director General of Income Tax (international

taxation) "DG-IT". For BAPA/MAPA, application should be made to the Competent Authority in India. The Competent Authority will send the application to DG-IT who in turn will send it to respective APA teams. The APA filing fee depends upon the amount of the proposed covered transactions over the proposed APA term, as below:

- 1 million INR for international transactions up to 1 billion INR
- 1.5 million INR for international transactions up to 2 billion INR
- 2 million INR for international transactions greater than 2 billion INR

There is no specific time lines within which the APA process is to be concluded. Generally, it takes around 2-3 years for UAPA and 3-5years for BAPA.

Recent Developments – APA Programme (FY 2025–26):

- The APA programme has continued to witness significant growth and has become one of India's most effective transfer pricing dispute prevention mechanisms.
- The APA programme now covers a broad spectrum of industries, including information technology and IT-enabled services (IT/ITES), pharmaceuticals, automobile and auto components, engineering, financial services, consumer goods, oil and gas, telecommunications, and contract research and development, among others.
- The increasing number of APAs reflects the Government's continued emphasis on tax certainty, reduction of transfer pricing disputes, improved ease of doing business, and strengthening investor confidence. The APA programme, together with the recent reforms to the Safe Harbour Rules, continues to promote voluntary compliance and efficient tax administration.

Transfer Pricing Audits

The entities may be subject to TP audits where the tax returns are selected for scrutiny assessment depending upon the risk parameters. The tax / TP officer may request for TP documentation maintained by taxpayer for the purpose of its audit and such documentation is to be provided within 10 days from the date of receipt of notice from the TP officer. The tax / TP officer may also independently determine the arm's length price of the international transaction entered by the taxpayer during the audit period and if there is variance in arm's length price determined by TP officer and arm's length price computed by taxpayer, such difference may be regarded as primary adjustment and be taxable in India for the taxpayer.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under Indian TP Regulations, the responsibility to justify the arm's length nature of international transactions lies primarily with the taxpayer. This includes maintaining prescribed TP documentation supporting the arm's length nature of their intercompany transactions, especially if transaction values exceed the prescribed threshold and obtaining a Chartered Accountant report that certifies various aspects, such as the nature, quantum, TP method, and arm's length value. If taxpayers fail to maintain adequate documentation or justify their pricing, the tax authorities can challenge the pricing and initiate transfer pricing adjustments.

While the onus initially lies with the taxpayer, if robust documentation is maintained, the burden shifts to the tax authorities to prove that the pricing is inconsistent with the arm's length principle. In practice, however, tax authorities often demand highly detailed information, adopts aggressive adjustments, and sometimes even uses non-publicly available data. In case of disputes, taxpayers need to provide detailed justification to appellate authorities duly supported by extensive documentation which becomes is a critical asset. Therefore, for all practical purposes, burden of proof often shifts disproportionately onto the taxpayer.

Therefore, taxpayers must be diligent in maintaining comprehensive and high-quality documentation not just to comply with the regulations but also to protect themselves from potential transfer pricing adjustments. The documentation becomes crucial in defending the TP position adopted by taxpayer during TP proceedings and appeals. Proper and detailed documentation helps mitigate the risk of transfer pricing adjustments. In case of disputes, especially before appellate authorities, having strong documentation is critical to defend the TP position adopted by the taxpayer.

Transfer Pricing Penalties

The Indian tax laws provide for various penalties for non-compliance or violations relating to transfer pricing provisions in India. Various penalties as per India TP Regulations as mentioned below:

- 2% of value of international transaction for failure to maintain specified information / documents, failure to report transactions in Form no. 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27] and TP documentation, maintenance of incorrect information, failure to submit information during TP audits
- INR 0.1 million for failure to file Form 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27]
- 50% of tax amount in case of underreporting of income
- 200% of tax amount in case of misreporting of income
- INR 0.5 million for failure to furnish master file
- INR 5,000 per day for one month, INR 15,000 per day after one month, INR 50,000 per day after the date of service of penalty order for failure to furnish CbCR before the statutory due date.
- INR 0.5 million for furnishing inaccurate information

Local Hot Topics and Recent Updates

Outbound intra-group payments

While dealing with intra-group transactions, one often encounters situations wherein an AE being a service provider procures certain goods or services in its own name but for back-to-back sale to the foreign affiliate. In such cases, the key question is if mark-up should be charged or not on cost of all goods & services procured. In India, many multinational group entities enter into back-to-back arrangements for the group entities outside India. The problem is acute for such entities which though may procure capital intensive goods/ services for their related parties outside India but may incur only a nominal incremental cost towards the arrangement. Recently, Hon'ble Delhi Tribunal in the matter of ADM Agro Industries Kota & Akola P. Limited [TS-355-ITAT-2023(DEL)-TP]) held that where the taxpayer was purchasing goods from third parties in India and selling goods to its AE on a back-to-back basis, no mark-up was warranted on the cost of goods as the profit earned by the taxpayer was only linked to the operating expense incurred by it.

However, the aforesaid proposition may not apply to cases where an entity assumes significant risks with respect to the goods/ services procured, such as inventory risk, credit risk and product/ service delivery risk and also performs significant functions such as inventory management and vendor/ customer management.

Therefore, the factual matrix of the case needs to be critically evaluated to conclude whether a particular cost qualifies as a pass-through cost or not. For instance, in cases where the goods or services procured do not influence the functions performed and the risks undertaken by the entity, the cost of goods or services can assume the status of pass-through costs. The concept is usually prevalent in the case of service providers or limited risk distributors.

Block Assessment Scheme

A new three-year block TP assessment mechanism has been introduced as a part of Income-tax Rules, 2026 which is applicable from 1 April 2026.

This framework is designed to reduce repetitive TP audits in situations where the nature of international transactions and business conditions remain broadly consistent over time. Under this scheme, the ALP would be determined for two consecutive tax year along with the base year for which TP reference is made subject to the taxpayer opting in and the TPO validating that the necessary conditions are satisfied.

Safe Harbour Reforms

The Union Budget 2026 has introduced significant reforms to the Safe Harbour Regime, aimed at expanding its applicability and simplifying compliance for taxpayers, particularly in the IT services sector.

The first major reform is the consolidation of software development, ITeS, KPO, and contract R&D into a single category of "IT services." This removes classification ambiguity and addresses long-standing disputes, especially in BPO and KPO cases. Further, the introduction of automated approval of Safe Harbour applications is expected to reduce approval timelines and minimise subjectivity in tax authority reviews

The second major reform is an expansion of the turnover threshold for eligibility for "Provision of information technology services" under the Safe Harbour Rules. The threshold has been substantially raised from 3000 million INR to 20,000 million INR. This expansion is expected to bring a considerably larger number of businesses within the ambit of the Safe Harbour Regime, allowing them to benefit from greater certainty and reduced compliance obligations in their transfer pricing arrangements.

The third major reform relates to the profit margin prescribed under the regime. A common and reduced profit margin of 15.5% has now been prescribed uniformly for all IT services. This move towards a single, rationalized margin is intended to bring greater uniformity in the application of the Safe Harbour provisions, reduce the scope for disputes and litigation, and provide enhanced certainty to taxpayers operating in the IT services space.

Filings and documentation for overseas entities earning income from India

Overseas entities having income taxable in India are required to undertake requisite compliances including filing of Form 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27] and preparation and maintenance of Transfer Pricing Study Report. In certain cases, overseas entities relied upon the Transfer Pricing Study Report maintained by the Indian affiliate with whom they have entered into international transaction. However, recent trends suggest that Revenue Authorities are insisting on a separate Transfer Pricing Study Report prepared and maintained by such overseas entities.

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Documentation threshold

Master file	Value of international transaction exceeds INR 500 million (INR 100 million in relation to intangibles) and international group turnover exceeds INR 5 billion.
Local file	INR 10 million.
CbCR	INR 64 billion.

Submission deadline

Master file	30th November immediately following the financial year.
Local file	10 days from the date of receipt of a notice from tax authorities calling for the information.
CbCR	12 months from the end of reporting accounting year of the UPE.

Penalty Provisions

Documentation – late filing provision	2% of value of international transaction for failure to maintain / submit the specified information / documents. INR 0.5 million for failure to furnish master file.
Tax return disclosure – late/incomplete/no filing	INR 0.1 million for failure to file Form 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27]. 2% of value of international transaction for failure to report transactions in Form no. 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27] and TP documentation.
CbCR – late/incomplete/no filing	INR 5,000 per day for one month, INR 15,000 per day after one month, INR 50,000 per day after the date of service of penalty order.



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Overview

PB Taxand, Taxand Indonesia

PB Taxand is a tax advisory firm based in Jakarta and Surabaya, which offers a full range of tax services that focus on multinational as well as local companies.

PB Taxand's team is equipped to assist in every aspect of transfer pricing services, ranging from (1) compliance and reporting; to (2) analysis, planning and strategy; and (3) disputes and controversy:

- Under compliance and reporting, we cover the preparation of transfer pricing country-by-country reports; master file; and local file documentation.
- With analysis, planning and strategy, we cover business restructuring, the setting up a the Transfer Pricing strategy, and the preparation of transfer pricing policy.
- With disputes and controversy, we cover assistance in transfer pricing audits; objections; appeals; judicial reviews; Mutual Agreements Procedures; and the prevention or resolution of tax disputes, by concluding unilateral, bilateral or multilateral APAs.

General: Transfer Pricing Framework

The Rule of Arm's Length Principle in Indonesia

The arm's length principle is regulated in several domestic regulations in Indonesia, as follows:

- Income Tax Law

  The rule of the arm's-length principle is stipulated under article 18 paragraph 3 and 4 of the Income Tax Law No. 36 of 2008 ("Income Tax Law"). This law has undergone multiple amendments, with the most recent changes being incorporated in Law Number 7 of 2021 regarding the Harmonization of Tax Regulations.

- Value Added Tax Law on Goods and Services

  It is also stipulated in Article 2 of Law Number 8 of 1983, which regulates Value Added Tax on Goods and Services as well as Sales Tax on Luxury Goods, which has also undergone multiple amendments, with the most recent changes being incorporated in Law Number 7 of 2021 regarding the Harmonization of Tax Regulations.

- Government Regulation

  The arm's length principle is further regulated in Articles 32, 33, 35, 36 and 37 of Government Regulation No 55 of 2022.

The rule of Transfer Pricing Documentation in Indonesia

Article 28 of Law No. 28 of 2007 on The Consolidation of General Provisions and Tax Procedures stipulates that Taxpayers are required to maintain bookkeeping for general documentation.

Meanwhile, the Transfer Pricing documentation is stipulated under Article 10 of Government Regulation number 74 of 2011 ("GR 74").

Transfer Pricing Regulation and Guideline in Indonesia

The Minister of Finance provides detailed regulations regarding transfer pricing under Minister of Finance Regulation No. 172 of 2023 (**MOF-172**). MOF-172 consolidates all prior transfer pricing regulations in Indonesia. This includes rules on related-party definitions, the arm's length principle, documentation, primary and secondary adjustments for Income Tax, Value Added Tax VAT adjustments, domestic corresponding adjustments, advance pricing agreements APAs, and mutual agreement procedure MAPs.

While the OECD Transfer Pricing Guidelines are not formally incorporated into Indonesian legislation, the Indonesian Tax Office (ITO) practically adopts them in its local regulations and recognizes them as an internationally accepted guide to explain and clarify the arm's length principle.

Accepted Transfer Pricing Methodologies

Under MOF-172, the accepted methods for applying the arm's length principle consist of:

a) Method of price comparison between independent parties (Comparable Uncontrolled Price method ("CUP"))

b) Resale Price Method ("RPM")

c) Cost Plus Method ("CPM")

d) Other methods, including:

   1) Profit Split Method ("PSM")

   2) Transactional Net Margin Method ("TNNM")

   3) Comparable Uncontrolled Transaction ("CUT") Method

   4) Method in Tangible Asset and Intangible Asset Valuation

   5) Business Valuation

Hierarchy of Methods:

If the CUP/CUT method and any other method offer the same degree of reliability, the CUP/CUT method is preferred. Similarly, if the RPM/CPM and PSM/TNMM offer the same reliability, the RPM/CPM is preferred.

During tax examinations, the ITO must evaluate the taxpayer's approach and methodology selection first. However, the taxpayer must substantiate why the chosen method is the most appropriate given the specific facts and circumstance

Transfer Pricing Documentation Requirements

Article 28 of the Consolidation of General Provisions and Tax Procedures Law and Article 10 of Government Regulation 74 (GR 74) requires taxpayers to document all intercompany transactions to support its arm's length nature. The provision requires Indonesian taxpayers to document the transactions conducted with related parties, which includes both cross-border and domestic transactions.

With regards to the obligation to prepare Transfer Pricing Documentation, under MOF 172, MNEs and Domestic companies are obligated to prepare Master files and Local files and Country-by-country reports, if certain threshold criteria are met.

If Taxpayers do not meet the threshold, it does not prevent the Tax officer from auditing the related parties' transactions and issuing tax assessment accordingly if the transactions deviate from the arm's length principle.

Local Jurisdiction Benchmarks

Comparable selection depends on the applied TP method. For benchmarking purposes, the Taxpayers may use local and overseas comparables if they fulfill a sufficient level of comparability.

As there are limited number of local comparables published in the commercial database, ITO would accept an overseas comparable when applying the arm's length principle in Indonesia.

Focus on Financial Transaction in Indonesia

Indonesia has tightened its transfer pricing framework for related-party financial transactions through MOF-172, aligning closely with the 2022 OECD Transfer Pricing Guidelines. The rules apply to intercompany loans, and other financing arrangements.

Taxpayers must prove that related-party financing is commercially rational by substantiating the transaction's purpose, debt volume, repayment structure, and the actual functions performed, assets used, and risks assumed by each party before setting the arm's length interest rate. This requires a comprehensive transfer pricing analysis, including accurate delineation of the transaction, functional analysis, creditworthiness assessments, and benchmarking.

Tax auditors frequently scrutinize whether a loan should be reclassified as equity, whether the borrower could have realistically obtained independent financing, whether the pricing is arm's length, and whether the lender possesses the economic substance to control the underlying financial risks.

Advance Pricing Agreement ("APA") Overview

Under MOF 172, the Taxpayer may submit a Unilateral APA, Bilateral APA or Multilateral APA application to the ITO for the related party transactions. APA may also be applied to domestic related party transactions in Indonesia. An APA can cover up to five prospective fiscal years, and taxpayers may also request a roll-back period. The roll-back period is subject to approval from ITO and certain criteria as follows: the requested roll back period is still within the 5 years statute of limitation; it has not been audited or if it is ongoing a tax audit process, then the audit has not been concluded; or such year is not subject to the criminal investigation.

Below are the requirements to apply for an APA.

a) The Taxpayer must have fulfilled the obligation to submit its Annual CITR for three fiscal years prior to the APA application period;

b) The Taxpayer must have met and fulfilled the obligation to prepare and maintain Transfer Pricing Documentation of master file and local file for three fiscal years prior to APA application period;

c) The Taxpayer must not be under any taxation criminal investigations or proceedings;

d) The application must only include related-party transactions that have already been disclosed in the taxpayers' Corporate Income Tax Return.

e) The application of the arm's length principle must not result in an operating profit lower than what was originally reported in the taxpayer's CITR.

The implementation of the APA must be documented in the taxpayer's transfer pricing documentation on an annual basis

Transfer Pricing Audits

Transfer pricing audits are typically handled as part of a general corporate tax audit or a specific audit focused on Income Tax or VAT. The ITO aggressively scrutinizes intercompany transactions, focusing primarily on:

- Company that incurs a loss for several years or reports unusually low profit
- Special related party transactions, such as use of intangible assets, intragroup services, and intercompany loans

Secondary Adjustment

Under the elucidation of article 18 paragraph 3 of Income Tax Law, the ITO will apply a secondary adjustment after the Primary tax adjustment during the tax audit. The secondary adjustment will be treated as a deemed dividend regardless of whether the transaction is conducted with shareholder or other affiliated party as the counterparty.

Under MOF-172, this deemed dividend (and the associated withholding tax) may be avoided if the taxpayers set up an account receivable and the counterparty physically remits the cash adjustment back to Indonesia within a specific statutory window.

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Corresponding Adjustment

MOF-172 regulates corresponding adjustments as a domestic mechanism to prevent double taxation.

The corresponding adjustment can be applied to the counterparty if the audited taxpayer accept the Transfer Pricing Assessment and waives its rights to file an Objection.

For international transactions, the MAP can be utilized to avoid double taxation issue as an alternative dispute resolution.

Hot Local Topics and recent Updates

As a capital-importing country, Indonesia sees a high volume of specialized transactions driven by overseas head offices or regional hubs to their local subsidiaries. Consequently, the ITO heavily scrutinizes transactions involving intangibles, intercompany services, and intercompany loans.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Because Indonesia operates on a self-assessment tax system, the legal burden of proof rests on the taxpayer. However, during an audit, the ITO holds the authority to make adjustments. In practice, the tax office must demonstrate that its assessment aligns with local regulations and the OECD Guidelines. During formal dispute resolutions, both sides are required to substantiate their arguments regarding the arm's length nature of the transactions.

Documentation threshold

Master File and Local File	Criteria to Prepare Master File and Local File
The Taxpayer has related party transactions with:	The taxpayer has related-party transactions and meets **at least one** of the following criteria: a. a gross revenue in the previous fiscal year of more than IDR 50 billion, or b. a related party transaction amount in the previous fiscal year of: - more than IDR 20 billion for tangible goods transactions; or - more than IDR 5 billion for each provision of service, payment of interest, use of intangible goods, or other related party transactions, or c. The related party is domiciled in a country or jurisdiction with a tax rate lower than the prevailing tax rate in Indonesia (the current tax rate in Indonesia is 22%).
CbCR	Criteria to Prepare Country-by-Country Reports a. Consolidated group turnover of at least IDR 11 trillion in prior year, or b. A Taxpayer who is a member of a Business Group, with a parent entity that is a Foreign Taxpayer, is required to file a Country-by-Country Report if the country or jurisdiction where the parent entity is domiciled: - does not require the filing of Country-by-Country Report, or - does not have any exchange of tax information agreement with Indonesia, or - has an exchange of tax information agreement, but the Indonesian Government fail to receive the Country-by-Country Report from the related country/jurisdiction.

Submission deadline

Master file	Must be available within **four months** after the fiscal year-end and submitted only upon request by the ITO.
Local file	Must be available within **four months** after the fiscal year-end and submitted only upon request by the ITO.
CbCR report	Must be submitted within 12 months after the fiscal year-end.
CBCR notification	Must be submitted within 12 months after the fiscal year-end.

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Penalty Provisions

Documentation – late filing provision	The transfer pricing documentation must be submitted within one month after ITO formally request for TP documentation during Tax Audit process. If the Taxpayer submits the transfer pricing documentation after the required timeframe, ITO may reject submission of the transfer pricing documentation and consider the Taxpayer does not comply with the regulation. The ITO will treat the TP Documentation as other documents rather than formal defense documentation.
Tax return disclosure – late/ incomplete/no filing	The administrative sanction for late filing of annual corporate tax return is IDR1million. If tax returns are deemed to be incomplete, ITO will request for the Taxpayers to amend the returns. If Taxpayers fail to file a tax return, there will be a potential tax audit by ITO. For tax assessment letter that resulted in tax underpayment, the underpaid amount is subject to a tax surcharge of Reference Interest Rate Issued Monthly by the Minister of Finance (MoF) plus uplift of 5% or 10% divided by 12 months for a maximum of 24 months, or a surcharge of 75%, depending on the case.
CbCR – late/ incomplete/no filing	Failure to file the CbCR triggers administrative sanctions aligned with the corporate tax return disclosure penalties outlined above.



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IRELAND

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Overview

William Fry Tax Advisors, Taxand Ireland

Taxand Ireland's transfer pricing services include: reviewing global transfer pricing policies in line with international market standards, performing transfer pricing risk reviews as part of the due diligence process and supporting clients through tax audits and negotiation of Advanced Pricing Arrangements ("APA") and Mutual Agreement Procedures ("MAP"). We liaise with and engage external providers for preparation of benchmarking analyses.

General: Transfer Pricing Framework

Transfer pricing legislation in Ireland was first introduced into Irish tax legislation ("TCA 1997") by the 2010 Finance Act.

Ireland's transfer pricing rules are construed in accordance with the OECD's Transfer Pricing Guidelines ("OECD TPG") which Ireland has adopted wholesale and which arelegally binding. For accounting periods commencing on or after 1 January 2023, the applicable OECD TPG are the 2022 OECD Transfer Pricing Guidelines published on 20 January 2022.

Although the Irish transfer pricing rules came into effect in 2011, Irish tax law had always contained provisions to restrict deductions for any expenses incurred by businesses when such expenses were in excess of market value under the circumstances. This measure is applied in parallel to the transfer pricing legislation.

The OECD'S Attribution of Profits to Permanent Establishments, the authorized OECD approach ("AOA") became effective in Ireland from 1 January 2022 with the introduction of Section 25A TCA 1997.

The Irish transfer pricing legislation includes an exemption for small and medium enterprises (SMEs). For these purposes, an SME has fewer than 250 employees, and either has a turnover of less than €50 million or assets of less than €43 million. This is an annual test that is applied at a group level.

Ireland also contains an exemption for certain Irish-to-Irish transactions (Section 835E TCA 1997), this applies where the Irish supplier / lender is providing services on a non-trading basis.

Specific documentation requirements in Ireland (Local File, Master File) became effective from 1 January 2020.

Accepted Transfer Pricing Methodologies

Irish tax legislation is to be construed in accordance with OECD TPG and, accordingly, provides for the transfer pricing methods that are set out therein. Taxpayers should demonstrate why a particular transfer pricing method has been chosen.

Transfer Pricing Methods Overview

Traditional Transaction Methods	⁘ Comparable Uncontrolled Price Method ("CUP") ⁘ Resale Price Method ⁘ Cost Plus Method
Transactional Profit Methods	⁘ Transactional Net Margin Method ("TNMM") ⁘ Profit Split Method
Other Methods	⁘ Use of other methods is allowed, depending on context, e.g. bespoke valuation methods for transfer of intellectual property

The most appropriate method is considered based on the functional analysis and the reliability of information.

One of the most common methods seen in Ireland is the CUP method, especially for intercompany financial transactions.

Transfer Pricing Documentation Requirements

Section 835G TCA 1997 requires that taxpayers should prepare and retain any records that might be necessary for the Irish Tax Authorities ("Revenue") to confirm that the prices charged on transactions to which the transfer pricing rules apply have been agreed on an arm's length basis.

The records required include:

- A "Master File": Where the taxpayer is a constituent entity of a Multinational Enterprise Group ("MNE group"), and where the total revenue of that group in the period is in excess of €250 million; and
- A "Local File": Where the taxpayer is a constituent entity of an MNE group, and where the total revenue of that group in the period is in excess of €50 million.

Master File

In general, the Master File is intended to provide a high-level overview of the Group, including the key products/services, supply chain, key value drivers, identification of the respective roles of Group entities, provide an overview of IP and financing structures. It is not required to be a compendium of detailed facts.

Local File

A Local File is specific to a country and includes detailed transactional transfer pricing documentation, identifying material related party transactions, the amounts involved in those transactions, and the company's analysis of the transfer pricing determinations they have made with regards to those transactions.

The key components of the Local File are the Functional Analysis and Economic Analysis used to support the arm's length nature of the intercompany transactions.

There is also specific additional information that is required to be included, such as management charts, information regarding APA's/MAP's/rulings, and reconciliations to financial statements.

Relevant Branch Records (RBR)

In addition, the requirement for RBR was introduced for accounting periods commencing on/after 1 January 2022. They are required for Irish branches of foreign companies and contain much of the same information as a Local File.

Transfer pricing documentation should be prepared no later than the filing date of the relevant tax return. In addition, it must be made available to Revenue within 30 days of a written request to do so.

Local Jurisdiction Benchmarks

Irish Revenue guidance outlines that if benchmarking analysis has been included in TP documentation, it also needs to be reasonably contemporaneous, but if there are no material changes to the economic circumstances surrounding the specific transaction and the analysis continues to be relevant to the particular facts and circumstances of the arrangement, then a taxpayer can rely on it for multiple periods.

For a TNMM benchmarking, in general, Irish Revenue will expect a full benchmarking study every 3 years and for the financials of the accepted comparables to be updated or refreshed on an annual basis.

Benchmarking does not have to be based on Irish comparables alone, pan-European comparables may be accepted depending on the specific facts and circumstances. However, if there are specific local factors that clearly differentiate the tested party's geographic market, they should be factored into the benchmarking analysis, where possible.

Focus on Financial Transactions

Under Irish transfer pricing legislation, intercompany financial transactions are required to comply with the arm's length principle and are construed in accordance with the OECD Transfer Pricing Guidelines.

Irish Revenue guidance emphasises the accurate delineation of financial transactions, taking into account the commercial and financial relations between the parties and that companies should consider the quantum of debt, interest rate and other terms and conditions of a loan when assessing whether an arrangement is consistent with the arm's length principle. Revenue also notes that the debt capacity of a borrower should be considered when analysing related-party loan arrangements.

The guidance further notes that the OECD guidance on financial transactions, which is incorporated into the 2022 OECD Transfer Pricing Guidelines, is relevant in determining whether the conditions of financial transactions between associated enterprises are consistent with the arm's length principle, including whether a purported loan should properly be regarded as debt.

In addition, the transfer pricing analysis of financing arrangements should be considered alongside Ireland's domestic interest limitation rules (ILR), which may restrict the tax deductibility of interest expenses for tax purposes even if the interest rate charged is consistent with what independent parties would have agreed.

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

APA and BAPA are both available in Ireland. However, unlike some other countries, Ireland does not provide a unilateral APA, i.e., an agreement between Revenue and the Irish taxpayer. Therefore, all APAs must be either bilateral or multilateral and involve the foreign tax authorities and the foreign taxpayer.

Transfer Pricing Audits

The Burden of Proof in Transfer Pricing: Theory versus Practice

Burden of proof

Burden of proof under the self-assessment system for the accuracy of information in tax returns lies with the taxpayer. Taxpayers with related party transactions should be able to confirm that the transfer prices have been determined in accordance with the arm's length principle.

Statute of limitations

Section 959AA TCA 1997 provides for a four-year time limit on the making and amending of assessments on chargeable persons. This limit is linked to the chargeable period in which the tax return is delivered. There are certain exceptions provided for in the provision. One such exception is to allow for the making and amending of assessments outside the four-year time limit in the case of bilateral MAPs reached between the competent authority of Ireland and a competent authority of another jurisdiction with which Ireland has a Double Taxation Agreement. This amendment will allow Irish Revenue to amend an assessment to implement the outcome of a bilateral MAP agreement.

Transfer Pricing Penalties

Where a taxpayer fails to provide Revenue with transfer pricing documentation within 30 days of a written request to do so, a fixed penalty of €4,000 will apply. This fixed penalty is increased to €25,000 plus €100 for each date on which the failure continues in circumstances where the taxpayer is required to prepare a local file.

The penalties for non-compliance by branches differ slightly from those imposed on companies. The RBR should be prepared contemporaneously with the branch corporation tax return and provided to Revenue within 30 days of a request. If a taxpayer fails to provide them within 30 days, there is a fixed penalty of €25,000 (and €100 per day until the documentation is provided) for large taxpayers (i.e. taxpayers that are part of a group with consolidated revenue of €50m or more) and €4,000 for other taxpayers.

In addition, where a transfer pricing adjustment results in additional tax due, the transfer pricing legislation provides for protection from tax-geared penalties in circumstances where the taxpayer has fully complied with transfer pricing documentation requirements and demonstrates reasonable efforts were made in applying transfer pricing to the arrangement. This protection from tax-geared penalties does not apply in the case of deliberate behaviour by the taxpayer to under-declare a tax liability.

Local Hot Topics and Recent Updates

In 2024, the Irish Tax Appeals Commission ("TAC"), decided against Revenue in the first landmark transfer pricing decision to be decided in Ireland (59TACD2024). The decision represents the substantive judicial consideration of Ireland's transfer pricing rules and provides guidance on the transfer pricing treatment of stock-based compensation arrangements.

The taxpayer in this case was a software development company which was part of a publicly listed multinational group that offered stock-based incentive schemes to employees of its subsidiary entities and did not have a recharge agreement in place between the parent entity and subsidiaries. The stock-based compensation was in respect of shares in the parent company. Revenue argued that the taxpayer's revenues were understated but did not challenge the TNMM used. The taxpayer attributed an expense value to them in their financial statements in line with accounting standards FRS 102 (being the fair value of the stock-based compensation). The key determining factors to the decision made by TAC was who bore the legal and economic risk and who should earn the profits referrable to the cost. The TAC considered whether the taxpayer was correct to exclude the value attributed to the stock-based compensation from its cost base when calculating the inter-company services fees that it charged to the parent company.

The taxpayer was successful in this appeal. In arriving at their decision, the TAC held that it was correct to exclude the notional value attributed (by FRS 102) to the stock-based compensation from the taxpayer's accounts. This conclusion was based on the fact that the costs of the stock-based compensation were borne by the parent company (rather than the taxpayer) and the OECD guidelines were concerned with the economic costs incurred by the taxpayer (rather than by its parent company).

The decision counterviews the Israeli case of Kontera which had been previously cited as authority in the area of stock-based compensation. This decision represents a key milestone in both domestic and international precedent.

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Documentation threshold

Master file	Group's global annual turnover > €250M
Local file	Group's global annual turnover > €50M
CbCR	Multinational enterprise groups ("MNE Groups") with consolidated group revenue of €750 million or more in the preceding fiscal year

Submission deadline

Master file	30 days upon request from Irish Revenue
Local file	30 days upon request from Irish Revenue
CbCR	To be filed with Irish Revenue within 12 months following the end of the period it relates to

Penalty Provisions

Documentation – late filing provision	€4,000 – €25,000, plus €100 per day until the documentation is provided
Tax return disclosure – late/incomplete/no filing	Penalties for late submission of corporation tax returns include a surcharge and restriction on use of allowances / losses. The surcharge levied is as follows: • 5% of the amount of tax payable up to a maximum surcharge of €12,695 where the return is submitted within two months after the due date; and • 10% of the amount of tax payable up to a maximum surcharge of €63,485 in all other cases. The failure to file a return attracts a fixed penalty of €3,000 on a per return basis. This can be increased to €4,000 where the failure to submit the return continues after the end of the tax year in which the person received the tax return from the Inspector. The filing of incorrect/incomplete returns also attracts a fixed penalty of €4,000.
CbCR – late incomplete/no filing	The penalty for failure to file a CbCR is €19,045 plus €2,535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is €19,045.



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Overview

Herzog Fox & Neeman, Taxand Israel

The Herzog Fox & Neeman "Herzog" transfer pricing team offers Israel's most comprehensive guidance on international transfer pricing, helping clients avoid costly audits, disputes and penalties. Herzog is the only law firm in Israel that provides full transfer pricing services; the fact that under Israeli law our clients' matters remain privileged and confidential, serves as an additional advantage of planning your international structure together with us. The Herzog practice is experienced with planning, documenting, litigation, APAs and MAPs, and provides the full range of services to its clients, focusing on the legal, economic, and business related aspects of the client's tax structure and supply chain, employing innovative solutions. Herzog represents clients in both inbound and outbound transactions, in restructuring, audits, and of course the preparation of the required documentation in accordance with the changing regulatory environment, including the implementation of FAR, DEMPE and Value Chain Analysis. Each Master File, Local File, intercompany agreement and transfer pricing study prepared, is given the full attention of the practice leader partner, attorney and economist Eyal Bar-Zvi.

Services include:

- Transfer pricing planning
- Master File, Local File, and transfer pricing studies
- Intercompany agreements
- Transfer pricing audits and litigation
- Transfer pricing policies (SOP)
- Advance pricing agreements (APA)
- Mutual agreement procedures (MAP)
- Transfer pricing implementation
- Intercompany finance
- DEMPE and profit split analyses
- Transfer pricing M&A Due Diligence

General: Transfer Pricing Framework

Israel's transfer pricing regime is regulated under Section 85A of the Israeli Tax Ordinance and the Regulations (Determination of Market Conditions) thereunder (the "Israeli TP Legislation"). Section 85A introduces the arm's-length principle by asserting that an international transaction between parties with 'special relationships' should be taxed in line with the appropriate market prices.

The scope of the Israeli TP Legislation is formally limited to cross-border transactions in which a special relationship exists between the parties to the transaction (i.e., related parties), however recent case law has expanded this scope also to non-related parties, and the ITA enforces the arm's length principle also in transaction within Israel. The Israeli TP Legislation covers all types of transactions, including: services (e.g., R&D, manufacturing, marketing etc.); distribution; the use or transfer of intangible assets (e.g., know-how, patents, trade names or trademarks); and financing transactions (e.g., loans, capital notes, guarantees and captive insurance).

As noted, the ITA unofficially implements the arm's length principles with respect to domestic related-party transactions, for example when involving Israeli entities that receive tax benefits (e.g. preferred technological enterprise). Additional guidance is provided by ITA circulars, such as with regard to safe harbours.

Accepted Transfer Pricing Methodologies

The Israeli TP Legislation mostly incorporates the OECD Transfer Pricing Guidelines for Multinational Organizations "OECD Guidelines" approach towards determination of the correct analysis methods for examining a multinational transaction between related parties. It should be noted, however, that certain tax circulars offer a 'safe-harbor' mechanism with specific margins.

The Best Method rule, which is set out in the Israeli TP Regulations, requires that the arm's length result of a controlled transaction, should be determined under the method that, given the facts and circumstances, provides the most reliable measure of an arm's length result.

The following hierarchy should be employed in implementing the Best Method rule:

1) The preferred method is the Comparable Uncontrolled Price or Transaction Method "CUP/CUT" method because it can produce the most accurate and reliable arm's-length results.
2) When the CUP/CUT method cannot be used, then one of the following methods should be employed:
   - Resale Price Method (RPM);
   - Cost Plus Method;
   - Profit Split Methods (comparable or residual); or
   - Transactional Net Margin Method (TNMM)
3) If none of the above methods can be applied, other methods that are more suitable under the circumstances should be used. However, this should be justified both economically and legally, and the application of a different method cannot normally be justified when one of the above-prescribed methods is applicable.

When applying a certain transfer pricing method, an adjustment is sometimes required to eliminate the effect of the difference derived from various comparison characteristics between the controlled and comparable uncontrolled transactions.

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According to the Israeli TP Legislation, a cross-border controlled transaction is considered to be at arm's length if, following the comparison to similar transactions, the result which has been obtained does not deviate from the results of either the full range of values derived from comparable uncontrolled transactions when the CUP/CUT method is applied (under the assumption that no comparability adjustments were performed), or the interquartile range (the values found between the 25th and 75th percentiles in the range of values) when applying other methods.

Transfer Pricing Documentation Requirements

As with most OECD countries, Israeli companies and/or PEs are required to meet the local transfer pricing requirements, which include to hold an intercompany agreement as well as a transfer pricing study.

On September 7th, 2022 the Finance Committee of the Knesset (the "Israeli Parliament") finalized the approval of changes to the Israeli TP Regulations to include Master File and Country by Country Report "CbCR" concepts, as well as updated other reporting (Local File) obligations in Israel.

TP documentation is required to be submitted within 30 days of request by the ITA, as customary in other jurisdictions. In this respect, the ITA expects the TP documentation to be in place and updated periodically (i.e. annually), as the TP study is the basis for annually filing Form 1385 (and 1485, if relevant), and Form 1585, as will be described hereinafter.

In addition to the previous requirements in the TP documentation that generally align with the OECD Local File, the following details were added as required in each TP study:

- A table depicting the senior level job descriptions and group / company structure, without the names. However, the companies will also be required to detail where the senior officials are physically located;
- A list of the entities' competitors;
- A description of the main agreements.

Moreover, as mentioned above, the Finance Committee also published requirements regarding Master File. The Finance Committee settled that the threshold will be NIS 150 million. This requirement applies to an Israeli parent as well as to an Israeli subsidiary even if the parent company's jurisdiction does not require a Master File.

The Master File template generally follows the OECD Master File template, however with some adjustments for Israeli companies, which widen the reporting scope, including but not limited to: (i) the group's organizational charts (indicating geographic location of employees); (ii) description of the group's service agreements; (iii) description of changes to the group's shareholders; (iv) description of the supply chain surrounding the group's five largest revenue generating products or services; etc.

In February 2025 the ITA published Circular 01/2025 providing additional guidance regarding Country-by-Country Reporting obligations, filing mechanics and thresholds applicable under Sections 85B and 85C of the Ordinance. All MNE groups meeting a consolidated revenue threshold of NIS 3.4 billion need to submit such report. The guidance covers the timing of the requirements as well the method of submission. This includes that in order to submit a CbCR in Israel, registration is required in a dedicated Internet system. This system may be used by Israeli ultimate parent entities submitting their CbCR in Israel as well as foreign ultimate parent entities that wish to submit its CbCR in Israel. The guidance also notes that an Israeli ultimate parent entity may choose to submit the CbCR in another country where a group entity exists. In this case, the ultimate parent must report on where the CbCR is submitted.

Lastly, the guidance provides that where a constituent entity resident in Israel is not the ultimate parent entity, it must report on the country in which the CbCR is submitted together with identifying details including the name of the entity, the number of the entity, the name of the MNE group, the name of the ultimate parent entity, tax identification number, and contact information.

A taxpayer engaged in a cross-border transaction with related parties is required to include in its annual tax return a special form, Form 1385, describing the transaction and its nature, including references to its price and other relevant terms and conditions, as well as additional details regarding the implemented transfer pricing method and the profitability rate used for the transactions. As of December 23, 2022, this form has been amended and now includes a requirement to disclose how the transfer pricing was determined, i.e. in accordance with the local safe harbor rules or in accordance with an existing transfer pricing study, by declaring whetehr the tax payer holds a transfer pricing study. The form is signed similar to an affidavit, with the signing person declaring that all the information included in the form is "correct, complete and accurate". A company which does not hold a complete transfer pricing study can either declare so – and "invite" an audit, or – if it states that it does while it does not actually hold a complete contemporaneous transfer pricing study, it will be subject to fines and potential criminal liability for making a false representation to the tax authorities.

We note that financial transactions are reported on a separate form, form 1485; and that an additional form providing group data in order to determine Master File and CbCR requirements, Form 1585, must be filled as well.

Local Jurisdiction Benchmarks

The Israeli TP Regulations do not require only local jurisdiction comparables, as those are mostly scarce. Generally benchmarks on the basis of Israeli comparables in addition to either North American comparables or developed European nation comparables are utilized.

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Focus on Financial Transaction in Israel

Under Israeli transfer pricing rules, intercompany financial transactions are subject to the arm's length principle and an increasing focus by the Israeli Tax Authority (ITA). Taxpayers are required to demonstrate that the terms and conditions of the financing arrangement are consistent with those that would have been agreed between independent parties under comparable circumstances. In practice, similar to the OECD Guidelines, the ITA places significant emphasis on the economic substance of the transaction, including the commercial rationale for the financing, the borrower's capacity to service the debt and the allocation of risks between the parties. Accordingly, a robust transfer pricing analysis typically includes an assessment of the borrower's creditworthiness, an evaluation of the amount of debt that could reasonably have been obtained from third-party lenders, and benchmarking of the interest rate and other key terms against comparable market transactions.

Intragroup financing arrangements are required to be disclosed and documented as part of the annual transfer pricing compliance framework, including on Form 1485, which is an annual tax return appendix that requires reporting of international related-party financial arrangements. Given the increasing focus of the ITA on financing transactions, taxpayers are expected to maintain contemporaneous documentation supporting both the pricing and characterization of such arrangements.

A notable instrument increasingly utilized by Israeli companies, when parent entities fund subsidiaries, is the capital note. A compliant capital note under Israeli tax principles must be classified as such prior to the transfer of the funds and is subject to specific characteristics such as a minimum term of five years, non interest bearing, etc. Given the extensive use of capital notes by Israeli multinational groups, the ITA has increasingly focused on whether an instrument genuinely satisfies the legal and economic characteristics of a capital note or whether it should instead be recharacterized as a loan, as was adjudicated also by relevant case law.

In addition to transfer pricing considerations, taxpayers must also consider the broader Israeli tax framework governing financing arrangements, including interest deductibility rules, withholding tax implications and general anti-avoidance principles, all of which may affect the ultimate tax treatment of intragroup financing irrespective of the arm's length nature of the pricing.

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

APAs are not common in Israel, although they exist. In certain cases, settlements to close audits can be carried forward as part of an APA. However, settling a past audit cannot guarantee the same treatment in the future, unless a formal APA is reached.

Transfer Pricing Audits

There is a dedicated Transfer Pricing Department "TPD" within the ITA, which is responsible for performing audits and economic analyses to determine the arm's-length price for a taxpayer's transactions. Further, the TPD has been given full authority to review (and tax) previously approved assessments and to reopen final assessments that were approved up to three years before their inspection. The TPD also gives guidance and instructions to local tax-assessing officers to screen and initiate audits on a wider level. In the event of an audit by a local tax tax-assessing officer, certain disagreements may be handed over to the TPD.

In Israel, the tax authorities' transfer pricing unit audits both Israeli subsidiaries of multinational enterprises and local corporations in all matters related to transfer pricing Taxpayers can dispute the proposed transfer pricing adjustments of the tax authorities by means of appeals, courts and through the use of treaties (where relevant).

Because of the nature of the Israeli market, the ITA gives special attention to R&D services provided by Israeli subsidiaries and matters relating to intangibles, which may also involve governmental support. The ITA also focuses its audits on the restructuring of functions, assets or risks and on the distinction between marketing services and distribution activities carried out in Israel by multinational enterprises.

The ITA Income Tax Circular No. 8/2025

The ITA issued Income Tax Circular 8/2025, establishing a more structured transfer pricing framework for multinational groups with Israeli R&D centers as well as multinationals which purchase Israeli companies and relocate the acquired company's IP. The Circular enhances tax certainty by formalizing acceptable cost-plus remuneration models, introducing approval thresholds for transfer pricing adjustments, and creating a dedicated ruling mechanism for post-acquisition IP transfers, including a formula to calculate the ITA's potential baseline position as to the value of such IP, and business restructurings. The guidance is intended to promote consistency and reduce transfer pricing controversies.

Evidence-gathering process

The ITA does not usually interview persons outside the company undergoing an audit, although this is not prevented by legislation. It is common, however, to allow the professionals who act as consultants to the company to be interviewed by the ITA with regard to their work, and to present them to the ITA as part of a 'hearing' held for the

company. These meetings occur both prior to and following the issuance of a transfer pricing tax assessment.

With regard to intra-group information requirements, the ITA may request intra-group information even if it is held outside Israel. If the company fails to present the requested information, it is likely to be viewed negatively throughout the process, including (potentially) in court, thereby preventing the company from providing the information at a later stage.

The Burden of Proof in Transfer Pricing: Theory versus Practice

According to the Israeli transfer pricing rules, the initial burden of proof lies with the taxpayer and shifts to the ITA once a transfer pricing study has been submitted for assessment. Based on Tax Circular 1/2020, the rules for shifting the burden of proof have been aggravated as the filing of a transfer pricing study alone does not necessarily shifts the burden of proof to the ITA where there is a disagreement on the factual background, the method chosen, or when the submitted transfer pricing study is incomplete.

Non-recognition - In rare cases where a transaction between related parties lacks any commercial rationale (ie, the same transaction under similar economic circumstances would not have been agreed between non-related parties), the ITA may choose not to recognize the transaction in its original form and may treat it as an entirely different type of transaction – a type of transaction that, in its view, would reflect the business reality of the transaction in a more adequate manner. In those cases, the burden of proof lies with tax authority to justify its standing for non-recognition.

Transfer Pricing Penalties

Penalties may be imposed on a taxpayer for not preparing and submitting transfer pricing documentation on time or at all. In addition to preventing penalties and fines, holding a transfer pricing study in most cases shifts the burden of proof to the ITA and enables the taxpayer to maintain an arguable position regarding any determination made by the ITA concerning transfer pricing adjustments.

The ITA is entitled to impose secondary adjustments and, in fact, does so in practice. For example, if the taxpayer made an adjustment (the first adjustment) according to its transfer pricing policy and determined its profit to be a certain percentage (based on its transfer pricing study or transfer pricing range), and the ITA disagreed with its policy or benchmark analysis, the ITA could, in that case, carry out a secondary adjustment.

Transfer pricing specific penalties are uncommon in Israel and, although discussed as a possibility, have not yet been enacted. Adjustments, linkage, interest and statutory fines on assessments, which already appear in the Israeli Tax Ordinance, currently apply to transfer pricing as well.

In this respect, it is also important to note that, in the past, ITA officials have indicated that submitting a Form No. 1385 that includes a personal affidavit by a company's officer subsequently found to be erroneous can lead to criminal liability, although such liability has not been imposed to date.

Local Hot Topics and Recent Updates

As is the case in many jurisdictions worldwide, transfer pricing remains a focus of the Israeli Tax Authority and a constantly evolving field. The following is a small sample of the many recent updates:

Evolving Business Models and the Strain on Traditional Transfer Pricing Methods

Business innovation is rapidly outpacing the tax frameworks built to price it. The traditional TP boundary between "routine" service providers and risk-bearing entities is eroding. Modern commercial structures increasingly blend service provision with performance-tied upside, co-investments, or cost-plus models carrying economic exposure. Once routine revenue is entangled with entrepreneurial outcomes, static TNMM or cost-plus analyses fail to reflect economic reality.

Simultaneously, a gap is widening between formal TP structures and actual operations. As local teams organically scale and assume strategic responsibilities, tax authorities are aggressively auditing this misalignment by scrutinizing actual decision-making and value creation rather than accepting paper contracts at face value.

This friction is highly visible in Israel's tech sector, where routine cost-plus R&D centers evolve into key decision-making hubs without updated TP structures.

Furthermore, the increasing relocation of Senior/Strategic personnel is raising questions regarding the point at which such relocations constitute a significant change in the business or potential move of function as well as the appropriate treatment of option plans and vesting cycles. As such, this is an area increasingly scrutinized by the ITA.

Finally, due to the increased strain on traditional models, we have seen an increase in audits leading to MAP procedures in which each authority raises significant claims that highlight this ever evolving gap between traditional models and actual operations.

The Philip Morris Case – Israeli Subsidiary can be Served on behalf of its Foreign Parent

The March 2025 ruling in the Philip Morris case was a ruling in a civil procedure matter with profound impact on transfer pricing. The case centered on an alleged violation of competition laws by a Phillip Morris entity in Switzerland together with the group's ultimate parent entity in the United States. The lawsuit was brought locally against Philip Morris' entity in Israel as a representative of its Swiss parent and the

group ultimate parent entity. Philip Morris Israel contended that it is not the appropriate party to be served and should not be a party to the lawsuit. In its ruling the supreme court ruled that as a fully owned subsidiary engaging in the same field of business, the lawsuit can be served to Phillip Morris Israel. This ruling raises significant transfer pricing questions as this additional risk undertaken by Israeli subsidiaries must be considered when settling on an appropriate compensation model.

SentinelOne Reaches a Landmark Settlement with the ITA over Israeli R&D Center IP

In January 2026, SentinelOne, Inc. entered into an assessment agreement with the ITA, resolving a major TP dispute over its Israeli subsidiary's IP valuation. Covering fiscal years 2021–2025, the settlement targets a classic tech lifecycle: a startup that evolved post-funding into a key group service provider.

Notably, the dispute was resolved through a bilateral APA process involving both the IRS and the ITA, underscoring how multinationals are increasingly relying on bilateral APAs to resolve the very valuation disputes the ITA now hopes to pre-empt via Circular 8/2025.

The case stands as a stark example of how shifting functional profiles can trigger massive cross-border tax disputes that require years of bilateral negotiation to resolve.

Coca-Cola Ruling Expands the Arm's Length Principle

In an October 2024 ruling, the courts ruled in favor of the ITA in a precedent setting case against the Central Bottling Company (the "Israeli Bottling Company" or "IBC").

The ITA argued that Coca-Cola's business activities within Israel, through a privately held unrelated entity, the IBC, Coke's exclusive manufacturer and distributor in Israel, benefitted from special relationships that went beyond the contractual or legal obligations of a simple buyer-supplier relationship and as such should be subject to transfer pricing regulations.

The Coca-Cola concentrate is central to IBC's operations, and this dependency, argues the ITA, gives Coca-Cola significant influence over IBC's pricing strategies, market positioning, and even supply chain decisions. Further, the ITA claimed that part of the payments should be classified as consideration for the license to use Coca-Cola's trademarks and intellectual property in marketing Coca-Cola drinks in Israel, as well as for example knowhow related to the manufacturing process. The court determined that, "In exchange for such a strong trademark with an accepted global reputation, it is customary to pay royalties."

Documentation threshold

Master file	Group revenue exceeding NIS 150M
Local file	No minimum
CbCR	Group revenue exceeding NIS 3.4B

Submission deadline

Master file	Should be prepared prior to filling of tax return, submission upon request.
Local file	Should be prepared prior to filling of tax return, submission upon request. Necessary to submit affidavit (Form 1385) with tax return indicating if the local file is in place.
CbCR	Either submission or notification of jurisdiction of submission when filling tax return.



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ITALY

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Overview

LED Taxand, Italy

LED Taxand is a tax advisory firm providing tailored advice on domestic and international tax matters. Drawing on strong technical expertise and a pragmatic approach, the firm assists clients in addressing complex tax issues and implementing effective solutions for their business projects.

LED Taxand has a dedicated Transfer Pricing and Business Restructuring team that provides tailor-made assistance to the clients. The services provided include the following:

- Business model analysis, Definition/Design of TP Policies (based on ESG principles as well) and corporate restructuring/Operational Transfer Pricing/Complex statistical models for TP risk assessment
- Business/IP valuation, IP planning and structuring, Assistance with Patent Box regime
- Assistance during tax audits and litigation, Negotiation of mutual agreements and arbitration procedures
- Preparing transfer pricing documentation and assisting with Country-by-Country reporting.

General: Transfer Pricing Framework

Transfer Pricing rules are laid down in the Income Tax Code ("ITC", approved by the Presidential Decree No. 917 of 22 December 1986). Art. 110 para. 7 of the ITC, as amended in June 2017, is applicable to transactions that occurred between an Italian enterprise and non-resident companies that: "directly or indirectly control the Italian enterprise, or are controlled by it, or are controlled by the same company controlling the Italian enterprise". The Ministerial Decree dated May 14, 2018 (in the following "the Ministerial Decree"), implementing the arm's length principle in the general tax system, provided additional clarifications with reference to the definition of "associated enterprises", and namely:

a) "associated enterprises" means an enterprise resident in the Italian territory as well as non-resident companies where:

1) one of them participates directly or indirectly in the management, control, or capital of the other, or

2) the same person participates directly or indirectly in the management, control or capital of both enterprises;

b) "participation in the management, control or capital" means:

1) a participation of more than 50% in the capital, voting rights or profits of another enterprise; or

2) the dominant influence over the management of another enterprise, based on equity or contractual constraints.

The Decision of the Commissioner of the Italian Revenue Agency "Agenzia delle Entrate" of 23 November 2020 "the Provision", Circular Letter no. 15/2021 and Circular Letter no. 16/2022 provide some rules and clarifications concerning transfer pricing documentation requirements and the arm's length range.

Accepted Transfer Pricing Methodologies

The Italian Transfer Pricing legislation follows the OECD standards. The Ministerial Decree implements the arm's length principle in Italy and sets forth the methods to be applied, consistently with the OECD Guidelines, updated from time to time.

In particular, the Ministerial Decree (in Article 4) refers to both traditional transaction methods (CUP, Resale Price, Cost Plus) and income methods (TNMM and Profit Split). Alternative methods can be selected where appropriate and when taxpayers can demonstrate the following:

i) none of those methods could be applied with reliable results to determine the pricing of a controlled transaction based on the arm's length principle; and

ii) such different method produces a result consistent with what independent enterprises would expect to obtain in carrying out comparable uncontrolled transactions.

In compliance with the OECD Guidelines "the best method rule" applies. However, when a traditional method and an income method can be applied with the same degree of reliability, the former must be preferred. Furthermore, if the CUP method can be applied with the same degree of reliability as other traditional methods, the former must be applied.

Transfer Pricing Documentation Requirements

Documentation requirements were first introduced in 2010 and updated in 2020 by the November 23 Provision. The Italian Tax Authority provided additional clarifications with the Circular Letter no. 15, released on 26 November 2021. In general terms, local rules are consistent with the OECD Guidelines. However, there are some differences that taxpayers must consider.

Local regulations do not require the taxpayer to prepare the documentation (Masterfile and Local File) as an obligation. Taxpayers filing "proper" documentation will benefit of so called "penalty protection" in case of upward adjustments assessed by the Tax Authority. Penalty protection is recognized only if the formal and substantive requirements of the Provision are met.

The Masterfile can be drafted in English; Local File must be drafted in Italian.

Both Masterfile and Local File must be prepared annually and signed electronically by the legal representative (or a delegate) with a time stamp, to be put by the date of filing of the relevant income tax return (the tenth month following the end of the tax period).



The documentation does not have to be sent to the Italian Tax Authority. Its possession must be communicated by "checking the box" in the annual tax return ("Modello Redditi", Section RS, Line 106). In case of tax audit, the taxpayer shall submit the transfer pricing documentation to the Tax Authority in electronic form within 20 days upon request.

Country-by-country reporting "CbCR" was introduced in Italy by Law No. 208 dated December 2015, (published in the Official Gazette No. 302 on December 30, 2015) and entered into force on January 1, 2016. Ministerial Decree dated 23 February 2017 "the CbCR Decree" and the Decision of the Commissioner of the Italian Revenue Agency dated 28 November 2017 provided for detailed implementation guidance of CbCR.

