Introduction
As multinational companies continue to globalize their supply chains, transfer pricing is increasingly at the forefront of business transformation initiatives. Organizations recognize that transfer pricing strategies can add significant value to business projects and help fund future growth as they look to maximize efficiencies and minimize their global tax liabilities.

The transfer pricing environment is constantly changing, in terms of both risks and opportunities. Multinational companies need to ensure they stay up-to-date with the latest developments and transfer pricing best practices. In doing so, they can optimize the opportunities to reduce their global effective tax rate and ensure they remain compliant with changing guidelines and regulations, while at the same time minimizing the risks associated with a transfer pricing audit.

Keeping track of the fast-developing transfer pricing landscape is itself a challenge. From detailed transfer pricing regulations to stricter documentation requirements, robust audit practices to harsher penalties for non-compliance, global companies must deal with an ever more complex environment.

Above all, ensuring an effective transfer pricing strategy means being proactive in planning, implementation, risk management, documentation and dispute resolution. Taxpayers need to understand the global perspective, but also be able to call on expertise and insight to combine it with a local orientation.

KPMG’s Global Transfer Pricing Review is designed to help multinational companies stay current with transfer pricing rules worldwide.

Compiled from information supplied by various KPMG member firm professionals who provide transfer pricing services, the review offers a broad-ranging look at transfer pricing compliance requirements in 100 countries.
Country Snapshots
The following are snapshots of countries that are not included in the overview section of the 2012 GTPS Review, either because the country does not have transfer pricing regulations in place, or guidance surrounding their transfer pricing regulations is still emerging.