In principle, CbCR must be prepared by eligible taxpayers, i.e., parent companies of multinational groups with a consolidated turnover of not less than €750 million. However, in some cases (e.g., where the group foreign parent company is not obliged to or fails to file the CbCR in its jurisdiction), the burden of filing the CbCR falls on an Italian entity of the group.

The CbCR Decree clarified that an entity (parent or subsidiary) subject to reporting obligation, within the deadline to file the tax return referred to the fiscal year forming the scope of the reporting must notify the Italian Tax Authority of its reporting obligation.

Local Jurisdiction Benchmarks

Benchmarking analyses are commonly used to support the arm's length nature of controlled transactions, particularly where one-sided methods such as the TNMM are applied. Economic analyses are typically performed using publicly available databases, such as Moody's databases or other reliable sources, and should be tailored to the specific features of the transactions under review and the relevant comparability factors.

Italian transfer pricing rules do not establish a formal preference for domestic comparables over foreign comparables; comparables should be selected on the basis of the highest degree of reliability, taking into account the relevant comparability factors and the market in which the tested party operates. In practice, where the tested party is an Italian entity, Italian comparables may prove more reliable in the specific facts and circumstances of the case. It should be noted that, in the event of an audit, the selection of comparables is often reviewed together with the underlying search strategy, screening criteria and the taxpayer's positioning within the arm's length range.

Taxpayers must carry out relevant benchmark analyses on a yearly basis. Small and medium-sized enterprises can update relevant financial data (i.e., not performing a "fresh" benchmarking), assuming that the comparability analysis is

based on information from publicly available sources and that there have been no changes in the comparability factors.

The Italian Revenue Agency has clarified that any point within the full range may be regarded as arm's length where the comparables are equally reliable. Where, however, the comparables do not present the same degree of comparability and residual comparability defects remain, statistical tools such as the interquartile range may be used to narrow the range and strengthen its reliability. Resort to a central value within the range should be limited to cases in which the range, even if statistically refined, does not contain values characterised by a sufficiently homogeneous degree of comparability, and should in any event be specifically reasoned.

Focus on Financial Transactions

Under Italian law, intercompany financial transactions fall within the ordinary transfer pricing framework and must be assessed in accordance with the arm's length principle, as reflected in Article 110(7) of the Italian Income Tax Code, Ministerial Decree of 14 May 2018 and the OECD Transfer Pricing Guidelines.

While Italian domestic legislation does not provide transfer pricing guidance specifically dedicated to financial transactions, recent Italian Supreme Court case law confirms an increasing focus on the actual delineation of intra-group financial arrangements, including, in particular, interest-free financing and the possible recharacterization of purported debt in exceptional cases.

Accordingly, the analysis should not be reduced to the mere presence, absence or quantum of remuneration, but should also take into account the borrower's creditworthiness, the amount and duration of the financing, the realistically available options, the effects of group membership and implicit support, the existence of guarantees or other security, and the functions and risks actually assumed by the parties.

In the case of cash pooling and treasury arrangements, the remuneration of the treasury entity depends on its actual role: where it performs only coordination or agency functions, only a limited remuneration would generally be appropriate, whereas a higher remuneration requires more substantive functions and the assumption of economically significant risks.

Likewise, the pricing of guarantees should distinguish between passive association benefits and legally binding credit support that provides an incremental benefit to the borrower.

Finally, the transfer pricing analysis must be considered together with the Italian domestic rules on the deductibility of interest expenses, including Article 96 of the Italian Income Tax Code.

ITALY

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

In general APAs (unilateral/bilateral/multilateral) are available in Italy.

An APA may be requested by resident companies with "international activities", i.e., fulfilling one or more of the following requirements:

- having transactions with non-resident associated companies;
- holding stakes in the assets, funds, capital of non-resident companies or whose assets, funds, capital are held by non-resident companies;
- paying to or receiving by non-resident companies income items such as dividends, interests or royalties;
- conducting their business through a permanent establishment outside Italy;
- transferring their residence from Italy to another State or from another State to Italy.

A specific application must be sent to the Italian Tax Authority; details of the procedure are set out in the Decision of the Commissioner of the Italian Revenue Agency of 21 March 2016. Filing an application for a bilateral or multilateral APA requires the payment of a fee as follows:

- EUR 10,000 for groups with consolidated revenues below EUR 100 million;
- EUR 30,000 for groups with consolidated revenues between EUR 100 million and EUR 750 million; and
- EUR 50,000 for groups with consolidated revenues above EUR 750 million.

The fees listed above are reduced to 50% in case of renewal of a previous APA. There is no charge for unilateral APA.

The procedure is concluded with a binding agreement. As a general rule, the agreement is binding for the fiscal year in which it is signed and for the four subsequent fiscal years, unless relevant factual or legal circumstances change. In the case of bilateral or multilateral APAs, the scope and period covered by the agreement may also depend on the outcome of the negotiations between the competent authorities of the jurisdictions involved.

The roll-back of the APA may apply to previous fiscal years for which the statute of limitation has not expired, subject to specific conditions. More in detail:

- For unilateral APAs, rollback is permitted for fiscal years still subject to tax audits, provided that no changes occurred to the agreed conditions and no tax audits started.
- For non-unilateral APAs, rollback is permitted as of the fiscal year during which the APA request was filed with the Italian Tax Authority. However, rollback is allowed also to previous fiscal years, provided that:
  - the same factual and legal circumstances exist for these periods on the basis of the agreement stipulated with the competent authorities of foreign countries
  - the taxpayer has requested the roll back in the APA request
  - the competent authorities of foreign countries agree to extend the agreement to previous years, and
  - no inspections or tax audits started in relation to these fiscal years.

Transfer Pricing Audits

The Italian tax authorities perform tax audits on the basis of risk-assessment criteria and data-driven selection processes.

In practice, the selection of taxpayers may be informed by information obtained through country-by-country reporting, international exchange of information mechanisms, cross-border arrangement disclosures and other data available to the tax administration.

Recent planning documents issued by the Italian Ministry of Economy and Finance and the Italian Revenue Agency confirm a further shift towards coordinated, risk-based audits supported by upfront data analysis.

Tax audits may be carried out by both the Italian Revenue Agency (Agenzia delle Entrate) and the Tax police (Guardia di Finanza), whereas tax assessment notices may be issued only by the Italian Revenue Agency.

In transfer pricing audits, the Italian tax authorities typically focus on the selection of comparables and the positioning of the tested party within the arm's length range, as well as on intra-group services, royalty payments, business restructurings, permanent establishment issues, tax residence and intercompany financing.

Accordingly, taxpayers should ensure that their transfer pricing documentation is consistent with the wider set of information available to the tax authorities, including tax returns, intercompany agreements, financial data and other mandatory disclosures.

ITALY

Burden of Proof in Transfer Pricing: Theory versus Practice

Regarding the burden of proof, the Italian Supreme Court (*"Corte di Cassazione")* has stated that the tax authorities bear the burden of proving the breach of the arm's length principle, while the taxpayer shall prove compliance with it in IC transactions.

According to the Ministerial Decree of May 14, 2018 (concerning the application of Italian transfer pricing regulations), if the Italian company has adopted one of the methods provided for in the mentioned Decree (i.e., the methods expressly provided for in the OECD Transfer Pricing Guidelines) in compliance with the comparability criteria and the best method rule, any re-assessment shall be based on the method selected by the taxpayer.

In practice it is common to experience situations in which the tax authority disregards the scenario described above, challenging the TP policy applied even if only on the basis of presumptions or inadequate reasoning and proceeding directly to recalculate the arm's length range.

Transfer Pricing Penalties

The taxpayer who has prepared transfer pricing documentation that complies with the requirements (both formal and substantial) mentioned above, can benefit from the "penalty protection regime".

In Italy there are no specific transfer pricing penalties. Ordinary administrative penalties, equal to 70% of the higher tax assessed, can be applied[1].

Local Hot Topics and Recent Updates

- Amount B

According to the OECD Transfer Pricing Country Profile updated in October 2025, Italy states that the domestic application of the simplified and streamlined approach for baseline marketing and distribution activities (Amount B) is currently "under evaluation". The same profile also indicates that Italy respects the outcome of the application of the approach by a covered jurisdiction, in line with the Inclusive Framework political commitment, subject to domestic legislation and administrative practices.

- Cooperative compliance

The Italian cooperative compliance regime continues to expand and is becoming increasingly relevant for large multinational groups. Following the latest reform, the revenue thresholds for access to the regime were reduced to EUR 750 million from 2024, EUR 500 million from 2026 and EUR 100 million from 2028. In parallel, in February 2026 the Italian Revenue Agency launched the optional regime based on the adoption of a tax risk control framework, thereby extending the practical relevance of tax governance and internal control systems also to smaller businesses.

- Public CbCR

Another significant development is the introduction of Italy's public CbCR rules under Legislative Decree No. 128/2024, implementing EU Directive 2021/2101. The new rules apply to financial years beginning on or after 22 June 2024 and require both filing with the Companies Register and publication of the report on the company's website.

[1] Please note that the mentioned penalties are applicable for violations committed on or after September 2024. For prior violations, penalties ranging from 90% to 180% of the higher tax assessed were applicable.

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Documentation threshold

Master file	Not applicable
Local file	Not applicable
CbCR	€ 750 million

Submission deadline

Master file	Both Master file and Local File do not have to be submitted, but must have been prepared, signed and marked before sending the corporate income tax return.
Local file	The tax return is due by the end of the 10th month after the closing of the relevant fiscal year.
CbCR	To be submitted within 12 months following the last day of the multinational group's reporting fiscal year

Penalty Provisions

Documentation – late filing provision	Failure to timely prepare and properly disclose transfer pricing documentation results in ineligibility for the "penalty protection regime"
Tax return disclosure – late/incomplete/no filing	A tax return filed within 90 days after the statutory deadline is treated as late-filed but validly submitted and is subject to a fixed penalty of EUR 250. A tax return filed more than 90 days after the statutory deadline is treated as omitted and is subject to a penalty equal to 120% of the tax due, or to a penalty ranging from EUR 250 to EUR 1,000 where no tax is due.[2] An inaccurate tax return is subject to a penalty equal to 70% of the higher tax due.
CbCR – late/incomplete/no filing	Late, incomplete or omitted filling of CbCR is subject to an administrative penalty ranging from € 10,000 to € 50,000.



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[2] Please see previous footnote.

JAPAN

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Overview

Nagashima Ohno & Tsunematsu, Taxand Japan

Taxand Japan is renowned for its broad coverage of a variety of tax-related matters, ranging from tax planning for various commercial transactions to tax disputes and tax litigation cases arising from differences in opinion with the tax authority.

Taxand Japan has been highly evaluated by domestic and international clients, peers and third party research institutes. Notably, over the past year, our firm received remarkable evaluations as follows:

- Ranked in the top group (Tier 1) in The Legal 500 Asia Pacific 2026
- Ranked in the top group (Band 1) in the 2026 edition of Chambers Asia-Pacific
- Awarded "Tax and Trusts Law Firm of the Year" at ALB Japan Law Awards 2026
- Awarded "Japan Tax Firm of the Year" at ITR Asia-Pacific Tax Awards 2025
- Recognized as an "Outstanding" firm in Tax in Japan by asialaw 2025

As a part of its broad coverage of tax-related services, Taxand Japan offers transfer pricing services ranging from planning to disputes and controversy.

General: Transfer Pricing Framework

Transfer pricing legislation is provided in Article 66-4 of the Special Tax Measures Act "STMA" and the provisions of the Cabinet Order and the Ministerial Ordinance provided thereunder (the "TP Legislation"). Consistent with the TP Legislation, transactions between related parties must take place on an arm's-length basis. The transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated into Japanese legislation, however the transfer pricing methods described in the TP Legislation are substantially similar and, notably, center on the arm's length principle. There is also no explicit hierarchy of transfer pricing methods, as the "best method" rule requires that a transfer pricing method is selected that provides for most reliable assessment of the arm's length dealing.

In the TP Legislation, the following methods are specifically listed as transfer pricing methods: the Comparable Uncontrolled Price ("CUP") method, the Resale Price ("RP") method, the Cost Plus ("CP") method, the Profit Split ("PS") method (specifically, the Comparable Profit Split method, the Contribution Profit Split method and the Residual Profit Split method), the Transactional Net Margin Method ("TNMM") and the Discount Cash Flows ("DCF") method. Any other method similar to the methods listed above can be applied if such method leads to an arm's length principle.

Transfer Pricing Documentation Requirements

Article 66-4, paragraph 6 of the STMA requires a taxpayer to prepare and maintain a local file for all intra-group company transactions except transactions with a group company with which the taxpayer had less than JPY 5 billion-worth transactions (less than JPY 300 million-worth transactions for transactions involving intangibles) in total in the previous fiscal year. As there is no threshold based on overall revenues for this obligation, this can also apply to small and medium sized companies depending on the size of transactions with its group companies. Information to be kept in the local file includes information on the intra-group transactions and the arm's length price for those transactions.

In addition to the local file obligations generally applicable, the master file and country-by-country reporting obligations are enacted in Articles 66-4-4 and 64-4-5 of the STMA. Under Article 66-4-4 of the STMA, a country-by-country report is required to be submitted for MNE's that exceed the JPY 100 billion annual revenue threshold if the ultimate parent entity or the surrogate parent entity of the MNE's is a resident of Japan or a country which has not implemented the country-by-country reporting system, has no agreement with Japan to exchange information reported in country-by-country reports or is designated by the Japanese tax authorities as a country not expected to provide Japan with information contained in country-by-country reports. Under Article 66-4-5 of the STMA, master file documentation is required to be submitted for any member entity of MNE's exceeding the JPY 100 billion annual revenue threshold that is a resident of Japan or has a permanent establishment in Japan.

Local Jurisdiction Benchmarks

Benchmarking helps to demonstrate that transfer prices are at arm's length. Comparability criteria to be followed in Japan are considered to be in line with those provided in the OECD TP Guidelines.

Although there is no specific requirement to update the benchmark searches every year, it is recommended to do so in order to make the result of benchmarking reliable. However, in practice, most taxpayers do not undertake a full update of their benchmark searches on an annual basis. It is provided in a guidance issued by the Japanese tax authorities that benchmarks can be updated every three years unless the business conditions relating to the intra-group transactions or the benchmarks are changed.

Focus on Financial Transactions

In 2022, the Administrative Guidelines on Operation of Transfer Pricing issued by the National Tax Agency of Japan was amended to reflect the OECD Transfer Pricing Guidance on Financial Transactions released in 2020. After the amendment, a creditworthiness analysis of the borrower (through a credit rating of the borrower as a group member) is usually required in determining arm's length interest rate for an intercompany loan and the use of the yield approach, the cost approach or the valuation of expected loss approach is usually required in determining an arm's length guarantee fee.

In addition, it is specifically provided that the consideration to be paid by a borrower to a lender without the capacity to manage the risks associated with the lending transaction or the decision-making functions should be calculated based on the risk-free rate.

Finally, this transfer pricing analysis operates alongside specific Japanese rules on financial expenses, such as the thin-capitalization rules and the earning-stripping rules, which may further restrict the deductibility of intragroup interest irrespective of arm's length pricing.

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

Japan has a program for APAs since the last century. Currently, the Transfer Pricing Administrative Guidelines set out the requirement for seeking an APA, materials that need to be submitted in seeking an APA, and the procedures by which the cases will be handled. It is provided in the Transfer Pricing Administrative Guidelines that if the taxpayer requesting a unilateral APA is willing to submit the matter to a MAP, the tax authority shall urge the taxpayer to apply for a MAP thereby seeking a BAPA.

In principle, an APA/BAPA has a term in the range of 3 to 5 years and may under certain circumstances be "rolled back" to previous tax years where the statute of limitations remains open.

Transfer Pricing Audits

The Japanese tax authorities can perform audits at random and all companies are subject to audit for any open period. The statute of limitations period for transfer pricing matters is seven years. When the local file is requested in an audit, it is then to be presented within a period designated by the examiner not exceeding forty-five (45) days, that is why in practice it is important to maintain regular documentation.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In the Japanese tax system, the allocation of the burden of proof is pivotal in determining the outcome of disputes. In Japan, the burden of proof in transfer pricing matters is, in principle, straightforward: if the tax authorities consider that the prices set by a taxpayer are not at arm's length and wish to make an assessment on the taxpayer by using prices which the tax authorities consider are at arm's length, the tax authorities bear the responsibility of demonstrating that the prices used by them, rather than the prices set by the taxpayer, are at arm's length.

However, if (a) a taxpayer fails to present one of certain important documents regarding transactions for which a local file shall be prepared or a document forming a part of the local file, each in accordance with a request (including a timeframe reasonably set) from the tax authorities, or (b) a taxpayer fails to present one of certain important documents regarding transactions for which a local file needs not be prepared in accordance with a request (including a timeframe reasonably set) from the tax authorities, the tax authorities are allowed to make an assessment by using prices calculated based on a simplified method using more easily accessible information and such prices are presumed to be at arm's length (i.e., the taxpayer bears the burden of proof that such prices used by the tax authorities are not at arm's length).

Transfer Pricing Penalties

Fines up to a maximum of JPY 300,000 can be imposed on the taxpayer for non-compliance with filing obligations for country-by-country reporting or master file.

Local Hot Topics and Recent Updates

As a result of the 2026 Tax Reform, taxpayer corporations in general became required not only to keep, but also to acquire and document, certain information regarding related-party transactions, such as intellectual property transactions between related parties and intragroup service transactions. This is mainly to disallow an excuse claimed by a taxpayer corporation that such information (such as the basis of the calculation made in determining the consideration for intragroup services) is only kept by the related party which the taxpayer corporation is transacting with and cannot be produced at a tax audit on it. Therefore, such information required to be acquired and documented (such as the basis of the calculation made in determining the consideration for intragroup services) shall be kept locally, which is, in a sense, equivalent to the local file obligation.

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Documentation threshold

Master file	Turnover JPY 100 billion
Local file	N/A
CbCR	Turnover JPY 100 billion

Submission deadline

Master file	Submission within 12 months after end of fiscal year.
Local file	Should be available in the taxpayer's administration upon due date for filling corporation tax
CbCR	Submission within 12 months after end of fiscal year.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting or master file.
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting.



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LATVIA

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Overview

COBALT, Taxand Latvia

Established in 1994, COBALT's Tax Practice stands out for its unparalleled depth of expertise, integrated Baltic-level approach, and a proven track record of successfully navigating complex tax matters for a diverse client portfolio. We provide comprehensive solutions grounded in a profound understanding of both tax and broader business law, ensuring robust protection of client interests across Energy, Real Estate, Fintech, and Manufacturing sectors.

Our tax team will assist with:

- Transfer pricing planning – Designing compliant transfer pricing structures for domestic and cross-border transactions.
- Transfer pricing documentation – Preparing and reviewing Master Files, Local Files, and benchmarking analyses.
- Intercompany agreements – Drafting and reviewing agreements supporting transfer pricing policies.
- Financial transactions – Advising on intra-group financing, guarantees, and cash pooling.
- Tax audits and disputes – Assisting in transfer pricing audits, controversy, and litigation.
- Advance Pricing Agreements "APAs" – Advising on and negotiating APAs with tax authorities.
- Business restructurings – Supporting transfer pricing aspects of reorganisations and M&A transactions.

General: Transfer Pricing Framework

Latvian transfer pricing rules are broadly aligned with the OECD Transfer Pricing Guidelines. They adopt the arm's length principle and implement the OECD three-tier documentation framework consisting of the Master File, Local File and Country-by-Country Report. In addition, from reporting years beginning in 2025, Latvia has introduced a separate Controlled Transactions Report. The main rules are contained in the Act on Taxes and Duties, the Corporate Income Tax Act and Cabinet Regulations No. 677 and 802.

In practice, the OECD materials are used as an interpretative reference.

Where the terms of a related-party transaction do not correspond to arm's length terms, the shortfall or surplus is treated as deemed distributed profit and included in the corporate income tax base.

Latvian transfer pricing documentation obligations mainly apply to transactions with related foreign parties, related individuals, persons in low-tax or tax-free jurisdictions, and certain related Latvian resident transactions where the transaction forms part of the same supply chain as a cross-border controlled transaction.

Accepted Transfer Pricing Methodologies

Although the OECD Transfer Pricing Guidelines are not All five transfer pricing methods included in the OECD Transfer Pricing Guidelines are accepted.

There is no strict hierarchy of methods. The most appropriate method should be selected based on the facts and circumstances of the transaction, including the functions performed, risks assumed, assets used and the availability of reliable comparable data.

A combination of methods may be used where this provides a more accurate arm's length result.

Transfer Pricing Documentation Requirements

Latvia applies the OECD three-tier transfer pricing documentation approach, consisting of the Country-by-Country Report "CbCR", the Master File and the Local File. For reporting years beginning in 2025, taxpayers meeting the statutory threshold are additionally required to submit a separate Controlled Transactions Report "CTR".

Country-by-Country Reporting

A CbCR is generally required where the multinational enterprise group's consolidated revenue for the preceding fiscal year exceeds EUR 750 million.

The Latvian ultimate parent entity, or another Latvian reporting entity where applicable, must submit the CbCR within 12 months after the last day of the reportable fiscal year. Where the Latvian entity is not the reporting entity, it may also have an obligation to notify the State Revenue Service of the identity and tax residence of the entity that will file the CbCR.

Master File documentation

A Master File is required where the total value of the taxpayer's relevant controlled transactions exceeds EUR 20 million during the reporting year.

The Master File contains information on the multinational enterprise group as a whole, including its organisational structure, business activities, intangible assets, intra-group financing, and consolidated financial and tax position.

The Master File must be prepared within 12 months after the end of the reporting year. It is submitted only upon request from the State Revenue Service "SRS" and must generally be provided within 30 days. It may be prepared in either Latvian or English, although the SRS may request a Latvian translation.

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Local File documentation

A Local File is required where the total value of the taxpayer's relevant controlled transactions exceeds EUR 250,000 during the reporting year.

The Local File contains detailed information on the taxpayer, its business, material-controlled transactions, functional and comparability analyses, the selected transfer pricing method and supporting financial information.

The Local File must be prepared within 12 months after the end of the reporting year. It is generally submitted only upon request from the SRS and must be provided within 30 days. For certain chain transactions involving related Latvian residents, the submission deadline is 90 days following an SRS request. It may also be prepared in either Latvian or English, subject to the SRS requesting a Latvian translation.

TP documentation simplifications

Taxpayers providing qualifying low value-added services may prepare simplified transfer pricing documentation instead of a full Local File.

The simplified documentation should include, among other things, information on the parties, the services provided, the reasons why the services qualify as low value-added services, the expected economic benefit, the cost allocation methodology and the calculation of the service charge.

In addition, transactions with an individual annual value not exceeding EUR 90,000 may generally be omitted from the detailed transaction information, subject to the statutory conditions.

Controlled Transactions Report

For reporting years beginning in 2025 or later, taxpayers whose total value of relevant controlled transactions exceeds EUR 250,000 must submit a CTR.

The report must be filed electronically in a structured format within 12 months after the end of the reporting year. It includes transaction-level information such as the transaction type, direction, value, counterparty, transfer pricing method, tested party, source of comparable data and the selected arm's length indicator.

Local Jurisdiction Benchmarks

A benchmarking analysis is generally required as part of the Local File where a transfer pricing method requires comparable uncontrolled transactions. The Local File must include details of the benchmarking methodology, including the search strategy, selection criteria, comparable transactions or companies, reasons for accepting or rejecting potential comparables, comparability adjustments and the supporting financial information.

Latvian legislation does not prescribe a preference for local, regional or pan-European comparables. In practice, taxpayers generally use the most reliable comparable data available, depending on the nature of the transaction and the availability of suitable comparables.

Both internal and external comparable uncontrolled transactions are recognised under the Latvian transfer pricing rules. Under the Comparable Uncontrolled Price Method, the price in a controlled transaction may be compared with the price in an internal comparable transaction, an external comparable transaction or, where sufficiently comparable, publicly available information on external prices.

Latvian legislation does not prescribe preferred transfer pricing methods in practice. The most appropriate method should be selected based on the facts and circumstances of the transaction.

Benchmarking analyses are part of the Local File and must be supported by search methodology, selection criteria, reasons for accepting or rejecting comparables and comparability adjustments. The Local File is submitted to the SRS upon request, so benchmarking support should be prepared in a form that can withstand review.

Focus on Financial Transactions

Financial transactions between related parties must comply with the arm's length principle.

For loan transactions, the arm's length analysis should not be limited to the interest rate. The transaction should also be assessed taking into account the amount of the financing and the terms and conditions of the loan.

For transfer pricing documentation purposes, the value of a controlled loan transaction generally includes the loan amount advanced or received during the reporting year together with the recognised interest. Where a revolving credit facility or cash pool involves numerous drawdowns and repayments, taxpayers may determine the transaction value using an alternative calculation based on opening balances, drawdowns, repayments and recognised interest, provided that this gives a more objective picture of the financing and the related transfer pricing risk.

The Master File must contain information on the group's financing activities, including the group's financing structure, significant financing arrangements with unrelated lenders, the entities performing group financing functions and the group's transfer pricing policy for intra-group financial transactions.

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

Latvia provides for an advance agreement procedure under which a taxpayer may apply to the SRS in advance to determine the arm's length price or pricing method for a transaction or type of transaction. A corporate income tax taxpayer may conclude such an agreement where the value of the transaction or planned transaction with a related foreign enterprise exceeds EUR 1,430,000 in the reporting year, or where the value of the controlled transaction in the previous reporting year exceeded EUR 1,430,000. The

application must identify the parties, transactions, proposed transfer pricing method, requested period and supporting transfer pricing analysis. The agreement may apply for up to five years. The fee is EUR 7,114, with 20% payable before filing and 80% after the SRS decides to commence the procedure. If no agreement is reached within one year after the procedure starts and continuation is no longer useful, the SRS may terminate the process.

Transfer Pricing Audits

In practice, formal transfer pricing audits are relatively rare due to their complexity. Where they are initiated, they often result in litigation and/or a Mutual Agreement Procedure "MAP". More commonly, the SRS follows a "consult first" approach, under which taxpayers are informed of alleged transfer pricing non-compliance and invited to address the issues voluntarily. In many cases, taxpayers choose to make relatively limited adjustments to their transfer pricing arrangements as a pragmatic compromise, with the aim of resolving the matter at an early stage and avoiding a formal audit and subsequent dispute.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In principle, the taxpayer must be able to demonstrate that its controlled transactions comply with the arm's length principle. This is primarily done through the required transfer pricing documentation and supporting evidence.

The taxpayer should retain intercompany agreements, invoices, correspondence, calculations, evidence that services were actually provided, financial and credit analyses, board materials, forecasts and database search records.

The SRS must substantiate a transfer pricing adjustment in its administrative decision. However, where the documentation is missing, incomplete or inconsistent with the taxpayer's accounts and actual conduct, the taxpayer will usually be required to provide extensive additional evidence.

In practice, taxpayers therefore often find themselves in a defensive position. High-quality documentation is not only a formal compliance requirement but also an important tool for reducing the risk of a transfer pricing adjustment.

The transfer pricing documentation should be consistent with the taxpayer's financial statements, corporate income tax returns, CTR, agreements and actual business operations..

Transfer Pricing Penalties

Failure to submit the required transfer pricing documentation within the statutory deadline, or the submission of materially incomplete documentation, may result in a penalty of up to 1% of the amount of the controlled transaction for which documentation was required, capped at EUR 100,000.

The same penalty applies to the failure to submit, late submission or materially incomplete submission of the Controlled Transactions Report.

Where the SRS makes a transfer pricing adjustment, the adjustment is treated as deemed distributed profit and included in the corporate income tax base. In addition, late payment interest in the amount of 0.05% per each day of delay (but not more than 40% of the principal tax debt) and penalties in the amount of 10% to 30% of the assessed tax can be applied.

Failure to submit a CbCR, or failure to comply with its preparation or submission requirements, may result in a fine of up to 1% of the taxpayer's annual turnover or revenue, capped at EUR 3,200.

Local Hot Topics and Recent Updates

Recent amendments to the Latvian transfer pricing rules have significantly revised the transfer pricing documentation framework for reporting years beginning in 2025.

The most notable development is the introduction of the Controlled Transactions Report, a new transfer pricing reporting obligation that must be submitted electronically in a structured format within 12 months after the end of the reporting year where the total value of relevant controlled transactions exceeds EUR 250,000. The report includes transaction-level information, such as the type and direction of the transaction, its value, the counterparty, the transfer pricing method, the tested party, the source of comparable data and the selected arm's length indicator.

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Documentation threshold

Controlled Transactions Report	Total value of relevant controlled transactions exceeding EUR 250,000.
Master file	Total relevant controlled transactions exceeding EUR 20 million.
Local file	Total relevant controlled transactions exceeding EUR 250,000.
CbCR	Consolidated group revenue exceeding EUR 750 million in the preceding fiscal year.

Submission deadline

Controlled Transactions Report	Must be submitted electronically within 12 months after the end of the reporting year.
Master file	Must be prepared within 12 months after the end of the reporting year. It must be submitted to the SRS within 30 days after the SRS request.
Local file	Must be prepared within 12 months after the end of the reporting year. It must be submitted to the SRS within 30 days after the SRS request.
CbC Report	12 months after the reportable year-end.

Penalty Provisions

Documentation – late filing provision	Fine of up to 1% of the relevant controlled transaction amount, capped at EUR 100,000.
Tax return disclosure – late/ incomplete/no filing	Fine of up to 1% of the relevant controlled transaction amount, capped at EUR 100,000, for failure to submit, late submission or materially incomplete submission of the Controlled Transactions Report
CbC Report – late/incomplete/no filing	Fine of up to 1% of annual turnover or revenue, capped at EUR 3,200



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Overview

Law firm Norkus and partners COBALT | Professional Partnership, Taxand Lithuania

Law firm Norkus and partners COBALT | Professional Partnership is the Lithuanian member firm of Taxand and forms part of COBALT's integrated Baltic tax practice. COBALT's Lithuanian tax team comprises 5 tax professionals and advises local and international clients on direct and indirect tax, transfer pricing, customs and tax disputes. COBALT was named Baltic States Tax Firm of the Year at the ITR EMEA Tax Awards 2023, having also received this recognition in 2021.

Our Transfer Pricing ("TP") services cover TP planning and structuring, documentation and compliance, economic and benchmarking analyses, financial transactions, and assistance in TP audits, disputes, APA and MAP procedures.

General: Transfer Pricing Framework

Lithuanian TP rules are principally set out in the Law on Corporate Income Tax of the Republic of Lithuania and the rules approved by Minister of Finance Order No. 1K-123. They apply the arm's length principle to controlled transactions and require related parties to determine prices and profits consistently with those that would arise between independent parties under comparable circumstances.

The Lithuanian rules expressly recommend using the OECD Transfer Pricing Guidelines ("OECD TPG") to the extent they do not conflict with domestic rules. Lithuania follows the OECD TPG three-tier transfer pricing documentation approach, comprising Master File, Local File and country-by-country reporting, together with separate associated-party reporting requirements.

Both domestic and cross-border transactions may be subject to TP rules. Associated persons are:

a) related persons; or

b) persons able to influence each other so that the terms of their transactions differ from those that would apply between persons independently seeking maximum economic benefit.

Related persons include, among others:

1) an entity and its participants or management body members;

2) entities belonging to the same group;

3) entities linked through direct or indirect participation of at least 25% or at least 25% of voting rights;

4) entities under common ownership of at least 25%;

5) an entity and its permanent establishment; and

6) certain individuals connected through family or similar personal relationships.

Accepted Transfer Pricing Methodologies

Lithuania accepts all five standard OECD methods: comparable uncontrolled price ("CUP"), resale price, cost plus, profit split and transactional net margin method. The taxpayer must select the method most appropriate to the controlled transaction, taking into account the characteristics of the transaction, data reliability and comparability.

Lithuanian rules contain a limited hierarchy. If a traditional transaction method and a transactional profit method are equally reliable, the traditional transaction method is preferred. If CUP and another method are equally reliable, CUP is preferred. Other generally recognised financial valuation methods may be used where necessary and properly justified.

For qualifying low value-adding services, a simplified 5% mark-up on the relevant cost base may be applied where a cost-based method is the most appropriate, subject to the conditions in the Lithuanian rules.

Transfer Pricing Documentation Requirements

Generally, Lithuania applies the OECD TPG three-tier TP documentation approach, comprising Country-by-Country reporting, Master File and Local File documentation.

Country-by-country reporting (CbC)

CbC reporting applies to multinational enterprise groups with consolidated group revenue of EUR 750 million or more in the financial year preceding the reporting financial year.

The CbC report must generally be submitted to the Lithuanian tax authorities within 12 months after the end of the relevant reporting financial year. Lithuanian entities must also notify the Lithuanian tax authorities of the entity responsible for filing the CbC report by the last day of the relevant reporting financial year.

Master File documentation

A Master File is required for Lithuanian entities and Lithuanian permanent establishments of foreign entities whose revenue in the preceding tax period exceeded EUR 15 million, provided they belong to a multinational group.

The Master File must generally be prepared by the 15th day of the sixth month of the following tax period. It is not filed routinely with the Lithuanian tax authorities but must generally be submitted within 30 days upon request.

Local File documentation

A Local File is required for Lithuanian entities and Lithuanian permanent establishments of foreign entities whose revenue in the preceding tax period exceeded EUR 3 million.

Financial companies, credit institutions and insurance companies are subject to the Local File requirement irrespective of their revenue.

The Local File must generally be prepared by the 15th day of the sixth month of the following tax period. It is not



filed routinely with the Lithuanian tax authorities but must generally be submitted within 30 days upon request.

TP documentation may be prepared in a foreign language, although the Lithuanian tax authorities may require a Lithuanian translation.

TP documentation simplifications and exemptions

The Master File and Local File requirements generally do not apply to controlled transactions between Lithuanian taxable entities where the transaction is related to their activities in Lithuania.

TP documentation is also generally not required for a controlled transaction not exceeding EUR 90,000 during the tax period. The threshold is applied taking into account aggregation rules for transactions of the same type or transactions which are inseparably linked. This exemption does not apply to transactions with associated persons registered in target territories.

Local File documentation and database searches may generally be updated every three years where the relevant circumstances remain materially unchanged, while financial data relating to the controlled transactions must be updated annually.

TP reporting

Lithuanian entities and Lithuanian permanent establishments must generally submit the associated-party transaction report (FR0528) where a transaction with an associated person, relevant aggregate transactions, or a loan amount reaches EUR 90,000. The report must generally be submitted to the Lithuanian tax authorities by the 15th day of the sixth month of the following tax period.

Separately, Lithuanian entities may be required to submit form FR0438 disclosing information on controlled entities and controlling persons. The form is generally filed together with the annual corporate income tax return by the 15th day of the sixth month of the following tax period.

Local Jurisdiction Benchmarks

Lithuanian rules give priority to internal comparables. Where a reliable internal comparable exists, it should be used first. External comparables may be used when no suitable internal comparable exists or to support the analysis. A taxpayer that has internal comparables but relies on external comparables must explain why the internal data are not suitable.

There is no formal requirement to use Lithuanian-only comparables. The geographic scope should reflect the relevant market and other comparability factors, so regional or wider European comparables may be appropriate depending on the transaction and available data. Internal CUPs are expressly acceptable and, where reliable, are effectively preferred under the rules. External database searches should document each search and selection step, including the criteria and reasons for inclusion or exclusion. Selected companies and searches may generally be updated every three years if economic conditions have not materially changed.

Focus on Financial Transactions

Lithuanian TP rules do not prescribe a separate safe-harbour interest rate for related-party financing. Intercompany loans, cash pooling, guarantees and other financial transactions are therefore subject to the general arm's length rules. In practice, the analysis should accurately delineate the transaction and consider the commercial rationale, functions and risks of the parties, the borrower's creditworthiness and the key contractual terms, including amount, maturity, currency, security, ranking and guarantees. Reliable internal comparables should be considered first, otherwise market data may be used to benchmark the interest rate or other financial remuneration.

The TP analysis applies alongside separate Lithuanian interest-deductibility rules. Under the thin-capitalisation rules, interest attributable to controlled borrowed capital above a 4:1 debt-to-fixed-capital ratio is generally non-deductible, unless the taxpayer proves that the same loan on the same terms would have been available between independent parties. Separately, net borrowing costs are generally subject to the 30% taxable EBITDA limitation, with a EUR 3 million de minimis threshold and other statutory exceptions.

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

Unilateral, bilateral and multilateral APAs are available in Lithuania. From 1 January 2026, APA procedures are governed by the Lithuanian Tax Administration Law and Lithuanian tax authorities' Order No. VA-81.

APAs may apply for the duration of the relevant transaction, but generally for no longer than the current and five following calendar years, and may be renewed. Unilateral APA applications are generally examined within 90 calendar days, which may be extended by a further 90 calendar days. Bilateral or multilateral procedures may take longer due to negotiations between the competent authorities.

An APA decision is issued in form FR1163. For decisions issued under the rules effective from 1 January 2026, taxpayers must also submit an annual PLN212 compliance report for each tax period during which the APA is in force.

Transfer Pricing Audits

Transfer pricing may be reviewed by the Lithuanian tax authorities as part of a broader corporate income tax audit or a targeted tax control procedure. As Master Files and Local Files are not routinely filed, the Lithuanian tax authorities generally obtain them upon request, with taxpayers generally having 30 days to submit the documentation.

During an audit, the Lithuanian tax authorities may review the consistency of the TP analysis against intercompany agreements, invoices, accounting records, disclosures, CbC information and tax returns.

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The Burden of Proof in Transfer Pricing: Theory versus Practice

Under the Law on Tax Administration of the Republic of Lithuania, the Lithuanian tax authorities must substantiate the tax and related amounts assessed. A taxpayer disagreeing with the assessment must, in turn, substantiate why it is incorrect. Accordingly, the initial burden of supporting a TP adjustment rests with the Lithuanian tax authorities, while in practice both parties must support their respective positions once a dispute arises.

Taxpayers should retain sufficient evidence supporting the pricing and commercial substance of controlled transactions, including TP documentation, intercompany agreements, invoices, functional analyses, financial data, benchmarking files and calculations, and financing documentation where relevant. TP documentation and other supporting information must generally be retained for at least five calendar years, counted from the year following the year of the controlled transaction.

Transfer Pricing Penalties

Failure to comply with the statutory TP documentation requirements may result in an administrative fine of EUR 1,820 to EUR 5,590 for the responsible person. A repeated infringement may result in a fine of EUR 3,770 to EUR 6,000.

If the Lithuanian tax authorities make a TP adjustment resulting in an underpayment of tax, the taxpayer may be assessed additional tax, late-payment interest and a tax penalty generally ranging from 20% to 100% of the tax shortfall, depending on the circumstances and applicable statutory rules. Separate administrative penalties may also apply for late, missing or incorrect tax returns, CbC or other tax reports.

Local Hot Topics and Recent Updates

In 2026, the Lithuanian tax authorities published for public consultation draft Q&A guidance on Transfer Pricing Documentation for Controlled Transactions and Construction of the Arm's Length Range.

The draft guidance was prepared taking into account common deficiencies identified by the Lithuanian tax authorities in practice and frequently raised taxpayer questions. It provides further practical guidance on the preparation of TP documentation and the determination of an arm's length range.

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Documentation threshold

Master file	EUR 15 million of revenue in the preceding tax period, provided the taxpayer belongs to a multinational group.
Local file	EUR 3 million of revenue in the preceding tax period. No revenue threshold for financial companies, credit institutions and insurance companies. Transaction-level and domestic exemptions apply.
CbCR	EUR 750 million of consolidated group revenue in the preceding financial year.

Submission deadline

Master file	Preparation within 15th day of the sixth month of the following tax period. Submission within 30 days upon request.
Local file	Preparation within 15th day of the sixth month of the following tax period. Submission within 30 days upon request.
CbC Report	12 months after the reportable financial year-end.

Penalty Provisions

Documentation – late filing provision	Administrative fine of EUR 1,820-5,590. Repeated infringement EUR 3,770-6,000.
Tax return disclosure – late/ incomplete/no filing	Warning or administrative fine of EUR 200-390 under general reporting rules.
CbC Report – late/incomplete/no filing	Warning or administrative fine of EUR 200-390 under general reporting rules.
Non-compliance with the arm's length principle	For the company – additional tax resulting from the transfer pricing adjustment, late-payment interest and a penalty generally ranging from 20% to 100% of the additional tax assessed. For responsible persons – separate administrative liability ranging from EUR 1,820 to EUR 6,000 may apply for related TP documentation or reporting infringements.



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Overview

ATOZ Tax Advisers, Taxand Luxembourg

With over 100 tax practitioners, ATOZ is a high-end, independent advisory firm offering a comprehensive and integrated range of tax and transfer pricing services. Our collective industry expertise encompasses local and global companies in a wide variety of industry sectors, including – but not limited to – investment funds (real estate, private equity, infrastructure, venture capital, debt funds), aviation, banking, capital markets, communications, financial services and insurance.

In the field of transfer pricing, we assist our clients with the development of transfer pricing strategies, the preparation of transfer pricing documentation, regular risk reviews and disputes (local and cross-border).

Our transfer pricing expertise covers a broad spectrum of areas, such as financing activities, mere intermediary services, interest rate assessments on a wide range of debt instruments, fund management services, operational services, debt/borrowing capacity analyses, valuation of tangible and intangible assets, attribution of profits between a permanent establishment and its head office.

General: Transfer Pricing Framework

Luxembourg tax law does not provide for integrated transfer pricing legislation. Transfer pricing adjustments with the objective to restate arm's length conditions can be made on the basis of different tax provisions and concepts applicable under Luxembourg domestic tax law. The arm's length principle is explicitly stated in Article 56 of the Luxembourg Income Tax Law (hereafter: "LITL"). Article 56 of the LITL is complemented by Article 56bis of the LITL which provides more guidance on the application of the arm's length principle. More precisely, Article 56bis of the LITL formalises the authoritative nature of the OECD Transfer Pricing Guidelines and replicates some of the key concepts provided in Chapter I (Arm's length principle) of the OECD Transfer Pricing Guidelines.

The law might be amended to introduce new rules specifically for multinational groups (Bill of Law No. 8186, 28 March 2023, hereafter: the "Bill").

In addition, a transfer pricing decree on intra-group financing activities contains additional guidance and requirements in this specific context.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Luxembourg legislation but are an explicit point of reference and guidance.

Therefore, the general hierarchy of transfer pricing methodologies is commonly accepted and no method is *per se* rejected, if its use is justified in the individual case at hand (noting that certain market practices have developed over time for a number of transactions).

The taxpayer is, however, free to apply another transfer pricing method, provided that the appropriateness of the selected method can be demonstrated in light of the arm's length principle.

In practice, the comparable uncontrolled price method is the most commonly applied transfer pricing method, particularly for financial transactions and licensing arrangements. However, other methods such as the cost-plus method (for low value-adding services) as well as the profit split (e.g. for highly integrated fund management activities) are regularly relevant in practice as well.

Transfer Pricing Documentation Requirements

Taxpayers are not explicitly required to prepare annual documentation (although, depending on the facts and circumstances, annual updates may be appropriate in practice) and are not required to file transfer pricing documentation with the local tax authority (but to be provided upon request). Transfer pricing documentation should be prepared contemporaneously with the transaction (or even before it is entered into) to reduce the risk of challenge.

While there are no legal de minimis thresholds, in practice all material related-party transactions should be covered by an appropriate transfer pricing documentation. Pragmatic and proportionate approaches may be adopted for small transactions with immaterial tax risks.

Luxembourg taxpayers may indirectly be obliged to prepare a master or local file, if this is imposed by another jurisdiction (i.e., the jurisdiction of a subsidiary or parent company).

Under the Bill, new documentation requirements might also be introduced for Luxembourg companies of multinational groups that fall within the scope of country-by-country reporting (i.e. with a consolidated turnover of at least EUR 750 million).

Luxembourg companies forming part of such multinational groups would have to prepare a local file and a master file, under certain circumstances.

The master and local file requirements broadly correspond to BEPS Action 13, with some exceptions, deviations and additional local requirements.

Local Jurisdiction Benchmarks

Given the absence of Luxembourg-specific benchmarking data, the Luxembourg tax authorities generally accept pan-European benchmarks, provided that they meet OECD-compliant search strategy standards. Multiple-year data are not commonly used. The use of any points in the interquartile ranges derived from the benchmarking analyses is generally feasible with a preference for measures of central tendency (e.g., median or average). A yearly update is not explicitly required and in practice, a full refresh of the benchmark searches is generally not performed on an annual basis. Where the relevant business activity and underlying facts and circumstances remain broadly unchanged, benchmark searches are typically updated every three years.

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Focus on Financial Transactions

Luxembourg is a leading jurisdiction for intra-group financing activities and transfer pricing remains a key area of focus for financing entities.

In addition to the general arm's length principle set out in Articles 56 and 56bis LITL, Luxembourg has issued specific guidance on intra-group financing activities through Circular L.I.R. n°56/1 – 56bis/1 of 27 December 2016. The Circular provides a framework for determining the arm's length remuneration of Luxembourg financing entities based on their functional profile, the economically significant risks assumed, as well as their financial capacity to control such risks. It further emphasises that financing entities should have adequate decision-making capacity, appropriate resources and substance in Luxembourg to perform and control the relevant financing activities. In practice, documenting the arm's length nature of intra-group financing arrangements generally requires a transfer pricing analysis consistent with the OECD Transfer Pricing Guidelines, including the accurate delineation of the financing transaction, an assessment of the borrower's creditworthiness and a benchmarking of the arm's length remuneration, interest rate and other financial terms against comparable uncontrolled transactions.

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

Despite the legal possibility to do so, the number of APA in Luxembourg is extremely limited in practice.

Transfer Pricing Audits

Within the statute of limitations, the Luxembourg tax authorities may conduct tax audits at their discretion. While the number of tax audits performed remains relatively limited compared to the overall number of taxpayers, transfer pricing matters - particularly in relation to financial transactions - have become an area of increased focus in recent years. Tax inspectors frequently perform detailed reviews of transfer pricing arrangements and request comprehensive supporting documentation to substantiate the arm's length nature of the transactions.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under Luxembourg tax law, the burden of proof is generally shared between the taxpayer and the Luxembourg tax authorities. The burden of proof for facts and circumstances that result in an increase in the taxpayer's taxable income rests with the Luxembourg tax authorities, while the burden of proof for facts and circumstances that result in a decrease in the taxpayer's taxable income rests with the taxpayer (Article 59 of the Law of 21 June 1999; BFH, Decision of 24.6.1976, IV R 101/75, BStBl II 1976, p. 562; BFH, Decision of 11.4.1984, I R 175/79, BStBl II 1984, p. 535). Thus, a distinction must be made between upward and downward adjustments with respect to the burden of proof for transfer pricing adjustments.

Burden of proof in case of upward adjustments

The burden of proof that transactions are not at arm's length generally rests with the Luxembourg tax authorities. It is up to the administration to verify whether the transfer prices for goods and services transferred between group companies are in line with the arm's length principle.

In practice, although the burden of proof is on the tax authorities, they can still reasonably require a Luxembourg company to provide consistent arguments regarding its transfer pricing (RFH, Decision of 21.12.1938, RStBl 1939, p. 307; BFH, Decision of 7.4.1959, I 2/58 S, BStBl III 1959, p. 233). In this regard, the company must consider that the voluntary production of documents can significantly improve the persuasiveness of the company's transfer pricing approach to the tax authorities.

Burden of proof in case of downward adjustments

In the case of hidden capital contributions and "downward adjustments" under Article 56 LITL, the fair market value of the advantage shifted to a Luxembourg company is deducted from the company's taxable income. It follows that the facts and circumstances underlying the advantage shifted to a Luxembourg company must be proven by the taxpayer.

In practice, in these situations, the Luxembourg tax authorities may reasonably require that the value of a hidden capital contribution or the advantage that would result in a downward adjustment under Article 56 LITL be substantiated in a transfer pricing study.

Transfer Pricing Penalties

There is no specific penalty for the non-preparation of transfer pricing documentation, but the non-availability of such documentation upon request of the tax authorities significantly increases the risk of adjustments.

Local Hot Topics and Recent Updates

Although it has been pending since 2023, the potential introduction of master and local file requirements for certain multinational groups remains a topic to monitor. Such requirements would represent a significant step towards further formalising Luxembourg's transfer pricing documentation framework

In parallel, the increasing focus of the Luxembourg tax authorities on financial transactions has also been reflected in 2026 case law. Recent decisions regarding interest-free shareholder loans and intra-group guarantees illustrate that financing arrangements continue to be an area of close examination, with courts considering not only the contractual terms but also the economic substance of the arrangements, including the allocation of functions, assets and risks between related parties.

Another important development is Luxembourg's adoption of the OECD's simplified and streamlined approach for certain baseline distribution and marketing activities under Amount B of Pillar One. This framework, applicable

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for financial years starting on or after 1 January 2025, provides taxpayers with an additional simplified approach for determining arm's length remuneration for in-scope marketing and distribution activities.

Finally, the implementation of BEPS 2.0 (Pillar One & Two) reflects the evolving regulatory environment and the increasing complexity of managing intra-group transactions.

Documentation threshold

Master file	Not Applicable (draft Law)
Local file	Not Applicable (draft Law)
CbCR	EUR 750m consolidated group turnover

Submission deadline

Master file	Not Applicable (draft Law)
Local file	Not Applicable (draft Law)
CbCR	12 months after the final day of the reporting fiscal year of the MNE group. CbCR notification must be submitted on or before the last day of the reporting fiscal year.

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Up to 10 percent of the tax due and a fine up to EUR 25,000
CbCR – late/incomplete/no filing	Up to EUR 250,000



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Overview

TMF Management and Administrative Services (Malta) Limited, Taxand Malta

TMF Management and Administrative Services (Malta) Limited is a licensed corporate services provider and a tax firm providing an array of services to multinationals, private equity and high net worth individuals "HNWI".

Taxand Malta's team may assist in various aspects of Transfer Pricing services including:

- Compliance – preparation of certain compliance documentation such as local file documentation,
- Reporting – assistance in local filings including Country-by-Country reporting "CbCR" requirements,
- Analysis – providing due diligence services or health checks, and assessment of risk areas to help management with their strategy and risk mitigation,
- Planning – establishing intercompany financial arrangements,
- Disputes and controversy – assistance in transfer pricing audits or investigations as well as preventing or resolving tax disputes by concluding APAs.

General: Transfer Pricing Framework

Malta has introduced formal Transfer Pricing Rules 'TP Rules' through subsidiary legislation published in in November 2022. These rules became effective for basis years commencing on or after 1 January 2024 and apply to cross-border related party arrangements entered into on or after that date, as well as to arrangements entered into prior to that date which are subsequently materially altered.

The TP Rules apply to cross-border arrangements between associated enterprises, broadly defined to include entities that are under common control or participation, whether direct or indirect. Small and medium-sized enterprises (SMEs), as defined under the relevant EU regulations, fall outside the scope of the rules.

Accepted Transfer Pricing Methodologies

The preferred TP methodologies are those outlined in Chapter II of the OECD Transfer Pricing Guidelines. Other methods may be accepted in accordance with Paragraph 2.9 of the OECD Transfer Pricing Guidelines.

Transfer Pricing Documentation Requirements

The transfer pricing documentation requirements to be held by taxpayers shall be in line with Chapter V of the OECD Transfer Pricing Guidelines which include the need to have a Master File containing the information outlined in Annex I to Chapter V of the OECD Transfer Pricing Guidelines and a Local file containing the information outlined in Annex II to Chapter V of the OECD Transfer Pricing Guidelines.

Local Jurisdiction Benchmarks

The TP Rules and guidelines do not prescribe benchmarks or benchmarking requirements, however,the guiding principle is the arm's length principle.

Focus on Financial Transactions'.

'In Malta, the transfer pricing analysis of financial transactions is primarily driven by the Maltese transfer pricing rules and their reliance on the arm's length principle, with reference to the OECD Transfer Pricing Guidelines. Accordingly, where a related-party financial transaction falls within the scope of the Maltese transfer pricing rules, the analysis would generally need to be supported by an OECD-style assessment of the commercial and financial terms of the arrangement.

In practice, this means that the focus should be on whether the transaction is commercially supportable from the perspective of the Maltese entity and whether the terms are consistent with those which would have been agreed between independent parties. For intragroup loans or similar financing arrangements, this would typically include considering the borrower's credit profile, repayment capacity, the amount of debt advanced, the interest rate applied, maturity, security and any other relevant terms. The analysis should not be limited to benchmarking the interest rate, but should also consider whether the level and terms of the funding are commercially justifiable.

Where treasury or financing functions are performed within the group, the Maltese analysis would also need to consider the actual functions, risks and substance of the entities involved. However, in the absence of detailed Malta-specific rules on treasury centres or cash pooling, the practical reference point is likely to be the OECD guidance, including the principle that entities performing limited coordination or administrative functions should generally earn a return commensurate with those functions, while the assumption of financing risks should be supported by appropriate control over those risks and financial capacity to bear them.

Separately, even where the relevant financing arrangement is supportable from a transfer pricing perspective, the Maltese tax deductibility position should be considered independently. In particular, interest or other financing costs would still need to satisfy the general Maltese tax requirement that expenses be incurred wholly and exclusively in the production of income, and any other applicable Maltese tax limitations should be assessed based on the facts of the case.'

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

The TP Rules provide for the issuance of unilateral transfer pricing rulings, as well as unilateral, bilateral and multilateral advance pricing agreements ("APAs"). An application for an APA is subject to a fee of €3,000, while a fee of €5,000 applies in the case of a bilateral or multilateral APA.

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An APA is generally valid for a period of up to five years. A directly interested party is required to notify the tax authorities of any relevant material changes within 30 days from the later of the date of occurrence of such change or the date on which the party becomes aware thereof. In the case of unilateral transfer pricing rulings, such rulings cease to have effect from the date on which the tax authorities notify the relevant party that a material change has occurred.

APAs may be renewed, provided that an application for renewal is submitted within the six months preceding their expiry. Reduced fees of €1,000 and €2,000 apply for the renewal of unilateral APAs and bilateral or multilateral APAs, respectively.

An APA request may be made in respect of cross-border arrangements commencing on or after the date of the application. Where the arrangement has already commenced, the scope of the request may extend to transactions, agreements and dealings forming part of that arrangement for a period of up to three years preceding the application.

The tax authorities may refrain from issuing an APA where the applicant is not fully compliant with its tax filing obligations.

Transfer Pricing Audits

The TP Rules do not contain any specific provisions with respect to transfer pricing audits but these may be carried out by virtue of the powers contained in the income tax legislation.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Following the introduction of TP Rules in Malta, effective for periods commencing on or after 1 January 2024, the practical application of the burden of proof remains an evolving area. The framework adopts a self-assessment approach, requiring taxpayers to demonstrate that intra-group transactions comply with the arm's length principle and to maintain adequate supporting documentation. While, in theory, tax authorities are expected to substantiate any adjustments in line with OECD principles, in practice the evidentiary burden is likely to fall largely on taxpayers, particularly given the increased disclosure requirements and growing scrutiny by the Maltese tax authorities. The manner in which these principles will be applied in practice is expected to become clearer as the regime continues to develop.

Transfer Pricing Penalties

The TP Rules do not contain any specific provisions for transfer pricing penalties.

Local Hot Topics and Recent Updates

Following the introduction of the TP Rules, many taxpayers sought guidance to ensure that local entities are compliant with these requirements. In this regard, the Malta Tax and Customs Administration has issued transfer pricing guidelines to provide further clarification on the application of the rules. While the grandfathering provisions (where applicable) continue to apply to certain pre-existing arrangements, entities engaged in cross-border transactions are expected to ensure that their transfer pricing policies and documentation are aligned with the current framework.

Documentation threshold

Master file	De-minimis threshold for total cross-border related party transactions of €6 million (revenue items) and €20 million (capital items), measured based on the preceding financial year.
Local file	De-minimis threshold for total cross-border related party transactions of €6 million (revenue items) and €20 million (capital items), measured based on the preceding financial year.
CbCR	Applies to multinational enterprise groups with consolidated group revenue of €750 million or more.
Public CbCR	Applies to multinational enterprise groups with consolidated group revenue of €750 million or more.

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Submission deadline

Master file	No annual submission requirement – to be made available to the Malta Tax and Customs Administration upon request.
Local file	No annual submission requirement – to be made available to the Malta Tax and Customs Administration upon request.
CbCR	The CbCR is to be filed within 12 months from the end of the fiscal year of the MNE Group. CbCR notification by Maltese constituent entities is to be made by the deadline for filing the relevant income tax return (generally nine months from the end of the financial year).
Public CbCR	To be published and filed within 12 months from the end of the relevant financial year.

Penalty Provisions

Documentation – late filing provision	Not Applicable, as no submission requirement exists; however, penalties may arise where documentation is not provided upon request.
Tax return disclosure – late/incomplete/no filing	Administrative penalties may be imposed, generally up to a maximum of €1,500.
CbCR – late/incomplete/no filing	Failure to submit the CbCR within the prescribed deadline: Penalty of €200 plus €100 for each day during which the default continues, capped at €20,000. Failure by a constituent entity to submit a notification: Penalty of €200 plus €50 per day during which the default continues, capped at €5,000. Errors in reporting: Minor errors – €200 plus €50 per day, capped at €5,000. Significant non-compliance – penalties of up to €50,000. Failure to comply with a request for information by the Commissioner: €100 per day during which the default continues, capped at €30,000.
Public CbCR – late/incomplete/no filing	Failure to comply with Public CbCR reporting obligations under Articles 213B–213D and Part II of the Fourth Schedule of the Companies Act: Default penalty of €2,329 and a daily penalty of €46 for continued non-compliance.



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MAURITIUS

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Overview

IQ-EQ, Taxand Mauritius

IQ-EQ Mauritius, part of IQ-EQ Group, one of the leading global investor services group, is a member of the Taxand network since 2009. Taxand Mauritius is a full fledge tax practice providing predominantly tax advisory, compliance and litigation services.

General : Transfer Pricing Framework

In Mauritius, there is no formal transfer pricing legislation. There is however, an arm's length test under the Income Tax Act.

Accepted Transfer Pricing Methodologies

Since Mauritius does not have formal transfer pricing, the OECD guidelines are not incorporated into the Mauritius legislations. The use of cost plus is commonly used specially on inter-company loans.

Transfer Pricing Documentation Requirements

There is no prescribed documentation required. However in case of an audit from the tax authority, the tax payer should have supporting documents to defend the arm's length price. Mauritius has implement Country-by-Country (CbCR) Reporting. Multinational Enterprises having group turnover of EUR 750 million and above need to file CbC Reports/Notifications.

Local Jurisdiction Benchmarks

As there are no formal transfer pricing legislations in Mauritius, there is no specific requirements for benchmarking. However, as the onus to defend the transfer price is on the taxpayer, benchmarking analysis is highly recommended to demonstrate the prices used in case of a challenge from the MRA.

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

The Mauriitus Revenue Authority (MRA) issue Tax Ruling upon applications made by the tax payer. The Tax Ruling Committee at the MRA is chaired at the end of each month. Full facts need to be submitted to the MRA and a fee of USD 225 is payable at the time of the application. The Committee will ask for agreements and any other supporting documents. Depending on the complexity of the ruling, the Commitee may take between 3 to 9 months to issue a ruling.

Transfer Pricing Audits

Transfer pricing audit is common in Mauritius. The MRA regularly investigates into inter-company transactions, specially on inter-company loans. The statute of limitation in Mauritius is the current and the 3 preceding years of assessments.

The MRA may select companies on a random basis or target companies which answer Yes to the question on the tax return as to whether they have related party transactions to ensure that these transactions have been conducted on an arm's length basis.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Mauritius operates a self assessment tax system and the burden to support a transaction is at arm's length is on the taxpayer. However, in the absence of transfer pricing legislation, there is no formal mechanism/guidance on whom the onus to prove the transaction is at arm's length lies in case of a tax dispute.

Transfer Pricing Penalties

There is no specific penalty for non compliance with transfer pricing. However, where the MRA adjusts the tax payable, there is an assessing penalty of up to 50% of the amount assessed together with a 2.5% late payment penalty and interest of 0.25% per month until the amount is settled.

Local Hot Topics and Recent Updates

Mauritius has undergone major tax reforms to comply with the international standards of the OECD and the EU. The previous tax regime whereby only GBC1 companies would benefit from the Deemed Foreign Tax Credit of 80% on all their foreign source income was considered a harmful tax practice and has been abolished.

With effect from 1 January 2019, Mauritius has instead introduced an 80% partial exemption regime on specified income streams. The partial exemption is only available if, amongst others, a company carries its Core Income Generating Activities ("CIGA") in Mauritius and meets the required substance as prescribed in respect to these income streams.

The partial exemption applies to the grandfathered companies as from 1 July 2021.

GBC1 companies that obtained their licences prior to 16 October 2017 were grandfathered and are deemed to be converted into GBL companies on 1 July 2021. These companies need to ensure that they meet the substance requirements of the Global Business License ("GBL").

The FSC stopped issuing GBC2 Licence post 30 June 2021. Companies could either convert into GBL or apply for an authorization to become an Authorised Company.

MAURITIUS

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Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	Euro 750 million

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months after accounting year end

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Late filing penalty capped at USD 445 p.a.
CbCR – late/incomplete/no filing	USD 110



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MEXICO

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Overview

Mijares, Angoitia, Cortés y Fuentes, S.C., Taxand Mexico

We offer general Transfer Pricing "TP" planning and structuring services in cross-border transactions, as well as the review of TP documentation and drafting of intercompany agreements. We also offer tax controversy services with regards to TP matters, and negotiation and implementation of Advance Pricing Agreements "APA" and Mutual Agreement Procedures.

General: Transfer Pricing Framework

Mexican resident taxpayers who execute transactions with related parties are required to calculate their gross income and authorized deductions using the prices, considerations, and profit margins that would have been used by independent parties in comparable transactions (i.e., the arm's length principle is applied). For such purposes, they shall keep the supporting documentation to demonstrate compliance with the arm's length principle.

Chapter II of Title VI of the Mexican Income Tax Law "MITL" contains the relevant TP provisions. Additionally, the OECD Guidelines can be used to interpret such provisions to the extent that they are consistent with the provisions of the MITL and the tax treaties entered into by Mexico.

Mandatory TP documentation generally follows BEPS Action 13's guidelines and includes the preparation of TP studies as well as the submission of a Local File, a Master File, and Country by Country Reporting "CbCR", observing certain preferred methods and formalities set forth in the MITL. The TP documentation habitually contains a description of all related party transactions, benchmark analysis, and the disclosure of the comparable transactions used in the analysis.

In addition to the documentation in compliance with BEPS Action 13 described above, taxpayers must also file an informative return disclosing transactions executed with related parties no later than May 15 of the following fiscal year to which the informative return corresponds.

Accepted Transfer Pricing Methodologies

Mexican resident taxpayers shall apply first the CUP method and may only use the other methods when the CUP method is inappropriate for determining if transactions were conducted at arm's length and, in such cases, RP and CP methods are preferred over the remaining methods.

The MITL does not recognize cost sharing or cost contribution agreements, therefore, such agreements are usually challenged when implemented given the formalistic approach required by the tax authorities for tax documentation.

In the case of the Mexican toll manufacturing industry, commonly known as maquiladoras, Mexican resident companies that operate under the Program for Manufacturing, Maquiladora and Exportation Services Industry ("Mexican Maquiladoras") are deemed to comply with the arm's length principle when certain safe harbors are met. It will be deemed that the services rendered by Mexican Maquiladoras to their non-Mexican resident principals are at arm's length when their taxable profits equal to the greater of either (i) 6.9% of the total asset value used in the toll manufacturing operation in a given fiscal year, or (ii) 6.5% of the total operating costs and expenses incurred by the Mexican Maquiladora.

Transfer Pricing Documentation Requirements

Mexican resident taxpayers entering into transactions with related parties are required to submit Local File and Master File documentation if they fall under any of the following assumptions:

a) Publicly traded companies;

b) if the taxable income for income tax purposes of the previous fiscal year is equal to or greater than MXN $1,103.2 million (approximately USD $63.59 million);

c) companies belonging to a tax group under Mexican rules;

d) State-owned companies of the Federal Public Administration; and

e) related parties of a publicly traded company or a company with taxable income for income tax purposes in the previous fiscal year is equal to or greater than MXN $2,013.7 million (approximately USD $116 million).

CbCR is only required to be submitted by:

1) Mexican resident controlling multi-national companies, as defined in the MITL, which are not in turn subsidiaries of a non-Mexican company and have earnings exceeding MXN $12,000 million (approximately USD $691 million); and

2) Companies appointed by a non-Mexican resident controlling multi-national company as responsible for filing the CbCR of its multi-national group.

Local File documentation must be submitted no later than May 15 of the following fiscal year to which the report corresponds. The Master File documentation and CbCR must be filed no later than December 31 of the following fiscal year to which the report corresponds.

Local Jurisdiction Benchmarks

Benchmark analysis is required to comply with the arm's length principle. There is preference for local comparable transactions. However, they are generally unavailable, and therefore, regional and global comparable transactions are mostly used in practice.

Depending on the type of transaction and industry sectors, different transfer pricing methods are preferred. However, in general, the TNM method is most used, rather than the CUP, RP or CP methods, given the sensitivity to available information for benchmarking.



As of 2022, information regarding comparable transactions corresponding to the year under analysis shall be considered, and only when the business cycles cover more than one year, information corresponding to two or more years, either before or after, may be considered.

In Mexico, internal CUPs are acceptable. Conversely, PS and RPS methods are constantly scrutinized and challenged by the Mexican tax authorities.

Focus on Financial Transactions

Mexican tax authorities have increasingly scrutinized intercompany financing transactions from a transfer pricing perspective. In addition to the interest rate, they typically assess whether the amount of the debt, the terms and conditions of the financing, and the borrower's financial capacity are consistent with what independent parties would have agreed upon under comparable circumstances. Accordingly, taxpayers should maintain robust documentation supporting the arm's length nature of the financing, including the economic rationale for the transaction and the basis for the pricing applied.

It is important to note that compliance with the arm's length principle alone does not guarantee the deductibility of interest. Under the Mexican Income Tax Law, interest is generally deductible only if the financing satisfies the general deductibility requirements under domestic law, including the obligation for taxpayers to demonstrate that the borrowed funds were used for business purposes. Furthermore, Mexico applies thin capitalization rules, under which, in general, interest attributable to related-party debt owed to foreign related parties exceeding a 3:1 debt-to-equity ratio is non-deductible. Similarly, net interest expense exceeding 30% of the taxpayer's adjusted taxable profit (tax EBITDA) may also be non-deductible, subject to the statutory threshold.

Mexican domestic law also contains provisions that may disallow the deduction of payments made to related parties or through structured arrangements where the corresponding income is subject to a preferential tax regime or results in hybrid mismatch outcomes. Therefore, financing transactions should be reviewed not only from a transfer pricing perspective, but also in light of the domestic interest limitation and anti-avoidance rules applicable under Mexican law.

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

It is possible to obtain rulings issued by the Mexican tax authorities with the effects of an APA or a BAPA. General requirements include submitting information, data and documentation regarding methodology used for determining prices or consideration amounts in transactions with related parties.

A ruling with the effects of an APA or a BAPA consists of a methodology proposal filed by the taxpayer with aims to be confirmed by the tax authorities. Therefore, there is no negotiation between the taxpayer and the tax authorities to reach an arm's length result, and as such, a proposed methodology may only be confirmed or denied by the tax authorities. If confirmed, a ruling is valid for the fiscal year in which it is granted, the previous fiscal year and the following three fiscal years.

A BAPA may be granted for a longer term, typically up to five years, if provided for under a double taxation treaty entered into by Mexico.

Filing fees of requests for rulings with the effects of an APA or a BAPA are applicable and amount to MXN $336,624.17 (approximately USD $19,404.2). Upon a request, Mexican tax authorities are required to issue a ruling within three months of the date in which the request is filed. As previously stated, it is the tax authority's discretional ability to issue a positive or a negative ruling. Negative rulings may be challenged in court.

Transfer Pricing Audits

The Mexican tax authorities tend to audit TP matters commonly on manufacturing activities and financial services, specifically challenging the comparable transactions that are used for benchmarking analyses.

Further, the Mexican tax authorities tend to question the valuation methods used or intangible assets and benchmarking related to royalty payments and technical assistance fees. Likewise, the functional analysis related to these matters is carefully reviewed from a substance perspective (i.e., whether the functions were effectively carried out).

In recent years, it has also become common for the tax authorities to question commonly used stock valuation methods, such as the discounted cashflow method, giving preference to the equity value of the relevant company, adjusting such equity for inflation.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Mexico, the allocation of the burden of proof is technically borne by the tax authorities. That is, when presenting a transfer pricing challenge, the tax authorities are responsible of demonstrating that the consideration agreed between related parties deviates from the arm's length principle and, in principle, should provide sufficient evidence to support a transfer pricing adjustment. Notwithstanding, in practice, the burden of proof is habitually shifted to the taxpayer under statutory provisions that require taxpayers to maintain sufficient and idoneous documentation to demonstrate that the related party transactions have been agreed at arm's length (Art. 76, sections IX of the Mexican Income Tax Law).

Based on the above, it is habitual that the practical burden of proof is shifted to the taxpayer under the grounds that the documentation provided during an audit is not ideal or lacks comprehensiveness, or that the comparables used or methodology applied is not idoneous for a relevant transaction given the lack of documentary evidence. That is, tax inspectors seldomly will have a proactive



approach in determining the arm's length remuneration and will challenge the allegations of the taxpayer until they deem the documentation sufficient. Furthermore, in practice, the Mexican tax authorities will not only impose a transfer pricing adjustment but will also challenge the deductibility of payments made to foreign resident related parties when formal issues arise. Although questionable, such denial habitually rests on the grounds that, in these cases, formal documentary requirements (broadly comprising transfer pricing documentation requirements) have not been met to support the deductibility (Art. 27, section V of the Mexican Income Tax Law).

As an exception to the statutory burden of proof described above, in the case of Advance Pricing Agreements, the taxpayer is legally required to propose the methodology subject matter and the tax authorities either accept or deny such proposal under technical grounds. That is, the tax authorities do not make propositions of their own and therefore, do not actively contribute to an "agreed" methodology. In these cases, the burden of proof does rest in the hands of the taxpayer as a matter of statute.

Considering these tendencies, taxpayers must pay special attention to gathering material and comprehensive documentation to increase the possibilities of such documentation being deemed sufficient by the tax authorities and, if required, the Court. Given that in practice the burden of proof rests on the taxpayer, and not only a transfer pricing adjustment may occur, but also the denial of the deductibility of a cross-border payment, taxpayers are urged to continuously review their transactions and the contemporaneous documentation resulting therefrom to create a robust defense file in the likely event of an audit.

Transfer Pricing Penalties

The Mexican tax authorities may impose penalties to those taxpayers that are required to submit TP documentation and fail to do such submissions or submit TP documentation with mistakes, inconsistencies or in a different manner than the indicated in the applicable tax provisions.

Likewise, such tax authorities may adjust taxable income and authorized deductions when they deviate from the arm's length principle. In this case, any taxes omitted from such adjustments shall be covered with inflation and surcharges

levied at a 1.47% monthly rate. Furthermore, penalties equal to 55% to 75% of the historical omitted taxes may be levied.

Local Hot Topics and Recent Updates

Until 2022, Mexican Maquiladoras were able to secure rulings for their manufacturing transactions with USA resident related parties, with the effect of an APA by determining their profit margin under the Qualified Maquiladora Approach that was negotiated between the Mexican tax authorities and the USA tax authorities through a Memorandum of Understanding. Such procedure was referred to as the fast-track procedure. This APA was available as an alternative to the existing safe harbors set forth in the MITL and to APAs requested pursuant to another proposed methodology.

Derived from the tax reform that entered into force on January 1, 2022, APAs, and therefore also APA's under the fast-track procedures, are no longer available to the Mexican Maquiladora regime. Notwithstanding, any request for a ruling filed before 2022 may still be eligible for the fast-track procedure, and therefore, it may be valid for the fiscal year in which it has been requested, and for the following years according to the terms of the authorizations.

In this respect, during June 2024, the Mexican and the United States tax authorities concluded a Memorandum of Understanding validating the Qualified Maquila Approach methodology for the ruling requests underway, for instance, for APA's submitted during fiscal year 2021, effective until fiscal year 2024.

Finally, the tax reform that entered into force on January 1, 2022, requires the TP analysis to consider comparable transactions corresponding to the year under analysis and only when the business cycles or commercial acceptance cover more than such year, it is allowed to consider comparable transactions corresponding to previous or following years.

Additional Recent Developments

In recent years, transfer pricing has become one of the main audit priorities of the Mexican tax authorities. According to publicly available information released by the Mexican tax authorities, transfer pricing audits of large taxpayers have resulted in a significant increase in tax collections compared to previous years. In consequence, transfer pricing will continue to be an area of focus by the Mexican tax authorities, with audit programs increasingly relying on data analytics, effective tax rate comparisons and industry-specific risk indicators to identify taxpayers for review. Consequently, taxpayers should ensure that their transfer pricing documentation is robust and fully consistent with the economic substance of their intercompany transactions.

From an international perspective, multinational groups operating in Mexico should also continue monitoring the implementation of the OECD's BEPS 2.0 initiatives. Although Mexico has not yet incorporated the Pillar Two Global Anti-Base Erosion Rules into its domestic legislation, these rules may still affect multinational groups with operations in Mexico through the application of top-up taxes in other jurisdictions. Likewise, Mexico has expressed its intention to evaluate the implementation of the OECD's simplified Amount B approach for baseline marketing and distribution activities. While no domestic rules have yet been enacted, these developments may influence future transfer pricing compliance obligations and should therefore remain on taxpayers' radar.

MEXICO

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Documentation threshold

Master file	MXN $1,103.2 million (approximately USD $63.59 million)
Local file	MXN $1,103.2 million (approximately USD $63.59 million)
CbCR	MXN $12,000 million (approximately USD $691 million)

Submission deadline

Master file	December 31 of the following fiscal year to which the report corresponds.
Local file	May 15 of the following fiscal year to which the report corresponds.
CbCR	December 31 of the following fiscal year to which the report corresponds.

Penalty Provisions

Documentation – late filing provision	No penalties apply as long as compliance is spontaneous.
Tax return disclosure – late/incomplete/no filing	Penalties between MXN $226,000 (approximately USD $13,027) and MXN $321,770 (approximately USD $18,548).
CbCR – late/incomplete/no filing	Penalties between MXN $226,000 (approximately USD $13,027) and MXN $321,770 (approximately USD $18,548).



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NETHERLANDS

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Overview

Borgen Tax

Borgen Tax is a tax advisory firm based in Amsterdam offering a comprehensive range of tax services to Multinational enterprises ("MNEs"), private equity investors and their portfolio companies.

The Borgen Tax team assists clients across the full spectrum of transfer pricing matters, including (1) compliance and reporting, (2) analysis, planning and strategy and (3) disputes and controversy:

- Compliance and reporting: Borgen Tax prepares benchmark studies and transfer pricing documentation, ranging from comprehensive documentation packages to tailored local deliverables. Borgen Tax also assists with global or local transfer pricing compliance processes and supports clients in substantiating their financial results in light of their transfer pricing policies. Furthermore, Borgen Tax advises on Country-by-Country ("CbC") reporting requirements.
- Analysis, planning and strategy: Borgen Tax advises on transfer pricing model design, value chain analysis and optimization, business restructuring, and the development and implementation of transfer pricing strategies and policies. The team also performs independent reviews of existing transfer pricing models and assesses whether those models remain sustainable in light of changes to the business, regulatory environment and applicable transfer pricing standards.
- Disputes and controversy: Borgen Tax assists clients with transfer pricing audits, Mutual Agreement Procedures ("MAPs"), MAP arbitration and the prevention and resolution of transfer pricing disputes through unilateral, bilateral or multilateral Advance Pricing Agreements ("APAs").

General Transfer Pricing Framework

The arm's length principle is codified in article 8b of the Corporate Income Tax Act ("CITA"). Article 8b (3) CITA contains the general transfer pricing documentation requirement. This form free requirement applies to domestic and cross-border transactions between associated entities and requires taxpayers to substantiate the arm's length nature of the conditions applied to those transactions.

In addition, under article 29g CITA, an entity that is subject to Dutch corporate income tax and forms part of an MNE group with at least EUR 50 million of consolidated group revenue in the immediately preceding fiscal year must maintain a master file and local file. These files must be included in the taxpayer's records by the deadline for filing its Dutch corporate income tax return.

MNE Groups with at least EUR 750 million of consolidated group revenue in the immediately reporting fiscal year fall within the CbC reporting framework laid down in articles 29b-29h CITA. The CbC report is generally filed by the ultimate parent entity or surrogate parent entity, although a Dutch entity may be required to file locally in specified circumstances.

Following the publication of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines") in January 2022, the Dutch Transfer Pricing Decree ("Transfer Pricing Decree") was published on 1 July 2022. The principal changes included substantially revised guidance on financial transactions reflecting Chapter X of the OECD Guidelines. The Dutch transfer pricing framework is based on the arm's length principle, and the OECD Guidelines are considered an appropriate interpretation and clarification of article 8b CITA. However, Dutch legislation and administrative guidance contain several specific domestic rules and positions. In particular, articles 8ba-bd CITA restrict certain downward transfer pricing adjustments and certain increases in the tax basis of assets where no corresponding amount is included in a tax on profits at the level of the associated entity.

Furthermore, the Amount B Decree 2025 took effect on 1 January 2025. The Netherlands has not implemented Amount B for routine marketing and distribution activities performed by Dutch taxpayers. However, subject to the conditions of the decree, the Netherlands will respect the proper application of Amount B qualifying covered jurisdictions.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated in Dutch legislation. However, based on the Transfer Pricing Decree, the OECD Guidelines are considered internationally accepted guidance providing an appropriate interpretation and clarification of the application of the arm's length principle.

In line with the OECD Guidelines, the Dutch tax authorities ("DTA") begin a transfer pricing examination from the perspective of the transfer pricing method applied by the taxpayer at the time of the transaction. The taxpayer is, in principle, free to select the transfer pricing method, provided that that method is appropriate in light of the facts and circumstances and produces an arm's length outcome. The taxpayer is not required to analyze every available method or demonstrate that the selected method is the "best" method, but must substantiate its selection.

Dutch transfer pricing policy does prescribe a hierarchy of methods. The five methods recognized in the OECD Guidelines, the Comparable Uncontrolled Price ("CUP") method, resale price method, cost-plus method, Transactional Net Margin Method ("TNMM") and transactional profit split method, may be applied depending on which method is most appropriate in the circumstances. In practice, the CUP method can be difficult to apply because sufficiently comparable transactions are often unavailable. As a result, the TNMM is frequently used.



The taxpayer may also use another method or valuation technique where this is appropriate in the circumstances, produces an arm's length outcome and is adequately substantiated.

Transfer Pricing Documentation Requirements

Article 8b (3) CITA requires taxpayers to document and substantiate the arm's length nature of intercompany transactions with associated entities. As no threshold applies, this obligation also applies to small and medium sized companies. The provision requires Dutch taxpayers to document the transactions entered into with associated entities in both cross-border and domestic situations.

The documentation requirement under article 8b (3) CITA is form free. The required level of detail depends on the facts and circumstances, with proportionality playing an important role. The documentation should ordinarily address the economically relevant characteristics of the controlled transaction, the selection of the transfer pricing method and the conditions, including the price, applied to the transaction.

Under article 29g CITA, an entity that is subject to Dutch corporate income tax and forms part of an MNE group with at least EUR 50 million of consolidated group revenue in the immediately preceding fiscal year must maintain a master file and a local file in accordance with Base Erosion and Profit Shifting ("BEPS") Action 13.

The master file and local file must be available in the Dutch taxpayer's administration by the deadline for filing the corporate income tax ("CIT") return for the respective year. The files are not routinely submitted with the CIT return but must be provided to the DTA upon request. They may be prepared in Dutch or English. The master file and local file must be prepared and maintained for each relevant fiscal year.

The local file documentation must contain the required information relating to each relevant Dutch entity and its material cross-border controlled transactions. Dutch legislation does not provide a general exemption for entities included in the same fiscal unity for CITA purposes. A combined document may be maintained for administrative convenience only where it separately and fully contains the required entity specific information for every entity covered.

MNEs groups with at least EUR 750 million of consolidated group revenue in the immediately preceding reporting fiscal year fall within the CbC reporting rules set out in articles 29b – 29h CITA.

Dutch taxpayers must file a CbC report if the ultimate parent entity or the surrogate parent entity is tax resident in the Netherlands. A Dutch entity may also have a local filing obligation in circumstances specified in article 29c CITA. The report must be filed within 12 months after the last day of the relevant reporting fiscal year.

In principle, every Dutch resident entity of an MNE group that falls within the CbC reporting regime must notify the DTA of the identity and tax residence of the reporting entity, or notify the DTA that it is itself the ultimate parent entity or surrogate parent entity, no later than the last day of the relevant reporting fiscal year. For entities included in the same Dutch fiscal unity, the DTA permits a single notification to be submitted on practical grounds.

Pillar Two Filing

The Dutch Minimum Tax Act 2024 entered into force on 31 December 2023. In June 2026, the DTA made available the digital filing channels through which groups can comply with the Dutch Pillar Two information reporting, notification and tax return requirements.

For multinational and large scale domestic groups within scope of the Pillar Two rules, generally those with consolidated annual revenue of at least EUR 750 million in at least two of the four fiscal years immediately preceding the relevant fiscal year, this commenced the first compliance filing cycle for groups whose first reporting fiscal year ended on 31 December 2024.

The Dutch Pillar Two compliance framework comprises three distinct filing obligations. These are not necessarily cumulative: a notification generally applies instead of a Dutch GloBE Information Return ("GIR") filing, while a Dutch minimum tax return is required only if top-up is payable in the Netherlands.

- GIR / Bijheffing informatieaangifte ("BIA")

  The BIA is the Dutch statutory information return corresponding to the OECD/EU GIR template. It can be submitted electronically through Digipoort, which became available for this purpose on 1 June 2026. Where the relevant requirements are met, GIR information may subsequently be exchanged with other jurisdictions under the applicable international exchange arrangements. A Dutch group entity may be designated to submit the BIA on behalf of the other Dutch group entities.

- GIR Notification

  Where the GIR is filed in another jurisdiction and the DTA receives it through a qualifying international exchange arrangement with the Netherlands, Dutch group entities are relieved from the Dutch BIA filing obligation. Instead, they must notify the DTA of the identity of the entity submitting the GIR and the jurisdiction in which that entity is located. The notification is submitted through the Gegevensportaal, which became available for this purpose on 2 June 2026. One Dutch group entity may be designated to submit the notification on behalf of the other Dutch group entities. No notification is required where the BIA/GIR is filed in the Netherlands.

- Dutch Minimum Tax Return

  The Dutch minimum tax return formalizes and reports any top-up tax payable in the Netherlands, including, depending on the relevant fiscal year and circumstances, amounts arising under the income inclusion rule ("IIR"), undertaxed profits rule ("UTPR") and Dutch domestic top-up tax ("QDMTT"). The UTPR generally applies to fiscal years beginning on or after 31 December 2024 and would therefore ordinarily not apply to a calendar year fiscal year ending on 31 December 2024.

  A Dutch minimum tax return is required only where top-up tax is payable in the Netherlands. The return can be submitted through 'Mijn Belastingdienst Zakelijk', which became available for this purpose on 1 June 2026.

Under the standard rules, the BIA/GIR (or, where applicable, the notification) must be submitted within 15 months after the last day of the reporting fiscal year. The Dutch minimum tax return and any associated payment are due within 17 months after the last day of the reporting fiscal year. For the first reporting fiscal year, transitional deadlines apply, extending these periods to 18 and 20 months respectively.

For groups with a first reporting fiscal year ending on 31 December 2024, the first Dutch Pillar Two deadlines were/are:

- BIA/GIR or notification: 30 June 2026
- Dutch minimum tax return and payment: 31 August 2026

Local Jurisdiction Benchmarks

Depending on the transfer pricing method, benchmarking studies can support the arm's length nature of intercompany transactions. The DTA generally accept pan-European comparables where geographical differences do not materially affect comparability. The selection of the profit level indicator ("PLI") must be appropriate to the selected method, the tested party and the economically relevant characteristics of the controlled transaction.

Benchmarking studies must be based on a transparent and reproducible search strategy and a sufficiently robust comparability analysis, taking into account the five comparability factors identified in the OECD Guidelines.

The DTA may refer to multiple year data where this provides useful information regarding the controlled transaction or the comparables.

The results of a benchmark study yield an arm's length range. Where the results are of sufficiently equal and high reliability, the full range may be relevant. Where residual comparability defects remain, statistical tools such as the interquartile range may be used to enhance reliability. If the tested result falls within the properly determined arm's length range, no adjustment should ordinarily be made. If it falls outside that range, the adjustment should be made to the point that best reflects the facts and circumstances. The median is used only where no other point within a statistically determined range can be identified as more reliable.

Benchmarking analyses should be reviewed annually. Where the underlying business and market circumstances remain unchanged, an external database search may generally be refreshed every three years, provided that the financial data of the selected comparables are updated annually. A new search may be required earlier where material changes affect the controlled transaction, the tested party or the comparability analysis.

A benchmark study can be used to set or support royalty percentages as remuneration for the use of intellectual property. However, royalty benchmarks are generally subject to close scrutiny because publicly available license agreements may contain insufficient information regarding the relevant rights, functions, assets, risks and contractual conditions. A detailed analysis of value creation, including the relevant DEMPE functions, may therefore be required. A Value Chain Analysis ("VCA") can support this analysis. Depending on the facts, an appropriate method may include a CUP method, profit split method, valuation technique or tested-party approach.

Focus on Financial Transactions

Under Dutch law, the transfer pricing treatment of financial transactions is largely aligned with Chapter 10 of the OECD Transfer Pricing Guidelines, which was implemented through the Transfer Pricing Decree. As a result, the Dutch tax authorities place significant emphasis on the arm's length character of both the financing structure and the pricing of intragroup financial transactions. Taxpayers are expected to substantiate that the terms and conditions of intercompany financing arrangements are consistent with the arm's length principle, including the amount of debt, the pricing and other financial conditions. In practice, this requires a detailed analysis of the borrower's creditworthiness, the relevance of potential (implicit) group support, the borrower's realistically available alternatives, and the overall consistency of the financing structure with what independent parties would have agreed under comparable circumstances. Since the introduction of Chapter 10, the DTA have increasingly challenged not only the pricing of financial transactions, but also structural elements including debt capacity, particularly in the context of real estate financing where for example the loan-to-value ratio is relevant in determining the amount of debt that could have been obtained by an independent borrower in relation to the value of the underlying property. In addition, the DTA increasingly scrutinize financing structures where the borrower's ability to service and repay the debt is not supported by recurring income streams but instead relies predominantly on expected capital gains upon a potential sale of the underlying real estate.



The Transfer Pricing Decree also confirms that the tax authorities may disregard or recharacterize financial transactions where the actual conduct or the overall structure differs from what independent parties acting at arm's length would have agreed. In practice, the DTA increasingly use transfer pricing audits on financial transactions as a broader entry point to challenge financing structures and perceived base erosion arrangements. The focus is therefore not limited to the interest rate itself, but extends to the delineation of the transaction, the allocation and control of financial risks, the functional substance of treasury and financing entities, and the extent to which the financing arrangement is consistent with the arm's length principle from the perspective of all parties involved. Robust transfer pricing documentation and a well-supported benchmarking analysis are therefore of particular importance in the Netherlands.

Within the DTA, a dedicated specialist team has been established to review the arm's length character of intragroup financial transactions and financing structures. This team works closely with other coordination groups focusing on tax avoidance and aggressive financing arrangements. In addition to the transfer pricing analysis, Dutch taxpayers must also consider various domestic anti-abuse and interest limitation rules, including the earnings stripping rule implementing ATAD, which generally limits the deductibility of net borrowing costs. These rules operate separately from the arm's length analysis and may restrict interest deductibility even where the pricing of the financing transaction itself is considered arm's length.

Advance Pricing Agreement / Bilateral Advance Pricing Agreement Overview

A revised framework for international tax rulings took effect on 1 July 2019 and has subsequently been amended, including in 2021 and 2023. The framework applies to unilateral, bilateral and multilateral Advance Pricing Agreements ("APAs"). A bilateral or multilateral APA is negotiated by the competent authorities of the relevant jurisdictions under the applicable tax treaty or other international legal instrument.

A request for an international ruling must satisfy the general requirements applicable to advance tax certainty. In principle, advance certainty will not be provided where:

- the requesting taxpayer or group does not carry on sufficient relevant economic activities in the Netherlands, supported by personnel and operational substance appropriate to those activities;
- Dutch or foreign tax savings constitute the sole or decisive motive for the relevant transaction or structure;
- the requested certainty concerns the tax consequences of direct transactions with entities established in jurisdictions included in the Dutch Regulation on low-tax and non-cooperative jurisdictions, subject to the exceptions introduced into the ruling framework; or
- the requesting taxpayer, a relevant director, ultimate beneficial owner or qualifying intermediate holding company appears on an applicable EU sanctions list.

The precise application of these exclusions depends on the nature of the requested certainty, and the ruling framework contains limited exceptions for specified situations.

No fixed statutory processing period applies to bilateral or multilateral APAs. The two-year indicator associated with BEPS Action 14 relates to the timely resolution of MAP cases and should not be presented as a guaranteed BAPA processing period. According to the DTA's 2025 ruling report, the gross average processing time for granted unilateral APA requests was approximately 11 months, compared with approximately 39 months for granted bilateral and multilateral APA requests. These figures are historical averages and do not constitute service guarantees.

An APA under the Dutch ruling practice can cover matters such as the classification and remuneration of intercompany transactions and the profit allocation for permanent establishments.

The processing time depends on, among other matters, the complexity of the case, the completeness of the application, the number of transactions and jurisdictions involved, the required internal review and, for bilateral or multilateral APAs, the negotiations between the competent authorities.

Transfer Pricing Audits

The DTA apply a risk-based approach to tax supervision. Transfer pricing matters may be reviewed as part of a broader corporate income tax audit, through a dedicated transfer pricing examination or by means of targeted information requests.

The DTA do not conduct audits on a mandatory periodic basis. The publication of the Transfer Pricing Decree does not itself determine whether a taxpayer will be audited. It does, however, set out the administrative positions that inspectors will generally apply when examining transfer pricing matters. Transfer pricing matters within the DTA are coordinated by the Coördinatiegroep Verrekenprijzen ("CGVP"). Areas commonly requiring detailed support include financial transactions, transactions involving intangibles, business restructurings and intragroup services.

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Financial transactions continue to receive considerable attention, particularly in relation to the accurate delineation of the transaction, debt capacity, creditworthiness, implicit support, cash pooling, guarantees and the control of financially significant risks.

The Burden of Proof in Dutch Transfer Pricing: Theory vs. Practice

In the Dutch tax system, the allocation of the burden of proof is pivotal in determining the outcome of disputes. As a general starting point, where the inspector makes an upward transfer pricing adjustment, the inspector must substantiate that adjustment in accordance with the ordinary rules governing the allocation of the burden of proof. The precise allocation may nevertheless depend on the nature of the adjustment, the position taken by the taxpayer and the facts and circumstances of the case.

Dutch law requires taxpayers to maintain sufficient documentation to substantiate their transfer prices under Article 8b(3) CITA and, where applicable, the master file and local file requirements under Article 29g CITA.

Failure to comply with the documentation requirements does not automatically reverse the burden of proof. Formal reversal and strengthening of the burden of proof require the applicable statutory and procedural conditions to be satisfied. Depending on the circumstances, this may require the inspector to issue an information decision under Article 52a of the General Taxes Act before the evidentiary consequences provided for in Article 27e of that Act can arise.

In practice, the distinction between the formal and evidential burden remains important. Once the inspector has presented a sufficiently reasoned basis for an adjustment, the taxpayer will generally need to respond with transaction specific facts, functional evidence, financial analyses and reliable comparables. A taxpayer with incomplete contemporaneous documentation may therefore face a materially more difficult evidential position, even where the formal burden of proof has not been reversed.

Given this practical dynamic, Dutch taxpayers should ensure that their transfer pricing documentation is both robust and comprehensive. This includes complying with article 8b(3) CITA and, where applicable, the master file and local file requirements under article 29g CITA.

Contemporaneous documentation should establish a clear and consistent connection between the contractual arrangements, the parties' actual conduct, the functional analysis, the selected transfer pricing method and the financial results. High-quality documentation is therefore both a compliance requirement and an important element of effective audit and dispute management.

Transfer Pricing Penalties

Under Article 29h CITA, failure to comply, or to comply correctly, completely or on time, with specified CbC reporting and notification obligations may result in an administrative penalty where the non-compliance is attributable to intent or gross negligence. The maximum penalty is linked to the sixth statutory penalty category, which amounts to EUR 1.1 million from 1 January 2026. This is a statutory maximum; the actual penalty must reflect the circumstances and seriousness of the infringement.

Dutch law does not prescribe a separate fixed transfer pricing penalty solely for failure to maintain Article 8b documentation or a master file and local file. Such non-compliance may nevertheless have general penalty, administrative and evidentiary consequences, depending on the circumstances.

Local Hot Topics and Recent Updates

Current areas requiring particular attention include financial transactions, transactions involving intangibles and value creation, and intragroup services. These areas are addressed extensively in the Transfer Pricing Decree and frequently require detailed factual and economic substantiation.

Financial transactions: The detailed guidance on financial transactions included in the Transfer Pricing Decree continues to influence the analysis of intragroup loans, cash pooling arrangements, guarantees and financial service entities.

The analysis should consider both parties' perspectives and address the accurate delineation of the transaction, the borrower's debt capacity, credit rating, implicit group support, contractual terms, economically relevant characteristics and realistically available alternatives.

For cash pools, particular attention should be given to the remuneration of the cash pool leader and participants and to whether structurally long-term debit or credit positions should be characterized as deposits or loans. Guarantees should be examined to determine whether they provide an incremental benefit beyond implicit group support and whether a guarantee fee is warranted.

The functions performed, risks controlled and financial capacity of the parties are central to the allocation of the financing return. The historical 1%/EUR 2 million real-risk criterion should not be presented as a general transfer pricing safe harbour or as a rule determining arm's length remuneration.

Where a financial service entity does not control the relevant financial risks or lacks the financial capacity to bear them, the Transfer Pricing Decree takes the position that the entity is not entitled to the return associated with those risks. Where its activities are limited to support or administration, a cost-based remuneration may be appropriate.



Intangibles and Value Chain Analysis: A VCA can be a useful analytical tool for complex business models and transactions involving intangibles. It can help identify how value is created within the group and how the relevant functions, assets and risks, including DEMPE functions, are distributed among the parties. The analysis should distinguish between the identification of value creating contributions and the selection of the appropriate transfer pricing method. A VCA does not, by itself, determine how profits should be allocated and does not replace the need to price the accurately delineated controlled transaction.

For complex or highly integrated transactions, the analysis may need to consider the contributions and realistically available alternatives of all relevant parties. A two-sided or multi-sided analysis is particularly relevant where a one-sided method cannot reliably capture the economically significant contributions made by the parties. It is not, however, mandatory for every controlled transaction.

Intragroup services: Intragroup services remain an important area of transfer pricing compliance. Taxpayers should demonstrate that services were actually rendered, that they provided economic or commercial value to the recipient and that an independent enterprise would have been willing to pay for the services or perform them internally. Relevant considerations include the benefit test, the exclusion of shareholder activities, possible duplication, the composition of the cost base, the allocation keys applied, the distinction between direct and indirect charging methods, and the arm's length mark-up.

Where the conditions for the OECD simplified approach for low value adding intragroup services are met, a 5% mark-up may generally be applied to the relevant cost base without a separate benchmarking analysis. The taxpayer must nevertheless substantiate that the services fall within the scope of the simplified approach.

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Documentation threshold

Master file	Consolidated group turnover EUR 50 million
Local file	Consolidated group turnover EUR 50 million
CbCR	Consolidated group turnover EUR 750 million
Pillar Two	Consolidated group turnover EUR 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.
CbCR report	Submission within 12 months after end of reporting year.
CbCR notification	Before year end of the reporting year.
Pillar Two	GIR / GIR Notification Submission within 15 months after end of reporting year. Minimum Tax Return Submission and payment within 17 months after end of reporting year. 18/20 months respectively for the first reporting year.

Penalty Provisions

Documentation – late filing provision	Administrative fines up to a maximum of EUR 6,709 can be imposed.
Tax return disclosure – late/incomplete/no filing	Administrative fines up to a maximum of EUR 6,709 can be imposed.
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 1,100,000 can be imposed on the taxpayer for non-compliance.
Pillar Two - late/incomplete/no filing of the GIR, GIR Notification or Minimum Tax Return Administrative	Fines up to a maximum of EUR 1,100,000 can be imposed on the taxpayer for non-compliance.



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Overview

Selmer Law firm, Taxand Norway

Selmer is a full service law firm based in Oslo and Stavanger, Norway. We offer a full range of tax advisory and litigation services, covering in practice all business sectors.

Selmer's team can assist in every aspect of transfer pricing services, including compliance and reporting, analysis, tax planning and strategy and disputes.

General: Transfer Pricing Framework

Norway has implemented the OECD TP Guidelines as Norwegian law and, accordingly, also the arm's-length principle. Thus, the transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

The legal framework is outlined in the Income Tax Act ("ITA").

Accepted Transfer Pricing Methodologies

In general, Norway follows the OECD TP guidelines as to which transfer pricing methodologies are accepted and preferred.

The taxpayer must be able to substantiate why the chosen method is considered appropriate, based on the relevant facts and circumstances.

In principle, the CUP method is the preferred method by the DTA but because comparable uncontrolled transactions are difficult to find, in practice, the cost plus method (typically for group services) and the TNMM method are the most popular transfer pricing methods.

Transfer Pricing Documentation Requirements

The NTA requires taxpayers to be able to substantiate all related party / intercompany transactions in transfer pricing documentation. There is no threshold to this obligation, and the requirement must be seen as a general requirement for all controlled transactions. The requirements are:

- Duty to disclose; The disclosure and reporting of controlled transactions are made in a form delivered as part of the annual tax return. This obligation applies for all businesses, except if the controlled transactions of the taxpayer in aggregate is less than 10 million NOK and at year end the total receivables/debt between related parties is less than 25 million NOK.
- Duty to document; Taxpayers subject to the disclosure requirement shall also prepare TP documentation, unless the business has less than 250 employees, and either sales income less than 400 million NOK or a total balance (in its accounts) less than 350 million NOK (all values on a consolidated basis).

The documentation should be in the form of a group master file and local file in accordance with the OECD TPG. The documentation must be delivered to the NTA within 45 days after written notice.

The documentation generally should include information on the related party/group structure, the business carried out, the legal and management structure, the intra group transactions, and the choice of TP methodology used. There is no fixed requirement as to prepare a benchmark of the transactions involved, but this is often used to substantiate the chosen mark-up/margin.

Local Jurisdiction Benchmarks

In Norway, a benchmark analysis is not mandatory. However, if a benchmark analysis is not prepared the taxpayer may have substantial problems documenting and substantiating the margin/mark-up used and the NTA will be in a better position to amend the taxpayer's pricing and increase the taxpayer's taxable income.

It is therefore generally recommended that a benchmark analysis is carried out, at least if the amounts involved are material.

The NTA accepts both local and pan-European benchmarks, provided that they meet comparable search strategy standards. The NTA generally refers to multiple year data and the interquartile range in terms of benchmarking. Most taxpayers update their benchmark searches every 1-3 years, depending also on if the business activity has undergone significant changes or not.

Benchmark analyses prepared in accordance with generally accepted standards are normally accepted by the tax authorities, but we also see cases where the benchmark studies are challenged.

Focus on Financial Transactions

Intercompany loans, guarantees, and other financial arrangements should be substantiated by a thorough analysis of the borrower's creditworthiness — typically through a stand-alone credit rating approach — and that the interest rate and other financial terms should be benchmarked against comparable uncontrolled transactions.

In line with the OECD 2020 Transfer Pricing Guidance on Financial Transactions (Chapter X of the OECD TPG), the NTA places emphasis on the accurate delineation of financial transactions: the quantum of debt must be consistent with what the borrower could have obtained on the open market, and entities performing limited treasury or cash pooling functions without genuine decision-making capacity should only earn a routine return commensurate with those limited functions.

It should be noted that Norway also has introduced interest deduction limitation rules (based on the EU Anti-Tax Avoidance Directive), which cap the deductibility of net interest expenses at 25% of taxable EBITDA. These rules operate independently of the transfer pricing analysis and may further restrict the deductibility of intragroup interest even where the interest rate itself satisfies the arm's-length standard.

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

In Norway there is no legal framework for APAs, but APAs are used more and more over the last years, and may be entered into in accordance with the relevant tax treaty and the MAP procedures.

An APA will normally not be granted if the main purpose of the transaction is to avoid taxes in Norway or abroad.

Transfer Pricing Audits

In Norway, transfer pricing is a focus area of the NTA and the NTA performs TP audits on a regular basis. The NTA defines matters of interest on an annual or regular basis. Taxpayers with significant cross border controlled transactions should expect a TP tax audit. The TP audits may cover practically all areas, including financial transactions.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Norway the burden of proof in transfer pricing matters depends on whether the related party is a business resident in a country inside or outside of the EEA area. If the related party *is resident outside of the EEA*, and there is reason to believe that income or wealth is reduced, the reduction shall be deemed to be a consequence of the intra-group relation unless the taxpayer proves that this is not the case. In other words: The taxpayer must prove that the price and other terms are on arm's length conditions. The same applies if the related party is resident within an EEA country with which Norway cannot require information about the related party's income and wealth according to a treaty.

If the related party *is resident within the EEA*, the burden of proof is formally the opposite: In these cases, the tax authorities bear the responsibility of demonstrating that the prices set by a taxpayer are not at arm's length. However, if a taxpayer fails to meet certain documentation requirements, the burden of proof may shift to the taxpayer also in these cases. Norwegian law prescribes that taxpayers must maintain sufficient documentation to substantiate their transfer prices, which imposes Master File and Local File obligations according to the OECD Guidelines.

The Norwegian rules imply, that the distribution of the burden of proof does not always align with the legal framework. The tax authorities often rely on assumptions and positions, shifting in practice the burden of proof onto the taxpayer also for EEA resident related parties, who is in practice forced to provide proof that the transactions are actually on arms-length terms. This implies that in disputes, taxpayers may find themselves in a defensive position, despite the legal principle that the tax office should bear the initial burden of proof. Given this, taxpayers must ensure that their transfer pricing documentation is both robust and sufficiently comprehensive. High-quality documentation is not just a compliance requirement but also a strategic step to minimize the risk of an unfavorable shift in the burden of proof.

Transfer Pricing Penalties

In Norway penalty tax may be levied with a rate of up to 60% of the tax that should have been paid had the taxpayer filed correct information. The base requirement for imposing penalty tax is that the taxpayer has provided the NTA with insufficient or wrongful information, and penalty tax is not levied due only to lack of documentation. A requirement is that the lack of documentation had or could have led to reduced taxable income.

In cases where the taxpayer has been negligent, only the maximum penalty tax is 20%. In cases with gross negligence or willful tax fraud the rates are up to 60%. There is no maximum nominal amount.

Local Hot Topics and Recent Updates

In Norway it seems that the NTA over the last few years have had a strong focus on financial transactions and the application of arm's length interest rates.

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Documentation threshold

Master file	MNOK 400 (or balance MNOK 350)
Local file	MNOK 400 (or balance MNOK 350)
CbCR	6 500 000 000 NOK (appr. MEuro 600)

Submission deadline

Master file	45 days from request from NTA
Local file	45 days from request from NTA
CbCR	Within 12 months after end of tax year

Penalty Provisions

Documentation – late filing provision	The NTA may impose a daily accruing coercive fine of one court fee (NOK 1,345 in 2026) subject to an aggregate cap of 50 times the court fee. Norway applies penalty tax if taxable income is increased and the taxpayer negligently has provided wrongful or incomplete information.
Tax return disclosure – late/incomplete/no filing	N/A – see above
CbCR – late/incomplete/no filing	N/A – see above



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POLAND

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Overview

Crido Taxand S.A., Taxand Poland

Crido Taxand is a tax advisory firm based in Warsaw and Cracow, offering the full scope of tax advisory and compliance services.

Our Transfer Pricing ("TP") Team is one of the largest and most experienced TP teams in Poland; we have a team of over 40 experts including 4 partners and 12 managers.

We are one of the most recognized transfer pricing teams in Poland. Our TP Team has also been recognized as the 'Poland Transfer Pricing Firm of the Year' at the ITR European Tax Awards for multiple years, 2016-2023, which is a result of our complex, innovative and often ground-breaking projects entrusted to us by our dedicated clients.

We offer full scope of transfer pricing services: designing TP models and policies, creating TP strategies, full range of TP analyses, valuations and benchmarking studies for all types of transactions, including financial and IP valuations, TP compliance, TP reporting, assistance in TP audits, litigation, APA and MAP procedures.

General: Transfer Pricing Framework

The Polish transfer pricing regulations generally follow the OECD Transfer Pricing Guidelines' ("OECD TPG") approach, adopting the arm's length principle, three-tier documentation, TP adjustments, and APA and MAP procedures. However, in some areas more detailed information in the TP documentation or more reporting obligations might be required.

OECD TPG are not part of the Polish law, however they are used as an explanatory instrument. In practice, when discussing transfer pricing cases with tax authorities, specifically the APAs with Polish competent authorities, OECD TPG are often used as supportive to the local regulations.

Not only foreign, but also domestic, transactions are subject to TP obligations.

Related parties are:

a) parties when one exerts considerable influence on another,

b) parties upon which a third party exerts considerable influence,

c) a partnership and its partners, or

d) a taxpayer and its foreign permanent establishment.

Exerting significant influence is understood as:

1) holding directly or indirectly at least 25 percent of shares in capital, or in voting rights in control or in decision-making bodies, or shares in profits or property or expectancy thereof,

2) actual ability of a person to influence taking key economic decisions by an entity, or

3) familial links up to a second degree.

Accepted Transfer Pricing Methodologies

All five transfer pricing methods from the OECD TPG are accepted. There is no preference of any method and the most appropriate to the transaction should be applied. Where it is impossible to apply one of the five standard methods, another method shall be applied, including the customary valuation techniques.

Transfer Pricing Documentation Requirements

Generally, the OECD TPG three-tier TP documentation approach is transposed to the TP regulations in Poland.

Country-by-country reporting (CbC)

Polish parent companies (or subsidiaries appointed by the parent company) of groups with an annual turnover of or over EUR 750 million must file the CbC form wihtin 12 months after the year-end. The CbC report must be also filed to Tax Authorities by the local subsidiary when the reporting entity resides in a country without the CbC obligations or without effective tax information exchange with Poland.