<table>
<thead>
<tr>
<th>Country</th>
<th>Answer</th>
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<tbody>
<tr>
<td>Andorra</td>
<td>Currently there are no standing/specific transfer pricing regulations in Andorra.</td>
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<tr>
<td>Angola</td>
<td>The new Angolan transfer pricing regime is included in the project of the local Tax Reform, currently in process. This regime generally follows the OECD Transfer Pricing Guidelines, despite including some relevant particularities.</td>
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<tr>
<td>Anguilla</td>
<td>No standing transfer pricing regulations exist.</td>
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<tr>
<td>Armenia</td>
<td>Currently there are no standing transfer pricing direct regulations in Armenia. However, several provisions of tax legislation (particularly calculation of tax liabilities by the tax authority through an indirect method) are connected with transfer pricing.</td>
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<tr>
<td>Aruba</td>
<td>The arm’s length principle (ALP) was codified in the Aruban profit tax ordinance of 1 January 2008. The ALP is applicable on all transfer pricing between affiliated companies with regard to all mutual legal relations (e.g. purchase prices, management fees, remunerations for services provided, royalty paid, etc). A documentation obligation was also introduced in the profit tax ordinance. The explanatory notes on the bill state that for the meaning and application of the ALP and the documentation obligation, OECD Guidelines should be considered. The explanatory memorandum on the bill indicates that taxpayers should be allowed a reasonable period of time to produce such documentation, if it is not available immediately when requested. Non-compliance of the documentation obligation leads to a reversed burden of proof to the taxpayer. Finally, since the OECD Guidelines are quite extensive, and also considering the small-scale economy of Aruba, it is still unclear to what extent these guidelines are to be followed. The legislature has not yet elaborated on this.</td>
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<tr>
<td>Bahamas</td>
<td>Bahamas has no transfer pricing regulations. However, Bahamas Customs does have the right to reassess the declared value of imports if they believe that such value is not based on commercial terms.</td>
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<td>Belarus</td>
<td>There are no transfer pricing rules in Belarus.</td>
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<tr>
<td>Botswana</td>
<td>Botswana has no transfer pricing rules. However, in terms of the domestic law, the Commissioner of Taxes has the power to adjust the liability of the taxpayer where he is of the opinion that a transaction, scheme or operation has not been entered into or carried out by persons dealing at arm’s length, with the effect of avoiding, reducing or postponing tax liability.</td>
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<tr>
<td>Brunei Darussalam</td>
<td>There are currently no transfer pricing regulations in Brunei Darussalam.</td>
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<tr>
<td>Country</td>
<td>Answer</td>
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<tr>
<td><strong>Bulgaria</strong></td>
<td>Transfer pricing provisions appear in the four legislative acts outlined below. Generally, the arm’s length principle is the underlying principle in the tax legislation in Bulgaria. Although Bulgaria is not yet a member of the OECD, it has voluntarily transposed the principles of the OECD transfer pricing guidelines in its legislation. The Bulgarian Tax and Social Security Procedure Code (TSSPC) provides the definitions of the basic terms relevant to transfer pricing (e.g. related parties, control, market price, transfer prices) and determines the transfer pricing methods applicable in Bulgaria. It also stipulates that it is an obligation of the Bulgarian taxpayer to provide evidence that the prices agreed with related parties are at arm’s length. The transfer pricing provisions of the Bulgarian Corporate Income Tax Act (CITA) expand the scope of the transfer pricing regulations to unrelated parties. The CITA also includes descriptions of certain types of transactions which are considered tax evasion (e.g. provision of tangible or intangible assets for use with no consideration, borrowing or lending at interest different from the market interest levels, payment for services which have not been performed, etc). In addition, the CITA stipulates that if the Bulgarian revenue authorities discover non-compliance with the transfer pricing regulations, they are entitled to adjust the tax results of the Bulgarian parties involved, taking into consideration the market levels. The Bulgarian VAT Act also incorporates certain transfer pricing provisions. These require that the taxable base for VAT purposes for transactions between related parties shall be the arm’s length price. Based on the provisions of the TSSPC, a dedicated Ordinance for Applying the Methods for Determining the Arm’s Length Prices was issued by the Bulgarian Minister of Finance (the Ordinance), which deals with the implementation of the transfer pricing methods and generally incorporates the principles set in the OECD transfer pricing guidelines. The Ordinance describes how the transfer pricing methods should be applied, the specific requirements related to intra-group services and intellectual property. It also includes a short section regarding documentation of the transfer pricing method used. However, although the Ordinance requires documentary support, it does not provide for any specific requirements in this regard. At the beginning of 2010, the Bulgarian revenue authorities published a transfer pricing manual (TPM). It represents the first attempt at a transfer pricing methodology which gives certain insight on the expected application of the transfer pricing legislation and possible approaches that might be followed during tax audits. However, it should be noted that the TPM is not a statutory document and it is not binding for the tax administration or the taxpayers.</td>
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<td><strong>Cambodia</strong></td>
<td>Currently, there are no Directives, Circulars or Rulings issued by the Cambodian Tax Office in respect of transfer pricing regulations. However, the Tax Laws (Article 18) give power to the Tax Office to re-determine “related party” transactions. A related party relationship is one where there is a 20 percent or more shareholder relationship. Article 18 of the Tax Laws states, “In the case of two or more enterprises, whether incorporated in or outside of the Kingdom of Cambodia, which are under common ownership, the tax administration may, as may be necessary, distribute gross income, deductions or other benefits among such enterprises and their owners in order to prevent the avoidance or evasion of taxes or to clearly reflect the income of such enterprises, or their owners.” Through using the power of the “related party” provisions, the Tax Office has adopted a very aggressive approach to the tax audit of related party transactions.</td>
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<td><strong>Cayman Islands</strong></td>
<td>No standing transfer pricing regulations exist.</td>
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<td><strong>Costa Rica</strong></td>
<td>No standing transfer pricing regulations exist.</td>
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<tr>
<td>Country</td>
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</table>
| El Salvador  | The Tax Code included new transfer pricing rules from fiscal year 2010. The new rules required that the Salvadorian taxpayer follow the arm's length principle in intra-group transactions with related parties abroad, and with countries with low tax regimes. The regulation requires the taxpayer to produce transfer pricing documentation. The new rules include the following requirements and definitions:  
  - Article 199-A – gives the tax authority power to determine adjustment in case the taxpayer does not comply with the arm’s length principle  
  - Article 199-B – definition of arm’s length principle  
  - Article 199-C – definition of related party  
  - Article 199-D – comparability analysis and adjustments  
  - Article 124-A and Article 147 e) – Transfer pricing documentation requirements  
  - Article 62 A obligation to establish market prices for related party transactions  
  The Tax Code has yet to include guidelines concerning methodology or items that should be included in the transfer pricing documentation.  
  In the case of non-compliance with the arm’s length principle, the tax authority can adjust the prices to reflect the arm’s length principle as well as penalties for the non-compliance.                                                                                                                                                        |
| Georgia      | The Tax Code of Georgia (TCG), effective from 1 January 2011, contains a specific chapter on transfer pricing with rules based on the OECD arm’s length principle and OECD methods. According to TCG, any person who is affected by the transfer pricing rules must submit documentation (including economic analysis) upon request of the tax authorities to prove that its prices comply with the arm’s length principle.  
  The guidance on the application of transfer pricing rules (including guidance on the documentation requirements) is to be issued by the Ministry of Finance (MOF), however to date no such guidance has been issued. Regardless, TCG and current administrative practice recognize the concept of “market price” with respect to transactions between related parties, and permit the tax administration to allocate income and expenses between related parties.                                                                                                                                                                                                                     |
| Honduras     | There are currently no transfer pricing regulations.                                                                                                                                                                                                                                                                                       |
| Iceland      | According to a general provision of Icelandic tax law, if financial transactions take place between taxpayers under terms that differ substantially from those generally applicable to such transactions (not at arm’s length), any financial benefit or advantage that would, in the absence of such terms, have accrued to one of the parties, but did not accrue to that party by reason of such terms, may be added to that party’s taxable income. Tax authorities may also determine a reasonable purchase or sales price if property is bought at an abnormally high price or sold at an abnormally low price. The above provisions also apply to possible adjustments of taxable profits, where an Icelandic business entity controlled by a foreign enterprise is subject to trade terms different from those that would apply between independent business entities.  
  There are no special documentation rules regarding transfer pricing in Iceland.                                                                                                                                                                                                                                                                                                     |
| Kazakhstan   | Kazakhstan has a transfer price law specifying a hierarchy of transfer pricing methodologies that taxpayers must use, with the comparable uncontrolled price method being the one that must be used in the first instance. Any other method of establishing market price can be used only if it is impossible to use the comparable uncontrolled price method.  
  The law further stipulates that any cross-border transaction (except sales and purchases of agricultural goods) with a transaction price deviating from market price may be reviewed, regardless of whether it occurs between related parties. Cross-border sales and purchases of agricultural goods are subject to transfer pricing scrutiny only if the transaction price deviates from market price by more than 10 percent.  
  APAs are in principle envisaged by the law, but the tax authorities are extremely reluctant to conclude them.                                                                                                                                                                                                                           |
Kuwait