Additionally, Polish subsidiaries of reporting groups must file an annual CbC notification, before year-end, covering identification of the reporting entity and their residence jurisdiction.

Masterfile documentation

For capital groups with consolidated group revenues of, or exceeding, PLN 200 million in the previous year a Masterfile documentation is required.

Masterfile is in line with OECD TPG standards and there is a possibility to use the Masterfile prepared by another group entity. An English version is allowed. Masterfile documentation must be prepared by the end of 12th month after the year-end.

Local File documentation

For intercompany transactions exceeding certain materiality thresholds (PLN 10 million for goods and financial transactions, PLN 2 million for services and other transactions), a Local File documentation is required. The Local File documentation follows the OECD TPG standard, must be prepared in Polish, and be available by the end of the 10th month after the year-end.

The Local File documentation must always include a transfer pricing analysis with a benchmarking study or a compliance analysis, where a benchmarking study is impossible to procure.

TP documentation simplifications and exemptions

Micro and small enterprises are not obliged to include a transfer pricing analysis in their TP Local File documentation.

Domestic transactions between two companies reporting taxable income (not loss) are exempt from preparing the TP documentation.

There are two safe harbours allowed under Polish TP regulations – 1) for low value-adding services and 2) for small financing transactions (loans or bonds). TP regulations list specific conditions to be met in order to apply the safe harbours. If safe harbour is applied, no TP analysis or TP Local File is necessary.

TP reporting

Each company that is preparing the TP documentation must report transfer prices to Tax Authorities through their respective Tax Office. Reporting is done electronically, with a dedicated TPR-C form, by the end of 11th month after the year-end. TPR-C form must be signed with a qualified electronical signature by a person authorized to represent the legal entity.

Local Jurisdiction Benchmarks

Transfer pricing analysis is an obligatory element of a TP documentation. When it comes to comparable data, generally global or Pan-European benchmarking studies might be accepted if these are the most appropriate for the documented transaction. There is a slight preference towards local comparables, which should at least be included in the search strategy. Both internal and external comparables are accepted. If a benchmarking study based on comparables cannot be prepared, for instance due to lack of appropriate data, a TP compliance analysis can be prepared. This analysis describes in a more general manner, or with other market data, the terms of the transactions to evidence that they were set at arm's length.

Focus on financial transactions

Under Polish law there are no specific transfer pricing regulations on financial transactions. In practice both taxpayers and tax authorities follow the OECD Transfer Pricing Guidelines and the non-binding recommendations of the Transfer Pricing Forum ("Forum Cen Transferowych"), whose Working group No. 14 issued a report on financial transactions in late 2025 covering loans, cash pooling and financial guarantees. Tax authorities usually expect a proper accurate delineation of the transaction, an assessment of the borrower's creditworthiness (with the effect of implicit group support also assessed), verification of the business rationale from the borrower's perspective, and a benchmarking study of the interest rate and other financial terms against comparable uncontrolled transactions. Tax authorities may also disregard or recharacterize a transaction that an independent party, acting rationally, would not have entered.

Under Polish transfer pricing regime safe harbour rules for intercompany loans, credits and bond issuances also exist. Where the interest is set in line with the base rate and margin announced annually by the Minister of Finance (for 2026: a margin between 2.0 and 2.6 percentage points), the principal amount does not exceed PLN 20 million in annual aggregate, the term does not exceed 5 years, no fees other than interest are charged, and the counterparty is not located in a tax haven, tax authorities will not adjust the interest rate and the transaction is exempt from local file documentation.

Outside the safe harbour rules, financial transactions with related parties exceeding PLN 10 million of principal must be documented in the local file documentation, have a benchmarking analysis updated regularly (no later than every 3 years) and reported in the TPR-C form. Separately from the transfer pricing analysis, the deductibility of intragroup financing costs is restricted (implementation of ATAD), which limits the deduction of net debt financing costs to the higher of PLN 3 million or 30% of tax EBITDA, with a five-year carry-forward of the disallowed excess.

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

Unilateral, bilateral or multilateral APAs are all allowed in Poland. In fact they are the only measures to prevent transfer pricing disputes on the arm's length nature of the pricing of a transaction.

APAs can be concluded for up to five years and at the end of this period the agreement can be renewed. APAs are concluded through a negotiation process with the National Fiscal Administration – the Polish competent authorities for APAs.

Concluding an APA is subject to an administrative fee to be paid in advance of submitting the APA application. The fee varies depending on the type of the APA:

- up to PLN 100 thousand for a unilateral APA, and
- up to PLN 200 thousand for a bilateral or multilateral APA

It may take a few years to conclude the APA, depending on the merit of the transaction and if it is a uni-, bi- or multilateral procedure. The APA provisions state 6 month for uni-, 12 months for bi- and 18 months for multilateral APAs.

Transfer Pricing Audits

Polish tax authorities can perform audits randomly, as a separate process or jointly with a general corporate income tax audit. Following the introduction of the TP reporting with TPR-C form in 2019, Polish tax authorities have access to much detailed data about intragroup transactions, their pricing and comparability analyses results. Therefore, TP audits are becoming more and more targeted. Also, certain tax inspection offices specialize in conducting the TP audits, having the ability to target taxpayers for the audit countrywide, even outside of their local jurisdiction.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In the Polish tax system, the allocation of the burden of proof in transfer pricing matters is a critical aspect of dispute resolution. In principle, the burden of proof lies with the tax authorities, who must demonstrate that the prices set by a taxpayer are not at arm's length. However, Polish regulations emphasize the importance of taxpayers maintaining comprehensive documentation to support their transfer prices (the OECD three-tiered transfer pricing documentation with benchmarking study for each documented transaction).

What is more important, taxpayers must also submit the transfer pricing reporting file (TPR-C form) to the tax authorities, which not only details the financial data of a transaction and of the benchmarking study's results but also includes a statement confirming the preparation of the Local File documentation and the arm's-length nature of the documented and reported transactions.

In practice, while the legal framework places the burden of proof on the tax authorities, taxpayers often find themselves in a defensive position. The Polish tax authorities have become increasingly stringent in their audits, focusing not only on the formal compliance with documentation requirements but also on the technical content and justification of the transfer prices. Recent trends indicate that taxpayers must provide robust and detailed documentation to support their pricing, even when the tax authorities have not fully demonstrated that the prices deviate from the arm's-length principle.

Given this trend, Polish taxpayers must ensure that their transfer pricing documentation is comprehensive and robust. This includes fulfilling the Local File and Master File obligations, maintaining up-to-date comparable studies, and providing economic justification for their pricing decisions. High-quality documentation is not just a compliance requirement; it is a strategic necessity to minimize the risk of an unfavorable shift in the burden of proof during disputes. While the OECD guidelines emphasize reasonableness and caution in making transfer pricing adjustments, the practical reality in Poland increasingly revolves around whether a taxpayer can sufficiently substantiate its pricing, rather than whether the tax authorities have adequately proven their case.

Transfer Pricing Penalties

If transfer prices are questioned by tax authorities, an additional tax liability may be charged, which amounts to 10% of total amount of unduly reported or overstated tax loss and not fully or partially reported tax income to the extent resulting from the decision. The legislation stipulates also a possibility of doubling the penal liability (20%) if the basis for determining additional tax liability exceeds PLN 15 million (for the part exceeding this amount) or the taxpayer fails to submit TP documentation for a given transaction (unless it is completed within the deadline specified by the tax authority, no longer than 14 days) and even tripling (30%) if the amount exceeds PLN 15 million and at the same time the taxpayer fails to submit TP documentation (unless it is completed within the deadline specified by the tax authority, no longer than 14 days). The additional tax liability will be increased by the interest on arrears.

For non-filing, late-filing or wrong-filing of the TPR-C reports to the tax office and the TP documentation to the tax authorities (upon their request), there are also fiscal penalties for board members of the company. The size of the penalty fine will depend on multiple factors, it may be up to 720 daily rates (they are based i.e. on the persons income), which may amount up to approx. PLN 30 million.

Local Hot Topics and Recent Updates

Since TPR-C reporting is happening in Poland since 2019, tax authorities start targeting taxpayers for TP audits based on the information reported in those forms. Hot topics include: confirmation of arm's length nature of any flows (service charges, interest rates, intangible royalties) that are subject to withholding tax in Poland. Financial transactions are on a constant agenda of the tax inspectors, the same as multiple-year loss making companies.

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Documentation threshold

Master file	PLN 200 million of the group consolidated revenue in the year before the documented year
Local file	PLN 10 million for goods and financing PLN 2 million for services and other transactions PLN 2.5 million and PLN 0.5 million for the respective transactions with tax havens
CbCR	EUR 750 million

Submission deadline

Master file	12 months after the reportable year-end
Local file	10 months after the reportable year-end
CbCR	12 months after the reportable year-end

Penalty Provisions

Documentation – late filing provision	Personal-fiscal penalties for the board members up to approx. PLN 30 million
Tax return disclosure – late/incomplete/no filing	Penalty up to PLN 30 million for incorrect data or failure to submit the TPR-C return. Penalty up to PLN 10 million for late submission of the TPR-C return.
CbCR – late/incomplete/no filing	Penalty up to PLN 1 million for late submission, incorrect data or failure to submit CBC-R report or the CBC notification
Non-compliance with the arm's length principle	Personal-fiscal penalties for the board members up to approx. PLN 30 million for late submission or incorrect transfer pricing statement. For the company - additional tax liability of 10%, 20% or 30% tax rate on reassessed taxable income, increased by penalty interest for tax arrears



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PORTUGAL

Overview

Garrigues Portugal, S. L. P. - Sucursal, Taxand Portugal

Garrigues Portugal, a law firm headquartered in Spain, with offices in Portugal (Lisboa and Porto), offers a full range of tax and legal advisory services at local, regional and global level. Currently, it is the only law firm in Portugal that covers all areas of tax, including transfer pricing "TP", counting with a specialized, fully dedicated and experienced team providing a full-service and offering, e.g. advisory services ranging from mere documentation to engaging analysis, strategic planning and addressing disputes and controversies or valuations, as follows:

- Preparation of TP documentation (Master File / Local File / Country-by-Country Reporting "CbCR"); Assisting on the tax returns related with TP policies and transactions; Drafting and review of intercompany agreements (TP aspects)
- Review and design of TP policies, economic analysis / TP benchmarks (e.g., prices, margins, interest rates, royalty rates, valuations); Model intragroup transactions and supply chain
- Preparation and negotiation with the tax authorities of advance pricing agreements "APAs"; Assistance in relation to mutual agreement procedures "MAPs"
- Assisting in TP inspection procedures and litigation.

General: Transfer Pricing Framework

Article 63(1) of Corporate Income Tax Code "CITC" and article 1 of Ministerial Order no. 268/2021, of 26th of November "Ministerial Order no. 268/2021" foresee the arm's length standard by requiring for corporate tax purposes that the terms and conditions practiced, accepted and agreed between related parties in their commercial, financial, restructuring dealings and profit/loss allocations follow those that would have been expected in similar transactions between unrelated parties. The OECD Transfer Pricing Guidelines "OECD Guidelines" are referred in the Portuguese Transfer Pricing legislation "Portuguese TP legislation" as a source of recommended guidance in the application of the arm's length principle, given its complex application and the need to avoid double taxation and litigation.

TP documentation obligations are also in force.

Accepted Transfer Pricing Methodologies

The TP methods stipulated in Portuguese TP legislation - Article 63(3) of CITC and Article 6(1) of Ministerial Order no. 268/2021 - are aligned with those outlined in the OECD Guidelines and can be categorized into two groups: traditional methods and profit-based methods. The Comparable Uncontrolled Price "CUP", Resale Price and Cost-Plus methods are considered traditional methods, while the Transactional Net Margin Method and Profit Split Method fall under the profit-based category. In addition, the Portuguese TP legislation provides the possibility to adopt other generally accepted methods, techniques or models for the economic valuation of assets, whenever the previously mentioned methods cannot be used due to the unique or singular nature of the transactions or the lack of reliable comparable information.

In line with the OECD Guidelines, the Portuguese TP legislation has eliminated any specific reference to a hierarchy in their application, adopting the best method rule. The selection of the most appropriate method depends on the specific characteristics of the transaction under analysis and requires that the selected TP method ensures a reliable assessment of the arm's length principle.

Transfer Pricing Documentation Requirements

Article 17 of Ministerial Order no. 268/2021 states that the obligation to prepare the TP documentation (comprised by both Master File and Local File) applies to any taxpayer registering annual revenues equal to or higher than EUR 10,000,000 during fiscal year to be documented. There is a reporting exemption for controlled transactions in amounts of less than EUR 100,000 (per transaction, per counterparty) and, in globality, of EUR 500,000. These exemptions do not cover controlled transactions carried out with taxpayers resident outside the Portuguese territory and subject to a more favourable tax regime.

Despite being exempt from preparing TP documentation, since the total revenues are lower than the threshold of EUR 10,000,000, the Portuguese taxpayers should be in position to prove the compliance with the arm's length principle regarding the transactions carried out with related entities in case of a potential tax inspection conducted by Portuguese Tax Authorities "PTA".

The Portuguese TP legislation currently in force requires more and more detailed information, when compared with the OECD Guidelines, to be included both in the Master File and Local File, stating in Appendix I of the Ministerial Order no. 268/2021 an exhaustive list of elements which are mandatory to include.

Taxpayers qualified as Small and Medium Enterprises "SME" are allowed to prepare simplified TP documentation.

The TP documentation must be prepared in Portuguese.

Controlled transactions and amounts must be reported in Annex H of the so-called Simplified Business Information "IES", together with other TP relevant information (e.g., the taxpayer should indicate if TP documentation was prepared, whether any restructuring has been implemented).

Large Taxpayers are obliged to submit their TP documentation to PTA no later than the 15th day of the 7th month following the fiscal year end. The same deadline applies to the filing of the "IES". For taxpayers not falling under this category, the submission of TP documentation is compulsory upon PTA's request. The usual administrative deadline for submitting the documentation is 10 days.

CbCR and CbCR notification rules, generally in line with the OECD Guidelines, are also in force. CbCR must be submitted by the ultimate parent entity of the Group until the end of the 12th month after the end of the fiscal year to which it refers. The CbCR notification must be submitted by the Portuguese constituent entities until the end of the 5th month after the closing of the fiscal year to which the CbCR refers.

Local Jurisdiction Benchmarks

There is a tendency to prefer domestic comparables specially in those cases where the controlled transactions under evaluation would involve terms and conditions significantly connected with specific/exclusive characteristics of the domestic market. If necessary, Iberian or European comparables may be used.

The use of both internal and external comparables is accepted.

The criteria used by the taxpayer when preparing benchmarks together with the point of the range used as reference are often scrutinized by PTA in tax inspections.

Domestic legislation allows the use of an arm's length range and statistical measures for its determination. The use of the median as reference value in the context of potential adjustments resulting from a tax inspection is stated in the legislation.

When applying a TP method, and if the terms and conditions of the tested transaction are not fully comparable in any of the relevant aspects required for an arm's length test, comparability adjustments must be performed in order to eliminate the effect of the existing differences. The Portuguese TP legislation is generally in line with the OECD Guidelines regarding comparability adjustments.

The benchmarking searches may remain valid for three years (with a compulsory yearly update of the financials), provided that the facts and circumstances surrounding the transactions have not materially changed.

Another important note to point out is the independence threshold specified in the Portuguese legislation.

In addition, there is a preference for the weighted average three-year approach for benchmark analysis.

Finally, if the TP technical studies are prepared by a third-party expert, a Declaration of Responsibility regarding the methods, information and techniques must be issued.

Focus on Financial Transactions

Under Portuguese law, transactions between a taxpayer and any related entity must be contracted, accepted and carried out in terms and conditions substantially identical to those that would normally be agreed upon between independent entities in comparable transactions (arm's length). This framework covers intragroup financial operations – loans, guarantees, cash pooling, treasury, among other transactions – and imposes an analysis considering the substance of the transaction, availability of reliable information and degree of comparability. The Portuguese legal system also requires accurate delineation of controlled transactions, in line with the OECD TP Guidelines, meaning the PTA may look beyond the contractual form to identify the real economic substance of the arrangement. Where the terms and conditions of an intragroup financial transaction do not reflect the terms and conditions agreed by independent parties, the PTA may recharacterize the transaction and pursue the necessary adjustments.

Portuguese case law on transfer pricing for intragroup financial transactions reveals a trend of decisions favoring taxpayers, largely driven by queries on PTA's comparability analysis. The PTA's reliance on statistical data - such as average interest rates – published by the National Bank "Banco de Portugal" or the European Central Bank "ECB" as benchmarks under the CUP method arises as a recurring issue, which has been repeatedly challenged before arbitral and tax courts. Recent decisions have held that such statistical averages fail to meet the comparability requirements and therefore cannot be used as reliable arm's length benchmarks for certain operations in the same group, such as cash pooling, without the necessary adaptation of the specific characteristics of the transactions in question.

On other topic, case law has established that intragroup guarantees cannot be benchmarked against standalone bank guarantees, given the different risk allocation and the fact that such guarantees arise from corporate relationship itself.

Advance Pricing Agreement "APA"

Since 2008, Portugal implemented an APA programme that follows the principles set forth by the OECD Guidelines. Taxpayers may apply for a unilateral, bilateral or multilateral APA in Portuguese jurisdiction. The rules on the procedures related with the conclusion of APA are foreseen in Article 138 of CITC and Ministerial Order no. 267/2021, of 26th November which transposes some of the work developed by OECD, recommending and endorsing the use of the OECD Guidelines.

The procedure to request an APA comprises two phases:

- Pre-filing phase, which entails a preliminary evaluation of the initial taxpayer proposal and may involve joint meetings with PTA, and
- Proposal phase, which entails the submission, analysis and negotiation of the APA proposal, that in any case should be presented at least 6 months before the beginning of the applicable tax year.

As regards the time frame to finalize the critical second phase, the law provides that unilateral agreements should be concluded within a maximum of 180 days, whilst a 360-day period applies to bilateral/multilateral APAs.

An APA may not exceed a 4-year period and under certain conditions, rollback provisions are possible.



Upon the implementation of an APA, taxpayers are required to file an annual report on the execution of the agreement, in addition to the general obligation to comply with local TP documentation rules. Failure to comply with this requirement may render the APA invalid.

An APA is subject to a filing fee depending on the taxpayer´s average turnover (reduced by 50% for renewals and by 25% for SME taxpayers).

Transfer Pricing Audits

PTA may adjust prices set in controlled transactions whenever consider that such transactions do not comply with the arm's length principle. The burden of proof for those adjustments rests with PTA as long as the TP documentation requirements are sufficiently met. In Portugal, the statute of limitation on TP assessments is 4 years.

Recent practice and case law unveiled that financial transactions (including cash pooling mechanisms and intercompany guarantees), intangible assets transactions (with special relevance of the Hard To Value Intangibles "HTVI"), intra-group services, recurrent loss-making companies with significant cross-border intercompany transactions, contradictions between the disclosed TP information between the several TP sources and restructuring transactions are most frequent subjects of tax disputes. As referred, benchmarks' criteria are frequently challenged, as well as comparability features, functional analysis/profiles, TP methods selection and application, use of internal versus external comparables, among others.

In addition, recent tax disputes before arbitral courts challenged the PTA's systematic practice of adjusting the pricing practiced by taxpayers under controlled transactions directly to the median of the interquartile range, as under the OECD TP Guidelines and domestic law any result falling within the limits is generally presumed to comply with the arm's length principle. These disputes highlight the PTA's burden of proof when performing adjustments, which should rely on clear and sufficient reasoning over conclusory assertions that render the median as the only reliable benchmark.

The Burden of Proof in Transfer Pricing: Theory versus Practice

According to the Portuguese law (corroborated by case law), under a tax inspection on transfer pricing matters, the PTA has the possibility to perform transfer pricing adjustments if they consider that the arm's length principle was not accomplished by the Portuguese taxpayer, holding the burden of proof of such non-compliance. Nevertheless, the burden of proof shifts in case the taxpayer fails to prepare TP documentation when obliged to do so according to the Portuguese requirements (or if such documentation is not sufficient to demonstrate that the arm's length principle is being accomplished, e.g. if it is not prepared according to local specific requirements).

In this sense, and in practice, the taxpayer should demonstrate, in a first instance, that the transfer pricing practices adopted comply with the arm's length principle, by duly preparing strong and complete TP Documentation, in line with the local specific requirements (mandatory for certain taxpayers and highly recommended for taxpayers that, even though are not obliged, are part in material and/or risky controlled transactions, as this is the first mean of defense in case of inspection).

Burden of proof has been severally disputed in arbitration and judicial courts. Recent court decisions have clarified that the PTA bears the burden of proof of the assumptions that justify the transfer pricing adjustments performed, which are frequently considered insufficient, leading to the annulment of such adjustments by courts, which are arguing also that the court itself cannot assume the role of the PTA in determining the correct arm's length pricing. Several decisions corroborate the high importance of having a strong and robust TP documentation prepared as a way of defense against adjustments performed by PTA.

Transfer Pricing Penalties

Failure to prepare / submit TP documentation, IES, CbCR report or CbCR notification is subject to a penalty of EUR 500 to EUR 10,000, per fiscal year, per taxpayer, with an additional 5% of the penalty amount for each day of delay.

Failing to comply with the publishment of CbCR information is subject to a penalty of EUR 1,500 to EUR 30,000, applicable to fiscal years starting on or after 22nd June 2024.

Any inaccuracies in the information provided in the documents referred to above will be subject to a penalty of EUR 375 to EUR 22,500, per fiscal year, per taxpayer.

If the taxpayer has stated in the IES that the transfer pricing documentation has been prepared but refuses to submit it upon request of PTA, the applicable penalty can reach EUR 150,000, per fiscal year, per taxpayer.

Local Hot Topics and Recent Updates

Ministerial Order no. 268/2021 introduced significant amendments to Portuguese TP regulations by revising the previously applicable Ministerial Order no. 1446-C/2001, which

had been in effect for 20 years. These provisions aimed to align Portuguese TP regulations with the OECD Guidelines, for example, encompassing the full adoption of the three- tiered OECD documentation approach.

On 23rd August of 2023, Decree-Law no. 73/2023 transposed into Portuguese jurisdiction the public CbCR requirements as outlined in Directive (EU) 2021/2101 of the European Parliament and of the Council from November 2021. This law, applicable to fiscal years starting on or after 22nd June 2024, introduced fresh provisions concerning the public



disclosure of corporate tax information for multinational companies operating in Portugal. In compliance with some specific requirements, CbCR must be made accessible on the parent company's website (or the website of the subsidiary or branch, if the parent company is not based in the EU) in both an official language and one of the official languages of the EU.

Recently, the PTA decided, in the context of a Binding Information Request / Pedido de Informação Vinculativa "PIV" an instrument correspondent to a ruling, that this is not the appropriate way for determining the transfer pricing method or the arm's length pricing between related parties under an intragroup service agreement. Instead, PTA considered that entering into an APA would be the suitable mechanism.

Finally, on 18th October of 2024, Law no. 41/2024, transposed into the Portuguese jurisdiction the Council Directive (EU) 2022/2523 of 15 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups whose annual consolidated revenue is equal to or greater than 750 million euros "Pillar Two Directive".

This new framework "Regime do Imposto Mínimo Global" or "RIMG", follows the model rules developed by the OECD/G20 Inclusive Framework, although it imposed a new top-up tax on low-taxed Portuguese entities, ("Qualified Domestic Minimum Top-up Tax" or, in Portuguese, "Imposto complementar nacional qualificado português") with some particular specifications.

Finally, Law no. 41/2024 of 8 November implemented in Portugal the rules arising from Council Directive ("EU") 2022/2523 of 15 December 2022, introducing the Global Minimum Tax Regime (Regime do Imposto Mínimo Global "RIMG"). This regime is aligned with the OECD/G20 Inclusive Framework's Pillar Two Model Rules and applies to multinational enterprise groups and large-scale domestic groups with annual consolidated revenue of at least EUR 750 million.

The Portuguese framework provides for the application of a Qualified Domestic Minimum Top-up Tax "QDMTT", as well as the Income Inclusion Rule "IIR" and the Undertaxed Profits Rule "UTPR", where applicable. In addition, in-scope groups should assess and comply with the reporting and filing obligations established under the RIMG, including the submission of the relevant returns, notifications and information filings within the applicable deadlines.

Case law

The number of cases related to transfer pricing has surged, both in judicial and in arbitration, with rather interesting rulings. For instance, a trend has emerged in terms of TP case law according to which the burden of proof has become a critical factor, with taxpayers possessing well-structured and technically sound documentation having a higher probability of success in legal disputes, whereas those without such documentation face lower odds.

The arbitral court has been issuing decisions regarding the legal strength of the OECD Guidelines in the Portuguese jurisdiction in TP adjustments.

The sale of capital shares between related entities is also a subject that is being more challenged recently.

Additionally, on 13 May 2026, the Court of Justice of the European Union "CJEU" issued a landmark ruling in Case C-603/24, which involves a Portuguese entity, which addresses the interaction between Value Added Tax "VAT" law and TP adjustments between related companies. The key question was whether an adjustment within a Multinational Enterprise "MNE" – made to align intercompany pricing with the arm's length principle – gives rise to consideration for a separate supply of services for VAT purposes. In this decision, the CJEU held that such adjustments do not automatically constitute remuneration for a separate supply of services, clarifying an area of uncertainty in transfer pricing. Therefore, a TP adjustment does not automatically establish the existence of a taxable transaction under the EU VAT Directive, unless there is an identifiable and direct link between a payment and a specific supply of goods and services.

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Documentation threshold

Master file	Annual revenues equal to or higher than EUR 10 million
Local file	Annual revenues equal to or higher than EUR 10 million
CbCR	Consolidated revenues equal to or higher than EUR 750 million

Submission deadline

Master file	Should be available, within 15th day of the 7th month after the fiscal year end. For large Taxpayers, its submission to PTA on that deadline is compulsory.
Local file	Should be available within 15th day of the 7th month after the fiscal year end. For Large Taxpayers, its submission to PTA on that deadline is compulsory.
CbCR	Submission within 12 months after the fiscal year end.

Penalty Provisions

Documentation – late filing provision	Failure to prepare / submit TP documentation, IES, CbCR report or CbCR notification is subject to a penalty of EUR 500 to EUR 10,000, per fiscal year, per taxpayer, with an additional 5% of the penalty amount for each day of delay. Failing to comply with the publishment of CbCR information is subject to a penalty of EUR 1,500 to EUR 30,000, applicable to fiscal years starting on or after 22nd June 2024. Any inaccuracies in the information provided in the documents referred to above will be subject to a penalty of EUR 375 to EUR 22,500, per fiscal year, per taxpayer. If the taxpayer has stated in the IES that the transfer pricing documentation has been prepared but refuses to submit it upon request of PTA, the applicable penalty can reach EUR 150,000, per fiscal year, per taxpayer.
Tax return disclosure – late / incomplete / no filing	
CbCR – late / incomplete / no filing / no publishment	



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ROMANIA

Overview

Taxhouse, Taxand Romania

Taxhouse is a tax advisory firm based in Romania, and is the local member of Taxand Global, offering a comprehensive and integrated range of tax consultancy and related compliance services in domestic corporate and international direct tax, indirect tax, transfer pricing, tax representation, tax litigation, etc.

Our transfer pricing services include, but not limited to:

- Design and preparation of transfer pricing policies at group or company level;
- Preparation of transfer pricing files (master file, country file);
- Country by Country reports and notifications, public Country by Country reporting;
- Review of existing transfer pricing and documentation or guidance in preparing the required files;
- Preparation of the benchmarking studies for local purposes and Group purposes;
- Drafting and negotiation of Advance Pricing Agreements (APA); and
- Dispute resolution services: representation and assistance during fiscal audits, assistance during the administrative appeal stage and judicial expertise services,
- MAP procedures.
- Review of the supply chain and business and advise on transfer pricing matters, in direct correlation with the indirect tax consequences;

General: Transfer Pricing Framework

The Romanian transfer pricing legislation follows the OECD Transfer Pricing Guidelines ("OECD TPG") and requires that transactions between related parties be carried out at arm's length. The rules apply to both domestic and non-domestic transactions. The obligation to comply with the arm's length principle and the general documentation requirements are provided by the Romanian Fiscal Code and Order no. 442/2016 issued by the President of the National Agency for Tax Administration ("Order 442/2016").

Order 442/2016 establishes: (i) thresholds for each category of taxpayer for the value of intra-group transactions above which taxpayers may be required to prepare transfer pricing documentation demonstrating that the intra-group transactions have been carried out at market value, and (ii) the rules on the content of the transfer pricing documentation file, as well as the procedure for adjusting/estimating transfer prices.

If the intra-group transactions are not set at arm's length, the Romanian tax authorities ("RTA") have the right to adjust the taxpayer's income and expenses to reflect the market conditions. Such adjustments could lead to additional corporate income tax liabilities and related late payment interest and penalties.

Accepted Transfer Pricing Methodologies

The Romanian TP legislation follows the OECD TPG in applying the arm's length principle and contains specific regulations regarding the transfer pricing methods provided by OECD TPG (i.e., comparable uncontrolled price method, resale price method, cost plus method, profit split method, transactional net margin method). Also, there is a direct provision related to "any other method" provided by OECD TPG.

There is no hierarchy in choosing one specific method, as the generally accepted standard is to choose the most appropriate method, as described in the OECD TPG. The taxpayer, however, must be able to substantiate why the chosen method is appropriate in light of the relevant facts and circumstances.

In practice, the CUP method is the preferred method by the RTA. However, as comparable uncontrolled transactions are usually difficult to find, TNMM method is the most popular transfer pricing method.

Transfer Pricing Documentation Requirements

The Romanian TP legislation follows the OECD TPG and provides specific regulations on the content of the TP file, which is comprised of: (i) a group section (containing information regarding the group as a whole) and (ii) a taxpayer section (containing information regarding the taxpayer and each related party transaction).

Reporting requirements

- Large taxpayers, identified as such by the Romanian tax authorities, based on specified criteria, are obliged to have their TP documentation ready by the time of submission of the annual corporate income tax return. This date is currently the 25th of June of the year following the reporting one. For the large taxpayers, the transfer pricing file must be submitted electronically through Virtual Private Space (SPV) within **30 working days** from the statutory deadline established for filing the annual corporate income tax return (i.e., 25 June) for each financial calendar year. The TP file should be submitted with the signature of the administrator or empowered representative. Compliance requirements exist should their intra-group transactions exceed certain annual thresholds **for each related party**: EUR 100,000 for intra-group services, EUR 200,000 for interest related to financial transactions, EUR 250,000 for intangible assets, including royalties and , EUR 350,000 for transactions with tangible. assets and. For large taxpayers that do not



electronically submit the transfer pricing file through the Virtual Private Space (SPV) within 30 working days of the corporate income tax return filing date, the deadline for providing the file upon request is limited to **a maximum of 5 working days** from the date the request is received. As an exception, taxpayers that do not meet the above mentioned value threshold may be requested by the central tax authority, during a tax audit, to prepare and submit a transfer pricing file covering certain transactions and specific fiscal periods where the tax risk assessments conducted by the authority warrants such a request. In these circumstances, the taxpayer shall prepare and provide the transfer pricing file in compliance with the requirements and within the timeframe stipulated in the formal request issued by the central tax authority. In this case, the taxpayer is required to prepare and submit the TP file under the conditions and within the deadline established by the central tax authority through the request issued for this purpose, but not less than 30 working days from the date the request is communicated. This deadline may be extended only once, upon a duly justified request from the taxpayer, by no more than 30 working days.

- The appendices to the TP file that are available in electronic format (i.e., Word, PDF, and Excel) shall be submitted to the central tax authority in an editable format.
- The TP file shall not be requested or prepared for transactions and periods for which an adjustment or estimation decision regarding the income or expenses of one of the Romanian related parties has been issued, provided that such decision has been implemented by the related parties concerned.
- The new legislation defines the term "incomplete TP file".

Medium or small taxpayers are obliged to prepare the TP documentation if they carry out transactions with each related party exceeding the following annual thresholds: EUR 100,000 for interest related to financial transactions, EUR 50,000 for intra-group services, EUR 200,000 for transactions with tangible assets and EUR 150,000 for transactions with intangible assets, including royalties. Unlike the rule applicable to large taxpayers subject to annual documentation, the RTA have the right to request the TP file only during a tax inspection and to grant the taxpayer 30 to 60 calendar days to prepare and submit the file. This term may be extended upon request of the taxpayer and the approval of the tax authorities with another 30 calendar days.

The CbCR requirements apply to MNE groups having consolidated income reported in the last fiscal year prior to the reporting period equal to or exceeding EUR 750 million. An entity with tax residence in Romania is required to file a

CbCR with respect to its reporting fiscal year if the entity is: (i) the ultimate parent entity of the MNE group, (ii) the surrogate parent entity, being appointed by the MNE group as a sole substitute for the ultimate parent entity or (iii) a constituent entity of the MNE group, having the obligation under certain conditions of filing the CbCR in Romania on behalf of such MNE group (e.g., the CbCR for the MNE group is submitted in a non-EU jurisdiction). The filing term of the CbCR is within 12 months since the last day of the reporting fiscal year of the MNE Group.

Romania is a signatory to the multilateral agreement on the exchange of CbCR, but it has non-reciprocal jurisdictions status. As such, Romania sends CbCR to its exchange partners but does not receive such reports from non-EU exchange partners. In practice, Romania receives CbCR only from EU Member States. Therefore, a CbCR must be filed in Romania.

The Romanian resident entity that does not fulfill the criteria mentioned above (i.e. not being the final parent entity or the surrogate parent entity or the designated constituent entity), but is part of a MNE Group that has consolidated group revenue over EUR 750 million during the fiscal year

preceding the reporting fiscal year, has the obligation to notify the relevant Romanian authorities with regard to the identity and residence of the reporting entity until the last day of the reporting fiscal year of the MNE Group at the latest, but not later than the submission deadline of the tax statement of the respective constituent entity for the previous year.

In September 2022, Romania became the first EU member state to adopt legislation transposing the Directive 2021/2101/EU on **public Country-by-Country reporting** ("EU Public CbCR Directive") and to choose to implement the reporting early, as the rules entered into force on 1 January 2023. The provisions of EU Public CbCR Directive have been implemented by Order no. 2048/2022 issued by the Ministry of Public Finance. Also, recent amendments have been introduced by Order 1730/2023 which provides further clarifications to the existing rules which are applicable as from 1 January 2023.

The first publication will take place within 12 months from the date of the balance sheet of the first financial year and will need to be made available for five years. The first publication will take place no later than 31 December 2024, for a financial year that ends on 31 December 2023.

The reporting obligations are applicable to: (i) Romanian ultimate parent entities of MNE Groups with a total global consolidated revenue exceeding EUR 750 million for each of the last two consecutive financial years, (ii) medium and large Romanian subsidiaries that are controlled by an ultimate parent company that is not governed by an EU Member State law, (iii) branches set up in Romania by entities that are not governed by the law of an EU member state and whose ultimate parent entity is also not subject to the law of an EU Member State.

This applies to Romanian MNE groups and to the groups headquartered outside the EU or EEA with consolidated turnover exceeding RON 3.7 billion (approx. EUR 750 mil.) in each of the two preceding consecutive financial years, based on consolidated financial statements. The entities covered by this reporting requirement include Romanian parent

companies, standalone entities, medium and large subsidiaries controlled by a non-EU or non-EEA parent company, and branches of non-EU entities.

No specific non-compliance penalties have been introduced to date in the Romanian legislation. The obligation is embedded in the accountancy law. Penalties are therefore expected to follow the general regime applicable under accounting law.

Local Jurisdiction Benchmarks

The generally accepted standard in Romania is to choose the most appropriate method, in line with the OECD TPG. In practice, the CUP method is the preferred method by the RTA. However, as comparable uncontrolled transactions are usually difficult to find, TNMM method is the most popular transfer pricing method.

The Romanian transfer pricing legislation provides the following specific rules in respect of benchmarking studie, depending on the jurisdiction of tested party:

- Territorial search requirements: the search has to be carried out first on the jurisdiction of the tested party and if no/insufficient comparable companies are found, the search is to be extended geographic region (i.e., the European Union, including the United Kingdom, the Europe, Middle East and Africa region (EMEA), Asia Pacific (APAC) region or North-America, Central and South America (Americas) region) and thereafter at the international level.
- Independence requirements:
  - Only companies where shareholders – legal entities have a stake of less than 25% are accepted;
  - Companies where (i) the individual shareholder which owns more than 25% in that company is also known to have, as per the information included in public databases, shareholdings and/or management positions in other companies and (ii) any person that (presumably) has control (given its position) in that company is also known to have, as per the information included in the databases, management positions/ shareholdings in other companies as well, are rejected. A person is considered to effectively control a legal entity if, based on both factual and legal evidence, it is established that the director or executive management has decision-making power over the legal entity's activity, including by entering into transactions with other legal entities controlled by the same director or management personnel, or if the management person within the legal entity is also a shareholder or director of the entity in question. To substantiate effective control, the following may be taken into account: contracts concluded between the entities concerned, as well as rights granted under the entities' constitutive documents, powers of attorney, employment contracts, or service agreements.
  - The TP file should include a list of transactions carried out with each related party, along with the corresponding value of each transaction. This list should clearly distinguish between categories of transactions, such as revenue-generating and expense-generating transactions based on the nature of the activities subject to documentation. The list should include the following elements: fiscal year, name of related party, jurisdiction, type of transaction, short description, annual value (without adjustments), TP adjustments, final documented value, reference to the section in the transfer pricing file.
  - Moreover, another mandatory element in the TP file is the rationale for selecting the tested party. When the tested party is not the taxpayer who is the subject of the preparation of the TP file, the obligation to present the supporting documentation regarding the computation of the profitability indicator is introduced, being able to present in this regard a report prepared by an authorized independent auditor certifying the reality.
  - Furthermore, the TP File must include an affidavit from the Company's representative regarding the reality and correctness of the information included in the TP File.

Focus on Financial Transactions

Financial transactions constitute one of the most contentious and technically complex areas of transfer pricing in Romania. Historically, intercompany financing received limited attention from ANAF compared to services and goods, but that position has changed fundamentally. In the last few years, financing transactions such as intragroup loans, deposits, cash pooling, guarantees, and NPL (non-performing loan) portfolios are systematically flagged in NAFA's risk evaluation system and are subject to deep technical challenge during audits, including assessments of borrower creditworthiness, debt capacity, and transaction reclassification risks that carry consequences for both corporate income tax and withholding tax.

During the last ten years, the banking sector has attracted some of the largest transfer pricing adjustments ever assessed in Romania.

Transaction reclassification is a distinct and growing area of dispute. The Romanian tax authorities ("RTA") have in practice reclassified two categories of transactions with particular frequency. First, sales of non-performing loan (NPL) portfolios between related entities have been reclassified as financing transactions rather than asset sales, on the basis that the economic substance of the arrangement, transferring credit risk at a distressed price between related parties, more closely resembles a subordinated loan or a capital injection than an arm's length disposal. This reclassification has significant CIT and WHT consequences for both entities.

Second, intercompany deposits placed by Romanian subsidiaries with affiliated group treasury entities have been reclassified as intragroup loans, particularly where the deposits are rolled over indefinitely or the terms diverge materially from standard commercial deposit arrangements. Under the reclassified treatment, the RTA apply interest rate benchmarks applicable to long-term senior unsecured loans rather than short-term deposit rates, producing higher imputed interest income for the depositing entity.

On the question of the arm's length interest rate itself, the RTA have consistently refused to accept a range outcome and insists on adjusting to the median of the comparability interquartile range, regardless of whether the taxpayer's rate already falls within the interquartile range (i.e., minim-maxim). This approach mirrors the general RTA's posture across all transfer pricing adjustments and has been the subject of significant litigation in the Romanian courts.

In the analysis of senior versus subordinated debt, the RTA apply the standard two-notch downgrade rule: the standalone entity credit rating is assessed first (using the issuer's actual rating or an implied rating from Moody's, S&P, or equivalent), and the rating for a subordinated instrument is then set two notches below that standalone rating. The RTA further assess whether the loan falls within the investment-grade band (BBB- and above) or the sub investment grade band and adjusts its benchmark rate accordingly. Where a Romanian borrower's standalone rating is sub investment grade, the RTA have applied comparables from higher-risk geographies that lack economic comparability with Romania, including, on occasion, Turkish lira denominated instruments, which are plainly not comparable to EUR or RON denominated Romanian market transactions.

The databases used by practitioners and, to varying degrees, by the RTA's inspectors for loan benchmarking are Bloomberg, Reuters / Refinitiv (including LoanConnector, a Thomson Reuters product with over 220,000 entries on loans and securities transactions), Moody's Analytics, and TP Catalyst. In practice, the RTA are reluctant to accept bond yields as comparables for intragroup loans, preferring actual loan transactions from the LoanConnector or Bloomberg databases. The rationale offered is that bonds carry different liquidity, covenant, and investor-base characteristics compared to bilateral loans, making them less comparable without adjustment.

In the area of cross-currency interest rate swaps (CCIRS), the Romanian tax inspectors have in practice demonstrated limited technical familiarity with these instruments. Taxpayers who use CCIRS to hedge the currency risk on intragroup loans converting (i.e., a EUR denominated parent loan into RON cash flows for the Romanian subsidiary) have encountered situations where the RTA either rejected the swap-adjusted effective interest rate altogether, substituting its own RON denominated benchmark without accounting for the hedging structure, or introduced comparables from unrelated currency markets that do not reflect the economic substance of the CCIRS. This approach is technically incorrect, according to OECD Chapter X, the arm's length price of a CCIRS must take into account the specific currency pair, the notional structure, and the tenor, and the pricing must be benchmarked against quoted mid-market rates for comparable swap structures rather than simple deposit or loan benchmarks.

The use of credit default swap (CDS) spreads as a proxy for the credit risk premium in intragroup loan pricing is technically recognized under OECD Chapter X, as a potential approach where no reliable CUP loan transactions exist. However, the OECD itself cautions that CDS instruments are subject to a high degree of market volatility, which may undermine their reliability as point in time comparables for a multiyear intragroup arrangement. In the Romanian practice, the RTA have been consistently reluctant to accept CDS based benchmarks presented by taxpayers, typically on the grounds that the CDS market for Romanian borrowers is thin, that the spread reflects sovereign or systemic risk factors not directly relevant to a specific intragroup credit risk, and that the volatility of observed CDS spreads during the audited period introduces an unacceptable degree of uncertainty into the arm's length determination.

Cash pooling arrangements present a further set of recurring challenges. The RTA do not accept that the principal company operating a notional or zero balance cash pool can be located outside Romania and act as the relevant counterparty for Romanian pool participants. In practice, inspectors have conisdered that a Romanian participant placing funds in a cash pool operated by a foreign group treasury entity should be treated as if it had short term loan with an affiliated party, and the remuneration is benchmarked accordingly against short-term loan interest rates. Furthermore, where a Romanian entity is a consistent net provider of liquidity to the pool (i.e., always in a credit position), the RTA have increasingly challenged the entire arrangement as a disguised long term intragroup loan, triggering the same reclassification risk described above for rolling deposits.

Given the absence of any min-max approach historically accepted by the RTA, in contrast to the interquartile range methodology applied in goods and services transactions, all financial transaction adjustments have invariably been set at the median of the interquartile range, maximizing the tax exposure for the audited taxpayer.

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

Taxpayers engaged in transactions with related parties have the possibility to apply for an APA. The Romanian legislation regulating the APAs is Law no. 207/2015 regarding the Fiscal Procedural Code and the Order of the President of the Romanian Tax Administration no. 827/2026 regarding the approval for issuing or amending an APA, as well as the content of the application for issuing or amending an APA.

Unilateral, bilateral and multilateral APAs can be issued as per the Romanian law. APAs are issued for a period of up to five years, with possibility of extension in case of long-term contracts. The terms for issuing APAs are 12 months for unilateral APAs and 18 months for bilateral and multilateral.

In July 2025, the possibility of APA roll-back was introduced in Romania. A taxpayer may request the retroactive application of an APA for up to five closed fiscal years preceding the year in which the application was filed, provided that the transactions were carried out under similar conditions during those prior periods. The roll-back APA is subject to ANAF approval, and the new rules also apply to APA applications pending on the date of entry into force. Where a tax audit covering the relevant taxes and periods is ongoing, the audit

The fees charged by the RTA for the APA procedure are as follows:

- 20.000 Euro for issuing an APA and 15.000 Euro for modifying it, in case of large taxpayers.
- 10.000 Euro for issuing an APA and 6.000 Euro for modifying it, in case of small and medium size taxpayers.

Also, if the consolidated value of transactions covered in APA exceeds the equivalent of 4.000.000 Euro or if the taxpayer is classified as "large taxpayer" within the period of validity covered in APA, the issuing fee becomes 20.000 Euro.

We note that in practice, the RTA have issued a very limited number of APAs and the process is very time consuming and bureaucratic on account of the limited resources involved by the RTA in this process. The new legislation is intended to align the procedure for the issuance of the Advance Price Agreement with the transfer pricing documentation procedure amended by OPANF no. 828/2026 regarding the threshold of transactions, the deadlines for preparation, the content and conditions for requesting the transfer pricing file and the transfer pricing adjustment/estimation procedure.

In addition to sending the physical submission by mail, the use of the Virtual Private Space for the electronic submission of applications, supporting documentation, additional information, and annual reports is also introduced, thereby contributing to administrative simplification.

Transfer Pricing Audits

- The RTA are performing risk assessments for transfer pricing purposes of various taxpayers and industries. The RTA are preparing list of potential companies which are subject to transfer pricing audits. The following financial or tax aspects could trigger a transfer pricing audit:
- tax accounting or operating losses/small profit margins/ significant fluctuations in profitability;
- significant share of intra-group transactions in total transactions;
- transactions with entities located in jurisdiction with low taxation;
- expiration of the prescription tax period;
- VAT refund claims made by taxpayers;
- business restructuring;
- voluntary transfer pricing adjustments recorded by the taxpayer;
- CbC Reports;
- significant management consultancy or intra-group services received from above;
- non correlation of the amounts declared in various tax returns
- late payment of the corporate income tax or other taxes;
- late submission or not submission of the tax returns;

In case of transfer pricing adjustments, there are the following alternatives for avoidance of double taxation:

1) Tax appeal and Court litigation when a Romanian judge is going to issue a final decision in respect of the approach of the RTA during a transfer pricing audit;
2) MAP - As an alternative to local court litigation, the MAP can be applied to adjustments done on transactions performed with non-resident and resident affiliated parties.

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Burden of Proof in Transfer Pricing: Theory versus Practice

According to the Romanian legislation, the supporting documents and accounting records of the taxpayer serve as evidence in determining the taxable base. If there are other supporting documents, these shall also be considered when establishing the taxable base. The taxpayer has the burden of proving the acts and facts that form the basis of their declarations and any requests submitted to the tax authority.

However, in practice RTA are making an aggressive approach and they are preparing their own benchmarking studies and trying to find all kind of ways to deny or to reject benchmarking studies prepared by the taxpayer. In Romania, OECD action 14 BEPS is fully implemented, meaning that you have Masterfile documentation, local file documentation and CbC reporting (CbCR) and even more, the public CbC reporting (Public CbCR). Transfer pricing aspect and issues together with other taxes, such as VAT, customs, deductibility of the services received from the Group are now elevated from the Romanian Litigation Courts through an European Court of Justice.

Transfer Pricing Penalties

Non-presentation / incomplete presentation / non-submission of the local TP file within the deadline provided by the law is sanctioned with a fine ranging between RON1 12,000 (approx. EUR 2,400) and RON 14,000 (approx. EUR 2,800) for large and medium size taxpayers, respectively between RON 2,000 (approx. EUR 400) and RON 3,500 (approx. EUR 700) for small size taxpayers. Separately, adjustment of tax base plus late payment interest and penalties may be applicable.

Interest and penalties related to additional corporate income tax caused by transfer pricing adjustments done by the RTA:

- late payment interest (i.e. 0.02%/ day late);
- late payment penalties (i.e. 0.01%/ day late);
- non-declaration penalties (i.e. 0.08%/ day late).

The penalties presented above are significant for a long audited period. The penalties are related to the transactions performed with non-resident related parties or Romanian related parties. If the additional corporate income tax assessed from transfer pricing adjustments is paid, the non-declaration penalty decreases with 75%.

For failing to file a CbC report, the penalty applied might be up to RON 100,000 (approx.EUR 20,000). For failing to file the CbC notification, the penalty ranges from RON 500 (approx. EUR 100) to RON 1,000 (approx.EUR 200) for small size taxpayers, while the penalty ranges from RON 1,000 (approx. EUR 200) to RON 5,000 (approx. EUR 1,000) for medium size and large taxpayers. There is no clear information from the Romanian authorities which is the penalty for not respecting the legal requirements for public CbCR but our opinion is that the penalty is approximately EUR 1,000 according to the accounting law.

Local Hot Topics and Recent Updates

Mutual Agreement Procedure (MAP)- there is the legal possibility to apply the MAP procedure for avoidance of double taxation for transfer pricing adjustments done by the RTA. As an alternative to local court litigation, the MAP cand be applied to adjustments done on transactions performed with non-resident and resident affiliated parties. The MAP procedure should be very easy to be applied for adjustments derived from transaction with EU related parties because Romania implemented the Directive 2017/1852.

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Documentation threshold

Master file	N/A
Local file	Annual thresholds for large taxpayers: EUR 100,000 for transactions that generate income or expenses from the provision or acquisition of services, EUR 200,000 for financing transactions generating interest income or expenses, EUR 250,000 for transactions that generate income or expenses from the sale or acquisition of intangible assets, and EUR 350,000 for transactions that generate income or expenses from the sale or acquisition of tangible assets. Annual thresholds for other taxpayers: EUR 50,000 for transactions that generate income or expenses from the provision or acquisition of services, EUR 100,000 for financing transactions generating interest income or expenses, EUR 150,000 for transactions that generate income or expenses from the sale or acquisition of intangible assets, and EUR 200,000 for transactions that generate income or expenses from the sale or acquisition of tangible assets.
CbCR	EUR 750 million Group consolidated annual turnover

Submission deadline

Master file	Large taxpayers who exceed the above materiality thresholds have the obligation to submit the transfer pricing file annually in electronic format, through the Virtual Private Space (VPS), within 30 working days from the legal deadline for submitting the corporate income tax return (estimated to be the beginning of August), while medium and small taxpayers prepare the file only at the request of the tax authority, during tax audit. In case of non-submission on the legal deadline for large taxpayers, in the case of a tax audit, the deadline for submission is 5 working days. Other taxpayers (including large taxpayers whose intra-group transactions do not meet the above thresholds): the RTA have the right to request the TP file only during a tax inspection and to grant the taxpayer 30 to 60 calendar days to prepare and submit the file. The term may be extended with another 30 calendar days depending on the decision of the RTA.
Local file	As Master file above
CbCR	12 months since the last day of the reporting fiscal year of the MNE Group

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Penalty Provisions

Documentation – late filing provision / non-submission	RON 12,000 (approx. 2,400 EUR) and RON 14,000 (approx. 2,800 EUR) for large and medium size taxpayers, respectively between RON 2,000 (approx. 400 EUR) and RON 3,500 (approx. 700 EUR) for small size taxpayers
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	For failing to file a CbC report, the penalty ranges from RON 70,000 (approx. 14,000 EUR) to RON 100,000 (approx. 20,000 EUR). For late filing of a CbC report or for incomplete/incorrect data in a CbC report, the penalty ranges from RON 30,000 (approx. 6,000 EUR) to RON 50,000 (approx. 10,000 EUR).



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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 practise 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.

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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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SLOVAKIA

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Overview

BMB Partners, Taxand Slovakia

Established in 1996, BMB Partners has been a high-end provider of tax advisory services in Slovakia for three decades. BMB Partners is an independent tax boutique offering a comprehensive and integrated range of tax consultancy and compliance services.

The BMB Partners team provides a wide range of transfer pricing services for multinational clients, in particular:

- Transfer pricing consultations and advisory
- Preparation and/or updates of transfer pricing documentation in Slovak, German and/or English languages (global and/or local file)
- Preparation of benchmark studies for various industry and service sectors
- Assistance in filing APA and BAPA applications, representation of clients during pre-filing meetings and investigation of tax authorities
- Assistance and representation of clients during transfer pricing audits
- Assistance in MAPs

General: Transfer Pricing Framework

Transfer pricing regulations are an integral part of the Slovak Income Tax Act (Act No. 595/2003 Coll.). The arm's length principle is applicable and is defined directly in the Income Tax Act (Section 18). The law defines also a material-controlled transaction – transaction the value of which (revenue or expense) exceeds EUR 10,000. In the case of loans between related parties, the transaction is considered to be material if the principal amount exceeds EUR 50,000.

The OECD Guidelines have been officially translated into Slovak and published. The Slovak Income Tax Act (Section 18) contains a direct reference to OECD Guidelines and their methodology. Thus, OECD Guidelines are widely applied and generally accepted as an interpretation tool by both taxpayers and tax administration.

The currently applicable rules and criteria concerning the duty to prepare transfer pricing documentation are set out in the Guidance of the Ministry of Finance of the Slovak Republic No. MF/012879/2025-724 on the contents of the documentation under section 17(7) and section 18(1) of the Act No. 595/2003 Coll. on Income Tax, as amended (hereafter "SK TPD Guidance"). Whether a particular entity is obliged to keep transfer pricing documentation and in what scope (full-scope, basic and simplified) depends on a number of criteria. These include turnover, value of particular controlled transactions, whether an APA application has been filed, whether losses are generated etc.

Accepted Transfer Pricing Methodologies

The OECD principles are applicable and the OECD methods have been taken over and incorporated into Slovak Income Tax Act. Traditional transaction methods (Comparable uncontrolled price method, Resale price method, Cost plus method) as well as Transactional profit methods (Transactional net margin method, Transactional profit split method) and their combinations are allowed. There is no hierarchy of methods, but the method which is most suitable in the given circumstances has to be applied and argumentation has to be provided why the particular method has been selected.

Transfer Pricing Documentation Requirements

The Master File & Local File obligation exists. However, as Slovakia is mainly a capital importing country, the most typical scenario is that headquarters are located abroad and subsidiaries in Slovakia. Accordingly, Slovak companies mostly need to prepare a Local File, as the Master File is generally provided by the parent company.

In Slovakia, the criteria specifying when companies are obliged to keep transfer pricing documentation and in which scope are very complex. Please see the specification below:

- Full-scope documentation is obligatory for:
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions, and preparing the individual financial statements under International Financial Reporting Standards;
  - taxpayers conducting a cross-border controlled transaction or a group of cross-border controlled transactions, if the value of such a controlled transaction or a group of controlled transactions for the relevant tax period exceeds EUR 10 million;
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions with a related party resident in a non-contractual state;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are covered by an APA application;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are subject to a tax base adjustment request, except for the adjustment of the income tax base related to inland controlled transactions;
  - taxpayers conducting a controlled transaction or a group of controlled transactions which are subject to MAP application for the tax period; and



- taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions and applying a tax relief in the relevant tax period.

- Basic documentation is obligatory for:
  - taxpayers conducting a cross-border material-controlled transaction or a group of cross-border controlled transactions, if the total revenues from operating and financing activities of the taxpayer for the relevant tax period exceed EUR 8 million;
  - taxpayers conducting a cross-border controlled transaction or a group of cross-border transactions, if the value of such a controlled transaction or a group of controlled transactions for the relevant tax period exceeds EUR 1 million;
  - taxpayers conducting an inland material-controlled transaction or a group of material-controlled transactions, and applying a tax relief in the relevant period; and
  - taxpayers conducting a controlled transaction or a group of controlled transactions with a related party residing in a non-contractual state.

- Taxpayers engaged in controlled transactions who are not required to prepare full-scope or basic transfer pricing documentation may meet their documentation obligation by duly completing the relevant section of their corporate income tax return. The information disclosed in the tax return serves as a substitute for simplified transfer pricing documentation and is deemed sufficient to meet the applicable documentation requirements. If the taxpayer does not provide the information in the tax return, they shall include it in the simplified documentation.

  Taxpayers do not have to prepare documentation in relation to transactions which do not have an impact on the tax base of the taxpayer.

  Entities obliged to keep full-scope and basic documentation have the duty to prepare both Master file and Local File.

  The documentation is not automatically filed with tax authorities. The taxpayer keeps the documentation and submits it only upon request of the tax administrator. The taxpayer has to submit the documentation within a 15-day-deadline after the submission request is delivered. The tax administrator may request the submission of the documentation either during a tax audit or, without opening a tax audit, by sending a request to the taxpayer to submit the documentation. The law expects the documentation to be prepared after the conclusion of the fiscal year so that it is ready if requested by tax administrator. It cannot be reasonably expected to prepare it within the 15-day-deadline after receiving the submission request.

The documentation may be submitted to the tax administrator also in a language other than Slovak. However, if requested by the tax administrator, the taxpayer is obliged to provide a translation into Slovak within a 15-day-deadline.

Local Jurisdiction Benchmarks

Benchmarks are a useful and efficient tool to prove that the transfer prices used by the taxpayer are in line with the arm's length principle. According to the SK TPD Guidance, a benchmark (a comparability analysis) is an essential part of the full-scope documentation. Entities not obliged to keep full-scope documentation are not required to submit a benchmark.

However, it is advisable to prepare a benchmark anyway, as it is useful for the taxpayer to define its tax position. If the taxpayer submits a benchmark, the burden of proof is shifted to the tax administrator, and if the tax administrator does not agree with the benchmark, it has to prove the benchmark is not correct. Benchmarks submitted by taxpayers to the tax authorities are closely reviewed and it is not uncommon that the tax administrator prepares its own benchmark (even if a benchmark is submitted by the taxpayer), and if the results deviate from the figures presented by the taxpayer as market values, it is up to the taxpayer to defend its position. The tax administrator may still accept the figures presented by the taxpayer if the taxpayer provides valid argumentation. At this point, valid negotiation and argumentation is extremely important. If the taxpayer fails to defend its position, the tax administrator calculates the difference in tax (tax adjustment) and the taxpayer has to pay the outstanding amount plus sanctions.

Benchmarks are mostly based on regional comparison, as Slovakia is a small country and there might not be enough comparable entities within the country for an exclusively local comparison. When selecting the comparable region, it is advisable to select countries similar in both geography and economic position to Slovakia (e.g., EU, Europe, Central and Eastern Europe), so that the results are truly comparable. Otherwise, it might prove very difficult to defend the results.

Internal CUPs are very difficult to find, but not impossible. As a direct method, internal CUP is even preferred by the tax administrator. If internal CUP method is applied by a taxpayer, the tax administrator closely inspects whether the conditions are truly comparable.

Focus on Financial Transactions

So far, Slovakia has not issued any special guidance or regulation focused on transfer pricing of financial transactions. The only specific mention of financial transactions can be found in Section 17 of the Slovak Income Tax Act, specifying that the term "material controlled transaction" covers also loans between related parties with principal amount exceeding EUR 50,000.



Apart from this threshold, the Slovak tax law does not contain any specific statutory provisions dedicated exclusively to transfer pricing of financial transactions. The primary legal basis is Section 18 of the Slovak Income Tax Act, which requires all controlled transactions between related parties, including loans, guarantees, cash-pooling arrangements, and other financing activities, to comply with the arm's length principle. Taxpayers and the tax authorities primarily rely on the OECD Transfer Pricing Guidelines, particularly Chapter X on Financial Transactions.

Historically, taxpayers have relied on indicative financing offers from commercial banks to support the arm's length nature of intercompany loan pricing. This approach is generally not accepted by the Slovak tax authorities, as such offers are merely indicative and do not represent transactions that were actually concluded or executed.

As regards case law, Slovakia has currently very limited case law dealing specifically with the transfer pricing of financial transactions. To date, the **EURO AGRI case (Administrative Court in Banská Bystrica, 2025)** appears to be the only relevant and publicly available Slovak judgment that directly addresses the arm's-length pricing of intra-group loans.

In **EURO AGRI**, the taxpayer entered into several intra-group loan arrangements, acting both as lender and borrower within its corporate group. The loan agreements were drafted in a very general manner, without fixed loan amounts, maturities, or clearly defined repayment schedules, and interest was charged at only **0.6%**, based on the company's funding costs plus a small premium. The Slovak tax authorities concluded that independent parties would not have agreed to such terms, particularly because the borrowers showed weak financial performance and elevated credit risk. They therefore performed their own credit-risk analysis, relied on market data and National Bank of Slovakia sector information, and adjusted the interest rates to what they considered an arm's-length level.

The court sided with the tax authorities and upheld the transfer pricing adjustment. The court also accepted the use of borrower credit-risk analysis and market-based benchmarking by the tax authorities. As a result, the judgment confirms that, in Slovakia, the arm's-length assessment of intra-group financing depends not only on the interest rate itself but also on the overall economic substance of the loan, including contractual terms, repayment conditions, and the borrower's creditworthiness.

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

In Slovakia, it is possible to apply for both unilateral APA and BAPA, and numerous taxpayers decide to take this step to gain legal certainty. The request for unilateral APA/BAPA has to be filed no later than 60 days prior to the beginning of the first year to which the APA should apply. APAs may be approved for a period of up to 5 years. If the taxpayer files a new APA request no later than 60 days before the lapse of the first APA and proves that the conditions have not changed, the tax administrator may approve another APA for a period of further up to 5 years.

The conditions for a BAPA are analogous. Roll-back is possible for a BAPA if both contracting states agree.

If no agreement on BAPA with the other state is reached, the Slovak administrator may still approve a unilateral APA.

The law specifically defines the information which has to be provided in the APA request.

The standard fee for a unilateral APA amounts to EUR 10,000 and for a BAPA to EUR 30,000. The fee is due at the time the request is filed. Both fees are reduced by 50% if the taxpayer is ranked as "highly reliable" within the Tax Reliability Index rating. This rating monitors the history of the taxpayer (whether the tax returns and other filings were filed on time, whether taxes were paid on time and in the correct amount etc.).

The duration of the process depends on individual circumstances. If there are no disputed issues, an APA may be approved within a few months. According to our experience, most unilateral APAs are issued within the period of 4 – 6 months. On the other hand, the average time to negotiate a BAPA is 48 months (according to EU statistics for 2024 published in January 2026). According to these statistics, there were 17 applicable APAs in Slovakia as at the end of 2024, thereof 15 unilateral and 2 bilateral.

Transfer Pricing Audits

In recent years, the Slovak tax administration started focusing on transfer pricing audits. The statute of limitation for cross-border transactions, and thus also for cross-border transfer pricing issues, is considerably long: 10 years after the lapse of the tax period in which the tax return was due, which means 11 years after the year in which the transaction was conducted. Transfer pricing audits are often performed by the tax administrator within the last 2-3 years of the limitation period, which results in rather big sanctions if findings are identified.

During transfer pricing audits, the tax administrator focuses mainly on losses or extremely low profit margins/mark-ups.

During transfer pricing audits, the tax administrator often prepares its own benchmark (even if a benchmark is submitted by the taxpayer), and if the results deviate from the figures presented by the taxpayer as market values, it is up to the taxpayer to defend its position. The tax administrator may still accept the figures presented by the taxpayer if the taxpayer provides valid argumentation. At this point, valid negotiation and argumentation is extremely important. If the taxpayer fails to defend its position, the tax administrator calculates the difference in tax and the taxpayer has to pay the outstanding amount plus penalty (penalty in form of interest).

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A new rule regarding transfer pricing adjustments came into effect in 2023. If the taxpayer does not comply with the arm's length principle (i.e., when his values are outside the range of independent comparable values), the adjustment by the tax administrator shall be based on the median resulting from the benchmark analysis (independent comparable values). If the taxpayer proves that, considering the particular circumstances, another value within the interquartile range than median is more suitable, the tax base shall be adjusted to this value. The law amendment copies the previous practice, as the adjustments of the tax administrator were based on the value of the median in the past, too.

Experts argue that this new provision is actually not in line with the OECD Guidelines, which specify that the whole range of independent comparable values (interquartile range) is in line with the arm's length principle and should therefore be accepted by the tax administrator without the need to defend the value with special arguments and circumstances. It will therefore be interesting to see the future development in this field, especially whether the tax administrator will enforce this provision during tax audits and how willing it will be to accept the argumentation of the taxpayer.

The Burden of Proof in Transfer Pricing: Theory versus Practice

High quality documentation that defines the tax position through evidence (comparability analysis) means that the burden of proof shifts to the tax administrator. In practice, the TP Catalyst database, which is also used by the Slovak tax administration, is popular and widely used. When a taxpayer submits a comparability study, the tax administrator first checks whether it agrees with the search strategy. If so, it then downloads its own dataset and performs a quantitative and qualitative analysis of the sample and confronts the taxpayer with the differences. This shifts the burden of proof back and the taxpayer has to explain and justify its steps and results. This is where the burden of proof shift back to the tax administrator often fails; it is more about the power of negotiation.

Transfer Pricing Penalties

Since 2017, the sanctions for the failure to comply with the arm's length principle in transactions with related parties have increased. The stricter sanctions are applicable to taxpayers that intentionally decrease the tax base or increase the tax loss through transfer prices. In such a case, the sanction is not the standard 3 x ECB base interest rate p.a. of the adjustment (additionally assessed tax) generally imposed by the tax administrator during tax audits, but double the amount. The maximum sanction is 100 % of the additionally assessed tax.

In addition to the above described sanctions, penalties may be imposed for other transfer pricing related offences, e.g., the failure to submit transfer pricing documentation or the submission of faulty transfer pricing documentation. These administrative offences are subject to a penalty of up to EUR 10,000.

Local Hot Topics and Recent Updates

The latest update of the SK TPD Guidance has been applicable since 2025. While most rules, requirements and also the documentation thresholds were left unchanged, the guidance has introduced the following changes:

- Abolition of the standalone simplified documentation requirement. Under the 2023 guidance, taxpayers not subject to full or basic documentation were generally required to maintain simplified documentation. Under the 2025 guidance, the documentation obligation is primarily satisfied through the proper completion of the transfer pricing section of the corporate income tax return;
- Introduction of a direct link between the tax return and transfer pricing documentation obligations. This reflects the increased importance of the transfer pricing disclosures contained in the Slovak tax return;
- More flexible transaction grouping rules. The 2025 guidance clarifies that a group of controlled transactions may include transactions carried out with different counterparties, provided they are of the same nature, closely linked, or comparable from a functional perspective. The previous wording did not expressly mention the possibility of grouping transactions involving different counterparties.

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Documentation threshold

Master file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
Local file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
CbCR	group revenue over EUR 750 million/year

Submission deadline

Master file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
Local file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
CbCR	For CbCR: 12 months after the lapse of the relevant fiscal year (according to the fiscal year of the parent company) For Notification on which foreign entity within the group files the CbCR: same as tax return filing deadline (standard deadline 3 months after the lapse of the tax period)

Penalty Provisions

Documentation – late filing provision	from EUR 100 up to EUR 10,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
Tax return disclosure – late/incomplete/no filing	from EUR 100 up to EUR 30,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
CbCR – late/incomplete/no filing	up to EUR 10,000 (for non-filing of CbCR), repeatedly up to EUR 3,000 (for non-filing of the Notification on which foreign entity within the group files the CbCR), repeatedly



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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.

Focus on Financial Transactions

In Slovenia, intercompany financing is primarily addressed through the general arm's length principle and the specific rules on interest between related parties. In practice, related-party loans should be supported by documentation covering the key terms of the financing, including the amount, maturity, currency, repayment terms, security, interest rate and the commercial rationale of the arrangement.

Slovenian rules provide for a recognised interest rate for related-party loans. Where the taxpayer applies terms that differ from this recognised rate, it should be able to demonstrate, based on the facts and circumstances of the transaction, that comparable financing could have been obtained from, or granted to, an independent party under comparable circumstances. Relevant supporting documentation may include the underlying loan agreement, the group financing policy, information on third-party financing, and, where appropriate, a benchmarking analysis of the interest rate and other financial terms.

From a reporting perspective, Slovenian corporate income tax returns also require specific disclosure of related-party loans and related interest adjustments. Therefore, intercompany financial transactions should be reviewed both from a transfer pricing documentation perspective and from the perspective of correct tax return disclosure.

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.

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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.

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.

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Documentation threshold

Master file	No specific statutory materiality threshold applies
Local file	No specific statutory materiality threshold applies
CbCR	Turnover € 750 million

Submission deadline

Master file	Prepared and available by the CIT return filing deadline; submitted only upon request
Local file	Prepared and available by the CIT return filing deadline; submitted only upon request
CbCR	Submission within 12 months after the end of the reporting fiscal year. Public CbCR report must be submitted to trade register (AJPES) within 11 months after the financial year-end.

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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Overview

ENS, Taxand South Africa

In line with the trend in most developing countries, transfer pricing has in the last years become a key focus area for the South African Revenue Service ("SARS"). ENS' transfer pricing team has, however, been involved in the area of transfer pricing since the initial introduction of the transfer pricing rules in South Africa in 1995.

ENS' transfer pricing team has extensive experience in all areas of transfer pricing, including transfer pricing advisory (i.e., detailed value chain analyses, characterisation of entities, economic analyses and drafting of transfer pricing policies, also taking into account areas such as corporate tax, indirect taxes and customs, intellectual property law and exchange controls), transfer pricing documentation, and transfer pricing dispute resolution (i.e., assisting clients in respect of their interactions with SARS and other tax authorities, from the initial risk assessment process to potential litigation).

General: Transfer Pricing Framework

The Law

Section 31 of the Income Tax Act No.58 of 1962 ("ITA") contains the main legislative provisions relating to the South African transfer pricing rules.

The South African transfer pricing rules will apply, broadly speaking, to any transaction, operation, scheme, agreement or understanding where:

a) that transaction constitutes an "affected transaction" as defined; and

b) results or will result in any tax benefit being derived by a person that is a party to the affected transaction.

The term "affected transaction" is defined in section 31(1) of the ITA and includes, *inter alia*, any transaction, operation, scheme, agreement or understanding which has been directly or indirectly entered into or effected between or for the benefit of either or both, *inter alia*, a resident and a non-resident which are connected persons or associated enterprises in respect to each other and where any of the terms or conditions agreed upon are not of an arm's length nature.

Section 31 of the ITA does not apply to transactions between a South African permanent establishment and its non-resident head office or *vice versa*. Instead, the transfer pricing principles find application through the applicable double taxation agreement in that SARS follows the OECD's guidance on the attribution of profits to a permanent establishment. On this basis, SARS will apply the arm's length principles to determine the arm's length attribution of profits between the permanent establishment and its head-office.

Where any non-arm's length term or condition of an affected transaction results or will result in any tax benefit being derived by a person that is party to that affected transaction, section 31(2) of the ITA places an obligation on each party to the affected transaction which derives a tax benefit, to calculate its taxable income or tax payable as if that transaction, operation, scheme, agreement or understanding had been entered into on the terms and conditions that would have existed, had those persons been independent persons dealing at arm's length.

Provision is also made for a secondary adjustment on the basis that any "adjustment amount" (i.e. the difference between the taxable income calculated in accordance with the arm's length principle and otherwise) will, in the case of an affected transaction between a resident company and *inter alia*, any other person that is not a resident, be deemed to be a dividend *in specie* paid by the resident company to that other person. This deemed dividend in specie will be subject to dividends withholding tax at a rate of 20%.

In the case of an affected transaction between a resident individual and *inter alia*, any other person that is not a resident, the adjustment amount is deemed to be a donation made by that resident to that other person. This donation will be subject to donations tax at a rate of 20% (or 25% if the donation exceeds ZAR30 million).

Guidance by SARS

A practice note on the application of section 31 of the ITA (as it was worded at the time and based on the 1995 OECD Guidelines) was issued by SARS in 1999 ("PN7"). While section 31 was subsequently amended to align with the updated guidance in the 2010 OECD Guidelines, PN7 was never updated nor recalled. As a result, only the guidance in PN7 that does not specifically refer to the previous version of section 31 or the 1995 OECD Guidelines remains valid.

In January 2023, SARS also published an interpretation note to provide guidance on the transfer pricing aspects of intra-group financing arrangements ("IN127") which is largely based on the latest guidance of the OECD included in Chapter X of the OECD Guidelines, confirming SARS' commitment to following the OECD Guidelines.

An interpretation note providing guidance on the definition of "associated enterprise", which was inserted into the definition of "affected transactions for years of assessment commencing on or after 1 January 2023, was published by SARS in April 2023 ("IN128").

Accepted Transfer Pricing Methodologies

Although South Africa is not a member country of the OECD, it became one of five Key Partners (along with Brazil, China, India and Indonesia) to the OECD in 2007. South Africa is also a member of the OECD Base Erosion and Profit Shifting ("BEPS") Committee.

South Africa closely follows the guidance contained in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD Guidelines") in respect of

transfer pricing matters in the absence of specific South African guidance and SARS also endorses the standard OECD transfer pricing methods.

As a general rule, the most reliable method will be the one that requires fewer and more reliable adjustments to be made. Taxpayers will not be required to undertake an intricate analysis of all the methodologies but should have a sound basis for using the selected methodology.

Transfer Pricing Documentation Requirements

South Africa implemented the OECD's "three-tiered" approach to transfer pricing documentation, consisting of a country-by-country report ("CbCR"), a master file and local file.

In terms of a public notice published by SARS, a Reporting Entity, as defined in the context of CbCR, that is a resident, will be required to submit information relating to all three tiers of documentation (i.e. CbCR, master file and local file).

In addition, a person, that is a resident, whose aggregate potentially affected transactions (essentially cross-border transactions with a connected person) for the year of assessment exceed or are reasonably expected to exceed ZAR100 million, will be required to submit the information relating to:

- the master file, where the ultimate holding company (the ultimate holding company is defined as a resident person which consolidates the taxpayer for accounting purposes, or would be required to do so if it were listed) in respect of the Group is a resident, or where a master file that substantially conforms with Annex I to Chapter V of the OECD Guidelines is prepared by any other entity within the Group; and
- the local file.

The necessary returns must be submitted within 12 months of the end of the taxpayer's financial year.

In addition to the submission of transfer pricing returns, South Africa has additional record keeping requirements specific to transfer pricing ("South African Record Keeping Requirements").

The South African Record Keeping Requirements provide for two levels of record keeping:

- Records in respect of structure and operations – applicable to taxpayers whose potentially affected transactions for a year of assessment exceed, or are reasonably expected to exceed ZAR100 million in aggregate.
- Records in respect of transactions – applicable to a taxpayer who has entered into a potentially affected transaction where such transaction exceeds or is reasonably expected to exceed ZAR5 million in value.

Taxpayers which do not meet the ZAR100 million threshold are nevertheless required to keep such records as will allow them to ensure, and allow SARS to be satisfied, that their potentially affected transactions were concluded at arm's length.

These records are not intended to be submitted as a matter of course but are required to be retained in case of an audit.

Independent of whether a taxpayer has met the above mentioned ZAR100 million threshold, the corporate income tax return requires the disclosure of certain transfer pricing-related information. In particular, taxpayers are required to disclose whether they have entered into any potentially affected transactions during the year of assessment. Taxpayers which have entered into such transactions are further required to answer whether they have prepared documentation which supports the arm's length nature of such transactions. According to the SARS Comprehensive Guide to the Income Tax Return for Companies, taxpayers answering this question in the affirmative must have such documentation available for immediate submission to SARS, if requested.

Local Jurisdiction Benchmarks

South Africa generally follows the guidance in the OECD Guidelines to determine an arm's length remuneration.

Where it is possible to locate comparable uncontrolled transactions, the CUP method is the most direct and reliable way to apply the arm's length principle and consequently, in such cases, the CUP method is preferable over all other methods. This was also recently confirmed by the Tax Court of South Africa *(ABD Limited vs Commissioner for SARS,* 87 SATC 64*).* SARS accepts both internal and external comparables.

Information on South African companies is only readily available in the form of published financial accounts of public companies. More detailed information on public companies and information on private companies is generally not publicly available. South African comparables are consequently not easily available.

Accordingly, SARS has stated (in its PN7 which provides guidance on the application of the transfer pricing rules in South Africa), that it accepts the use of foreign financial databases but may require that adjustments to the data are carried through for use in the South African market. While in the past SARS was relying heavily on European companies for comparability, its approach has recently been widened to include other geographic areas, depending on the specific circumstances of the transaction and the industry in which the tested party operates.

Although SARS accepts both gross margin and net margin based benchmarks, SARS has become increasingly critical of taxpayers' benchmarks and will critically review the search strategy as well as the final set of comparative companies.

Focus on Financial Transactions

The South African transfer pricing rules require that the arm's length principle be applied to "financial assistance" in the same way as to any other transactions, operations, scheme, agreement or understanding. "Financial assistance" is defined as including any debt, security or guarantee.

In particular, in the context of financial assistance, a taxpayer is required to determine, inter alia, (1) what amounts it would and could have been able to borrow in the open market (i.e. its borrowing capacity), (2) on what overall terms and conditions, and (3) at what price.

IN127 provides guidance on the transfer pricing aspects of intra-group financing arrangements. IN127 is largely based on the OECD's Guidance in Chapter X of the OECD Guidelines.

In addition, it is important to note the introduction of the South African Rand Overnight Index Average Rate (ZARONIA) by the South African Reserve Bank in November 2025. ZARONIA will replace the Johannesburg Interbank Rate ("JIBAR") which will be permanently discontinued after its final publication on 31 December 2026, with a "no new JIBAR" initiative already in effect from 1 May 2026.

While replacing JIBAR with ZARONIA in related-party financial arrangements is generally expected to yield an arm's length rate without unintended tax consequences, MNE groups should not overlook the documentation implications. Following the updates to introduce ZARONIA. In particular, TP documentation should be updated to reflect the withdrawal of JIBAR, and any amendments to financial instruments between connected persons should be reviewed to ensure continued compliance with the arm's length principle.

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

On 7 August 2026, the final APA secondary legislation was published in Government Gazette 55152, together with an External Guide (GEN-LBC-23-G01), which collectively set out the eligibility criteria, fee structure, application procedures, and operational guidelines for bilateral double taxation agreement ("DTA") APAs.

As a starting point, SARS has opened an APA Pilot Programme and, with effect from 1 September 2026, SARS will be accepting the prescribed pre-application form and supporting information.

Key features of the APA Framework in its current format include, *inter alia*:

- the scope of APAs is limited to affected transactions as defined in section 31 of the ITA and does not include, for example, transactions between a South African permanent establishment and its non-resident head office or *vice versa*;
- Only bilateral/DTA APAs are currently provided for;
- The maximum period of time for the application of an APA is five (5) years with an option to extend for a further three (3) years provided that the facts and circumstances have not changed materially from the original application for an APA. SARS may also allow for a rollback of the APA for up to 3 consecutive earlier years, provided it does not result in a cumulative decrease in taxable income or increase in assessed losses.

During the Pilot phase, an applicant must be a South African resident with turnover exceeding ZAR10 billion in the preceding year of assessment. The proposed transaction must involve distribution, manufacturing or intragroup services. The Pilot Programme excludes financial assistance and transactions that create intangible property.

The applicable transaction-value thresholds are ZAR1 billion for distribution and manufacturing and ZAR300 million for services. The applicant must also be tax compliant, and SARS retains a discretion to accept applications having regard to the transaction, industry and its available resources.

Fees are envisaged for all the steps in the process and include, inter alia, a ZAR100,000 (non-refundable) pre-application fee, a cost recovery fee of ZAR1 million and a ZAR100,000 annual maintenance fee once the APA is concluded.

Transfer Pricing Audits

A small specialist unit within SARS conducts transfer pricing audits. Although SARS is committed to building the capacity of this unit, transfer pricing audits typically take a long time and it not unusual for an audit to take 2 - 3 years to finalise.

Transfer pricing audits are often triggered by taxpayers' responses to the transfer pricing specific questions included in the Income Tax Return for Companies.

SARS' approach typically starts with a detailed functional analysis, including functional analysis interviews.

Key focus areas for transfer pricing audits include, *inter alia*, both inbound and outbound distribution arrangements, as well as transfer pricing models that include a limited risk entity, such as contract manufacturing and limited risk distributor arrangements.

SARS selects taxpayers for audit from all industries in South Africa, but appears to focus on the commodities, financial services, retail, including FMCG and automotive sectors.

The Burden of Proof in Transfer Pricing: Theory versus Practice.

In terms of the South African transfer pricing rules, the starting point is that the burden of proof is on the taxpayer to show that their related-party transactions ("Controlled Transactions") were entered into based on terms and conditions that would have existed had the persons been independent persons dealing at arm's length.

Once this is achieved, the onus of proof shifts to SARS in that SARS would have to produce sufficient facts and evidence to disprove the arm's length nature of the taxpayer's transfer prices.

According to section 31 of the ITA and the Tax Administration Act, No. 28 of 2011 ("TAA"), taxpayers must provide sufficient documentation and evidence to support the arm's length nature of their Controlled Transactions. The South African transfer pricing documentation requirements incorporates the OECD's "three-tiered" approach to transfer pricing returns which requires certain taxpayers (identified based on the value of related-party transactions) to submit transfer pricing returns, including a CbCR master file and/or local file, to SARS. In addition to the submission of transfer pricing returns, certain taxpayers are also required to retain certain specified records in case of a transfer pricing audit.

Taxpayers who do not meet the threshold for submission of transfer pricing returns and/or the additional record keeping requirements are nevertheless required to keep such records as will allow them to ensure, and allow SARS to be satisfied, that their Controlled Transactions were concluded at arm's length, thereby discharging the initial burden of proof.

Comprehensive transfer pricing documentation should include the following elements:

- A detailed analysis of the functions performed, assets used and risks assumed by the parties that allows for a clear understanding of the overall value creation process and the contributions of each of the parties ("Functional Analysis");
- The Functional Analysis should conclude with an accurate delineation of the Controlled Transactions and a characterisation of the entities involved in the context of each identified Controlled Transaction;
- The outcome of the Functional Analysis will inform the decision on the choice of the most appropriate transfer pricing method and profit level indicator to determine the arm's length remuneration in respect of each Controlled Transaction identified ("Economic Analysis");
- Should a benchmarking study be used to support the arm's length nature of the transfer pricing in the Economic Analysis, it is important to prepare a well-researched and reliable benchmarking study. A carefully considered search strategy is essential to ensure comparable transactions are identified. To ensure that the benchmarking study can withstand SARS' scrutiny, a detailed analysis of the identified comparable companies that is carefully documented is crucial.

It is further advisable for multinational companies to have clear intercompany pricing policies aligned with their operational and economic realities and these pricing policies should be reviewed regularly to ensure compliance and reduce exposure to transfer pricing adjustments.

Transfer Pricing Penalties

In addition to the primary and secondary adjustment, where the application of non-arm's length terms has resulted in any prejudice to SARS or the fiscus, the taxpayer may be liable for understatement penalties in terms of section 222 of the TAA.

Understatement penalties are determined as a percentage of the difference between the understated amount of tax and the amount that should properly have been chargeable to tax. The percentage depends on the "behaviour" involved in the understatement and ranges between 10 percent, for a first case of "substantial understatement" to 200 percent for a repeat case of "intentional tax evasion".

In terms of sections 89*bis* and 89*quat* of the ITA, interest is payable on underpaid amounts of tax at a rate which is prescribed from time to time.

South African taxpayers with an obligation to file the CbCR and/or a master and/or local file to SARS, that fail to comply, could also be subject to so-called "administrative non-compliance penalties".

Administrative non-compliance penalties comprise fixed amount penalties as well as percentage-based penalties as per sections 210(1) and 211 of the TAA. The penalty amount that will be charged depends on a taxpayer's taxable income and can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues.

Local Hot Topics and Recent Updates

Domestic transfer pricing rules for Special Economic Zones

On 30 July 2026, the National Treasury and SARS introduced the Draft 2026 Taxation Laws Amendment Bill, which proposes a material change to the South African tax treatment of certain transactions involving companies operating in Special Economic Zones (SEZs). Unlike section 31, which generally applies to affected transactions between a South African resident and a nonresident, the proposed section 31B would introduce an arm's-length regime for specified transactions between two South African-resident connected companies in which only one benefits from the reduced 15% SEZ corporate income tax rate.

This proposal is still in Draft and subject to legislative processes.



Transfer pricing cases

In February 2024, the Tax Court of South Africa finalised South Africa's first transfer pricing case to consider certain technical transfer pricing principles related to intellectual property ("IP") licensing *(ABD Limited vs Commissioner for SARS*, 87 SATC 64). ABD Limited, a South African telecommunications company, licensed the ABD tradenames and trademarks to its subsidiaries in various jurisdictions worldwide, charging a uniform royalty rate of 1% of the profits generated from the use of the IP. SARS challenged this rate for the 2009 to 2012 tax years, arguing that it was not at arm's length and issued the taxpayer with additional assessments in terms of section 31(2) of the ITA. The core dispute centered on determining an appropriate arm's length royalty rate, with both parties presenting differing methodologies and expert testimonies.

The Tax Court ruled in favour of ABD Limited, finding the company's application of the CUP method persuasive. ABD Limited demonstrated that the 1% royalty rate was consistent with an internal CUP on the basis that, after selling a subsidiary in Cyprus to a third party, ABD Limited licensed its brand to the now-independent entity at the same 1% rate. The court found this internal comparable compelling especially since SARS' alternative methodologies were deemed unorthodox and less reliable.

The case is significant insofar as it sets a precedent for transfer pricing disputes in South Africa, highlighting the importance of robust documentation and the application of recognised OECD transfer pricing methods. It also highlights the preference of the CUP method over any of the other OECD approved methodologies, as well as the necessity for tax authorities to employ consistent and widely accepted methodologies when challenging intercompany pricing arrangements.

South Africa's position regarding Amount B

South Africa has expressed a clear intention to adopt Amount B, a component of the OECD's BEPS initiative aimed at simplifying transfer pricing for baseline marketing and distribution activities. This is in line with the position of the African Tax Administration Forum ("ATAF"), which has encouraged its member countries to consider implementing Amount B, viewing it as beneficial for enhancing tax compliance and administration by standardising the application of the arm's length principle for qualifying distribution activities.

At this stage, however, any formal guidance from South African authorities on the application of Amount B is still pending and, in particular, it is not clear whether South Africa will opt for a mandatory or elective application of the mechanism.

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Documentation threshold

Master file	ZAR100 million
Local file	ZAR100 million
CbCR	Consolidated group revenue exceeding ZAR10 billion

Submission deadline

Master file	12 months from financial year end
Local file	12 months from financial year end
CbCR	12 months from financial year end

Penalty Provisions

Documentation – late filing provision (Master File and Local File)	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosure – late/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosures – incomplete filing	Understatement penalties that can range from 10 percent, for a first case of "substantial understatement" to 200 percent for a repeat case of "intentional tax evasion" in terms of section 222 of the TAA
CbCR – late/incomplete/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA



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Overview

Yulchon LLC, Taxand Korea

Yulchon's Transfer Pricing Team provides top-tier one-stop service for leading Korean and foreign multinational enterprises (the "MNEs") in relation to all types of transfer pricing issues, including the following:

- Establishment of global transfer pricing policies (including benchmarking analysis, tax review, and intercompany agreement preparation)
- Preparation of transfer pricing documentation (including local file, master file, and country-by-country report)
- Tax risk assessments and tax audit defense
- Tax due diligence
- Assistance with APA (Advance Pricing Agreement) and MAP (Mutual Agreement Procedure) applications
- Assistance with tax appeals and tax litigation

International Tax Review selected Yulchon as the "*South Korea Transfer Pricing Firm of the Year,*" and various other international organizations have recognized Yulchon's transfer pricing expertise and capabilities.

General : Transfer Pricing Framework

The transfer pricing legislation is governed by the Adjustment of International Taxes Act (the "AITA"), which is commonly known as the Law for Coordination of International Tax Affairs in practice. The AITA, the Presidential Decree

of the AITA, and the Enforcement Regulation of the AITA do not specifically contain a reference to the OECD Guidelines, but the AITA is mostly consistent with the OECD Guidelines, which are used as a reference in making and implementing transfer pricing related policies and amendments.

The AITA specifies the arm's length principle to be applied to overseas intercompany transactions and also requires transfer pricing documentation for certain types of MNEs.

Accepted Transfer Pricing Methodologies

The AITA generally follows the OECD principles that it enlists the same 5 transfer pricing methods, which include the (1) Comparable Uncontrolled Price Method, (2) Resale Price Method, (3) Cost Plus Method, (4) Profit Split Method, and (5) Transactional Net Margin Method.

Without a hierarchy of methods, the most appropriate and reliable method should be adopted among the five transfer pricing methods above considering all relevant factors and circumstances. Only where such five transfer pricing methods cannot be applied, other reasonable method (alternative method) can be selected and applied.

Transfer Pricing Documentation Requirements

Based on the currently effective AITA, MNEs with (i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion are required to prepare and submit a Master File and Local File within 12 months from the fiscal year-end.

In addition, ultimate parent companies of MNEs with the sales revenue on the consolidated financial statement in the immediately preceding tax year exceeding KRW 1 trillion, etc. are required to prepare and submit a Country-by-Country Report (the "CbCR") within 12 months from the fiscal year-end. A reporting entity's CbCR notification form must be filed no later than 6 months of the fiscal year end of the Korean entity.

Other taxpayers engaged in overseas intercompany transactions below the threshold for the Master File and Local File are still required to maintain reasonable transfer pricing documentation (the "Contemporaneous Transfer Pricing Documentation") by the due date of filing the corporate tax return and submit it within 30 days upon the NTS's request.

Local Jurisdiction Benchmarks

Based on the AITA, benchmarks are required to compute a relevant arm's length price (range) for covered intercompany transactions.

Depending on selection of the tested party, regional / global or local comparables can be utilized. In case that the tested party is a Korean entity, local comparables using the local database, namely NICE BizLINE / Value Search (formerly KIS-Line / KIS-Value), are usually used and requested by the Korean tax authority, the National Tax Service (the "NTS").

During tax audits, the NTS challenges the appropriateness of taxpayers' benchmarks such as applied screening criteria, etc., and in particular, the NTS mostly likely raises an issue of using regional / global benchmarks when the tested party is a Korean entity. The NTS, however, does not use secret comparables for transfer pricing assessment purposes.

Similar to other countries, the Transactional Net Margin Method is a commonly applied method with various profit level indicators such as operating margin and full cost plus markup.

If a taxpayer may prove appropriateness of internal CUPs, such information can be utilized to defend its transfer prices.

Focus on Financial Transactions

Under Korean law, the tax authorities' approach to intercompany financial transactions heavily focuses on the factual attributes of the debt and the borrower's economic profile. More specifically, the regulations require that the arm's-length interest rate be assessed by reference to the principal amount, debt maturity, the existence of guarantees, and the borrower's creditworthiness. This entails verifying the rate through the comparable uncontrolled price (CUP) method with appropriate comparability adjustments, or by utilizing internationally accepted financial pricing models. Additionally, while a safe harbor rate is prescribed, recent case law dictates that the tax authorities cannot uniformly impose it in place of a taxpayer's own arm's-length benchmarking analysis.

Furthermore, the Korean tax authorities' regulatory framework—reflecting the OECD 2020 guidance—demands a strict assessment of treasury functions and economic substance within cash pooling arrangements. Entities performing only limited intermediary or coordination functions are evaluated under service transaction methods, whereas the assumption of financial risks and active management of group funds must be evaluated under financial transaction methods.

Finally, this transfer pricing analysis involves a detailed allocation of synergy benefits among cash pooling participants, which must account for the duration of participation, group risk management policies, cross-guarantees, and the respective functions, assets, and risks of each entity.

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

Based on the AITA, both unilateral APA (the "UAPA") and bilateral APA (the "BAPA") applications are possible, and general APA process is same as other jurisdictions as follows:

- [Step 1] Pre-filing Meeting
- [Step 2] Application and Commencement
- [Step 3] Examination and Negotiation (Exchange of Position Paper and CA Meeting)
- [Step 4] Closing (Closing Letter and Notification of APA Approval)
- [Step 5] Follow-up Management (Annual Report)

There are no specific qualification requirements for the APA applications, and there is no APA application filing fee in Korea.

Based on the NTS' most recent 2024 APA Annual Report, the average time to conclusion for all years was 21 months for UAPAs and 31 months for BAPAs. Of the 809 APAs concluded by 2024 on a cumulative basis, 542 (67%) cases covered a period of 5 years, and 419 (52%) cases were concluded with a roll-back, of which 118 cases covered a 3-year rollback.

Transfer Pricing Audits

The NTS conducts tax audits at random, and all MNEs are subject to tax audit for any open period. The ordinary statute of limitations period is 5 years in Korea. Under current guidance, when an MNE is audited, the transfer pricing documentation reports are to be requested as one of the initially requested information. Tax auditors usually review all transfer pricing related topics (e.g., all overseas intercompany transactions with all related parties).

The Burden of Proof in Transfer Pricing: Theory versus Practice

In Korea, the allocation of the burden of proof in transfer pricing disputes is a key factor in determining tax assessments and litigation outcomes. The fundamental principle is that the tax authorities bear the initial burden of proving that a taxpayer's transfer prices deviate from the arm's length principle. However, this burden may shift to the taxpayer if they fail to meet statutory documentation obligations. Korean tax law mandates that taxpayers maintain sufficient documentation to substantiate their transfer prices, particularly through Master File and Local File (or contemporaneous transfer pricing documentation) requirements under the Adjustment of International Taxes Act.

In practice, however, the distribution of the burden of proof does not always align with this legal framework. Rather than presenting substantive evidence, tax authorities frequently rely on broad assertions, shifting the practical burden onto taxpayers. This is particularly evident during tax audits, where authorities often challenge a company's pricing methodology without first demonstrating that their own adjustments are reasonable. As a result, taxpayers may find themselves required to provide extensive justification for their pricing, even when tax authorities have not adequately substantiated their claims. Since Supreme Court Decision 99Du3423 Decided October 23, 2001, the Korean Supreme Court has consistently ruled that tax authorities must first establish the reliability of their own transfer pricing determinations before shifting the burden to the taxpayer. However, despite these precedents, taxpayers frequently end up in a defensive position, compelled to submit extensive evidence to counter tax authorities' often unsubstantiated challenges.

Given this practice, companies must take a proactive approach to transfer pricing compliance. Fulfilling statutory documentation requirements is necessary but often insufficient to withstand scrutiny. Taxpayers should go beyond minimum compliance and prepare detailed economic analyses, comparability studies, and functional reviews to ensure their pricing positions are defensible. The OECD Transfer Pricing Guidelines advocate for reasonableness and balance in tax authority adjustments, but in Korea, disputes often hinge less on whether tax authorities have proven their case and more on whether the taxpayer can sufficiently justify its pricing. As a result, high-quality documentation is no longer just

a regulatory obligation but a strategic necessity. Companies should anticipate that their transfer pricing methodologies may be challenged and ensure they are well-prepared to defend their positions with substantive evidence. A proactive stance in documentation and dispute resolution is essential to mitigating the risk of unfavorable tax adjustments and securing a stronger position in transfer pricing compliance.

Transfer Pricing Penalties

There are no specific transfer pricing penalties for under-reporting and late payment of tax, but general penalties apply for transfer pricing assessments, which include (i) the penalty for under-reporting, 10% of the assessed tax amount (60% for fraudulent cross-border transactions) and (ii) the penalty for late payment, which is interest charge in nature, at 8.03% per annum.

If a taxpayer has reasonably prepared and submitted a Local File and Master File or a Contemporaneous Transfer Pricing Documentation in good-faith, the under-reporting penalty tax may be waived.

Failure to submit transfer pricing-related documents or the submission of false or incomplete information may result in administrative fines ranging from KRW 30 million to 70 million. If non-compliance continues after a corrective notice period (generally 30 days), additional administrative fines of up to KRW 200 million may be imposed. Furthermore, newly introduced enforcement fines apply when taxpayers fail to submit requested books or documents during a tax audit without justifiable cause. These enforcement fines accrue on a daily basis—up to 0.3% of the average daily revenue or KRW 5 million per day—until the submission is made or the audit is closed.

Local Hot Topics and Recent Updates

The NTS has recently conducted more aggressive tax audits challenging various transfer pricing issues, and some of the notable developments are as follows.

- General view and approach: Tax auditors frequently target industries that have experienced significant profit pattern shifts in recent years. Furthermore, the mere filing of an APA application prior to its formal conclusion remains subject to a full transfer pricing review during a tax audit. Overall, transfer pricing issues continue to be a top priority for multinational enterprises, regardless of whether they are domestically or foreign-headquartered.
- Significant factual findings based on substance-over-form rule: Tax auditors persistently request substantial transfer pricing information from foreign affiliates. In addition, they conduct extensive functional interviews to verify consistency with the taxpayer's transfer pricing documentation. There is also an increasing emphasis on scrutinizing both the legal form and the economic substance of transactions, along with a strict requirement for a legitimate business rationale in relation to business restructurings.
- Reconstruction of a taxpayer's transfer pricing policy: Tax auditors conduct various simulations and scenario analyses that ultimately lead to transfer pricing assessments. This often involves adjustments to the selected transfer pricing method, modifying the profit level indicator, and/or changing the tested party. Additionally, auditors frequently challenge the arm's length interest rates of intercompany loan transactions by expecting the application of safe harbor rates.

Effective January 1, 2026, a Korean downward transfer pricing adjustment now requires either a prior tax assessment or a corresponding adjustment by the counterparty jurisdiction in respect of the same intercompany transaction. This provides a domestically administered route that can be utilized when a foreign tax authority makes an assessment, though the NTS retains full authority to review the arm's length basis of the requested adjustment during the refund claim process.

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Documentation Threshold

Master file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
Local file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
CbCR	the sales revenue on the consolidated financial statement in the immediately preceding tax year exceeding KRW 1 trillion

Submission Deadline

Master file	within 12 months from the fiscal year-end
Local file	within 12 months from the fiscal year-end
CbCR	within 12 months from the fiscal year-end

Penalty Provisions

Documentation – late filing provision	an administrative fine of KRW 30 million for each type of documentation, with an additional fine of up to KRW 200 million if non-compliance continues after a corrective notice period (generally 30 days)
Tax return disclosure – late/incomplete/no filing	an administrative fine ranging from KRW 5 million to 70 million depending on the specific tax return form, with an additional fine of up to KRW 200 million if non-compliance continues after a corrective notice period (generally 30 days)
CbCR – late/incomplete/no filing	an administrative fine of KRW 30 million, with an additional fine of up to KRW 200 million if non-compliance continues after a corrective notice period (generally 30 days)
Enforcement fines – failure to submit requested documents during tax audits	enforcement fines accruing on a daily basis (up to 0.3% of average daily revenue or KRW 5 million per day) until submission or audit closure, applied when taxpayers fail to submit requested books or documents without justifiable cause



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SPAIN

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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.

- 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.

Focus on Financial Transactions

Spain's transfer pricing approach on intercompany financial transactions closely follows the OECD's 2020 Transfer Pricing Guidance on Financial Transactions.

Consistent with this framework, the Spanish tax authorities are placing increasing emphasis on the accurate delineation of treasury functions and the substance underlying them within the group, moving beyond formal documentation checks toward detailed functional, economic, and legal analyses of related-party transactions. This substantive scrutiny extends directly to intercompany financing arrangements, including cash pooling and other centralized treasury structures, which have been identified as audit priorities over the past years.

This administrative focus is mirrored by recent case law. In Judgments 3721/2025 and 1746/2026, the Spanish Supreme Court addressed the arm's length treatment of a centralized cash pooling system, under which the leading entity swept participants' balances to zero daily and earned the differential between the rates applied to net depositors and net borrowers.

In both cases, the Supreme Court sided with the tax authorities, holding that: (i) the rates paid on contributed amounts and charged on borrowed amounts must be symmetrical in a centralized treasury system; (ii) a cash pool leader with no real decision-making power and no meaningful risk cannot earn a margin from a rate differential and should instead be remunerated as a low-value-adding service provider under a cost-plus approach; and (iii) the relevant credit rating should generally be that of the consolidated group rather than the individual borrowing entity, at least where the cash flows form part of an integrated group financing strategy.

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.

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". 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.

The 2026 Tax and Customs Control Plan builds on previous initiatives while confirming 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, 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.

The plan also confirms the continued 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.

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.

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.

Two recent Supreme Court rulings deserve particular attention in this regard: the Electrolux case, on the deductibility of restructuring costs, and the Bunge case, on the arm's length treatment of cash pooling arrangements.

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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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Overview

Skeppsbron Skatt AB, Taxand Sweden

Thanks to our extensive experience of all aspects of transfer pricing, combined with our ability to see the big picture from a business as well as a tax perspective, Skeppsbron Skatt serve clients in most sectors. Such sectors include manufacturing, finance, retail, IT, food, commodities, energy, pharmaceuticals and life sciences and offer comprehensive practicable advice on i.a.

- Restructurings
- IP deals
- Tax disputes
- Advance Pricing Agreements "APA" and Mutual Agreement Procedures "MAP"
- Transfer pricing policies and documentation.

General: Transfer Pricing Framework

The arm's length principle is incorporated into Swedish domestic law (Chapter 14, section 19 of the Income Tax Act, "ITA"). The arm's length principle is also incorporated into Sweden's double tax agreements, which are in turn based on Article 9 of the OECD's Model Tax Convention. The Swedish transfer pricing regulations are normally interpreted based on the principles laid down in the OECD Guidelines. This is not explicitly stated in the Swedish legislation but is based on statements made by the Swedish Supreme Administrative Court (RÅ 1991 ref. 107). It should be noted that the Swedish Tax Agency "STA" generally believe that new versions of the OECD Guidelines are applicable retroactively and viewed as clarifications of the arm's length principle.

Accepted Transfer Pricing Methodologies

The OECD Guidelines is implemented by decisions from the Swedish Supreme Administrative Court. Consequently, the methods described in the OECD Guidelines are all accepted. The method used must, however, reflect the functional, risk and asset profile of the parties in the transaction. The applied method should be deemed appropriate from an arm's length perspective.

In summary, the most appropriate pricing method providing the most reliable measure of an arm's length result in each case should be selected on a transaction-by-transaction basis. It is further accepted to apply other methods as long as it can be demonstrated that it results in arm's length pricing.

The most common methods are the transactional net margin method "TNMM" for routine entities and the comparable uncontrolled price method "CUP" especially for financial transactions and license fees. The use of the profit split method "PSM" is still rather uncommon although it is becoming increasingly adopted by taxpayers.

Transfer Pricing Documentation Requirements

Sweden has implemented transfer pricing documentation (master and local file) requirements in line with the OECD Guidelines. An unlimited taxable company that carries out transactions with a limited taxable company abroad within the same group must provide transfer pricing documentation. Transactions between Swedish entities are exempt from documentation; however, the transactions should still be priced at arm's length. This is particularly important in case the Swedish entities lack group contribution rights or if the entities have restrictions on tax losses carried forward.

To be exempted from the transfer pricing documentation requirements, such companies must, in the year that precedes the tax year, have fewer than 250 employees and either an annual turnover of no more than SEK 450 million or a balance sheet total of no more than SEK 400 million.

According to Swedish law, it is not required to document immaterial transactions in a local file. The materiality of the transactions is based on the size and operations of the local entity. Large transactions or transactions key to the core operations are considered material. There is, however, an exemption related to the total value of the transactions. If the transactions with a foreign controlled entity are less than SEK 5 million during the financial year, the transaction is per definition considered immaterial. The transaction should however still be priced in accordance with the arm's length principle. For intangible assets, the exemption is only applicable if the intangible assets do not pertain to the company's core business.

The documentation shall consist of two parts, a master file and local file. It may be prepared in Swedish, Danish, Norwegian or English. The master file must be prepared no later than the time when the parent company in the group must submit its income tax return. The local file must be prepared no later than the time when the Swedish company must submit its income tax return.

The transfer pricing documentation is to be submitted to the STA upon request. There is no timeframe specified by the law for how long the company may have to submit the master- and local file. Consequently, the timeframe is decided by the STA on a case-by-case basis depending on how long the company needs. Normal practice for the STA is, however, to request the documentation within 30 days.

The transfer pricing documentation must be kept available for seven years after the end of the calendar year in which the fiscal year ended.

Sweden has also enacted the country-by-country reporting "CBCR" rules in line with the OECD Guidelines. The rules apply to groups with revenues exceeding SEK 7 billion. The CbCR must be submitted within 12 months of the end of the relevant fiscal year. CbCR notifications should be submitted to the STA by all Swedish entities of a group liable to prepare the CbCR by the end of the relevant fiscal year.

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Local Jurisdiction Benchmarks

Sweden follows the guidance described in the OECD Guidelines regarding comparability analysis. There is generally no specific preference for domestic comparables over foreign comparables, however the comparables should be independent and have a clear comparability. The STA usually refers to multiple year data and the interquartile range in terms of benchmarking. In line with the OECD Guidelines, the benchmark should be updated every three years, unless no substantial changes have occurred that prompts an update. A financial update should be conducted every year as best practise. However, the STA would not necessarily question a benchmark for which no financial update has been made.

Focus on Financial Transactions

Under Swedish law, pricing of intercompany financial transactions is primarily assessed under the arm's length principle as reflected in the Swedish adjustment rule in Chapter 14, Section 19 of the Swedish Income Tax Act. The Swedish Tax Agency and Swedish case law generally interpret this rule in light of the OECD Transfer Pricing Guidelines (including the guidance on financial transactions). However, Swedish practice has historically focused on whether the terms of an intragroup loan, in particular the interest rate, are arm's length rather than challenging the legal characterization of the funding as debt. A recent court case illustrates the challenges that may arise in a cross-border context where certain jurisdictions, relying on the OECD guidance, may seek to recharacterize or partly disregard an intragroup loan on the basis that an independent lender would not have granted the same amount of debt under comparable circumstances. Sweden does not have the same practice of recharacterizing loans for transfer pricing purposes.

The Swedish transfer pricing analysis concerning pricing of financial transactions is consistent with the OECD framework, and the analysis would place importance on whether treasury entities or cash pool leaders have the personnel, decision-making capability and financial capacity required to control and assume relevant financial risks. Where an entity performs only limited financial intermediation or administrative functions, its remuneration should generally be limited to an appropriate routine return. Conversely, any higher return linked to funding or financial risk should be supported by actual substance, decision-making capability, and capital at risk. In a cash pool context, persistent or long-standing debit or credit positions may also need to be analysed as long-term intragroup loans rather than as short-term cash pool balances, depending on the facts and circumstances.

Finally, the transfer pricing analysis operates alongside Swedish domestic rules on the deductibility of interest expenses. Even where the pricing of an intragroup loan is considered arm's length, deductibility may be affected by Sweden's targeted interest deduction limitation rules for certain related-party debt as well as the general EBITDA-based interest limitation rules. Accordingly, the Swedish tax analysis should address both the arm's length nature of the financial transaction and the separate domestic tax rules that may restrict interest deductibility.

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

APA procedures in Sweden are initiated by the taxpayer by sending a written application to the competent authority which is part of the STA. Apart from Swedish companies, foreign companies with permanent establishments in Sweden are also allowed to apply for an APA. The taxpayer is generally given the possibility to meet the STA to discuss the APA prior to submitting the application, should the taxpayer want to. An APA application may only cover complex issues and major transactions. A question is not considered complex if the application of the arm's length principle in the current situation is not unclear.

Bilateral and multilateral APAs are accepted in Sweden and the arrangements are entered through a mutual agreement procedure regime in the applicable tax treaty (article 25, mutual agreement procedure, OECD:s Model Tax Convention on Income and on Capital). As such, APAs are only available if there is a tax treaty in force between Sweden and the foreign tax jurisdiction. Unilateral APAs are not accepted in Sweden.

The fee for an APA is SEK 150,000 per country for the first application. The fee is somewhat reduced for renewals.

The APA procedure is generally relatively time-consuming as the competent authority has limited resources and demands high level of detail before they feel comfortable forming an opinion on the issue.

Transfer Pricing Audits

During the most recent years, the STA seems to have focused audits on companies involved in a re-structuring and/or transfer of intellectual property. Additionally, companies with branches or permanent establishments have also been subject to scrutiny. Finally and most importantly, loss-making entities/groups are always of particular interest to the STA.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Recent court rulings in Sweden have brought renewed attention to the allocation of the burden of proof in tax disputes. Under Swedish tax law, the initial burden of proof rests with the party seeking to amend taxable income. During a tax audit, if the STA determines that a taxpayer has submitted an incorrect statement in their income tax return, the STA bears the initial burden of proving the inaccuracy. Once the STA has provided sufficient evidence, the burden shifts to the taxpayer to counter the STA's claims. Similarly, if a taxpayer requests an adjustment to their taxable income, they must substantiate the claim with appropriate evidence.

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In the context of transfer pricing and the application of the so called "correction rule" (Swedish: *korrigeringsregeln*), the STA must first demonstrate that the pricing deviates from what independent parties would have agreed upon under comparable circumstances. This requires the STA to present sufficient evidence supporting the claim that e.g. the reported transfer prices do not reflect arm's length conditions. Once this threshold is met, the burden shifts to the taxpayer, who must counter the STA's position by proving that the pricing has not been influenced by the fact that the entities are related. In doing so, the taxpayer may rely on e.g. transfer pricing documentation, benchmark studies or other supporting analyses.

The burden of proof will only shift back to the STA if the taxpayer presents compelling evidence that undermines the STA's findings - otherwise, the STA's position prevails. If the taxpayer successfully demonstrates that the transaction was conducted at arm's length, the burden of proof shifts back to the STA, which then will be able to refute the taxpayer's evidence. If the STA prevails in refuting the evidence and successfully demonstrating that the reported income is subject to additional taxation in the end, the taxpayer may be taxed accordingly. In practice, however, the Swedish courts often appear to lean in favor of the STA, sometimes shifting the burden of proof to the taxpayer more readily than might be expected.

This increased attention on the burden of proof emphasizes the importance of maintaining thorough documentation and being prepared to present critical evidence during tax audits, in other words, maintaining proper documentation has become a critical safeguard against the risk of an unfavorable reallocation of the burden of proof.

Transfer Pricing Penalties

There are no specific penalties related to not preparing transfer pricing documentation. In case the STA considers that the pricing applied is incorrect, penalties of maximum 40% on the additional tax levied may be applied. Having compliant transfer pricing documentation in place may reduce potential penalties by half if certain criteria are met. Potential penalties can also be fully reduced if an open statement has been made in the tax return or if the transfer pricing issue is deemed very complex.

Local Hot Topics and Recent Updates

In recent years, the STA has intensified its focus on business restructurings, particularly in the context of MNEs adapting to current economic challenges. For example, the STA has closely scrutinized cases where MNEs have relocated functions out from Sweden, e.g. to low-cost jurisdictions or centralized key functions in a single country as part of efficiency-driven initiatives or as a result of an acquisition.

Under Swedish transfer pricing regulations and the OECD Guidelines, such restructurings may trigger exit taxation. The STA has shown greater interest in following up and challenging such restructurings. Most commonly, when the taxpayer has failed to adequately document the transfer pricing implications, and particularly when no or limited compensation has been recognized for the transferred business.

Given the heightened scrutiny, MNEs engaging in restructurings should proactively evaluate the tax consequences, ensure appropriate analysis and documentation and assess whether arm's length compensation is required.

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Documentation threshold

Master file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
Local file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
CbCR	Revenue SEK 7 billion.

Submission deadline

Master file	No later than the time when the parent company in the group must submit its income tax return.
Local file	No later than the time when the Swedish company must submit its income tax return.
CbCR	Within twelve months after the end of the financial year. It is the financial year of the group's parent company that determines the time period.

Penalty Provisions

Documentation – late filing provision	No penalty.
Tax return disclosure – late/incomplete/no filing	Late filing fee is SEK 6,250 (could be charged up to three times).
CbCR – late/incomplete/no filing	No penalty.



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Overview

Tax Partner AG, Taxand Switzerland

Tax Partner AG is focused on Swiss and international tax law and is recognised as a leading independent tax boutique. The firm currently features 17 partners and counsel and a total of more than 50 tax experts consisting of attorneys, legal experts and economists. The firm advises multinational and national corporate clients as well as individuals in all tax areas. A central focus lies on tax controversy and dispute resolution, including transfer pricing issues. Tax Partner AG also provides support regarding transfer pricing studies and the preparation of transfer pricing documentation. Other key areas include M&A, restructuring, real estate transactions, financial products, VAT and customs. Tax Partner AG is independent and collaborates with various leading tax law firms globally.

Transfer Pricing offering:

- Transfer Pricing design, value-chain analysis and optimizations.
- Restructurings and valuations.
- Implementation of new Transfer Pricing policies .
- Unilateral tax rulings.
- Benchmarking studies.
- Documentation (Master file, Local file, CbCR, EU pCbCR).
- Support in tax audits.
- Tax disputes, including obtaining unilateral and bilateral APAs and MAP agreements.
- Due diligence regarding transfer pricing set-ups.

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Transfer Pricing Framework

In Switzerland, transfer pricing issues arise mainly in connection with federal and cantonal corporate income taxes and federal withholding tax. However, transfer pricing issues might also arise in connection with VAT. In this regard, it should be noted that transfer pricing principles do not apply only to cross-border controlled transactions, but also domestic inter-cantonal controlled transactions.

With respect to corporate income tax, it should be noted that cantons have the authority not only to assess the cantonal and municipal taxes but also the federal corporate income taxes. This means that the cantons can issue advance rulings (so-called tax rulings) not only with regard to cantonal and municipal taxes but also regarding federal income taxes.

However, the Federal Tax Administration (FTA) still exercises an important supervisory function over the cantons and can also intervene in individual cases. In practice, the FTA, as well as the is becoming increasingly involved in discussions, especially in large transfer pricing cases.

While in the area of corporate income tax there is parallel competence of the federal government and the cantons, the federal government has the exclusive competence to levy withholding tax, stamp duties and VAT. In the area of withholding tax, the FTA established a competence center for transfer pricing in 2019. It is, hence, no surprise that in practice, for withholding tax purposes, transfer prices are increasingly subject to scrutiny during tax audits. This concerns, in particular, the relocation of functions and controlled transactions between Swiss companies and related companies abroad.

As far as legislation in the field of transfer pricing is concerned, it should be noted that there **are no specific regulations on the determination and documentation of transfer prices, neither at the federal level nor at the cantonal level**.

Switzerland has accepted the initial version and all updates of the OECD's Transfer Pricing Guidelines ("TPG") without reservation, including the latest update in 2022. Thus, there is **full consensus in Swiss tax law practice that the OECD's TPG are an important interpretative tool** for the application of the at arm's length principle in Swiss tax law.

In exercising its supervisory role over the cantonal tax administrations, the FTA instructed the cantonal tax administrations in 1997 and 2004 with a circular letter to directly apply the OECD's TPG. The Federal Supreme Court (FSC) tends to apply a static approach regarding the version of the OECD's TPG. Hence, the arm's length principle and the methods to determine the relevant transfer prices areassessed according to the OECD's TPG as they were published at the time the transaction in question was settled.

The importance of the OECD TPG has been further underlined by the recently (January 2024) published paper of the Swiss tax authorities, namely the SSK (Schweizerische Steuerkonferenz) and the FTA regarding transfer pricing, as this paper strongly refers to and basically summarizes the OECD TPG. Further, in February 2024, the FTA started publishing a Transfer Pricing Q&A on specific transfer pricing topics offering additional transfer pricing guidance and important insights into Swiss practice and the interpretation of international rules. According to the FTA, It is intended that these Q&A will be regularly updated.

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Accepted Transfer Pricing Methodologies

The FTA instructed the cantonal tax administrations by a circular letter of 1997, which was renewed in 2004, to directly apply the OECD's TPG.

As Switzerland adheres to the OECD's TPG and **has not established specific transfer pricing rules**, the current regime and its development are, in general, reflected by the OECD's TPG. However, the arm's length principle was already acknowledged before the first OECD's TPG were published. Hence, in the matter of Bellatrix SA, the FSC confirmed in 1981 that for withholding tax purposes, the arm's length principle is applicable with regard to transactions concerning the company's shareholders.

Swiss domestic tax laws or practices do not provide specific transfer pricing methods. Nevertheless, as Switzerland adheres to the OECD's TPG, all the usual transfer pricing methods are admissible ("most appropriate method" approach).

In accordance with the OECD's TPG, Switzerland does not have a specific hierarchy of the methods. **The most appropriate method should be used**. However, the three traditional methods – i.e., the comparable uncontrolled price (CUP) method, the resale price method and the cost-plus method – are still preferred by the tax administrations.

In its Transfer Pricing Q&A, the FTA clarified that tax expenses should generally not be included in the cost base, aligning with OECD TPG. However, a Swiss FSC ruling (9C_37/2023 of 11 June 2024) required the inclusion of taxes for domestic cases under article 58(3) of the Federal Direct Tax Act (FDTA). In response, the FTA issued an additional statement on 11 December 2024, reaffirming that this ruling does not impact cross-border transactions, where tax expenses remain excluded.

Similarly, the FTA Q&A highlighted that financing costs, typically unrelated to core business activities, should be excluded from the cost base. Additionally, the FTA Q&A confirms that no mark-up is added on pass-through costs.

Transfer Pricing Documentation Requirements

Swiss tax laws do not define specific documentation requirements with respect to transfer pricing. However, taxpayers must provide all documents necessary in order to enable the tax administration to conduct a proper assessment of the taxable base. This legal obligation is based on the principle that the taxpayer and the tax administration jointly determine the relevant facts to ensure a complete and correct assessment as far as corporate income tax is concerned. As a consequence, despite the lack of specific documentation rules, taxpayers are strongly advised to have full and state-of-the-art transfer pricing documentation at hand that can be disclosed if requested by the tax administration. This also includes intercompany agreements with respect to controlled transactions. Such documentation will also be helpful in the defense of potential tax evasion charges.

In addition, documentation should also include sound and updated benchmarking studies or other economic analysis supporting the arm's length nature of the transfer prices applied.

If no appropriate transfer pricing documentation can be presented and the taxable base subsequently cannot be properly determined, the tax administration might need to estimate the transfer prices. Even though that estimate has to be dutiful and based on experience, such estimates are rarely in favor of the taxpayer. Although such an estimate is not to be considered as a penalty, it still has to be taken into consideration as a potential negative impact. The reason for that is that the courts will reject such an estimate only if the taxpayer can demonstrate that the transfer prices set by the tax administration are obviously flawed or arbitrary.

Concerning transfer pricing documentation, Switzerland legally only requires to preparing a CbCR. **There is no legal obligation to prepare a master or local file.**

However, in view of a potential challenge of the transfer prices by the tax authorities, it is nonetheless **advisable** to have master and local files at hand. **In practice**, tax authorities **expect a transfer pricing documentation** to support the arm's length character of the controlled transaction (see section on the burden of proof below).

Local Jurisdiction Benchmarks

Benchmarking studies carried out in accordance with the principles set out in Chapter III of the OECD TPG are generally accepted by the Swiss tax authorities. Pan-European comparables are generally accepted by the Swiss tax authorities.

The Tax audit practice shows that internal CUPs are preferred where available and sufficiently comparable.

Special focus on intercompany finance transactions

Although the Swiss tax authorities do not have specific rules governing financial transactions, such transactions have been on the focus for already a couple of years, in particular if deviating from the unilateral safe harbour rates, annually updated by the FTA. The most relevant administrative guidelines in Switzerland in the area of transfer pricing can be seen in these circulars published by the FTA providing safe harbour rules for thin capitalization and for intra-group interest where the arm's length principle is not necessarily reflected in the published rates.

Financial transactions are treated in line with the principles of the OECD Transfer Pricing Guidelines. This is supported by the Q&A that was published by the FTA in January 2024, also covering questions and answers in connection with intra-group loans, making reference to the OECD Transfer Pricing Guidelines.

The FTA annually publishes circular letters providing unilateral safe harbour interest rates on long-term intercompany loan receivables and payables both in Swiss francs and foreign currencies. In a recent highest court decision, the Federal Supreme Court (9C_690/2022, 17 July 2024) clarified that these safe harbour rates are presumptive only—tax authorities can independently determine whether interest rates comply with the arm's length principle if taxpayers deviate from the published rates.

Consequently, any deviation from the FTA safe harbour rates places the burden on the taxpayer to prove that the applied interest rate is at arm's length through a transfer pricing analysis. Where safe harbour rates are applied to long-term loans, the arm's length presumption is basically satisfied without further justification.

Safe harbour rules also apply regarding the qualification of debt vs. equity for tax purposes (thin cap based on maximum debt capacity ratios per asset category as in the FTA's Circular Letter No 6a of 10 October 2024).

Unilateral Rulings / Advance Pricing Agreement "APA"

Switzerland has a long-standing practice regarding the issuance of unilateral rulings. This practice also includes the issuance of unilateral transfer pricing rulings.

In Switzerland, **advance pricing agreements (APAs) are available** (APA in the sense of a bilateral APA). APAs have become a favored option for Swiss-based international groups with complex or high-volume transactions. In practice, the procedure starts with a presentation of the facts and a formal request to the State Secretariat for International Finance (Staatssekretariat für internationale Finanzfragen, or SIF), the competent authority in Switzerland.

In principle, the APA program is open for all taxpayers that engage in cross-border intra-group transactions.

Under current practice, APA procedures are **free of charge**.

In practice, an APA will cover three to five years. However, Switzerland does not have specific time limitations that an APA may or may not cover. Rather, the time period to be covered by an APA has to be decided depending on the characteristics of the case at hand and is subject to negotiations. Hence, the duration is typically a trade-off between administrative-economical reasoning and the uncertainty concerning future developments of the transactions that are the subject of the APA. Switzerland allows but does not require taxpayers to make year-end adjustments. In the APAs for example, Switzerland could agree on a term test solution if required by the taxpayer and agreed with the other Competent Authority.

Transfer Pricing Audits

Transfer pricing issues can generally be raised by the tax administration in the course of ordinary tax assessments or in the course of audits. Tax audits are not regularly performed.

With regard to transfer pricing controversy process, it has to be differentiated whether a cantonal tax administration or the FTA raised the issue of transfer pricing. While the cantonal tax administrations raise this issue in the context of corporate income tax, the FTA may also challenge transfer pricing also with regard to withholding tax, stamp duty or VAT.

As will be shown, taxpayers may challenge the results of a tax assessment or from an audit in an administrative objection proceeding before bringing the case to court. As regards the selection of the courts, the taxpayer does not have options since the competent courts are determined by law.

Transfer pricing adjustments affecting corporate income tax have to be discussed with the cantonal tax administrations, as they are the competent authorities to assess and levy corporate income tax at cantonal and federal level. If the tax administration has already issued an assessment or

a decision, a formal objection can be lodged with the tax administration itself within 30 days. The tax administration will then have to evaluate the material objections and render a new decision.

The tax administration's second decision can be appealed before court, again within a 30-day deadline. Generally, each canton provides two judicial instances, whereas; though, typically, smaller cantons only established one judicial instance.

Once the highest cantonal court has rendered its decision, an appeal with the FSC can be lodged, also within 30 days.

In contrast to the cantonal instances, the FSC will only deal with questions concerning the correct application of the law, which includes the application of the OECD's TPG as soft law. Issues concerning the facts will only be dealt with if the facts were arbitrarily established. In the context of transfer pricing, it is worth noting that the choice of the transfer pricing method and its correct application of the same

is a question of law, whereas the result is considered as a factual question. Hence, regarding the determination of the at arm's length remuneration, the FSC can only intervene if the remuneration appears arbitrary.

In contrast to the cantonal tax administrations, the FTA can raise transfer pricing issues in connection with withholding tax, stamp duty and VAT. As at the cantonal level, the taxpayer can object against a negative decision of the FTA before appealing to the court.

As such a decision affects taxes being levied by a federal administrative authority, the appeal has to be lodged with the Swiss Federal Administrative Court – within 30 days. This court's decision can then be appealed with the FSC.

Withholding tax in the case of primary, corresponding and secondary adjustments

Further, the recently published Q&A by the FTA also provides answers as to when Swiss withholding tax is triggered in the case of primary adjustments, profit repatriations and secondary adjustments.

The FTA stresses that primary and corresponding adjustments typically relate to income tax. If such primary adjustment results in a profit repatriation, these are not considered to be deemed dividends and are not subject to withholding tax if they are carried out in accordance with the result of a mutual agreement procedure or a unilateral agreement based on art. 16 Federal Act on the Implementation of International Agreements in the Tax Area. In the absence of a mutual agreement procedure or a Swiss unilateral agreement, withholding tax is levied on payments made for the purpose of repatriation.

If, for example, a primary adjustment made by a cantonal tax administration is confirmed in whole or in part in the mutual agreement procedure, the question of the secondary adjustment arises – i.e., the levying of withholding tax by the FTA on the amount of the primary adjustment confirmed in the mutual agreement procedure. In this respect, the FTA differentiates between no withholding tax if there is a respective agreement in the mutual agreement or withholding tax. If addressed in the agreement (NB: the taxpayer has no claim that such clause is included in the agreement), the repatriation of profits must take place within 60 days of the mutual agreement's conclusion and needs to be proven vis-à-vis the FTA. In case of FTA audits, such agreement is excluded.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Swiss tax laws, apart from the Federal Act on the international automatic exchange of country-by-country reports of multinational groups, do not define specific documentation requirements with respect to transfer pricing. However, taxpayers must provide all documents necessary to enable the tax administration to conduct a proper assessment of the taxable base. This legal obligation is based on the principle that the taxpayer and the tax administration jointly determine the relevant facts to ensure a complete and correct assessment as far as corporate income tax is concerned.

In particular, taxpayers are obliged to provide the tax authorities with any information on transactions between associated companies upon request. Therefore, although there are no statutory TP documentation obligations, sound TP documentation can effectively reverse the burden of proof in favor of the taxpayer. Such documentation will also be helpful in the defense of potential tax evasion charges. Such documentation should also include sound and updated benchmarking studies.

Transfer Pricing Penalties

Switzerland **does not impose penalties that apply specifically in the transfer pricing context, except for violations of the CbCR requirements.**

However, violations of the arm's length principle under certain circumstances can be qualified as unlawful tax evasion (or tax fraud) and as such be subject to penalties. An unlawful tax evasion might be assumed if basic principles of transfer pricing were grossly neglected and, thus, the violation of the arm's length principle was not only recognizable for the company or the people in charge respectively but downright obvious. In such cases, it can be assumed that the transfer prices were deliberately set in violation of the arm's length principle.

In the case of tax evasion (or tax fraud), penalties may be imposed for all taxes involved. For instance, a transfer price-induced adjustment by the tax administration concerning corporate income tax may trigger respective consequences regarding withholding tax or VAT. In the case of corporate income tax, the penalties are determined based on the unlawfully evaded tax amount, whereas the potential penalty ranges from one third of the evaded tax to three times that amount. However, in general, the fine is equal to the amount of the evaded tax.

If the tax has not yet been definitively assessed, there may be a case of attempted tax evasion, which reduces the penalty to one third. It is important to note that for the purposes of corporate income tax a fine is imposed on the company. Regarding withholding tax and VAT, however, the fine is directly imposed on the person(s) responsible for the violation. At least in these cases, the fine is not determined based on the amount of tax evaded, but according to a fixed fine range.

Federal and cantonal Swiss tax laws provide for a one-time voluntary disclosure, which leads to a complete penalty relief if specific statutory conditions are met. Outside the voluntary disclosure procedures, penalties charged are lower in the case of ordinary negligence and higher in the case of gross negligence. Collaboration with the tax administration in the course of a tax criminal investigation will usually result in a lower penalty. With regard to the question of culpability, the importance of state-of-the-art transfer

pricing documentation should be emphasized. If a company does have such documentation, it will be difficult for the tax administrations to substantiate culpability. However, as indicated above, many disputes can be prevented or settled by negotiations with the tax authorities during a tax assessment or tax audit process (by filing formal complaints).

Local Hot Topics and Recent Updates

Transfer pricing topics are more and more part of routine tax audits.

In recent years, the transfer pricing team of the Swiss tax authorities has been growing in size, and taxpayers have been confronted more frequently with detailed questions on transfer pricing issues (e.g., requests for detailed transfer pricing documentation and explanations on comparables). The focus is on the transfer of functions, the transfer of intellectual property rights, financial and trading transactions and asset management services. In particular, transactions with foreign companies in low-tax jurisdictions are attracting the attention of the tax authorities.

The Administrative Court of Zug (5 December 2024, Case A 2023/1) reinforced the Swiss periodicity principle, prohibiting multi-year "margin smoothing" across multiple years, i.e. each fiscal year must be assessed separately regarding compliance with the arm's length principle:

A legal entity based in the Canton of Zug, which is part of an international pharmaceutical group, acted as limited risk distributor as of 2018. For 2018, the company reported a negative operating margin of –21.8%. The cantonal tax administration objected to this margin as being non–arm's length and instead assessed the company with a margin of 1.1% which was the lowest value of the interquartile range of the benchmarking study. As a result, a profit adjustment in the amount of around CHF9 million resulted. The taxpayer filed an objection and countered that the three-year average (2016–18) stood at 1.2%, which would compensate for the low 2018 margin. During court proceedings, the taxpayer referred to the OECD TP guidelines, which allow the use of multi-year data to determine appropriate transfer prices. The taxpayer concluded from this statement that it could also smooth the margin over several years.

The Administrative Court in the Canton of Zug did not accept the line of reasoning provided by the taxpayer. It emphasized the principle of periodicity, which requires taxes to be assessed separately for each tax year. A subsequent "smoothing" of the margin over multiple years was deemed impermissible, especially as there were no extraordinary circumstances substantiating the negative result in 2018. According to the court's ruling, it is in line with the fundamentals of transfer pricing law that each business unit be taxed according to the economic substance of the value it adds. This analysis is carried out anew every year.

Documentation threshold

Master file	N/A but recommended
Local file	N/A but recommended, and in practice expected
CbCR	CHF 900 M

Submission deadline

Master file	N/A
Local file	N/A
CbCR	12 months after FY closing

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Assessment by discretion by authorities
CbCR – late/incomplete/no filing	CHF 200 per day of late filing, up to CHF 50k

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Overview

DFDL (Thailand) Limited, Taxand Thailand

Founded in the Lao PDR in 1994, DFDL has grown into one of Southeast Asia's leading legal and tax advisory firms, with over 150 lawyers and advisers across 11 offices throughout the region. Since establishing a permanent presence in Bangkok in 2005, our Thailand practice has become an integral part of DFDL's regional platform, delivering seamless legal and tax solutions for both domestic and cross-border matters.

Our multidisciplinary team of Thai-qualified and international lawyers, tax and transfer pricing advisers works collaboratively across jurisdictions to provide clients with fully integrated legal and tax services. We are particularly recognized for our strength in cross-border transactions involving Thailand and the CLMV countries (Cambodia, Lao PDR, Myanmar, and Vietnam), offering clients a single point of contact for complex, multi-jurisdictional projects.

Our Transfer Pricing ("TP") team provides end-to-end transfer pricing services, including:

- TP policy design and implementation for intragroup transactions;
- Preparation of TP documentation (Local File, Master File, and Country-by-Country Reporting);
- Benchmarking and comparability analyses;
- TP advisory, risk assessment and health-checks;
- Assistance in TP audits and dispute resolution;
- Advance Pricing Agreement ("APA") and Mutual Agreement Procedure ("MAP") support; and
- Financial transaction and intercompany financing advisory.

General: Transfer Pricing Framework

Thailand's transfer pricing framework is governed by domestic legislation codified in Sections 71 bis and 71 ter of the Revenue Code, introduced by the Revenue Code Amendment Act B.E. 2561 (2018) and effective for accounting periods beginning on or after 1 January 2019. These provisions transformed TP from an administrative concept into a statutory compliance obligation, empowering the Revenue Department to assess related-party transactions by reference to the arm's length principle.

The OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration ("OECD Guidelines") are not directly incorporated into Thai law, but they serve as an important reference framework for TP.

Transfer pricing rules apply to both domestic and cross-border related-party transactions, covering a broad range of transaction types including the sale and purchase of goods, provision of services and management fees, royalties and intellectual property licensing, intercompany financing and guarantees, and cost allocation and shared service arrangements.

Accepted Transfer Pricing Methodologies

Thailand follows the OECD Guidelines in recognising five standard transfer pricing methods. There is no prescribed hierarchy; the most appropriate method is selected based on the facts and circumstances of the controlled transaction, the availability of reliable information, and the degree of comparability achievable with uncontrolled transactions. The five accepted methods are:

- Comparable Uncontrolled Price ("CUP") Method;
- Resale Price Method ("RPM");
- Cost Plus Method ("CPM");
- Transactional Net Margin Method ("TNMM"); and
- Profit Split Method ("PSM").

Taxpayers may use an alternative method not listed above only where they can demonstrate that none of the five standard methods is appropriate and that the alternative method selected is the most appropriate for the transaction.

Should taxpayers opt to adopt other methods, the taxpayer must submit a formal written notification (accompanied by a preliminary justification of the selected methodology) to the Director-General of the Thailand Revenue Department ("TRD") within the accounting period in which they commenced using the method.

Transfer Pricing Documentation Requirements

Companies or juristic partnerships that enter into transactions with related parties and whose annual revenue exceeds THB 200 million are required to file a transfer pricing disclosure form (the "TP Disclosure Form") along with the annual corporate income tax return, with the Revenue Department within 150 days after the end of their accounting period.

Such taxpayers are also required to prepare and retain TP documentation (i.e., Local File and Master File) to support the arm's length nature of their related-party transactions. The documentation must be in place by the annual corporate income tax return filing deadline and must be submitted to the Revenue Department within 60 days of receiving a written request.

Thailand's TP documentation framework broadly follows the OECD's three-tiered documentation approach:

Local File: A transaction-level file documenting detailed information on related-party transactions, including functional and, where applicable, benchmarking studies.

Master File: A group-level file providing an overview of the multinational enterprise ("MNE") group's business, value chain, transfer pricing policies, and financial and tax positions.

There is no requirement to file the Local File or Master File with the Revenue Department unless specifically requested.

Country-by-Country Report ("CbCR"): Required



for MNE groups with annual consolidated revenue of THB 28 billion or more. The CbCR must be filed by the Thai parent entity, or where the parent is a foreign entity, by the Thai constituent entity acting as a surrogate or under secondary filing obligations. CbCR must be filed within 12 months of the end of the reporting fiscal year.

Local Jurisdiction Benchmarks

The TRD has not issued any formal written regulation/ guidelines on preference for local / regional comparables for purposes of TP benchmarking studies. However, in practice, the TRD has a preference for local comparables.

Though the TRD has not issued any formal written regulation/ guidelines on the period of review, multiple-year testing (i.e., three-year or five-year testing) is commonly used, as opposed to single-year testing.

In addition, a 'benchmarking analysis exemption' has been provided under DGN 407, whereby a benchmarking study is not required if:

- The taxpayer's total revenue for the fiscal year is less than THB 500 million;
- The taxpayer has only domestic-related party transactions;
- Neither the taxpayer nor any of the relevant counterparties have carryforward losses for corporate income tax computation purposes; and
- All parties are subject to the same corporate income tax rate.

Furthermore, a benchmarking study is not required if the transactions are covered transactions under a bilateral Advanced Pricing Agreement ("APA") concluded with the TRD, and the relevant fiscal year is covered by the APA.

Focus on Financial Transactions

Under Sections 71 bis and 71 ter of the Thai Revenue Code, intercompany financial transactions, including loans, cash pooling arrangements and financial guarantees, are subject to the arm's length principle in the same manner as other related-party transactions.

Thailand has not issued specific TP legislation or safe harbour rules governing financial transactions; accordingly, the general transfer pricing provisions apply to these arrangements.

Although Thai legislation does not prescribe a specific methodology for analysing financial transactions, the TRD recognises the OECD Guidelines as an important reference framework.

Accordingly, taxpayers commonly evaluate intercompany financing by considering the accurate delineation of the transaction, the borrower's creditworthiness (including the effect of implicit group support where relevant), whether the amount and tenor of the financing are consistent with those that independent parties would have agreed, and whether the interest rate and other financial terms are supported by comparable uncontrolled transactions.

Similarly, intercompany financial guarantees should be assessed to determine whether they provide an economic benefit to the borrower and, where appropriate, whether an arm's length guarantee fee should be charged.

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

Under Thailand's current framework, TRD only accepts applications for BAPA.

BAPAs may be concluded between the Thai competent authority and the competent authority of a treaty partner where permitted under the relevant Double Tax Agreement.

Taxpayers seeking an APA are required to submit an application to the TRD, supported by information on the proposed covered transactions, transfer pricing methodology, functional analysis and relevant financial information. The APA process is administered by the TRD under its APA guidelines.

The APA covered period can be up to five years. As for roll-back, taxpayers can apply for roll-back for up to two years, provided that the circumstances of the roll-back period are identical to those of the APA period.

In practice, the timeframe for completing a BAPA depends on factors such as the complexity of the transactions, the completeness of the taxpayer's submission and coordination with the treaty partner's competent authority.

Transfer Pricing Audits

Transfer pricing has become an increasingly important area of focus for the TRD. Although the TRD has not published an exhaustive list of audit triggers, based on practical experience, TP audit risk is generally higher for:

- The Thai company has been consistently operating at a loss for several consecutive years.
- The Thai company has inconsistent business performance, such as alternating profits and losses from year to year, with no tax payments over several years.
- The total net profit is lower than the industry average, as concluded by TRD.
- The Thai company is operating at a loss after the expiration of the Thailand Board of Investment promotion period.
- Significant related-party transactions including royalty payments, management fees and service charges and related-party financing arrangements.
- Transactions involving entities in low tax jurisdictions.
- The Thai company has undertaken a business restructuring resulting in reduced net profit or losses, leading to lower or no tax payments.

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During a transfer pricing review, the Revenue Department may examine not only whether appropriate documentation has been prepared, but also whether the actual conduct of the parties, functions performed, risks assumed and benefits received are consistent with the reported TP outcomes. Accordingly, taxpayers should ensure that their TP policies are supported by both economic analysis and evidence demonstrating the commercial substance of the related-party arrangements.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Under Thailand's transfer pricing framework, the Revenue Department bears the responsibility of demonstrating that the conditions of a related-party transaction differ from those that would have been agreed between independent parties before making an adjustment to taxable income. Section 71 bis of the Revenue Code empowers the assessment officer to adjust income and expenses where related-party commercial or financial conditions are not consistent with arm's length conditions and result in lower taxable profits.

In practice, however, taxpayers may face significant challenges in defending their transfer pricing positions where adequate supporting documentation is not available. Under Section 71 ter of the Revenue Code, taxpayers within scope are required to submit a Transfer Pricing Disclosure Form and maintain transfer pricing documentation. Where requested documentation is not provided within the prescribed period, the Revenue Department may assess the taxpayer based on available information and make adjustments where it considers that the related-party pricing does not comply with the arm's length principle.

Accordingly, maintaining robust and contemporaneous transfer pricing documentation is essential for taxpayers seeking to support their related-party pricing arrangements. Documentation should generally include transfer pricing policies, intercompany agreements, functional analyses, economic analyses and benchmarking studies, together with relevant financial information supporting the pricing methodology applied.

Companies with appropriate internal governance processes, including clearly assigned responsibilities among management, finance, tax and legal functions, are better positioned to demonstrate the commercial rationale and consistency of their transfer pricing outcomes during a tax review.

Transfer Pricing Penalties

Failure to comply with Thailand's transfer pricing disclosure and documentation requirements may expose taxpayers to administrative penalties, tax adjustments and related surcharges.

Failure to file the Transfer Pricing Disclosure Form:

A taxpayer that fails to submit the required TP Disclosure Form within the prescribed timeline may be subject to a fine of up to THB 200,000 under Section 35 ter of the Revenue Code.

Incorrect, incomplete or late Transfer Pricing Disclosure Form:

The Revenue Code does not prescribe a separate fine specifically for a late or incomplete TP Disclosure Form. The same fine of up to THB 200,000 under Section 35 ter of the Revenue Code (referred to above) applies to incorrect, incomplete or late submissions made without a reasonable cause.

Failure to submit transfer pricing documentation upon request:

Taxpayers are required to prepare and maintain transfer pricing documentation and provide such documentation to the Revenue Department upon request. The taxpayer generally has 60 days from the date of receiving the request to submit the documentation, with a possible extension of up to 60 additional days. Failure to provide sufficient documentation may increase the taxpayer's exposure during a transfer pricing review, as the Revenue Department may make an assessment based on available information.

Transfer pricing adjustments:

Where the Revenue Department determines that related-party transactions are not consistent with the arm's length principle, it may adjust the taxpayer's income or expenses under Section 71 bis of the Revenue Code. Any resulting additional corporate income tax liability may be subject to a surcharge of 1.5% per month or fraction thereof under Section 27 of the Revenue Code, capped at the amount of the additional tax payable.

A penalty of 100% of the additional tax assessed may also apply under Section 22, although the penalty may be reduced or waived by the Revenue Department depending on the circumstances.

Local Hot Topics and Recent Updates

Thailand's OECD Accession and the Intensification of TP Scrutiny

Thailand's transfer pricing framework continues to evolve alongside the country's broader efforts to align its legal and regulatory framework with international standards. Following the OECD Council's decision in June 2024 to open accession discussions with Thailand and the adoption of Thailand's Accession Roadmap in July 2024, Thailand is undergoing technical reviews of its legislation, policies and administrative practices against OECD standards. Although the OECD accession process is broader than transfer pricing, it is expected to reinforce Thailand's continued alignment with internationally accepted tax principles and administrative practices.

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For multinational enterprise groups operating in Thailand, TP documentation should remain a key area of focus. Taxpayers should ensure that documentation is robust, contemporaneous and capable of supporting the arm's length nature of the related-party transactions, particularly those involving financing arrangements, royalties, management services and intangible assets. These transaction categories are recognised internationally as areas requiring careful TP analysis under the OECD Transfer Pricing Guidelines.

Global Minimum Tax

Thailand has implemented legislation introducing the OECD/G20 Inclusive Framework's Pillar Two Global Minimum Tax for in-scope multinational enterprise groups, effective from 1 January 2025. Although the Global Minimum Tax operates independently of Thailand's TP regime, TP outcomes may influence the calculation of GloBE income and the jurisdictional effective tax rate. Accordingly, multinational groups should consider TP and Pillar Two analyses together to ensure consistency between TP positions and Pillar Two computations.

Documentation threshold

Master file	Taxpayers with annual revenue exceeding THB 200 million that enter into related-party transactions.
Local file	The taxpayer must submit a Transfer Pricing Disclosure Form along with the annual corporate income tax return.
Country-by-Country Report (CbCR)	A consolidated annual revenue threshold of THB 28 billion applies.

Submission deadline

Master file	To be submitted to the Revenue Department within 60 days of a request (extendable once by up to 60 additional days).
Local file	
Country-by-Country Report (CbCR)	Filed within 12 months after the end of the reporting fiscal year by the reporting entity where the filing obligation applies.

Penalty Provisions

Documentation – late filing provision	Failure to provide the documentation when requested by the TRD may increase the risk of transfer pricing adjustments. Where an adjustment results in additional tax, the applicable tax penalty and surcharge under the Revenue Code may apply.
Tax return disclosure – late/ incomplete/no filing	Failure to comply with the TP Disclosure Form requirement or submission of incorrect or incomplete information without reasonable cause is subject to a fine of up to THB 200,000 under Section 35 ter of the Revenue Code
CbCR - late/incomplete/no filing	Failure to comply with Country-by-Country Reporting obligations, including failure to file the CbCR by the due date, is subject to a fine of up to THB 2,000 under Thailand's CbCR legislation and related regulations.



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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 employes 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.

TURKEY

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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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UAE

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Overview

Al Tamimi & Company, Taxand UAE

Al Tamimi & Company has a top tier tax practice consisting of experts with academic background in law, economics and accounting who gained strong tax experience from established jurisdictions in UK, Europe and Asia. The regional transfer pricing ("TP") team based in the United Arab Emirates ("UAE") is dedicated to providing sophisticated and pragmatic solutions tailored to the needs of multinational enterprises ("MNEs"). Our TP team offers deep expertise in navigating the complex regional regulatory environment, ensuring compliance with local and international standards while optimizing tax efficiencies. We assist clients in the following areas:

- Assess TP risks and identify opportunities to mitigate these risks.
- Develop tax efficient and globally defendable TP policies in line with business reality.
- Assist with the practical implementation of the TP policies.
- Support TP policies by preparing TP documentation in line with the TP requirements.
- Provide dispute resolution support as well as TP litigation assistance.

Transfer Pricing Framework

The UAE has incorporated TP rules within the Federal Decree-Law No.47 of 2022 on the Taxation of Corporations and Businesses ("Corporate Tax Law"). The TP Guide, issued by the Federal Tax Authority ("FTA") on 23 October 2023, provides general guidance on the TP regime in the UAE and practical examples on the application of the UAE TP rules. Broadly, the UAE TP rules are aligned with the TP guidance from the Organisation for Economic Co-operation ("OECD").

The arm's length principle is the cornerstone of UAE's TP rules, ensuring that transactions between related entities are conducted as if they were between independent parties. Under the Corporate Tax Law, notable articles in relation to TP include Article 34 (arm's length principle), Article 35 (related parties and control), Article 36 (payments to connected persons), and Article 55 (transfer pricing documentation).

The FTA mandates comprehensive TP documentation, including the preparation and submission of a TP Disclosure Form, a Master File, a Local File and as well as Country-by-Country Reporting ("CbCR") requirements for entities meeting specific thresholds.

Accepted Transfer Pricing Methodologies

The transfer pricing rules define the methodologies that are to be used to analyze related party transactions. There are five internationally accepted transfer pricing methods detailed in the OECD TP Guidelines and internalised under Article 34(3) of the Corporate Tax Law. These are the following:

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

The Corporate Tax Law 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

As stipulated under Article 55 of the Corporate Tax law, and to maintain compliance with TP requirements and safeguard the integrity of their corporate tax positions, taxable persons must compile contemporaneous TP documentation in relation to their controlled transactions. Furthermore, the TP Guide details the approach to TP documentation, including:

TP disclosure form

All taxable persons who conduct transactions with related parties or connected persons (domestic or international) are required to prepare and submit a TP disclosure form alongside the tax return (i.e. within 9 months from the end

of the relevant tax period). The Transfer Pricing Disclosure Form is subject to prescribed reporting thresholds. Broadly, disclosure is required where the aggregate value of transactions with Related Parties exceeds AED 40 million during the Tax Period, with reportable categories disclosed where the aggregate value exceeds AED 4 million per transaction category. Separate disclosure requirements also apply to transactions with Connected Persons, generally where the aggregate value of payments or benefits exceeds AED 500,000 per Connected Person (together with its Related Parties)..

As per the TP disclosure form, a taxable person should submit information such as the nature of the controlled transaction(s), the gross value of the controlled transaction(s), details of the related party(ies)/ connected persons and the transfer pricing method(s) used to determine the arm's length value of the controlled transactions, amongst others.

Master File and Local File
Taxable Persons who are a Constituent Company of an MNE Group with a total consolidated group of United Arab Emirates dirham ("AED") 3.15 billion or more; or where the taxable person's revenue in the relevant tax year is AED 200 million or more, must keep both a Master File and a Local File. The requirements prescribed by the FTA align with the requirements under Chapter V of the OECD TP Guidelines.

Any taxable person who is part of a UAE-headquartered organisation that is not an MNE organisation (i.e. a group with no commercial premises outside the UAE) is exempt from maintaining a Master File. However, they must keep a Local File in accordance with the prescribed thresholds (even when only domestic controlled transactions exist).

The Master File should provide an overview of the multinational group business, including the nature of its global business operations, its overall transfer pricing policies, and its global allocation of income and economic activity. On the other hand, the Local file focuses on information relevant to the related party transactions that the taxable person undertakes and evaluates the arm's length nature of these transactions.

A Taxable Person who does not fulfil the requirements for a Master File or Local File is nonetheless required to keep records demonstrating the arm's length character of their dealings with related parties/ connected persons, and the FTA may seek supporting documentation from all taxpayers. Functional analysis, benchmarking studies, intercompany agreements, meeting minutes, documentation of decisions taken, emails, invoices, workpapers estimating transfer prices, and so on are examples of such information.

This information can be requested by the FTA within 30 days or as ordered by the FTA.

It is crucial to mention that the FTA expects that documentation is maintained in English language either at the time of the controlled transaction or, by the time the taxable person submits its tax return for the tax period in which the controlled transaction is undertaken.

Country-by-Country Reporting ("CbCR")
The CbCR is a standardised report that provides information regarding the MNE Group's global income allocation, taxes paid, and economic activity indicators across tax jurisdictions. It also identifies the MNE Group's constituent entities for which financial information is disclosed, including the tax jurisdiction of incorporation and details of the constituent entity's major economic operations. The CbCR rules apply to multinational groups headquarted in the UAE that have a total consolidated group revenue of AED 3.15 billion or above. The CbC report should be filed within 12 months from the end of the financial year of the Group.

The CbCR notification provides information with respect to the filing entity. The CbCR notification should be submitted no later than the last day of the financial year that of the multinational group.

The CbCR requirements were introduced through the Cabinet Resolution No. 44 of 2020. It should be noted that the CbCR follows the Standard Template attached in Chapter V of the OECD TP Guidelines.

Local Jurisdiction Benchmarks

In the UAE, TP documentation practices adhere to international norms, including those outlined by the OECD. Taxable entities must prepare benchmarking studies to demonstrate that their intra-group transactions comply with the arm's length standard. These studies should be contemporaneous, with a comprehensive review every three years, and the financial data of comparable companies should be updated annually, where applicable.

It is recommended to first consider internal comparables when available, and if they are not used, a clear explanation should be provided. Adjustments to comparables are allowed if they enhance the accuracy and relevance of the data for the transaction in question.

Taxable entities should use domestic comparables in their comparability analysis as these comparables generally have a higher degree of comparability in terms of their market and economic circumstances compared to foreign comparables. Where insufficient data is available at the domestic level, taxable entities can consider regional or global comparables.

Focus on Financial Transactions

The UAE Transfer Pricing Guide contains dedicated guidance on the transfer pricing treatment of financial transactions, largely following the principles set out in Chapter X of the OECD Transfer Pricing Guidelines. The guidance makes clear that financial transactions between Related Parties and Connected Persons should first be accurately delineated based on their legal form and the actual conduct of the parties before an arm's length price is determined.

The guidance extends beyond intra-group financing and addresses a broad range of treasury activities, including treasury functions, intra-group loans, cash pooling arrangements, financial guarantees, hedging activities and captive insurance arrangements. In each case, the arm's length remuneration should reflect the functions performed, assets employed and risks assumed by the parties involved.

For intra-group loans, the Guide confirms that the Comparable Uncontrolled Price ("CUP") method will often be the most appropriate transfer pricing method where reliable third-party loan data is available. It also provides detailed guidance on determining the borrower's creditworthiness, recognising the effect of implicit group support, identifying appropriate third-party comparables, and making comparability adjustments where necessary.



The Guide further recognises that central treasury entities and cash pool leaders frequently perform routine coordination and administrative activities and, in such circumstances, should generally earn only an arm's length service remuneration. Conversely, where the treasury entity assumes and manages significant financial risks or performs more complex financing functions, a higher level of remuneration may be appropriate.

Overall, the guidance provides welcome clarity on the FTA's expectations for documenting and pricing financial transactions and reinforces the importance of undertaking robust functional and economic analyses supported by appropriate benchmarking and contemporaneous documentation.

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

Article 59 of the Corporate Tax Law provides the legislative basis for a Person to apply to the FTA for an Advance Pricing Agreement ("APA") in relation to the determination of the arm's length price for Controlled Transactions.

In December 2025, the FTA issued its Advance Pricing Agreements Guide and commenced the phased implementation of the UAE APA programme. The programme initially focuses on unilateral APAs ("UAPAs"). Applications for domestic UAPAs have been accepted from December 2025, while the commencement date for cross-border UAPAs is to be announced separately.

A Person may generally apply for an APA where the total value of the Controlled Transactions proposed to be covered is at least AED 100 million per Tax Period. However, the threshold is indicative rather than absolute, and the FTA may consider applications below the threshold where sufficiently justified. APAs are generally available for prospective periods of between three and five Tax Periods and require a mandatory pre-filing consultation followed by a formal application.

The FTA has also indicated that bilateral APAs ("BAPAs") and multilateral APAs ("MAPAs") will be introduced in a later phase in coordination with the UAE Competent Authority and relevant treaty partners. Further guidance and commencement dates for BAPAs and MAPAs are expected to be announced in due course..

Transfer Pricing Audits

The FTA is empowered to conduct TP audits to ensure compliance with the arm's length principle. Although random audits are not explicitly mentioned, the FTA may use risk assessment tools, including the mandatory Transfer Pricing Disclosure Form, to select taxpayers for audits. It is expected that TP audits will focus on the accuracy and appropriateness of the TP methods applied, the reliability of benchmarks, and the consistency of the TP documentation. Companies found to have non-compliant TP practices may face adjustments to their taxable income and potentially significant penalties.

Transfer Pricing Penalties

While the Corporate Tax Law does not specify distinct penalties for non-compliance with TP requirements, it is expected that penalties will follow the framework established under the UAE Tax Procedures Law of 2022 (Article 60, Corporate Tax Law). This includes penalties for late submissions, inaccurate documentation, and failure to maintain books and records. The FTA may impose additional taxes, interest on overdue payments, and fines for any discrepancies identified during an audit. The introduction of these rules underscores the UAE's commitment to preventing tax avoidance and ensuring that all related-party transactions comply with the arm's length standard.

When related-party transactions do not meet the arm's length standard, the FTA has the authority to adjust the taxable income to reflect an arm's length result. This adjustment ensures that the transaction or arrangement accurately reflects the economic reality and the facts and circumstances involved. Additionally, if an adjustment is made to one party's taxable income, a corresponding adjustment will be made to the related party involved in the transaction.

Local Hot Topics and Recent Updates

Following the implementation of Corporate Tax, transfer pricing compliance has become an established part of the UAE tax compliance framework. Taxable Persons undertaking transactions with Related Parties or Connected Persons should ensure consistency between their Corporate Tax Return, Transfer Pricing Disclosure Form, Financial Statements, intercompany agreements and supporting transfer pricing documentation.

Key areas of focus include the accurate identification and delineation of Controlled Transactions, payments or benefits provided to Connected Persons, intra-group services, financial transactions and transactions involving intangibles. Taxable Persons should also maintain contemporaneous evidence supporting the commercial rationale, conduct of the parties, transfer pricing methodology and arm's length nature of their Controlled Transactions.

Recent developments include the introduction of prescribed disclosure thresholds, further FTA guidance on the application of the Related Party and Connected Person provisions, and the phased implementation of the UAE Advance Pricing Agreement programme. These developments reinforce the importance of maintaining robust and readily available transfer pricing documentation and ensuring that transfer pricing positions are consistently reflected across the Taxable Person's records and filings.

UAE

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Documentation threshold

Master file	Companies that are part of an MNE Group with a total consolidated revenue of AED 3.15 billion or above, or where the taxable person's revenue for the relevant tax period is at least AED 200 million.
Local file	Companies that are part of an MNE Group with a total consolidated revenue of AED 3.15 billion or above, or where the taxable person's revenue for the relevant tax period is at least AED 200 million.
CbCR	MNEs with an Ultimate Parent Entity that is resident in the UAE, with consolidated revenues equal to or exceeding AED 3.15 billion.

Submission deadline

TP disclosure form	To be submitted alongside the tax return (within 9 months from the end of the relevant tax period)
Master file	To be maintained and submitted within 30 days upon request by the FTA.
Local file	To be maintained and submitted within 30 days upon request by the FTA
CbCR	Within 12 months from the end of the reporting fiscal year of the Group
CbCR notification	Notification must be submitted by the end of the reporting fiscal year

Penalty Provisions

Documentation – late filing provision	Fines as determined by the Corporate Tax Law and relevant Decisions
Tax return disclosure – late/ incomplete/no filing	Fines as determined by the Corporate Tax Law and relevant Decisions
CbCR – late/incomplete/no filing	Under the Cabinet Resolution No. 44 of 2020 on CbCR, four types of administrative penalties are imposed on eligible UAE taxable persons, ranging from AED 10,000 to AED 1,000,000. Specific penalties include: • Late filing of CbCR: Up to AED 1,000,000 plus AED 10,000 for each day of delay, capped at AED 250,000. • Inaccurate or incomplete CbCR: Fines range from AED 50,000 to AED 500,000. • Failure to maintain required documentation for five years: AED 100,000. • Failure to provide requested information: AED 100,000.



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UNITED KINGDOM

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Overview

Travers Smith LLP, Taxand United Kingdom

Travers Smith's Transfer Pricing team advises multinational clients on the legal aspects involved with complex cross-border pricing arrangements. We work seamlessly with partner firms and our Taxand network colleagues to deliver coordinated, practical, and commercially focused solutions that ensure alignment with global regulations and mitigate transfer pricing audit risk.

Our services include providing legal advice in connection with the structuring and documentation of intra-group transactions, mergers and acquisitions, and due diligence involving transfer pricing matters. In partnership with specialist firms, we can help facilitate benchmarking studies, economic analysis, and the design and implementation of transfer pricing policies.

Unity Advisory, Taxand United Kingdom

Unity Advisory's Transfer Pricing team advises multinational groups — from large-cap listed corporates to private equity-backed businesses — on the full economic and technical spectrum of transfer pricing, from policy design through to defence. We harness AI, including our own proprietary tools, to strengthen the robustness of our advice and documentation, enabling our team and our clients' teams to partner the business as commercial decisions are being considered.

We advise on business model reorganisations, from IP strategy through to full tax-efficient supply chain planning - enhancing cash flows, ETR management, operational efficiencies and shareholder returns. We also support clients through the transaction lifecycle, with a particular focus on M&A due diligence, carve-outs, post-merger integration and exit readiness, and we represent clients in dispute resolution — from managing tax authority audit enquiries through to Mutual Agreement Procedures (MAP) and Advance Pricing Agreements (APA).

Transfer Pricing Framework

For accounting periods ending on or after 1 April 2010, the UK's transfer pricing legislation is mainly governed by Part 4 of the Taxation (International and Other Provisions) Act 2010. Part 4 was significantly amended by the Finance Act 2026, with the principal changes taking effect for accounting periods beginning on or after 1 January 2026.

The UK's transfer pricing regime is based on the arm's length principle. The UK rules mandate that profits and losses should be calculated for tax purposes by substituting an 'arm's length provision' in place of an 'actual provision.' In broad terms, the UK's transfer pricing regime is triggered where:

- the actual provision differs from the arm's length provision, and
- the actual provision confers a potential 'UK tax advantage' on a person (or persons).

For these purposes:

- an arm's length provision means a 'provision' which would have been made between two independent enterprises (construed consistently with the expression of the arm's length principle in (a) Article 9 of the OECD Model Tax Convention ("OECD MTC"), as interpreted in accordance with the OECD's commentary, and (b) the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD TPG"));
- an 'actual provision' means a provision which has been made or imposed between the two 'connected parties' by means of a transaction (having a very wide definition) or series of transactions. The UK regime applies to both cross-border and UK-to-UK transactions (or series of transactions), subject to the introduction of the UK-to-UK transfer pricing exemption (see section below);
- a 'provision' is (broadly) equivalent to the phrase "conditions made or imposed" in Article 9 of the OECD MTC;
- two parties are 'connected parties' if (broadly) one controls the other, or a third-party controls both. However, the connection (or participation) test is satisfied in three additional scenarios involving indirect control:
  - Joint ventures ("JV"): such that a 40% participant in the JV will be deemed to control the JV if there is one other participant who also owns at least 40% of the JV – this is known as the 40% test;
  - Financing arrangements: such that persons that have 'acted together' in relation to the provision of finance – broadly, where parallel equity interests in respect of financing arrangements exist which would, if aggregated, result in the control of the borrower – will also be connected; and
  - Common management: for accounting periods beginning on or after 1 January 2026, such that two persons that are managed by the same person (or group of persons) in a way that is intended to align the economic interests of their shareholders will be treated as being connected; and
- A potential UK tax advantage includes any reduction of taxable profits, or any increase (or creation) of tax losses.

With effect for chargeable periods beginning on or after 1 January 2026, the regime also includes an anti-avoidance provision that ensures any arrangements with a main purpose of not meeting the participation test will be disregarded. In addition, in certain circumstances HM Revenue and Customs ("HMRC") have the power to require a taxpayer to file on the basis that the participation test is treated as met for the chargeable period (and future chargeable periods).

Where the regime applies, the advantaged party (or parties) must make a transfer pricing adjustment(s) in the tax



return for the relevant period. HMRC also has the power to impose a transfer pricing adjustment in a tax return. When a transfer pricing adjustment has been by one party, if certain criteria are met, another party (who is not advantaged) may make a 'compensating adjustment.' Any 'balancing payments' made between the parties in such cases are treated as neither taxable receipts nor allowable expenses.

Special rules apply to entities that are life assurance companies or North Sea oil and gas companies.

The UK transfer pricing regime does not apply to dormant companies.

Small and Medium Sized Enterprise ("SME") Exemption:

The UK regime exempts most transactions carried out by a business that is a SME. A SME is a business (together with any group or associated companies) with:

- 250 or fewer staff, and
- either:
  - Annual turnover of less than €50 million, or
  - Total balance sheet assets of less than €43 million.

However, the exemption for SME does not apply where:

- the business enters transactions with parties in a non-qualifying territory (i.e., a territory with which the UK does not have a double tax treaty with a non-discrimination article);
- HMRC has issued a transfer pricing notice to a medium-sized enterprise;
- HMRC has issued a notice requiring the SME to apply transfer pricing in respect of a provision related to a claim made under the UK Patent Box regime; or
- the SME has made an election to remain subject to transfer pricing rules.

UK-to-UK Exemption

For accounting periods beginning on or after 1 January 2026, the UK transfer pricing rules do not apply to provisions between UK-resident companies for a chargeable period, provided certain criteria have been met and none of the disqualifying criteria apply.

The exemption is intended to reduce the compliance burden in cases where the application of transfer pricing to UK-to-UK transactions would produce a tax-neutral result.

For a transaction to qualify for the exemption, the following criteria must be met:

- both parties to the transaction are UK-resident companies throughout the relevant period;
- the provision is relevant to the calculation of the profits or losses of both companies, and throughout the relevant period, any resulting profits are chargeable to corporation tax;
- both companies are subject to corporation tax at the same statutory rate; and
- both companies use the same reference currency.

The exemption does not extend to transactions involving partnerships, individuals or trusts. The exemption will further not apply where:

- the provision comprises or includes a contract which is not treated as a derivative contract for UK tax purposes (because of its underlying subject matter) in relation to one (but not both) of the parties;
- the provision relates to the UK patent box regime;
- an exemption adjustment for profits or losses of foreign permanent establishments is made;
- one or both companies is an 'excluded company'. Very broadly, an excluded company is one that operates certain specified businesses including oil and gas, banking, insurance, securitisation, and certain investment vehicles; or
- HMRC has issued a 'transfer pricing notice' disapplying the exemption where it considers this necessary to prevent a net loss of UK tax.

In addition, the potentially advantaged company can make an election for the exemption not to apply to them (or to a particular provision) for a chargeable period. The election is irrevocable once made.

Groups should be mindful that notwithstanding the introduction of this exemption, rules outside the transfer pricing regime may still regulate related-party transactions conducted on non-arm's length terms.

Pre-1 January 2026: Diverted Profits Tax ("DPT")

The UK's Diverted Profits Tax ('DPT') was introduced to counter perceived aggressive tax planning that diverted profits from the UK. The standalone DPT charge has been repealed with effect for accounting periods beginning on or after 1 January 2026 (but continues to apply to accounting periods beginning before that date). For those periods, the DPT is triggered in two circumstances:

- arrangements lacking economic substance: where arrangements between related entities (including those at arm's length) lack economic substance or were intended to exploit a tax mismatch to obtain a tax benefit, and
- avoided permanent establishment: subject to certain thresholds, where an entity was carrying on activities in the UK (in connection with the supply of services, goods, or other property) in a way designed to avoid creating a UK permanent establishment.

The DPT does not apply to a SME or in circumstances where (absent a tax avoidance motive) non-UK tax is being paid on the diverted profits (as defined) equal to at least 80% of the UK corporation tax that would otherwise have been payable.

The current general rate of DPT is 31%. The rate of DPT applicable to banking companies' profits subject to the corporation tax surcharge is 33%. The rate of DPT applicable to ring fence profits of oil and gas companies is 55%.

HMRC consider that the DPT is separate and distinct from UK corporation tax and so not covered by the UK's double tax treaty network.

Post-1 January 2026: Unassessed Transfer Pricing Profits ("UTPP")

For accounting periods beginning on or after 1 January 2026, a UTPP charge replaces the DPT. The UTPP is the main anti-avoidance tool aimed at deterring multinationals from circumventing the UK's transfer pricing rules.

The UTPP sits within the UK corporation tax regime and works by applying a higher rate of corporation tax to identified profits that should have been included in the company's corporation tax return. As was the case for DPT, the UTPP charge is not self-assessed: A company will only be subject to a UTPP charge if it receives a UTPP assessment from HMRC.

Subject to limited exceptions, UTPP will apply in relation to a provision in an accounting period where:

- the profits of the company for that period are subject to a transfer pricing requirement in relation to that provision, but the transfer pricing requirement was not wholly reflected in the company's tax return (i.e., "unassessed transfer pricing profits");
- the omission of those profits has resulted in a reduction in UK tax without a commensurate increase in tax in another jurisdiction (an 'Effective Tax Mismatch Outcome'); and
- it is reasonable to assume that the arrangements were designed to achieve the reduction in UK tax.

Where it applies, UTPP imposes a corporation tax rate that is 6% above the relevant company's underlying marginal rate. The tax is payable within 30 days of a UTPP assessment.

Since the UTPP rules are an anti-avoidance measure, no statutory or non-statutory clearances will be granted by HMRC in respect of their application, nor will they provide an informal view on whether transactions are likely to fall within the scope of UTPP. However, a UTPP assessment cannot be made on a basis that is inconsistent with the terms of an Advance Pricing Agreements (see the Advance Pricing Agreement "APA" section below).

Integrating the UTPP charge within the corporation tax framework means that companies subject to a UTPP assessment are entitled to access the UK's double tax treaty network and the Mutual Agreement Procedure ("MAP").

Profit Diversion Compliance Facility "PDCF"

Since 2019, HMRC has operated a voluntary disclosure system, the PDCF. The PDCF is intended to encourage multinational enterprises ("MNE") to review the design and implementation of their transfer pricing policies (including, but not limited to, any arrangements targeted by UTPP (for accounting periods beginning on or after 1 January 2026), or DPT (for accounting periods beginning before that date)) to ensure:

- they are aligned with factual operations;
- they accord with the OECD TPG; and
- the MNE can make amendments where necessary or appropriate.

The PDCF process can be onerous and requires MNEs to submit a detailed report (supported by evidence and signed by a senior responsible officer) outlining proposals to correct transfer pricing irregularities, pay any additional tax owed (plus interest) and any applicable penalties due. However, using the PDCF can help protect the MNE against HMRC action in relation to the UTPP (or DPT) and mitigate the scale of any penalties for non-compliance.

Accepted Transfer Pricing Methodologies

The UK's transfer pricing regime must be interpreted in accordance with the most recent versions of the OECD MTC, OECD commentary on the OECD MTC, and the OECD TPG, adjusted for any reservations, declaration or elections made by the UK on those materials, whether there is a treaty in force between the UK and the other country or not.

The UK Treasury has reserved the power to make regulations to add to the list of OECD materials that can be used as interpretive aids, set out the effect of any elective provisions, and if necessary to 'opt out' of any updated OECD materials. The power has not yet been exercised.

The general interpretative requirement includes ensuring the arm's length principle applies to a controlled transaction by replacing the actual terms of the transaction with arm's length terms and, for tax purposes, recalculating the profits accordingly.

HMRC's view is that the OECD TPG explain how to choose and apply the most appropriate transfer pricing methodology in any given case. As a result, any of the three traditional transaction methods (Comparable uncontrolled price "CUP"; Resale minus; and Cost plus), or either of the transactional profit methods (Profit split; and Transactional net margin method) may be used, provided that it is the most appropriate method to achieve the necessary degree of acceptable comparability with the transactions being tested in that case.

Although HMRC do not enforce any absolute hierarchy, their guidance states that the traditional transactional methods are the most direct way of establishing whether



arrangements are at arm's length, and (consistently with the OECD TPG) where the CUP and another pricing method can be applied equally reliably, the CUP method should be preferred.

Transfer Pricing Documentation Requirements

Under normal self-assessment rules, entities within the charge to UK tax must (unless they benefit from an exemption) keep sufficient records demonstrating that the results of their transactions with connected parties are determined according to UK transfer pricing rules and the application of the arm's length principle. Failure to keep or to preserve adequate records can result in penalties being charged.

HMRC can request transfer pricing records informally, or to support risk assessment activity, or as part of a formal enquiry. HMRC's formal information powers require entities to provide specified transfer pricing records within a reasonable period, typically 30 days. Failure to comply with requests can result in penalties being charged.

It should be noted that maintaining the specified transfer pricing records forms part of the responsibilities imposed by the UK's Senior Accounting Officer ("SAO") regime. Failure to keep the records may, therefore, be interpreted by HMRC as being an indication of not establishing and maintaining adequate accounting processes and arrangements for the purposes of SAO (and result in penalties being applied).

MNE groups

Entities that are part of a MNE group that meets the Country-by-Country Reporting ("CbCR") threshold, and have at least one 'material controlled transaction,' must create and preserve both a 'Master File' and a 'Local File.'

The CbCR threshold is met when the group:

- includes two or more enterprises that are tax resident in different jurisdictions; and
- has consolidated revenues of at least €750 million in a given period (whether the group is UK headquartered or not).

The Master File and the Local File must be prepared in accordance with the OECD TPG. The Master File and Local File form part of the statutory records of any UK entity and need to be available to HMRC upon request. HMRC expect both Master File and Local File to be reviewed annually (as a minimum) to determine that the functional and economic analysis remains accurate, and that necessary updates are made.

The country-by-country ("CbC") report (containing information relating to the global allocation of the MNE group's income and taxes paid) must be submitted for the period immediately following that in which the threshold requirement is met. A CbC report must be filed within 12 months after the end of the period to which it relates by:

- any UK resident ultimate parent entity "UPE" of the group; or
- the top UK entity in the group (if the non-UK UPE has not filed, does not need to file, or authorises the UK entity to file on its behalf)

Even where entities are not required to maintain a Master File and Local File, HMRC guidance states that preparing documentation in line with the OECD's recommended approach is an appropriate way to demonstrate that provisions between related parties adhere to the arm's length principle.

Local File: Preparation and materiality

For the purposes of preparing the Local File, controlled transactions are aggregated by category to assess materiality. A *de minimis* threshold of £1m applies to each category of controlled transaction such that, where the aggregate value of transactions is no more than £1m, those transactions do not need to be included in the Local File (but, for the avoidance of doubt, must still be priced in accordance with the arm's length principle).

HMRC guidance emphasises that because the Local File is an entity-based document, materiality must be assessed from the perspective of the UK entity preparing the Local File (rather than the MNE group as a whole).

However, certain categories of transactions are always material due to their nature and complexity, regardless of value. These are transactions:

- priced using a profit split method;
- involving the transfer or license of intangible assets;
- concerning Hard to Value Intangible assets;
- relating to the transfer of, use of, or right to use, key or strategic assets required by entity to carry on its business;
- concerning global or regional strategic or leadership services;
- involving Cost Sharing Agreements or Cost Contribution Agreements; and
- relating to business reorganisations (including where functions, assets, or risks have been moved into (or out of) the UK during the relevant period and transactions that commence or cease in the relevant period).



For other transaction categories, materiality should be determined on a case-by-case basis considering all relevant facts and circumstances, including factors such as the size of the UK entity, the nature of the transaction, risk level, impact on profit or loss, and industry context. Entities are required to set out their approach to assessing materiality in the Local File.

Local File: UK-to-UK Exemption

As detailed in the section 'UK-to-UK Exemption' above, for accounting periods beginning on or after 1 January 2026, a statutory exemption for UK-to-UK transactions disapplies the transfer pricing regime to qualifying domestic transactions. This will include documentation and Local File obligations.

For UK-to-UK transactions that do not qualify for the UK-to-UK Exemption, for example, because one or both entities is an excluded company, or the exemption has been disapplied by HMRC notice, a separate Local File exemption continues to apply. Subject to certain specific exceptions, information relating to 'material controlled transactions' with another entity does not need to be included in the Local File provided that both entities either:

- a company UK resident for tax purposes;
- a trust (where the trustees are UK resident for tax purposes); or
- a partnership (where the partners are UK resident for tax purposes).

International Controlled Transactions Schedule ("ICTS")

The UK government intends for the ICTS (a new annual filing requirement) to take effect for accounting periods beginning on or after 1 January 2027. The ICTS is intended to improve fairness, increase efficiency, and facilitate automated, data-led risk assessment by HMRC, facilitating more accurate identification of transfer pricing risk.

It is expected that businesses that are required to prepare a Local File should be able to use their existing transfer pricing analysis when completing the ICTS. Full details of the ICTS obligations will be set out in future regulations.

Local Jurisdiction Benchmarks

Comparability is of critical importance. HMRC emphasise that whatever transfer pricing methodology is employed, the uncontrolled transactions used must show an acceptable degree of comparability with the transactions being tested.

Since the UK legislation must be interpreted consistently with the OECD TPG, the nine-step process outlined there can be followed when performing a comparability analysis in the UK. The process envisages reviewing existing internal comparables (if any) before assessing available sources of information on external comparables.

HMRC state that internal comparables can be the best source of comparables. Entities should make efforts to identify if any suitable internal comparables are available (making appropriate adjustments if helpful) to ensure that the best available comparables have been reviewed. HMRC may challenge the work done by the entity if they do not think it has been sufficiently thorough.

For external comparables, the UK emphasizes the importance of assessing the market that the entity operates in. For UK companies, the starting point will normally be to consider UK market comparables first. However, where acceptable UK comparables cannot be found, using comparables from overseas markets (making appropriate adjustments as necessary) is acceptable.

Entities should update their transfer pricing comparability analysis 'regularly' (but not necessarily annually if the relevant operating conditions remain unchanged). The actual review cadence will depend on the factors set out in the OECD TPG (namely, the size of the transactions, complexity, level of risk involved, and the stability of the environment), but HMRC state that any functional change will mean a new benchmarking analysis is required.

Focus on Financial Transactions

The UK's transfer pricing regime applies to financial arrangements – widely defined to cover any arrangements made for providing or guaranteeing, or otherwise in connection with, any debt, capital, or other form of finance – between associated enterprises. The rules, therefore, apply to cases involving thin capitalisation. Although the general transfer pricing legislation and principles apply, it is worth re-emphasising that the test of indirect participation (connection) is expanded in relation to the provision of finance such that that persons that have 'acted together' will be treated as being connected. With effect for accounting periods beginning on or after 1 January 2026, the concept of persons 'acting together' has been simplified, is specifically defined in legislation, and is triggered where parties have parallel equity interests

With effect for accounting periods beginning on or after 1 January 2026, following technical reform in this area, the UK's rules are closely aligned to international standards. Specific rules setting out how the arm's length principle should be calculated in cases involving securities have (subject to transitional rules) been repealed. The requirement that the UK's transfer pricing rules must be interpreted in accordance with the most recent versions of OECD principles is now explicitly stated in legislation.



As a result, the principles set out in the OECD's 2020 Transfer Pricing Guidance on Financial Transactions, as incorporated into the OECD TPG, must be followed and applied. As a result, the UK regime also now clarifies, in relation to financial transactions involving guarantees, that:

- an intra-group guarantee that increases the amount of debt available to a borrower will never be considered an arm's length guarantee – The stated rationale for this is that the level of credit risk that a guarantor would assume in providing the guarantee of that additional amount of debt is the equivalent credit risk that would have been deemed non-arm's length for an independent lender to assume when evaluating the loan. It follows that if an independent lender would not be willing to assume the additional credit risk, an independent guarantor would be equally unwilling to assume the equivalent credit risk;
- allows UK resident companies to elect to act as a deemed guarantor for a borrowing provision of a related party UK resident company – The deemed guarantee will apply in respect of the amount of the borrowing which is excessive at arm's length in the provision between borrower and lender (that is, the amount that would not have been lent between independent enterprises without a guarantee). The aim of this easement is to ensure groups have flexibility in the way they structure and finance UK business operations; and
- the concept of implicit support (meaning any incidental benefit that arises because of a participatory relationship between companies) has been specifically carved out from the definition of a guarantee meaning that the effect of implicit support should be taken into account when considering the transfer pricing of financial transactions generally. HMRC recognise that presence and effects of implicit support are hard to evaluate. As a result, HMRC analysis of the point is likely to lead to further information requests to better understand the business. The degree of implicit support that may be considered appropriate, and its effects, will ultimately depend on the facts and circumstances of the case.

In addition, also with effect for chargeable periods commencing on or after 1 January 2026, exchange gains and losses arising on a 'qualifying financial instruments' (broadly, an instrument that is matched with another financial instrument for the purpose of eliminating or reducing exchange rate risk) are excluded from adjustment.

Finally, HMRC operates a specialist Advance Thin Capitalisation Agreement ("ATCA") process to address transfer pricing issues relating to complex financing arrangements. An ATCA allows a business to obtain advance agreement with HMRC on the arm's length borrowing capacity of a UK company and the interest deductibility profile of intra-group debt. The ATCA regime operates alongside, using the same legislation as, that used for agreeing Advance Pricing Agreements ('APAs').

Advance Pricing Agreement ("APA") & Bilateral Advance Pricing Agreement ("BAPA") Overview

The UK transfer pricing legislation provides for APA. An APA will normally determine an agreed pricing mechanism. APA are normally only used for more complex transactions and/or where there is an elevated risk of double taxation. When the terms of the agreement are complied with, it provides assurance to the business that the treatment of those transfer pricing issues will be accepted by HMRC for the period covered by the agreement.

They can be:

- unilateral: a 'domestic agreement' between a business and HMRC;
- BAPA: an agreement between HMRC and the tax administration of another country made under the Mutual Agreement Procedure "MAP" clause of the applicable tax treaty; or
- multilateral: since there is no specific mechanism for reaching multilateral APA, these are effectively multiple and complementary BAPA between the business and all relevant administrations affected by the transfer pricing issues.

The potential scope of an APA is flexible and broad-ranging. It can relate all the transfer pricing issues of the business in question, or it may be limited to one or more specific issues. An APA cannot, however, determine whether a permanent establishment does or does not exist.

HMRC do not impose a charge for the APA process. Key features of the UK APA programme include:

- the APA process is initiated by the business submitting to HMRC an expression of interest (EOI). If HMRC are willing to consider an APA, the entity will normally need to submit a formal written application within six months;
- HMRC expect the actual pricing of the transactions covered by an APA to be consistent with the transfer pricing methodology and terms defined by the APA, and that the economic, accounting and tax positions of the arm's length price are aligned;
- a business may withdraw an APA request at any time before final agreement is reached;
- an APA will typically cover a period of three to five years. A longer term will only be possible in exceptional circumstances. It is possible to revise and/or renew an APA;
- subject to agreement, and where an agreed methodology is appropriate, an APA can 'roll back' to cover an earlier period, and can be used as a basis for amending an entity's return for that prior period;



- an entity is required to lodge an Annual Report for each accounting period covered by the APA;
- HMRC has the power to revoke an APA where the entity does not comply with its terms or where a critical assumption ceases to be valid. The APA may be nullified, and penalties can be applied, if false or misleading information is supplied fraudulently or negligently at any time during the APA process; and
- HMRC aim to complete the APA process within 30 months from the date of the formal submission. According to published data from HMRC, the average time taken to agree an APA in the UK in the 2024/25 tax year was 43.9 months (in 2023/24 the average was 53 months). HMRC granted a total of 26 APAs during the same period (in 2023/24 the total was 27).

Businesses can use the UK's APA programme to obtain certainty on the transfer pricing treatment of Cost Contribution Arrangements.

Transfer Pricing Audits

The UK transfer pricing regime is self-assessed as part of the UK's compliance framework for corporation tax. Transfer pricing related enquiries into company tax returns are, therefore, subject to the UK's normal corporation tax enquiry rules.

The general rule is that HMRC may open an enquiry into a corporation tax return within twelve months from the date the return is filed, but this can be extended to four years for a discovery assessment, six years in cases involving careless behaviour, and 20 years in cases involving deliberate behaviour. HMRC does not have to justify opening an enquiry and will not normally provide reasons (although they may identify the areas that an enquiry will focus on).

HMRC adopts a risk-based methodology when opening transfer pricing related enquiries. There is no set, mechanistic process, or regularity in their approach. HMRC emphasise the importance of understanding how a business makes its profits or losses. They will look at where a company carries on its key functions, holds its key assets, and bears key risks. HMRC guidance states that any significant mismatch between that location and the location where the business generates its profits may be an indication of non-arm's length pricing.

HMRC will examine numerous factors to identify potentially suspect transactions but should involve the business throughout the process. The process will involve gathering key information about the business, including the markets in which the group operates, the group's accounts, intellectual property, processes, and main competitors. HMRC will then assess whether any risks exist, including the potential amount of tax at stake, and consider the implications of those risks.

HMRC will collect information from a wide variety of sources to inform their assessment including reviewing the business' website, conducting meetings with the business, accessing commercial databases, as well as open-source resources (such as press reports, trade magazines, and internet searches).

Enquiry Process

HMRC aims to resolve new transfer pricing enquiries within specific periods:

- 18 months in most cases.
- 36 months in complex or high-risk cases.

Governance Process

Although the opening of enquiries is not mechanistic, HMRC's governance process for transfer pricing enquiry cases follows three broad stages:

1) Selection: Ensuring the selection of appropriate cases.
2) Progress: Ensuring effective progress in each enquiry, including the issue of the formal enquiry notice, an action plan, and an anticipated timeline for the enquiry.
3) Conclusion: Ensuring an appropriate conclusion is reached, including the submission of conclusions to an appropriate HMRC panel for review, the agreement (or determination) of any transfer pricing adjustments, and imposition of any penalties.

With effect from 18 March 2026, it is no longer necessary for the Commissioners of HMRC to sanction a determination that a transfer pricing adjustment be made which has not been agreed by the business. Oversight of transfer pricing determinations in these circumstances is instead provided through an internal governance framework.

According to published data from HMRC, the total number of enquiry cases settled during the 2024/25 tax year was 143 (in 2023/24, the number was 128). The average age of enquiries settled in the same year was 41.0 months (in 2023/24, the average was 33.1 months).

The Burden of Proof in Transfer Pricing: Theory versus Practice

Since the UK transfer pricing regime is self-assessed, entities within scope are required to determine their transfer pricing position accurately, and HMRC can demand they justify transfer prices as part of any enquiry. The burden of proof under self-assessment lies clearly with the taxpayer.

HMRC will expect entities to prepare and retain documentation that might reasonably be expected of an entity similar in nature, size and complexity, and operating in a similar market, for that entity to be able to adequately demonstrate that their transfer pricing meets the arm's length principle.



The documents required will include:

- primary accounting records (i.e., records of transactions entered in an entity's accounting system);
- tax adjustment records (i.e., records that identify adjustments made by a business for tax purposes);
- records of transactions with associated businesses (i.e., records which identify transactions to which the transfer pricing rules apply); and
- arm's length calculations (i.e., records demonstrating arm's length for the purpose of transfer pricing rules).

A penalty up to £3,000 can be charged for each failure to keep or to preserve adequate records in respect of a tax return: this includes transfer pricing records. In addition, for the purposes of calculating tax-geared penalties, an inaccuracy in a submitted corporation tax return will be presumed to be careless where relevant transfer pricing records relating to the inaccuracy have not been maintained. The same presumption applies where HMRC makes a transfer pricing related discovery assessment of tax due, and the company has not maintained appropriate transfer pricing records.

Given HMRC's emphasis on adopting a risk-based approach to opening transfer pricing related enquiries, a company should consider regularly ensuring that its transfer pricing policy matches the reality of its commercial transactions and arrangements. In addition, it should ensure that its transfer pricing documentation clearly identifies economically significant risks and records all relevant related decision-making processes.

It may also be appropriate to conduct reviews of its value chain, functional analyses, economic analyses, and pricing methodologies, as well incorporating transfer pricing into other internal financial operating policies and procedures. Where the analysis suggests there is a risk of challenge from HMRC, the company should adjust transfer pricing policies and documentation accordingly and might consider applying to obtain an APA.

Transfer Pricing Penalties

Entities self-assess their compliance with the UK transfer pricing regime. Penalties will apply in situations where HMRC become aware of non-compliance. As highlighted already, entities within the charge to UK tax must keep records demonstrating that the results of their transactions with connected parties are determined in accordance with the arm's length principle.

Failure to keep or to preserve adequate records can result in a penalty of up to £3,000. Such a failure will also result in a presumption of carelessness for any inaccuracy contained in any document. However, where the entity can show that it has taken reasonable care there will be no penalty even if an adjustment is necessary. As a result, the higher the quality of the records retained by the entity the greater the protection against the imposition of penalties.

As already noted, HMRC can request transfer pricing records informally or as part of a formal enquiry. A failure to comply with an information request from HMRC within a reasonable period (normally 30 days) will result in a fixed £300 penalty plus £60 per day for every subsequent day of delay.

The submission of incomplete or inaccurate documents (including tax returns, the Master File and Local File) will also result in tax-geared penalties being charged depending on the severity of the failure and whether the entity has addressed the error voluntarily or not. Errors considered to be careless can trigger penalties equal to up to 30% of the extra tax due when the mistake is corrected. Deliberate, but unconcealed, errors can result in a penalty of up to 70% of the extra tax due, while deliberate and concealed errors will incur penalties equal to up to 100% of the extra tax due.

Senior Accounting Officer

Maintaining the specified transfer pricing records forms part of the responsibilities imposed by the UK's SAO regime.

The SAO applies to UK incorporated companies that either alone or as part of a group have an aggregate turnover in excess of £200m and/or a relevant balance sheet total of more than £2bn.

The SAO regime requires affected companies to certify that they have implemented adequate tax accounting arrangements to ensure that the correct tax liabilities are reported to HMRC. Failure to keep the appropriate transfer pricing records may be interpreted by HMRC as being an indication of not establishing and maintaining adequate accounting processes and arrangements for the purposes of SAO.

Penalties under the SAO regime, each at a fixed flat rate of

£5,000, can be levied on:

- the company for failing to notify HMRC of the name of its SAO for the relevant financial year, and/or
- the SAO personally for:
  - Failing to comply with the obligations imposed by the regime, and/or
  - Failing to (or failing to accurately) certify compliance with the regime to HMRC.

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Local Hot Topics and Recent Updates

In Lifeplus Europe Ltd v The Commissioners for HMRC [2026] UKFTT 797 (TC), the First Tier Tax Tribunal provided some guidance on the extent of HMRC's investigatory powers in the context of transfer pricing.

The dispute was whether HMRC could require a UK company to supply its US parent's financial statements as part of a long-running enquiry into the UK company's transfer pricing arrangements. HMRC asserted that these documents were "reasonably required" to check the UK entity's tax position and adoption of transfer pricing method. The company appealed against HMRC's request, arguing that, following the OECD TPG, the US accounts were not relevant to the Transactional Net Margin Method used.

The tribunal allowed the company's appeal. It found that HMRC's information request was excessive and lacked a clear connection to the specific transfer pricing issues in dispute. In addition, it decided that the company did not possess the required documents, nor did it have the legal right (or practical ability) to obtain them. The tribunal emphasised the need for HMRC to follow the OECD TPG, confirming that companies are not automatically obliged to procure parent company records.

The judgment outlines the limits on HMRC's information powers in transfer pricing cases and reemphasises the importance of the OECD TPG.

Documentation threshold

Master file	Mandatory for entities with consolidated group revenues of at least €750 million. Subject to exceptions, SME are exempt. Recommended for all entities maintaining transfer pricing records.
Local file	As for Master file above
CbCR	Consolidated group revenue of at least €750 million

Submission deadline

Master file	Within a reasonable period (normally 30 days) of receiving a request from HMRC..
Local file	Within a reasonable period (normally 30 days) of receiving a request from HMRC.
CbCR	Within 12 months after the end of the accounting period to which the CbC report relates.

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Penalty Provisions

Documentation – late filing provision	• Failure to keep or to preserve adequate records: up to £3,000. Failure to comply with an information notice: • £300 fixed penalty, plus • £60 per day daily penalties. Inaccurate documents and information, tax-geared penalty equal to a percentage of the extra tax due when the mistake is corrected: • Careless error, unprompted disclosure: 0% to 15% • Careless error, prompted disclosure: 15% to 30% • Deliberate but not concealed, unprompted disclosure: 20% to 70% • Deliberate but not concealed, prompted disclosure: 35% to 70% • Deliberate and concealed, unprompted disclosure: 30% to 100% • Deliberate and concealed, prompted disclosure: 50% to 100%
Tax return disclosure – late/incomplete/no filing	Failure to submit: • If submitted within 3 months of filing date: £100 fixed penalty (increased to £500 if late for three or more consecutive periods) • If submitted between 3 and 6 months after filing date: £200 fixed penalty (increased to £1,000 if late for three or more consecutive periods) • If submitted between 6 and 12 months after filing date: – £200 fixed penalty (increased to £1,000 if late for three or more consecutive periods), plus – Tax-geared penalty equal to 10% of unpaid tax • If submitted more than 12 months after filing date: – £200 fixed penalty (increased to £1,000 if late for three or more consecutive periods), plus – Tax-geared penalty equal to 20% of unpaid tax
CbCR – late/incomplete/no filing	Inaccurate documentation and information: up to £3,000. Late filing and failure to comply with an information notice: • £300 fixed penalty, plus • £60 per day daily penalties (potentially increased up to a maximum of £1,000 if the failure continues for more than 30 days)

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Overview

Covington, Taxand USA

Covington assists taxpayers on a range of transfer pricing issues across our international tax planning and tax controversy practices. Leveraging our strong relationships with transfer pricing economists, we provide advice on transfer pricing aspects of business restructurings, existing trading structures, and financing transactions. We are able to help clients across industries think strategically about their transfer pricing documentation, Country-by-Country Reporting profile, and potential public disclosures, including by developing global transfer pricing audit defense plans. We also have significant experience assisting taxpayers who are under IRS and foreign tax examination and in working with the IRS's Advance Pricing and Mutual Agreement ("APMA") program on Advance Pricing Agreements ("APAs") and Mutual Agreement Procedure ("MAP") matters. Our capabilities include:

- Implementing appropriate intercompany agreements and transfer pricing policies for business restructurings, trading structures, and financing transactions, including strategic consideration of global or specific-jurisdiction transfer pricing policies and related documentation
- Obtaining APAs
- Defending transfer pricing positions in IRS and foreign tax examinations
- Defending transfer pricing positions before IRS Appeals, and if necessary in litigation
- Obtaining MAP assistance under a bilateral tax treaty following transfer pricing adjustments
- Developing plans for tax-related ESG disclosures, such as in connection with public Country-by-Country Reporting

General: Transfer Pricing Framework

Section 482 of the Internal Revenue Code of 1986 (the "Code" or "IRC") allows the U.S. Internal Revenue Service (the "IRS") to adjust the income and deductions of taxpayers under common control as "necessary in order to prevent evasion of taxes or clearly to reflect the income" of such taxpayers. The Department of Treasury ("Treasury") and IRS have published comprehensive regulations under Section 482 adopting the arm's length standard and setting forth applicable transfer pricing methods. The United States has not adopted the Organization for Economic Cooperation and Development ("OECD") Transfer Pricing Guidelines (the "OECD Guidelines"), however the IRS views the Section 482 regulations as "wholly consistent" with the OECD Guidelines.[1] Within the Competent Authority processes, the IRS may refer to the OECD Guidelines; otherwise, the IRS generally enforces transfer pricing rules solely by reference to Section 482 and its regulations and not to the OECD Guidelines.

U.S. taxpayers that are the ultimate parent entities of a multinational group with annual turnover exceeding $850 million USD must file a Country-by-Country Report ("CbCR"). Otherwise, only transfer pricing documentation is required to be prepared or filed. Penalties shall not apply, however, when the taxpayer has prepared transfer pricing documentation compliant with certain regulatory requirements in advance of filing the taxpayer's tax return ("Contemporaneous Documentation"). Contemporaneous Documentation need not be filed with the tax return but must be provided within 30 days of the IRS's request during an audit. A typical transfer pricing audit begins with a request for the taxpayer's Contemporaneous Documentation.

Accepted Transfer Pricing Methodologies

The Section 482 regulations set out specific transfer pricing methods for specific types of transactions. These methods are generally analogous to the methos in the OECD Guidelines. There is no hierarchy of methods. Instead, in all cases, taxpayers must select the "best method" as defined in Treasury Regulation § 1.482-1(c). Selecting the best method depends on the degree of comparability between the controlled transaction or taxpayer and the uncontrolled comparable transaction or taxpayer and on the quality of the data and assumptions used in the analysis.[2]

Treasury Regulation § 1.482-3 sets out the methods available for pricing tangible property transactions as follows: (1) the comparable uncontrolled price method; (2) the resale price method; (3) the cost-plus method; (4) the comparable profits method or CPM (which is generally equivalent to the OECD Guidelines' transactional net margin method, or TNMM); and (5) the profit split method. Treasury Regulation § 1.482-5 contains detailed guidance on applying the CPM, and Treasury Regulation § 1.482-6 contains detailed guidance on applying profit split methods.

Treasury Regulation § 1.482-4 sets out the methods available for pricing transactions involving the transfer of intangible property: (1) the comparable uncontrolled transaction method; (2) the CPM (i.e., TNMM); and (3) the profit split method. Treasury Regulation § 1.482-9 specifies the methods to price services transactions, including (1) the services cost-method, an at-cost safe harbor available in certain circumstances; (2) the comparable uncontrolled services price method; (3) the gross services margin method; (4) the cost of services plus method; (5) the CPM (i.e., TNMM); and (6) the profit split method.

Each type of transaction listed above may also be priced by a method that is not specified in the regulations, which are referred to as "unspecified methods." There are special Contemporaneous Documentation requirements when an unspecified method is chosen.

Treasury Regulation § 1.482-2 provides general principles and a safe harbor for determining the arm's length interest rate for lending transaction, but the regulations do not contain a specific list of methods. Treasury Regulation § 1.482-7 contains rules that apply to cost-sharing arrangements, or CSAs.

[1] Advice Memorandum 2007-007 (March 23, 2007). [2] Treas. Reg. § 1.481-1(c)(2).

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Transfer Pricing Documentation Requirements

The United States implemented a requirement for U.S. ultimate parent entities with annual turnover exceeding $850 million USD to file a CbCR.[3] The United States does not require that taxpayers prepare master or local files, and the United States did not adopt surrogate CbCR filing procedures.

The preparation of Contemporaneous Documentation, which is similar to a local file, is optional. Many U.S. parented multinational groups choose to produce master files due to foreign requirements, and many U.S. taxpayers prepare Contemporaneous Documentation to protect against penalties. Contemporaneous Documentation must be prepared after the end of the tax year in order to test the taxpayer's actual results but before the taxpayer files its U.S. federal income tax return. It is common for the IRS to request a taxpayer's master file and Contemporaneous Documentation, including supporting files, at the start of a transfer pricing audit.

Local Jurisdiction Benchmarks

Taxpayers are required to select and apply the "best method" for transfer pricing purposes based on comparability criteria and available data.

The comparable uncontrolled price ("CUP") method for tangible transactions, the comparable uncontrolled transaction ("CUT") method of intangible transactions, and the comparable uncontrolled services price ("CUSP") method benchmark a taxpayer's transaction to external comparable transactions (i.e., transactions between two third parties) or to internal comparable transactions (i.e., transactions between the taxpayer and a third party). A high degree of comparability is required to apply one of these methods.

Economic comparability factors include the similarity of geographic markets; the relative size of each market, and the extent of the overall economic development in each market; the level of the market (e.g., wholesale, retail, etc.); the relevant market shares for the products, properties, or services transferred or provided; the location-specific costs of the factors of production and distribution; the extent of competition in each market with regard to the property or services under review; the economic condition of the particular industry, including whether the market is in contraction or expansion; and the alternatives realistically available to the buyer and seller. Transactional comparability factors include the form of consideration charged or paid; sales or purchase volume; the scope and terms of warranties provided; rights to updates, revisions or modifications; the duration of relevant license, contract or other agreements, and termination or renegotiation rights; collateral transactions or ongoing business relationships between the buyer and the seller, including arrangements for the provision of ancillary or subsidiary services; and extension of credit and payment terms.

Internal comparable transactions are more commonly used because it is rare to have transactional data for external comparable transactions. However, some accounting firms maintain databases of unrelated licensing transactions that are used as external CUTs.

Certain transfer pricing methods, including notably the CPM/TNMM, require benchmarking based on the profitability of unrelated parties with publicly available financial data. Benchmarking typically emphasizes functional comparability and similarity of economic conditions, based on the economic comparability factors listed above. As a practical matter, there is a preference for using benchmarks that are publicly traded and based in the United States.

Focus on Financial Transactions

Treasury Regulation § 1.482-2(a) governs the transfer pricing for interest payments, applying the arm's length principal. The regulations permit use of interest rates that are between 100% and 130% of the applicable federal rate, or "AFR," as a safe harbor. The IRS publishes AFR tables each month containing the safe harbor interest rates. If the AFR is not used, a benchmarking study is typically performed based on the credit standing of the borrower and any other relevant factors that may affect the interest rate. In 2023, the IRS published a General Legal Advice Memorandum, or "GLAM," stating that the IRS will consider "implicit support" (i.e., support that the borrower may receive from affiliates) in determining the borrower's credit rating and the resulting interest rate for intercompany loans. The IRS's reasoning is that third-party lenders would take into account the borrower's membership in a group in establishing the applicable interest rate. The IRS's position has been heavily criticized, and this issue is currently being litigated before the Tax Court.

The U.S. Treasury Regulations do not directly address guarantee fees, upfront fees, or other types of fees potentially associated with financial transactions.

The transfer pricing regulations only apply to bona fide indebtedness and do not cover the recharacterization of debt as equity. In addition to the transfer pricing rules, there are a number of other U.S. federal income tax considerations related to financial transactions, including the EBITDA-based interest expense limitation under section 163(j), the potential statutory recharacterization of debt as equity under section 385, and the potential for debt to be recharacterized as equity under common law principles.

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

The IRS's Advance Pricing and Mutual Agreement ("APMA") office administers a robust APA program. APMA encourages bilateral APAs to unilateral ones. Multilateral APAs are available but rare. Since the inception of the U.S. APA program, over 2,500 APAs have been concluded. Around 150 APAs were concluded in each of 2023 and 2024. In 2024, the most common countries for U.S. bilateral APAs were India,

[3] Treas. Reg. § 1.6038-4.

Japan, Italy, Canada, Korea, and Mexico. Renewal APAs are often about half of those concluded in a given year.

Revenue Procedure 2015-41 sets out detailed procedural requirements for APA applications. The Revenue Procedure sets forth the specific contents of an APA request and the required exhibits, unless permission to submit an abbreviated APA request is obtained. The IRS is in the process of revising and updating this revenue procedure. In addition, in 2023, the IRS released new APA intake procedures that place emphasis on the pre-filing process. The pre-filing process is strongly encouraged in most caess.

As of January 1, 2024, the following filing fees apply to U.S. APA requests:

- Original APA: $121,600
- Renewal APA: $65,900
- Small Case APA: $57,500
- APA Amendment: $24,600

On average, a unilateral APA takes approximately 2 to 2.5 years from filing to conclusion. On average a new bilateral APA takes 3.5 to 4 years to complete, and a renewal bilateral APA takes 2.5 to 3 years to complete.

Transfer Pricing Audits

Transfer pricing is regularly audited by the IRS, and the IRS has published a formal Transfer Pricing Examination Process ("TPEP") that it follows for these audits. Transfer pricing audits are typically staffed by a tax law specialist and an economist, among other IRS audit team members. Audits typically commence with a request for the taxpayer's Contemporaneous Documentation, followed by a request for supporting files, and progress through a series of Information Document Requests ("IDRs"). Fact finding can be extensive, and the IRS has very broad statutory powers to request information relevant to the taxpayer's tax liability. In transfer pricing audits, it is common for the IRS to request information such as job descriptions and organizational charts. The IRS may also request employee evaluations or broad categories of SAP data. Significant transfer pricing audits often include functional interviews, which are conducted under penalties of perjury by the IRS.

The Burden of Proof in Transfer Pricing: Theory versus Practice

Taxpayers generally have the burden of proving their tax positions, particularly their entitlement to tax deductions. In practice, transfer pricing audits often involve significant fact-finding. It is common for the IRS to conduct factual interviews of multiple employees in both the United States and the counterparty jurisdiction in order to verify the taxpayer's stated functional analysis. It is not uncommon for the IRS to request to review personnel files, such as job descriptions and performance reviews, as a part of its functional analysis

Transfer Pricing Penalties

Under Code Section 6662, the IRS may impose penalties on either a transaction-by-transaction basis or on the basis of net adjustments to a taxpayer's income for a given taxable year resulting from section 482 allocations. With respect to particular transactions, a 20% penalty applies if the price reported on a return is 200% or more, or 50% or less, of the amount determined to be the correct price under Section 482. The penalty increases to 40% if the price claimed on a return is 400% or more, or 25% or less, of the amount determined under Section 482. With respect to penalties imposed on the basis of net section 482 adjustments for a given taxable year, a penalty of 20% applies if the net section 482 adjustments exceed the lesser of $5 million or 10% of the taxpayer's gross receipts. The penalty for net section 482 adjustments increases to 40% if the adjustments exceed the lesser of $20 million or 20% of the taxpayer's gross receipts. Preparing Contemporaneous Documentation that meets regulatory requirements generally provides a taxpayer with a defense to penalties.

In recent years, the IRS has increased its efforts to assert penalties in connection with Section 482 adjustments, including in cases where the taxpayer has prepared Contemporaneous Documentation. For example, in 2018, the IRS issued a directive encouraging the assertion penalties in the transfer pricing context where appropriate, reasoning that if penalties are not applied, the IRS will be failing to make adequate use of a legislative tool intended to encourage taxpayer compliance.

Local Hot Topics and Recent Updates

In many cases involving the choice of method, the taxpayer has used a comparable uncontrolled transaction or profit split to allocate a significant return to a foreign related party and the IRS has asserted that the foreign related party should be tested using the CPM/TNMM.

A taxpayer successfully challenged the IRS's "blocked income" regulations, which require transfer pricing adjustments that take into account foreign earnings even when there are foreign legal restrictions that prevent the actual payment of the funds

In 2025, the IRS Chief Counsel's office released a general legal advice memorandum outlining its position on the "commensurate-with-income" standard, or "CWI." The IRS views itself as having the authority to adjust the pricing of transactions involving the sale of an intangible based on the income derived from the intangible by the purchaser, absent the application of a specific regulatory exception. In the memorandum, IRS Chief Counsel asserted that a taxpayer cannot overcome such adjustments merely by showing that it satisfied the best method rule when pricing the transaction. This policy represents a shift from the IRS's previously established position that it would not make ex-post periodic adjustments to income attributable to transfers of intangibles based on actual income realized.

In 2025, Facebook's parent company, Meta, filed a Tax Court petition challenging a CWI adjustment asserted by the IRS.

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Documentation threshold

Master file	No Requirement
Local file	No Requirement
CbCR	Ultimate Parent Entity with $850,000,000 in revenue during the prior reporting period

Submission deadline

Master file	No Requirement
Local file	No Requirement
CbCR	Tax Return Filing Date for Ultimate Parent Entity

Penalty Provisions

Documentation – late filing provision	No Requirement
Tax return disclosure – late/incomplete/no filing	No Requirement. Failure to provide adequate disclosure of certain positions exposes taxpayers to the risk of imposition of certain accuracy-related and other penalties under the Code.
CbCR – late/incomplete/no filing	A penalty of $10,000 may be imposed for failure to file a CbCR, with the penalty increasing by $10,000 for each thirty-day period the return is not furnished, up to a maximum of $50,000 annually. The increases begin 90 days after the IRS notifies the taxpayer of the failure to file.



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Overview

DFDL Vietnam Law Company Limited, Taxand (Vietnam)

DFDL Vietnam, established in 1995, offers comprehensive legal, tax and transfer pricing services from our offices in Hanoi and Ho Chi Minh City. Our renowned tax practice collaborates closely with our corporate and M&A team to handle complex M&A, joint ventures, and foreign investments.

Our services span the full tax lifecycle—from strategic tax planning to day-to-day operational support—including tax advisory, tax compliance, transfer pricing, and customs advisory. We are also committed to contributing to the development of the tax landscape in the jurisdictions where we operate.

Our Vietnam Tax team is recognized by clients, business chambers, industry associations, and leading legal and tax directories for its technical excellence, commercial insight, and practical approach.

Our Transfer Pricing ("TP") team provides end-to-end transfer pricing services, including:

- TP policy design and implementation for intragroup transactions;
- Preparation of TP documentation (Local File, Master File, and Country-by-Country Reporting);
- Benchmarking and comparability analyses;
- TP advisory, risk assessment and health-checks;
- Assistance in TP audits and dispute resolution;
- Advance Pricing Agreement ("APA") and Mutual Agreement Procedure ("MAP") support; and
- Financial transaction and intercompany financing advisory.

General: Transfer Pricing Framework

Vietnam's current TP framework is governed by Decree No. 255/2026/ND-CP ("Decree 255"), which took effect on 1 July 2026 and applies from the 2026 Corporate Income Tax ("CIT") year onwards. Decree 255 replaces both Decree No. 132/2020/ND-CP and Decree No. 20/2025/ND-CP, which are formally repealed as of the effective date.

The Vietnamese TP regime continues to align closely with the BEPS Action Plan issued by the Organization for Economic Co-operation and Development ("OECD").

Accepted Transfer Pricing Methodologies

Decree 255 codifies five transfer pricing methods in Articles 13 to 15:

i) Comparable Uncontrolled Price Method.

i) Resale Price Method.

i) Cost-Plus Method.

i) Net Profit Margin Comparison Method ("TNMM").

i) Profit Allocation Method ("Profit Split").

Each method carries specific statutory pre-conditions relating to the taxpayer's functions, ownership of intangibles, risk profile, and the availability of reliable data. The applicable method is selected by reference to those conditions and the nature of the transaction (Decree 255, Article 12).

In practice, internal CUPs are generally accepted by the GDT, provided they are based on robust, identical, or highly similar transactions with independent parties that require no material adjustments, consistent with the comparability principles set out in Articles 6 and 7 of Decree 255.

Transfer Pricing Documentation Requirements

A statutory three-tiered TP compliance obligation exists for taxpayers engaging in related-party transactions, requiring the preparation of TP Documentation comprising a Local File, a Master File, and a Country-by-Country Report ("CbCR"). Taxpayers are required to maintain contemporaneous documentation unless they qualify for specific exemptions.

Under the safe harbour thresholds, businesses are exempt from preparing the Local File and Master File if:

- Their annual revenue is less than VND 50 billion and the total related party transactions are less than VND 30 billion, or
- Their transactions are covered under an Advance Pricing Agreement ("APA"), and the taxpayer has submitted an annual report in accordance with the legal provisions on APAs.
- Their annual revenue is less than VND 500 billion; and they do not generate revenue or expenses from the exploitation or use of intangible assets; and earn net profit margin (excluding interest expenses and corporate income tax, and excluding the difference between revenue and expenses from financial activities) to net revenue ratios of 5% or higher for distribution, 10% or higher for manufacturing, or 15% or higher for processing.

A fourth exemption applies where the taxpayer's related party transactions are conducted solely with related parties that are Vietnamese CIT payers subject to the same CIT rate, with neither party benefiting from CIT incentives during the tax period. In this case, the taxpayer is exempt from both filing the TP declaration (i.e., disclosure form) and maintaining the TP documentation reports.

The TP Disclosure forms are to be submitted with the annual CIT return no later than the last day of the 3rd month from the end of the fiscal year. The TP Documentation must be prepared by the CIT finalisation deadline, submitted only on request within 30 working days, with a one-time 15 working-day extension for valid reasons.

The TP Documentation report together with supporting documents used to substantiate the taxpayer's TP position, should be prepared or made available in Vietnamese, consistent with general tax administration and language-of-filing requirements. Where source data is in a foreign language, it is advisable to retain a Vietnamese translation for submission to the GDT.

For global reporting, a local CbCR submission obligation applies to Vietnamese ultimate parent entities ("UPEs") whose global consolidated group revenues reach or exceed €750 million in the preceding fiscal year. The deadline for filing the CbCR is no later than 12 months from the end of the fiscal year of the UPE.

Local Jurisdiction Benchmarks

Taxpayers who do not qualify for statutory exemptions are required to undertake benchmarking studies to substantiate the arm's length nature of their related party transactions. As per the regulation, the use of an interquartile range of the 35th percentile to the 75th percentile is acceptable. Internal comparables are preferred, followed by external local comparables and lastly, regional comparables with comparable industry and economic growth.

To enhance consistency in TP audits, Decree 255 establishes a formal hierarchy for the use of comparable data in TP analyses under Article 17(3). This database-source hierarchy operates alongside, and is distinct from, the separate hierarchy for selecting comparable entities under Article 17(4), which prioritises internal comparables, followed by comparables resident in Vietnam, and lastly regional comparables with similar industry and economic development conditions. The prescribed order of priority for data sources is:

i) Publicly available and official information, including data published on securities markets, domestic and international commodity and service exchanges, other publicly available official sources, and the newly introduced National Database;

ii) Commercial databases; and

iii) The tax authorities' internal tax administration database.

The introduction of the National Database expands the range of comparable information available for benchmarking purposes and reinforces the use of transparent and independently verifiable data sources.

When a taxpayer is found not to fully comply with the relevant Decree 255 requirements (e.g., incomplete or missing documentation), the GDT may exercise its power under Article 21(3) of Decree 255 to determine the transfer price, profit margin or profit allocation ratio using its internal tax administration database – commonly referred to in practice as 'secret comparables' – rather than the taxpayer's own comparables set.

Focus on Financial Transactions

The GDT places immense scrutiny on related-party financial transactions, heavily emphasizing the commercial rationality, economic substance, and accurate delineation of the arrangement. Intercompany lending, borrowing, or guarantee arrangements must correspond directly to what independent parties would have agreed upon under comparable market circumstances. To defend these transactions during an audit, taxpayers are required to conduct a rigorous analysis that goes beyond a basic interest rate benchmark. This includes evaluating the creditworthiness of the borrower, verifying that the quantum of debt aligns with the borrower's standalone borrowing capacity, and ensuring the transaction satisfies a genuine commercial need rather than acting as a mechanism for profit shifting.

Decree 255 defines two distinct financing-related triggers for related-party status:

i) A general enterprise-to-enterprise loan or guarantee relationship, where the borrowing enterprise's outstanding debt to the lender or guarantor represents at least 25% of the borrower's equity and more than 50% of its total medium- and long-term debt (subject to carve-outs for licensed credit institutions); and

ii) Loans between an enterprise and an individual who manages or controls it (or certain related individuals), which trigger related-party status at a lower 10% of owner's equity threshold.

The arm's length requirements operate alongside strict local deductibility caps under Article 16 of Decree 255. The total deductible interest expense for an enterprise with related-party transactions is capped at 30% of its EBITDA for the tax period. Any non-deductible interest exceeding this limit may be carried forward for up to five consecutive years, imposing an absolute statutory ceiling on tax deductions irrespective of whether the interest rate itself satisfies the arm's length principle. This cap does not apply to loans taken out by taxpayers that are licensed credit institutions or insurance businesses, Official Development Assistance loans or preferential government loans for on-lending to enterprises, or to loans funding specified national target and state welfare programmes (Decree 255, Article 16(3)(c)).

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

Circular No. 95/2026/TT-BTC ("Circular 95") takes effect from 1 July 2026 and replaces Circular No. 205/2013/TT-BTC ("Circular 205") providing guidance on the implementation of DTAs, and Circular No. 45/2021/TT-BTC on APAs ("Circular 45").

Taxpayers can choose to pursue unilateral, bilateral, or multilateral APAs depending on their cross-border footprint. Under the current framework, the maximum validity period for an APA is capped at three tax years.

A notable change under Circular 95 is that an APA application may cover up to five years, while the effective period of an APA remains capped at three years commencing from either the tax year in which the APA is concluded or the immediately following tax year. In addition, APAs may also be renewed for up to three years.

The extended proposed covered period for an APA application may provide greater flexibility for taxpayers by reducing the detriment of a time-consuming APA review process and the need for repeated APA applications.

The procedural roadmap for an APA includes an optional pre-filing consultation with the GDT, followed by four official stages: (i) Formal application, (ii) Evaluation, (iii) Negotiation and (iv) Conclusion.

Circular 95 does not prescribe specific timelines for the evaluation or negotiation of an APA.

Transfer Pricing Audits

Taxpayers face significant risk if they report negative operating results, if their results fall below the arm's length range, or if they generate losses regularly. When a company's related-party segment shows lower profits than its third-party segment, it may raise further questions. Ideally, all involved related parties should be profitable. Otherwise, Special Factor Analyses might need to be prepared to demonstrate that the loss results are driven by commercial or business factors rather than the Group's TP policies.

Intragroup transactions such as royalties and management fees are frequently scrutinized. The GDT is particularly focusing on companies involved in intercompany royalty and service charges. These charges are often examined through "economic benefit" and "substance-over-form" tests to assess the legitimacy of the benefits claimed by the paying entities. If a company fails to justify or provide supporting documentation for the benefits received, the tax authorities will promptly reject such intercompany charges, imposing administrative fines and interest penalties.

Vietnamese tax authorities frequently question the validity of a taxpayer's selected comparables, and failure to include local Vietnamese comparables from the comparables set can result in its rejection.

The Burden of Proof in Transfer Pricing: Theory versus Practice

The burden of proof rests firmly on the taxpayer. Companies are legally obligated to demonstrate that their related-party transactions comply with the arm's length principle.

Taxpayers must retain their TP Documentation alongside detailed transactional records, commercial agreements, and benchmarking analyses to defend their pricing structures.

Transfer Pricing Penalties

The following penalties are applicable to tax return disclosures:

- Administrative penalties ranging from VND 2 million up to VND 25 million for late submission of the CIT finalization return (including TP Disclosure Forms).
- A penalty ranging from VND 8 million to VND 15 million for not submitting the TP Forms together with the annual CIT returns.
- A penalty equal to 20% of the underpaid tax amount shall be imposed for making incorrect declarations with respect to related-party transactions leading to any underpayment of taxes. This penalty applies even if the taxpayer has prepared the TP documentation or submitted the TP Disclosure Forms to the authorities.
- Late payment interest is levied at a rate of 0.03% per day on outstanding tax obligations.
- Potential penalties for tax evasion may also be imposed from one-to-three times the under-declared tax.

Local Hot Topics and Recent Updates

On 29 November 2023, the Resolution on Global Minimum Tax policy in Vietnam ("the Resolution") was approved by the National Assembly and came into effect on 1 Jan 2024. The Resolution provides that Vietnam will adopt (i) the Qualified Domestic Minimum Top-Up Tax ("QDMTT") rule and (ii) the Income Inclusion Rule ("IIR"), the Undertaxed Payments Rule ("UTPR") has not been adopted. Both adopted rules are intended to protect Vietnam's tax revenue in the context of Pillar 2 global implementation. The QDMTT rule essentially targets foreign inbound investment while the IIR targets Vietnam outbound investment. The rules are detailed in Decree No. 236/2025/NĐ-CP, effective 15 October 2025, and apply to multinational enterprise groups with consolidated annual revenue of at least €750 million in at least two of the four fiscal years immediately preceding the relevant fiscal year. No penalties apply for late filing, non-compliance, or incorrect reporting during the transitional period, being fiscal years beginning before 31 December 2026 and ending before 30 June 2028; penalties will apply under prevailing law thereafter.

On 30 June 2026, the Government issued Decree 255, which took effect on 1 July 2026 and applies from the 2026 CIT year onwards. Notably, it establishes a strict priority hierarchy for benchmarking data sources, favouring public/official listings and the National Database over commercial or internal tax authority databases. It significantly eases compliance

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for eligible taxpayers by raising the revenue threshold for TP documentation exemptions from VND 200 billion to VND 500 billion while removing qualitative criteria like "simple functions". Lastly, it refines CbCR obligations, explicitly shifting to a global standard threshold equivalent to EUR 750 million.

Documentation threshold

Master file	A taxpayer is exempt from preparing Master file and Local file if one of the following conditions is met: • Their annual revenue is less than VND 50 billion and total related-party transactions are less than VND 30 billion. • Their transactions are covered under an APA, and the taxpayer has submitted an annual report in accordance with the legal provisions on APAs. For those related-party transactions that are not covered by the APA, taxpayers shall be responsible for making TP declarations as required under Vietnamese TP regulations. • Their annual revenue is less than VND 500 billion; and they do not generate revenue or expenses from the exploitation or use of intangible assets; and earn net profit margin (excluding interest expenses and corporate income tax, and excluding the difference between revenue and expenses from financial activities) to net revenue ratios of 5% or higher for distribution, 10% or higher for manufacturing, or 15% or higher for processing. A fourth exemption applies where the taxpayer's related party transactions are conducted solely with related parties that are Vietnamese CIT payers subject to the same CIT rate, with neither party benefiting from CIT incentives during the tax period. In this case, the taxpayer is exempt from both filing the TP declaration (i.e., disclosure form) and maintaining the TP documentation reports
Local file	
CbCR	A local CbCR submission obligation applies to Vietnamese UPEs whose global consolidated group revenues reach or exceed €750 million in the preceding fiscal year. If the UPE is located outside Vietnam, local filing is not required, provided the report can be obtained via the Automatic Exchange of Information ("AEOI") framework. However, Vietnamese taxpayers must submit a one-time local CbCR Notification (Form No. 01/TB-BCLN).

Submission deadline

Master file	Must be prepared before the annual CIT deadline, i.e., last day of the 3rd month from the end of the fiscal year.
Local file	Submitted only upon request by the GDT within 30 working days. A one-time extension of 15 working days may be granted on a case-by-case basis.
CbCR	No later than 12 months from the end of the UPE's fiscal year.

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Penalty Provisions

Documentation – late filing provision	No separate penalties.
Tax return disclosure – late/ incomplete/no filing	❋ Administrative penalties ranging from VND 2 million up to VND 25 million are imposed for late submission of CIT finalization return (including TP Disclosure Forms). ❋ A penalty ranging from VND 8 million to VND 15 million for not submitting the TP Forms together with the annual CIT returns.
CbCR - late/incomplete/no filing	❋ A penalty equal to 20% of the underpaid tax amount shall be imposed for making incorrect declarations with respect to related-party transactions leading to any underpayment of taxes. This penalty applies even if the taxpayer has prepared TP Documentation or submitted the TP Disclosure Forms to the authorities. ❋ Late payment interest is levied at a rate of 0.03% per day on outstanding tax obligations. ❋ Potential penalties for tax evasion may also be imposed from one-to-three times the under-declared tax.



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ARGENTINA

Documentation threshold

Master file	Transactions with related parties which globally during the fiscal period exceed ARS 150,000,000 (approx. USD 100,000) or, individually, ARS 15,000,000 (approx. USD 10,000); and The total consolidated annual income of the MNE Group exceeds ARS 100,000,000,000 (or USD 66,666,666) in the fiscal year preceding to the one the filing is made.
Local file	Eligible transactions exceed, globally during the fiscal period, ARS 150,000,000 (approx. USD 100,000) or, individually, ARS 15,000,000 (approx. USD 10,000)..
CbCR	Includes those MNEs whose total consolidated annual revenues are EUR 750,000,000 or more.

Submission deadline

Master file	Within 12 months after the closing of the tax period.
Local file	Within 6 months after the closing of the tax period.
CbC Report	Within 12 months after the closing of the tax period of the UPE.

Penalty Provisions

Documentation – late filing provision	Up to ARS 22,000,000 (approx. USD 14,666) for late filing of tax reporting regimes (including, the Local File, the International Operations Regime and Master File). This fine is cumulative with another fine of ARS 35,000,000 (approx. USD 23,333) that applies to each failure to comply with the FTA's demands for compliance with informative regime. The last fine could be increased up to 10 times of the maximum amount when taxpayers whose annual gross income is equal or grates than ARS 10,000,000,000 (approx. USD 6,666,666) fail to comply with the third of the FTA's demands.
Tax return disclosure – late/ incomplete/no filing	
CbC Report – late/incomplete/no filing	Up to ARS 15,000,000 (approx. USD 10,000) failure to comply with the reporting filings related to information about the MNE Group to which the entity is part as well as to inform the date in which the CBC Report has been filed by the designated entity. This fine is cumulative with another fine of ARS 15,000,000 (approx. USD 10,000) that applies to the failure to comply with the FTA demands for compliance with CBC Report filing. Up to ARS 67,500,000 (approx. USD 45,000) for late or incomplete filing of CbC Report. This fine is cumulative with another fine of ARS 15,000,000 (approx. USD 10,000) that applies to the failure to comply with the FTA demands for compliance with CBC Report filing.Up to ARS 22,500,000 (approx. USD 15,000) for failure to comply with FTA's demands for provision of complementary information related to the CBC Report.

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AUSTRALIA

Documentation threshold

Master file	Group revenue of AUD 1 billion or more
Local file	Group revenue of AUD 1 billion or more
CbCR	Group revenue of AUD 1 billion or more

Submission deadline

Master file	Generally 12 months after income year end
Local file	As above
CbCR	As above

Penalty Provisions

Documentation – late filing provision	Up to AUD 825,000 (ie for SGEs)
Tax return disclosure – late/incomplete/no filing	Penalty depends on circumstances but may be up to AUD 825,000 plus potential further penalties calculated as a percentage of tax shortfall
CbCR – late/incomplete/no filing	Up to AUD 825,000

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AUSTRIA

Documentation threshold

Master file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
Local file	Entity of MNE group with turnover exceeding EUR 50 million in each of the two preceding years
CbCR	global consolidated group turnover of at least EUR 750 million in the previous year

Submission deadline

Master file	Only upon request
Local file	Only upon request
CbCR	12 months after the last day of the reporting fiscal year of the MNE group's ultimate parent company

Penalty Provisions

Documentation – late filing provision	no specific penalty provisions applicable
Tax return disclosure – late/incomplete/no filing	Assessment interest: in addition to the current annual rate of interest of the Austrian National Bank, an annual simple interest rate of 2% of the tax due Late filing penalty: 10% of the tax assessed may be charged by the tax office, unless the taxpayer can prove that the late filing was not his fault. If the taxpayer does not file a tax return, despite reminders from the tax authorities, the tax authorities may impose a penalty of up to EUR 5,000.
CbCR – late/incomplete/no filing	A maximum penalty of EUR 50,000 applies and up to EUR 25,000 for gross negligence with the CbC report.

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BELGIUM

Documentation threshold

Master file	⁘ Operating and financial income equal to or exceeding EUR 50 million (excluding non-recurring items); or ⁘ Balance sheet total equal to or exceeding EUR 1 billion; or ⁘ Average annual number of 100 or more FTEs
Local file	Same criteria as for the master file
CbCR	Gross consolidated revenue of at least EUR 750 million

Submission deadline

Master file	Within 12 months of the last day of the reporting period of the MNE group
Local file	Within the deadline for filing the corporate income tax return
CbCR	Within 12 months of the last day of the reporting period of the MNE group

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of EUR 25,000
Tax return disclosure – late/incomplete/no filing	Fines up to a maximum of EUR 1,250; ad valorem tax increase ranging from 10% to 200%
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 25,000

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BRAZIL

Documentation threshold

Master file	Over BRL 15 million
Local file	Between BRL 15 million and BRL 500 million
CbCR	N/A

Submission deadline

Master file	Within three months of the ECF's deadline for the respective fiscal year through the Tax Authorities' electronic portal (except for applications carried out in 2023 and 2024, when the deadline is the last business day of the following year)
Local file	Same as the Master file
CbCR	Annually and by means of the ECF

Penalty Provisions

Documentation – late filing provision	0.2%, per month or fraction, on the gross revenue for the period to which the obligation refers
Tax return disclosure – late/incomplete/no filing	5% on the transaction value or 0.2% on the consolidated revenue of the multinational group for the year prior to which the information refers
CbCR – late/incomplete/no filing	Fines applicable according to the type of infraction regarding the ECF

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CANADA

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	€ 750M

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months from year-end

Penalty Provisions

Documentation – late filing provision	Not Applicable; however, absence/inadequacy of timely contemporaneous documentation exposes taxpayer to penalties if transfer pricing adjustments exceed prescribed threshold
Tax return disclosure – late/incomplete/no filing	Late filing penalty of 5% of taxes owing plus a further 1% per month late (maximum 12 months)
CbCR – late/incomplete/no filing	$500/month to a maximum of 24 months

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CHINA

Documentation threshold

Master file	Related party transactions exceeding RMB 1 billion
Local file	Tangible buy-and-sell related party transactions RMB 200 million; intangible buy-and-sell related party transactions RMB 100 million; all other related party transactions RMB 40 million
CbCR	RMB 5.5 billion

Submission deadline

Master file	Within 12 months after the fiscal year-end
Local file	30 June of the following year
CbCR	31 May of the following year

Penalty Provisions

Documentation – late filing provision	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases
Tax return disclosure – late/incomplete/no filing	RMB 10,000 to RMB 50,000 in serious cases Late payment interest 0.05% per day
CbCR – late/incomplete/no filing	Under RMB 2,000; RMB 2,000 to RMB 10,000 in serious cases

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CROATIA

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	€750 million

Submission deadline

Master file	Upon request
Local file	Upon request
CbCR	Within 12 months from the last day of the reporting tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	€260 to 26,540
CbCR – late/incomplete/no filing	N/A

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CYPRUS

Documentation threshold

Master file	Consolidated revenue exceeding EUR 750 million
Local file	Cumulatively, per category (as defined in the SIT) exceeds the arm's length amount of EUR 5,000,000 for intragroup financing transactions and EUR 1,000,000 for all other transaction categories per tax year up to and including 2025. From 2026 onwards cumulatively, per category (as defined in the SIT) exceeds the arm's length amount of EUR 10,000,000 for intragroup financing transactions, EUR 5,000,000 for sale of goods and EUR 2,500,000 for all other transactions per tax year.
CbCR	Consolidated revenue exceeding EUR 750 million

Submission deadline

Master file	To be submitted to the CTD upon request within 60 days.
Local file	Local file to be submitted to the CTD upon request within 60 days. Further, the local file should be readied by the deadline for submitting the Income Tax Return for the relevant tax year.
CbCR	Submission to the CTD must occur within 12 months following the conclusion of the MNE group's reporting fiscal year.

Penalty Provisions

Local file and master file	Ranging from EUR 5,000 to EUR 20,000
Tax return disclosure – late/incomplete/no filing	EUR 100 and penalties imposed under ACTL noted above
CbCR – late/incomplete/no filing	Ranging from EUR 500 to EUR 20,000
SIT	EUR 500 for late submission

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CZECH REPUBLIC

Documentation threshold

Master file	N/A
Local file	N/A
CbCR	Turnover € 750 million

Submission deadline

Master file	N/A
Local file	N/A
CbCR	Submission within 12 months after the end tax year

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Fines up to CZK 300,000 (approx. EUR 12,000).
CbCR – late/incomplete/no filing	Fines up to a maximum of CZK 600,000 (approx. EUR 24,000) for non-compliance with the CbC notification obligations
	Fines up to a maximum of CZK 1,500,000 (approx. EUR 60,000) for non-compliance with the CbC reporting obligations

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DENMARK

Documentation threshold

Limited documentation requirements (Local File + Master File)	Alone or consolidated group basis has less than 250 employees and either a balance sheet total of less than DKK 195 million (approx. EUR 26 million) or a yearly turnover of less than DKK 391 million (approx. EUR 52 million)
Full scope documentation requirements (Local File + Master File)	Taxpayers that do not meet the thresholds for the limited documentation rules are subject to the full-scope documentation rules.
CbCR	Consolidated group turnover over DKK 5.6 billion

Submission deadline

Limited documentation (Local File + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
Full scope documentation (Local Lile + Master File)	60 days after the deadline for filing the corporate tax return (30 June if the fiscal year is the calendar year).
CbCR report CBCR notification	12 months after the last day of the income year in question.

Penalty Provisions

Documentation – late filing, incomplete or no filing	A penalty of DKK 250,000 (approx. EUR 33,500) may be imposed
Reduced penalty in case of subsequent satisfactory documentation	A penalty of DKK 125,000 (approx. EUR 16,740) may be imposed
Increased penalty in case of an increase in income	An additional penalty of 10% of the income increase, may be imposed
CbCR – late/incomplete/no filing	A penalty may be imposed. The amount of the penalty will be determined on a case-specific assessment.

ESTONIA

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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FINLAND

Documentation threshold

Master file	Documentation obligation can apply if the total value of taxpayers' cross-border related party transactions exceeds EUR 500,000 during the financial year. Please refer to section *Transfer Pricing Documentation Requirements* above for details
Local file	No des minimis threshold based on volume of related party transactions. However, if the total value of cross-border related party transactions between two parties does not exceed EUR 500,000 during the financial year, documentation omitting the functional and comparability analysis as well as method selection is allowed. Please refer to section *Transfer Pricing Documentation Requirements* above for details.
CbCR	CbCR obligation in Finland applies if the group revenue exceeds EUR 750 million in the financial year immediately preceding the reporting year.

Submission deadline

Master file	60 days from request
Local file	60 days from request
CbCR	12 months from the end of reporting year.

Penalty Provisions

Documentation – late filing provision	Up to EUR 25,000
Tax return disclosure – late/incomplete/no filing	Minimum of EUR 150 assuming no impact on taxable income.
CbCR – late/incomplete/no filing	Up to EUR 25,000

FRANCE

Documentation threshold

Master file	Revenues or gross assets above €150 million (€400 million for fiscal years starting up to December 31st, 2023) for the relevant fiscal year (taxpayer or shareholder or subsidiary).
Local file	
CbCR	Annual consolidated group revenues above €750 million in the immediately preceding fiscal year.

Submission deadline

Master file	Should be available at the start of the tax audit and provided upon request.
Local file	
CbCR	No later than 12 months after the last day of the reporting fiscal year of the MNE group.

Penalty provisions

Documentation – late filing/late provision	The highest of the following amounts: ⁘ 0.5% of the amount of the transactions for which no or partial documentation has been provided. ⁘ 5% of the income tax adjustments based on Article 57 of the FTC and relating to the transactions for which no or partial documentation has been provided. ⁘ €50,000 per audited fiscal year (€10,000 for fiscal years starting up to December 31st, 2023).
Tax return disclosure - late/ incomplete/no filing	Transfer pricing return (form 2257-SD): ⁘ failure to file the 2257-SD form: penalties of €150. ⁘ omissions or inaccuracies in the 2257-SD form: penalties of €15 per omission or inaccuracy, with the total penalties not less than €60 and not more than €10,000.
CbCR – late/ incomplete/no filing	Penalties up to €100,000.

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GERMANY

Documentation threshold

Master file	Turnover EUR 100 million of individual entity, i.e. no group perspective
Local file	Remuneration for supply of goods exceeds EUR 6 million or the total remuneration from other services exceeds EUR 600,000
Enhanced TP Documentation	Any transactions involving non-cooperative tax jurisdictions
CbCR	Turnover EUR 750 million

Submission deadline

Master file	Submission within 30 days after receipt of the announcement of the tax audit.
Transaction Matrix	Submission within 30 days after receipt of the announcement of the tax audit.
Local File	Submission upon request within 30 days.
Enhanced TP documentation	12 months after the end of the fiscal year
CbCR	Submission within 12 months after end of the tax year

Penalty Provisions

Documentation – late filing provision	Penalties up to EUR 1,000,000
Tax audit – lateness in cooperation	Penalties up to EUR 250,000
Tax return disclosure – late/incomplete/no filing	Penalties up to EUR 25,000
CbCR – late/incomplete/no filing	Penalties up to EUR 10,000

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GREECE

Documentation threshold

Master file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
Local file	Total value of annual intragroup transactions exceeding the amount of € 100,000 for entities with a total annual turnover which is equal or lower than € 5,000,000. For entities with an annual turnover exceeding € 5,000,000, the relevant threshold is increased to € 200,000 of total value of annual intra-group transactions.
CbCR	Turnover EUR 750 million

Submission deadline

Master file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Local file	N/A – there is no requirement to submit transfer pricing documentation in the ordinary course.
Summary Information Table	Submission until the deadline for the Corporate Income Tax returns, normally until the last day of the sixth month following the end of the fiscal year
CbCR & CBCR notification	Submission of the CBCR within 12 months after the end of the tax year under review. Notification must be submitted by the end of the reporting fiscal year.

Penalty Provisions

Please see the above remarks.

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HUNGARY

Documentation threshold

Master file	2026: Master file exemption if total related-party transactions do not exceed HUF 500 million (appr. EUR 1,400 thousand).
Local file	2026: HUF 150 million (appr. EUR 420 thousand) for Local file and data reporting.
CbCR	2026: EUR 750 million consolidated group revenue threshold; for Hungarian public CbCR purposes, HUF 275 billion may apply where relevant.

Submission deadline

Master file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: until the deadline for preparing the MF for the ultimate parent company of the group, but not later than the end of the year following the tax year
Local file	Submission: within 3 business days upon request of the competent tax authority Preparation deadline: by the submission of the yearly corporate income tax return, which deadline is 150 days following the tax year
CbCR	Submission and preparation: within 12 months following the end the reporting period

Penalty Provisions

Documentation – late filing provision	up to HUF 5 million (~ EUR 14,000), in recurring cases up to HUF 10 million (~ EUR 28,000) / per transaction per year
Tax return disclosure – late/incomplete/no filing	up to HUF 1 million (~ EUR 2,800) per return
CbCR – late/incomplete/no filing	up to HUF 20 million (approx. EUR 56,000) – also in the event of a violation of the notification obligation

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INDIA

Documentation threshold

Master file	Value of international transaction exceeds INR 500 million (INR 100 million in relation to intangibles) and international group turnover exceeds INR 5 billion.
Local file	INR 10 million.
CbCR	INR 64 billion.

Submission deadline

Master file	30th November immediately following the financial year.
Local file	10 days from the date of receipt of a notice from tax authorities calling for the information.
CbCR	12 months from the end of reporting accounting year of the UPE.

Penalty Provisions

Documentation – late filing provision	2% of value of international transaction for failure to maintain / submit the specified information / documents. INR 0.5 million for failure to furnish master file.
Tax return disclosure – late/incomplete/no filing	INR 0.1 million for failure to file Form 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27]. 2% of value of international transaction for failure to report transactions in Form no. 3CEB [Form No. 48 applicable from Tax Year ('TY') 2026-27] and TP documentation.
CbCR – late/incomplete/no filing	INR 5,000 per day for one month, INR 15,000 per day after one month, INR 50,000 per day after the date of service of penalty order.

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INDONESIA

Documentation threshold

Master File and Local File	Criteria to Prepare Master File and Local File
The Taxpayer has related party transactions with:	The taxpayer has related-party transactions and meets **at least one** of the following criteria: a. a gross revenue in the previous fiscal year of more than IDR 50 billion, or b. a related party transaction amount in the previous fiscal year of: - more than IDR 20 billion for tangible goods transactions; or - more than IDR 5 billion for each provision of service, payment of interest, use of intangible goods, or other related party transactions, or c. The related party is domiciled in a country or jurisdiction with a tax rate lower than the prevailing tax rate in Indonesia (the current tax rate in Indonesia is 22%).
CbCR	Criteria to Prepare Country-by-Country Reports a. Consolidated group turnover of at least IDR 11 trillion in prior year, or b. A Taxpayer who is a member of a Business Group, with a parent entity that is a Foreign Taxpayer, is required to file a Country-by-Country Report if the country or jurisdiction where the parent entity is domiciled: - does not require the filing of Country-by-Country Report, or - does not have any exchange of tax information agreement with Indonesia, or - has an exchange of tax information agreement, but the Indonesian Government fail to receive the Country-by-Country Report from the related country/jurisdiction.

Submission deadline

Master file	Must be available within **four months** after the fiscal year-end and submitted only upon request by the ITO.
Local file	Must be available within **four months** after the fiscal year-end and submitted only upon request by the ITO.
CbCR report	Must be submitted within 12 months after the fiscal year-end.
CBCR notification	Must be submitted within 12 months after the fiscal year-end.

INDONESIA

Penalty Provisions

Documentation – late filing provision	The transfer pricing documentation must be submitted within one month after ITO formally request for TP documentation during Tax Audit process. If the Taxpayer submits the transfer pricing documentation after the required timeframe, ITO may reject submission of the transfer pricing documentation and consider the Taxpayer does not comply with the regulation. The ITO will treat the TP Documentation as other documents rather than formal defense documentation.
Tax return disclosure – late/ incomplete/no filing	The administrative sanction for late filing of annual corporate tax return is IDR1million. If tax returns are deemed to be incomplete, ITO will request for the Taxpayers to amend the returns. If Taxpayers fail to file a tax return, there will be a potential tax audit by ITO. For tax assessment letter that resulted in tax underpayment, the underpaid amount is subject to a tax surcharge of Reference Interest Rate Issued Monthly by the Minister of Finance (MoF) plus uplift of 5% or 10% divided by 12 months for a maximum of 24 months, or a surcharge of 75%, depending on the case.
CbCR – late/ incomplete/no filing	Failure to file the CbCR triggers administrative sanctions aligned with the corporate tax return disclosure penalties outlined above.

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IRELAND

Documentation threshold

Master file	Group's global annual turnover > €250M
Local file	Group's global annual turnover > €50M
CbCR	Multinational enterprise groups ("MNE Groups") with consolidated group revenue of €750 million or more in the preceding fiscal year

Submission deadline

Master file	30 days upon request from Irish Revenue
Local file	30 days upon request from Irish Revenue
CbCR	To be filed with Irish Revenue within 12 months following the end of the period it relates to

Penalty Provisions

Documentation – late filing provision	€4,000 – €25,000, plus €100 per day until the documentation is provided
Tax return disclosure – late/incomplete/no filing	Penalties for late submission of corporation tax returns include a surcharge and restriction on use of allowances / losses. The surcharge levied is as follows: • 5% of the amount of tax payable up to a maximum surcharge of €12,695 where the return is submitted within two months after the due date; and • 10% of the amount of tax payable up to a maximum surcharge of €63,485 in all other cases. The failure to file a return attracts a fixed penalty of €3,000 on a per return basis. This can be increased to €4,000 where the failure to submit the return continues after the end of the tax year in which the person received the tax return from the Inspector. The filing of incorrect/incomplete returns also attracts a fixed penalty of €4,000.
CbCR – late incomplete/no filing	The penalty for failure to file a CbCR is €19,045 plus €2,535 for each day the failure continues. The penalty for filing an incomplete or incorrect CbC Report / Equivalent CbC Report is €19,045.

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ISRAEL

Documentation threshold

Master file	Group revenue exceeding NIS 150M
Local file	No minimum
CbCR	Group revenue exceeding NIS 3.4B

Submission deadline

Master file	Should be prepared prior to filling of tax return, submission upon request.
Local file	Should be prepared prior to filling of tax return, submission upon request. Necessary to submit affidavit (Form 1385) with tax return indicating if the local file is in place.
CbCR	Either submission or notification of jurisdiction of submission when filling tax return.

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ITALY

Documentation threshold

Master file	Not applicable
Local file	Not applicable
CbCR	€ 750 million

Submission deadline

Master file	Both Master file and Local File do not have to be submitted, but must have been prepared, signed and marked before sending the corporate income tax return.
Local file	The tax return is due by the end of the 10th month after the closing of the relevant fiscal year.
CbCR	To be submitted within 12 months following the last day of the multinational group's reporting fiscal year

Penalty Provisions

Documentation – late filing provision	Failure to timely prepare and properly disclose transfer pricing documentation results in ineligibility for the "penalty protection regime"
Tax return disclosure – late/incomplete/no filing	A tax return filed within 90 days after the statutory deadline is treated as late-filed but validly submitted and is subject to a fixed penalty of EUR 250. A tax return filed more than 90 days after the statutory deadline is treated as omitted and is subject to a penalty equal to 120% of the tax due, or to a penalty ranging from EUR 250 to EUR 1,000 where no tax is due.[2] An inaccurate tax return is subject to a penalty equal to 70% of the higher tax due.
CbCR – late/incomplete/no filing	Late, incomplete or omitted filling of CbCR is subject to an administrative penalty ranging from € 10,000 to € 50,000.

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JAPAN

Documentation threshold

Master file	Turnover JPY 100 billion
Local file	N/A
CbCR	Turnover JPY 100 billion

Submission deadline

Master file	Submission within 12 months after end of fiscal year.
Local file	Should be available in the taxpayer's administration upon due date for filling corporation tax
CbCR	Submission within 12 months after end of fiscal year.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting or master file.
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting.

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LATVIA

Documentation threshold

Controlled Transactions Report	Total value of relevant controlled transactions exceeding EUR 250,000.
Master file	Total relevant controlled transactions exceeding EUR 20 million.
Local file	Total relevant controlled transactions exceeding EUR 250,000.
CbCR	Consolidated group revenue exceeding EUR 750 million in the preceding fiscal year.

Submission deadline

Controlled Transactions Report	Must be submitted electronically within 12 months after the end of the reporting year.
Master file	Must be prepared within 12 months after the end of the reporting year. It must be submitted to the SRS within 30 days after the SRS request.
Local file	Must be prepared within 12 months after the end of the reporting year. It must be submitted to the SRS within 30 days after the SRS request.
CbC Report	12 months after the reportable year-end.

Penalty Provisions

Documentation – late filing provision	Fine of up to 1% of the relevant controlled transaction amount, capped at EUR 100,000.
Tax return disclosure – late/ incomplete/no filing	Fine of up to 1% of the relevant controlled transaction amount, capped at EUR 100,000, for failure to submit, late submission or materially incomplete submission of the Controlled Transactions Report
CbC Report – late/incomplete/no filing	Fine of up to 1% of annual turnover or revenue, capped at EUR 3,200

LITHUANIA

Documentation threshold

Master file	EUR 15 million of revenue in the preceding tax period, provided the taxpayer belongs to a multinational group.
Local file	EUR 3 million of revenue in the preceding tax period. No revenue threshold for financial companies, credit institutions and insurance companies. Transaction-level and domestic exemptions apply.
CbCR	EUR 750 million of consolidated group revenue in the preceding financial year.

Submission deadline

Master file	Preparation within 15th day of the sixth month of the following tax period. Submission within 30 days upon request.
Local file	Preparation within 15th day of the sixth month of the following tax period. Submission within 30 days upon request.
CbC Report	12 months after the reportable financial year-end.

Penalty Provisions

Documentation – late filing provision	Administrative fine of EUR 1,820-5,590. Repeated infringement EUR 3,770-6,000.
Tax return disclosure – late/ incomplete/no filing	Warning or administrative fine of EUR 200-390 under general reporting rules.
CbC Report – late/incomplete/no filing	Warning or administrative fine of EUR 200-390 under general reporting rules.
Non-compliance with the arm's length principle	For the company – additional tax resulting from the transfer pricing adjustment, late-payment interest and a penalty generally ranging from 20% to 100% of the additional tax assessed. For responsible persons – separate administrative liability ranging from EUR 1,820 to EUR 6,000 may apply for related TP documentation or reporting infringements.

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LUXEMBOURG

Documentation threshold

Master file	Not Applicable (draft Law)
Local file	Not Applicable (draft Law)
CbCR	EUR 750m consolidated group turnover

Submission deadline

Master file	Not Applicable (draft Law)
Local file	Not Applicable (draft Law)
CbCR	12 months after the final day of the reporting fiscal year of the MNE group. CbCR notification must be submitted on or before the last day of the reporting fiscal year.

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Up to 10 percent of the tax due and a fine up to EUR 25,000
CbCR – late/incomplete/no filing	Up to EUR 250,000

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MALTA

Submission deadline

Master file	No annual submission requirement – to be made available to the Malta Tax and Customs Administration upon request.
Local file	No annual submission requirement – to be made available to the Malta Tax and Customs Administration upon request.
CbCR	The CbCR is to be filed within 12 months from the end of the fiscal year of the MNE Group. CbCR notification by Maltese constituent entities is to be made by the deadline for filing the relevant income tax return (generally nine months from the end of the financial year).
Public CbCR	To be published and filed within 12 months from the end of the relevant financial year.

Penalty Provisions

Documentation – late filing provision	Not Applicable, as no submission requirement exists; however, penalties may arise where documentation is not provided upon request.
Tax return disclosure – late/incomplete/no filing	Administrative penalties may be imposed, generally up to a maximum of €1,500.
CbCR – late/incomplete/no filing	Failure to submit the CbCR within the prescribed deadline: Penalty of €200 plus €100 for each day during which the default continues, capped at €20,000. Failure by a constituent entity to submit a notification: Penalty of €200 plus €50 per day during which the default continues, capped at €5,000. Errors in reporting: Minor errors – €200 plus €50 per day, capped at €5,000. Significant non-compliance – penalties of up to €50,000. Failure to comply with a request for information by the Commissioner: €100 per day during which the default continues, capped at €30,000.
Public CbCR – late/incomplete/no filing	Failure to comply with Public CbCR reporting obligations under Articles 213B–213D and Part II of the Fourth Schedule of the Companies Act: Default penalty of €2,329 and a daily penalty of €46 for continued non-compliance.

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MAURITIUS

Documentation threshold

Master file	Not Applicable
Local file	Not Applicable
CbCR	Euro 750 million

Submission deadline

Master file	Not Applicable
Local file	Not Applicable
CbCR	12 months after accounting year end

Penalty Provisions

Documentation – late filing provision	Not Applicable
Tax return disclosure – late/incomplete/no filing	Late filing penalty capped at USD 445 p.a.
CbCR – late/incomplete/no filing	USD 110

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MEXICO

Documentation threshold

Master file	MXN $1,103.2 million (approximately USD $63.59 million)
Local file	MXN $1,103.2 million (approximately USD $63.59 million)
CbCR	MXN $12,000 million (approximately USD $691 million)

Submission deadline

Master file	December 31 of the following fiscal year to which the report corresponds.
Local file	May 15 of the following fiscal year to which the report corresponds.
CbCR	December 31 of the following fiscal year to which the report corresponds.

Penalty Provisions

Documentation – late filing provision	No penalties apply as long as compliance is spontaneous.
Tax return disclosure – late/incomplete/no filing	Penalties between MXN $226,000 (approximately USD $13,027) and MXN $321,770 (approximately USD $18,548).
CbCR – late/incomplete/no filing	Penalties between MXN $226,000 (approximately USD $13,027) and MXN $321,770 (approximately USD $18,548).

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NETHERLANDS

Documentation threshold

Master file	Consolidated group turnover EUR 50 million
Local file	Consolidated group turnover EUR 50 million
CbCR	Consolidated group turnover EUR 750 million
Pillar Two	Consolidated group turnover EUR 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.
CbCR report	Submission within 12 months after end of reporting year.
CbCR notification	Before year end of the reporting year.
Pillar Two	GIR / GIR Notification Submission within 15 months after end of reporting year. Minimum Tax Return Submission and payment within 17 months after end of reporting year. 18/20 months respectively for the first reporting year.

Penalty Provisions

Documentation – late filing provision	Administrative fines up to a maximum of EUR 6,709 can be imposed.
Tax return disclosure – late/incomplete/no filing	Administrative fines up to a maximum of EUR 6,709 can be imposed.
CbCR – late/incomplete/no filing	Fines up to a maximum of EUR 1,100,000 can be imposed on the taxpayer for non-compliance.
Pillar Two - late/incomplete/no filing of the GIR, GIR Notification or Minimum Tax Return Administrative	Fines up to a maximum of EUR 1,100,000 can be imposed on the taxpayer for non-compliance.

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NORWAY

Documentation threshold

Master file	MNOK 400 (or balance MNOK 350)
Local file	MNOK 400 (or balance MNOK 350)
CbCR	6 500 000 000 NOK (appr. MEuro 600)

Submission deadline

Master file	45 days from request from NTA
Local file	45 days from request from NTA
CbCR	Within 12 months after end of tax year

Penalty Provisions

Documentation – late filing provision	The NTA may impose a daily accruing coercive fine of one court fee (NOK 1,345 in 2026) subject to an aggregate cap of 50 times the court fee. Norway applies penalty tax if taxable income is increased and the taxpayer negligently has provided wrongful or incomplete information.
Tax return disclosure – late/incomplete/no filing	N/A – see above
CbCR – late/incomplete/no filing	N/A – see above

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POLAND

Documentation threshold

Master file	PLN 200 million of the group consolidated revenue in the year before the documented year
Local file	PLN 10 million for goods and financing PLN 2 million for services and other transactions PLN 2.5 million and PLN 0.5 million for the respective transactions with tax havens
CbCR	EUR 750 million

Submission deadline

Master file	12 months after the reportable year-end
Local file	10 months after the reportable year-end
CbCR	12 months after the reportable year-end

Penalty Provisions

Documentation – late filing provision	Personal-fiscal penalties for the board members up to approx. PLN 30 million
Tax return disclosure – late/incomplete/no filing	Penalty up to PLN 30 million for incorrect data or failure to submit the TPR-C return. Penalty up to PLN 10 million for late submission of the TPR-C return.
CbCR – late/incomplete/no filing	Penalty up to PLN 1 million for late submission, incorrect data or failure to submit CBC-R report or the CBC notification
Non-compliance with the arm's length principle	Personal-fiscal penalties for the board members up to approx. PLN 30 million for late submission or incorrect transfer pricing statement. For the company - additional tax liability of 10%, 20% or 30% tax rate on reassessed taxable income, increased by penalty interest for tax arrears

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PORTUGAL

Documentation threshold

Master file	Annual revenues equal to or higher than EUR 10 million
Local file	Annual revenues equal to or higher than EUR 10 million
CbCR	Consolidated revenues equal to or higher than EUR 750 million

Submission deadline

Master file	Should be available, within 15th day of the 7th month after the fiscal year end. For large Taxpayers, its submission to PTA on that deadline is compulsory.
Local file	Should be available within 15th day of the 7th month after the fiscal year end. For Large Taxpayers, its submission to PTA on that deadline is compulsory.
CbCR	Submission within 12 months after the fiscal year end.

Penalty Provisions

Documentation – late filing provision	Failure to prepare / submit TP documentation, IES, CbCR report or CbCR notification is subject to a penalty of EUR 500 to EUR 10,000, per fiscal year, per taxpayer, with an additional 5% of the penalty amount for each day of delay. Failing to comply with the publishment of CbCR information is subject to a penalty of EUR 1,500 to EUR 30,000, applicable to fiscal years starting on or after 22nd June 2024. Any inaccuracies in the information provided in the documents referred to above will be subject to a penalty of EUR 375 to EUR 22,500, per fiscal year, per taxpayer. If the taxpayer has stated in the IES that the transfer pricing documentation has been prepared but refuses to submit it upon request of PTA, the applicable penalty can reach EUR 150,000, per fiscal year, per taxpayer.
Tax return disclosure – late / incomplete / no filing	
CbCR – late / incomplete / no filing / no publishment	

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ROMANIA

Documentation threshold

Master file	N/A
Local file	Annual thresholds for large taxpayers: EUR 100,000 for transactions that generate income or expenses from the provision or acquisition of services, EUR 200,000 for financing transactions generating interest income or expenses, EUR 250,000 for transactions that generate income or expenses from the sale or acquisition of intangible assets, and EUR 350,000 for transactions that generate income or expenses from the sale or acquisition of tangible assets. Annual thresholds for other taxpayers: EUR 50,000 for transactions that generate income or expenses from the provision or acquisition of services, EUR 100,000 for financing transactions generating interest income or expenses, EUR 150,000 for transactions that generate income or expenses from the sale or acquisition of intangible assets, and EUR 200,000 for transactions that generate income or expenses from the sale or acquisition of tangible assets.
CbCR	EUR 750 million Group consolidated annual turnover

Submission deadline

Master file	Large taxpayers who exceed the above materiality thresholds have the obligation to submit the transfer pricing file annually in electronic format, through the Virtual Private Space (VPS), within 30 working days from the legal deadline for submitting the corporate income tax return (estimated to be the beginning of August), while medium and small taxpayers prepare the file only at the request of the tax authority, during tax audit. In case of non-submission on the legal deadline for large taxpayers, in the case of a tax audit, the deadline for submission is 5 working days. Other taxpayers (including large taxpayers whose intra-group transactions do not meet the above thresholds): the RTA have the right to request the TP file only during a tax inspection and to grant the taxpayer 30 to 60 calendar days to prepare and submit the file. The term may be extended with another 30 calendar days depending on the decision of the RTA.
Local file	As Master file above
CbCR	12 months since the last day of the reporting fiscal year of the MNE Group

ROMANIA

Penalty Provisions

Documentation – late filing provision / non-submission	RON 12,000 (approx. 2,400 EUR) and RON 14,000 (approx. 2,800 EUR) for large and medium size taxpayers, respectively between RON 2,000 (approx. 400 EUR) and RON 3,500 (approx. 700 EUR) for small size taxpayers
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	For failing to file a CbC report, the penalty ranges from RON 70,000 (approx. 14,000 EUR) to RON 100,000 (approx. 20,000 EUR). For late filing of a CbC report or for incomplete/incorrect data in a CbC report, the penalty ranges from RON 30,000 (approx. 6,000 EUR) to RON 50,000 (approx. 10,000 EUR).

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SERBIA

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)

SLOVAKIA

Documentation threshold

Master file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
Local file	N/A (complex rules explained in part Transfer Pricing Documentation Requirements)
CbCR	group revenue over EUR 750 million/year

Submission deadline

Master file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
Local file	During the transfer pricing audit, or, outside the audit within 15 days after the receipt of the request of the tax administrator
CbCR	For CbCR: 12 months after the lapse of the relevant fiscal year (according to the fiscal year of the parent company) For Notification on which foreign entity within the group files the CbCR: same as tax return filing deadline (standard deadline 3 months after the lapse of the tax period)

Penalty Provisions

Documentation – late filing provision	from EUR 100 up to EUR 10,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
Tax return disclosure – late/incomplete/no filing	from EUR 100 up to EUR 30,000 (at the discretion of the tax administrator, depending on the severity, duration and possible consequences)
CbCR – late/incomplete/no filing	up to EUR 10,000 (for non-filing of CbCR), repeatedly up to EUR 3,000 (for non-filing of the Notification on which foreign entity within the group files the CbCR), repeatedly

SLOVENIA

Documentation threshold

Master file	No specific statutory materiality threshold applies
Local file	No specific statutory materiality threshold applies
CbCR	Turnover € 750 million

Submission deadline

Master file	Prepared and available by the CIT return filing deadline; submitted only upon request
Local file	Prepared and available by the CIT return filing deadline; submitted only upon request
CbCR	Submission within 12 months after the end of the reporting fiscal year. Public CbCR report must be submitted to trade register (AJPES) within 11 months after the financial year-end.

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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SOUTH AFRICA

Documentation threshold

Master file	ZAR100 million
Local file	ZAR100 million
CbCR	Consolidated group revenue exceeding ZAR10 billion

Submission deadline

Master file	12 months from financial year end
Local file	12 months from financial year end
CbCR	12 months from financial year end

Penalty Provisions

Documentation – late filing provision (Master File and Local File)	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosure – late/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA
Tax return disclosures – incomplete filing	Understatement penalties that can range from 10 percent, for a first case of "substantial understatement" to 200 percent for a repeat case of "intentional tax evasion" in terms of section 222 of the TAA
CbCR – late/incomplete/no filing	Administrative non-compliance penalties that can range from ZAR250 up to ZAR16 000 a month for each month that the non-compliance continues in terms of section 211 of the TAA

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SOUTH KOREA

Documentation Threshold

Master file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
Local file	(i) the total amount of overseas intercompany transactions exceeding KRW 50 billion and (ii) the sales revenue exceeding KRW 100 billion
CbCR	the sales revenue on the consolidated financial statement in the immediately preceding tax year exceeding KRW 1 trillion

Submission Deadline

Master file	within 12 months from the fiscal year-end
Local file	within 12 months from the fiscal year-end
CbCR	within 12 months from the fiscal year-end

Penalty Provisions

Documentation – late filing provision	an administrative fine of KRW 30 million for each type of documentation, with an additional fine of up to KRW 200 million if non-compliance continues after a corrective notice period (generally 30 days)
Tax return disclosure – late/incomplete/no filing	an administrative fine ranging from KRW 5 million to 70 million depending on the specific tax return form, with an additional fine of up to KRW 200 million if non-compliance continues after a corrective notice period (generally 30 days)
CbCR – late/incomplete/no filing	an administrative fine of KRW 30 million, with an additional fine of up to KRW 200 million if non-compliance continues after a corrective notice period (generally 30 days)
Enforcement fines – failure to submit requested documents during tax audits	enforcement fines accruing on a daily basis (up to 0.3% of average daily revenue or KRW 5 million per day) until submission or audit closure, applied when taxpayers fail to submit requested books or documents without justifiable cause

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SPAIN

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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SWEDEN

Documentation threshold

Master file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
Local file	250 employees or either a turnover of at least SEK 450 million or a balance sheet of at least SEK 400 million.
CbCR	Revenue SEK 7 billion.

Submission deadline

Master file	No later than the time when the parent company in the group must submit its income tax return.
Local file	No later than the time when the Swedish company must submit its income tax return.
CbCR	Within twelve months after the end of the financial year. It is the financial year of the group's parent company that determines the time period.

Penalty Provisions

Documentation – late filing provision	No penalty.
Tax return disclosure – late/incomplete/no filing	Late filing fee is SEK 6,250 (could be charged up to three times).
CbCR – late/incomplete/no filing	No penalty.

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SWITZERLAND

Documentation threshold

Master file	N/A but recommended
Local file	N/A but recommended, and in practice expected
CbCR	CHF 900 M

Submission deadline

Master file	N/A
Local file	N/A
CbCR	12 months after FY closing

Penalty Provisions

Documentation – late filing provision	N/A
Tax return disclosure – late/incomplete/no filing	Assessment by discretion by authorities
CbCR – late/incomplete/no filing	CHF 200 per day of late filing, up to CHF 50k

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THAILAND

Documentation threshold

Master file	Taxpayers with annual revenue exceeding THB 200 million that enter into related-party transactions. The taxpayer must submit a Transfer Pricing Disclosure Form along with the annual corporate income tax return.
Local file	
Country-by-Country Report (CbCR)	A consolidated annual revenue threshold of THB 28 billion applies.

Submission deadline

Master file	To be submitted to the Revenue Department within 60 days of a request (extendable once by up to 60 additional days).
Local file	
Country-by-Country Report (CbCR)	Filed within 12 months after the end of the reporting fiscal year by the reporting entity where the filing obligation applies.

Penalty Provisions

Documentation – late filing provision	Failure to provide the documentation when requested by the TRD may increase the risk of transfer pricing adjustments. Where an adjustment results in additional tax, the applicable tax penalty and surcharge under the Revenue Code may apply.
Tax return disclosure – late/ incomplete/no filing	Failure to comply with the TP Disclosure Form requirement or submission of incorrect or incomplete information without reasonable cause is subject to a fine of up to THB 200,000 under Section 35 ter of the Revenue Code
CbCR - late/incomplete/no filing	Failure to comply with Country-by-Country Reporting obligations, including failure to file the CbCR by the due date, is subject to a fine of up to THB 2,000 under Thailand's CbCR legislation and related regulations.

TURKEY

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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UAE

Documentation threshold

Master file	Companies that are part of an MNE Group with a total consolidated revenue of AED 3.15 billion or above, or where the taxable person's revenue for the relevant tax period is at least AED 200 million.
Local file	Companies that are part of an MNE Group with a total consolidated revenue of AED 3.15 billion or above, or where the taxable person's revenue for the relevant tax period is at least AED 200 million.
CbCR	MNEs with an Ultimate Parent Entity that is resident in the UAE, with consolidated revenues equal to or exceeding AED 3.15 billion.

Submission deadline

TP disclosure form	To be submitted alongside the tax return (within 9 months from the end of the relevant tax period)
Master file	To be maintained and submitted within 30 days upon request by the FTA.
Local file	To be maintained and submitted within 30 days upon request by the FTA
CbCR	Within 12 months from the end of the reporting fiscal year of the Group
CbCR notification	Notification must be submitted by the end of the reporting fiscal year

Penalty Provisions

Documentation – late filing provision	Fines as determined by the Corporate Tax Law and relevant Decisions
Tax return disclosure – late/ incomplete/no filing	Fines as determined by the Corporate Tax Law and relevant Decisions
CbCR – late/incomplete/no filing	Under the Cabinet Resolution No. 44 of 2020 on CbCR, four types of administrative penalties are imposed on eligible UAE taxable persons, ranging from AED 10,000 to AED 1,000,000. Specific penalties include: ❁ Late filing of CbCR: Up to AED 1,000,000 plus AED 10,000 for each day of delay, capped at AED 250,000. ❁ Inaccurate or incomplete CbCR: Fines range from AED 50,000 to AED 500,000. ❁ Failure to maintain required documentation for five years: AED 100,000. ❁ Failure to provide requested information: AED 100,000.

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UNITED KINDGOM

Documentation threshold

Master file	Mandatory for entities with consolidated group revenues of at least €750 million. Subject to exceptions, SME are exempt. Recommended for all entities maintaining transfer pricing records.
Local file	As for Master file above
CbCR	Consolidated group revenue of at least €750 million

Submission deadline

Master file	Within a reasonable period (normally 30 days) of receiving a request from HMRC..
Local file	Within a reasonable period (normally 30 days) of receiving a request from HMRC.
CbCR	Within 12 months after the end of the accounting period to which the CbC report relates.

UNITED KINDGOM

Penalty Provisions

Documentation – late filing provision	Failure to keep or to preserve adequate records: up to £3,000. Failure to comply with an information notice: • £300 fixed penalty, plus • £60 per day daily penalties. Inaccurate documents and information, tax-geared penalty equal to a percentage of the extra tax due when the mistake is corrected: • Careless error, unprompted disclosure: 0% to 15% • Careless error, prompted disclosure: 15% to 30% • Deliberate but not concealed, unprompted disclosure: 20% to 70% • Deliberate but not concealed, prompted disclosure: 35% to 70% • Deliberate and concealed, unprompted disclosure: 30% to 100% • Deliberate and concealed, prompted disclosure: 50% to 100%
Tax return disclosure – late/incomplete/no filing	Failure to submit: • If submitted within 3 months of filing date: £100 fixed penalty (increased to £500 if late for three or more consecutive periods) • If submitted between 3 and 6 months after filing date: £200 fixed penalty (increased to £1,000 if late for three or more consecutive periods) • If submitted between 6 and 12 months after filing date: – £200 fixed penalty (increased to £1,000 if late for three or more consecutive periods), plus – Tax-geared penalty equal to 10% of unpaid tax • If submitted more than 12 months after filing date: – £200 fixed penalty (increased to £1,000 if late for three or more consecutive periods), plus – Tax-geared penalty equal to 20% of unpaid tax
CbCR – late/incomplete/no filing	Inaccurate documentation and information: up to £3,000. Late filing and failure to comply with an information notice: • £300 fixed penalty, plus • £60 per day daily penalties (potentially increased up to a maximum of £1,000 if the failure continues for more than 30 days)

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UNITED STATES

Documentation threshold

Master file	No Requirement
Local file	No Requirement
CbCR	Ultimate Parent Entity with $850,000,000 in revenue during the prior reporting period

Submission deadline

Master file	No Requirement
Local file	No Requirement
CbCR	Tax Return Filing Date for Ultimate Parent Entity

Penalty Provisions

Documentation – late filing provision	No Requirement
Tax return disclosure – late/incomplete/no filing	No Requirement. Failure to provide adequate disclosure of certain positions exposes taxpayers to the risk of imposition of certain accuracy-related and other penalties under the Code.
CbCR – late/incomplete/no filing	A penalty of $10,000 may be imposed for failure to file a CbCR, with the penalty increasing by $10,000 for each thirty-day period the return is not furnished, up to a maximum of $50,000 annually. The increases begin 90 days after the IRS notifies the taxpayer of the failure to file.

VIETNAM

Documentation threshold

Master file Local file	A taxpayer is exempt from preparing Master file and Local file if one of the following conditions is met: • Their annual revenue is less than VND 50 billion and total related-party transactions are less than VND 30 billion. • Their transactions are covered under an APA, and the taxpayer has submitted an annual report in accordance with the legal provisions on APAs. For those related-party transactions that are not covered by the APA, taxpayers shall be responsible for making TP declarations as required under Vietnamese TP regulations. • Their annual revenue is less than VND 500 billion; and they do not generate revenue or expenses from the exploitation or use of intangible assets; and earn net profit margin (excluding interest expenses and corporate income tax, and excluding the difference between revenue and expenses from financial activities) to net revenue ratios of 5% or higher for distribution, 10% or higher for manufacturing, or 15% or higher for processing. A fourth exemption applies where the taxpayer's related party transactions are conducted solely with related parties that are Vietnamese CIT payers subject to the same CIT rate, with neither party benefiting from CIT incentives during the tax period. In this case, the taxpayer is exempt from both filing the TP declaration (i.e., disclosure form) and maintaining the TP documentation reports
CbCR	A local CbCR submission obligation applies to Vietnamese UPEs whose global consolidated group revenues reach or exceed €750 million in the preceding fiscal year. If the UPE is located outside Vietnam, local filing is not required, provided the report can be obtained via the Automatic Exchange of Information ("AEOI") framework. However, Vietnamese taxpayers must submit a one-time local CbCR Notification (Form No. 01/TB-BCLN).

Submission deadline

Master file	Must be prepared before the annual CIT deadline, i.e., last day of the 3rd month from the end of the fiscal year.
Local file	Submitted only upon request by the GDT within 30 working days. A one-time extension of 15 working days may be granted on a case-by-case basis.
CbCR	No later than 12 months from the end of the UPE's fiscal year.

VIETNAM

Penalty Provisions

Documentation – late filing provision	No separate penalties.
Tax return disclosure – late/ incomplete/no filing	❁ Administrative penalties ranging from VND 2 million up to VND 25 million are imposed for late submission of CIT finalization return (including TP Disclosure Forms). ❁ A penalty ranging from VND 8 million to VND 15 million for not submitting the TP Forms together with the annual CIT returns. ❁ A penalty equal to 20% of the underpaid tax amount shall be imposed for making incorrect declarations with respect to related-party transactions leading to any underpayment of taxes. This penalty applies even if the taxpayer has prepared TP Documentation or submitted the TP Disclosure Forms to the authorities. ❁ Late payment interest is levied at a rate of 0.03% per day on outstanding tax obligations. ❁ Potential penalties for tax evasion may also be imposed from one-to-three times the under-declared tax.
CbCR - late/incomplete/no filing	

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