Kuwait does not currently have transfer pricing regulations. However, Executive Rule No. 48 issued by the Kuwait Tax Authority (KTA) permits the KTA to verify that intra-group transactions are conducted on an arm’s length basis and not for the purpose of obtaining illegal tax privileges. In such a case, the intra-group transactions of related companies shall be compared in accordance with the arrangements between companies that are not legally or financially related. Furthermore, depending on the nature of the relationship between the supplier/service provider and the acquirer with respect to a transaction, the Tax Authority deems a certain percentage of the costs or services rendered outside Kuwait as inadmissible. The percentage of disallowance depends on the nature of the relationship between the foreign company and the purchaser as shown below:

- Material and equipment cost imported from abroad is restricted as per the following percentages, according to Executive Rule No. 24 of 2008:

<table>
<thead>
<tr>
<th>Material imported from</th>
<th>Maximum cost to be allowed as a percentage of related cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head office</td>
<td>85 percent to 90 percent</td>
</tr>
<tr>
<td>Affiliates</td>
<td>90 percent to 93.5 percent</td>
</tr>
<tr>
<td>Third parties</td>
<td>93.5 percent to 96.5 percent</td>
</tr>
</tbody>
</table>

- Design and consultancy costs incurred abroad is restricted as per the following percentage, according to Executive Rule No. 25 of 2008 of the Kuwait Tax Law No. 2 of 2008:

<table>
<thead>
<tr>
<th>Engineering costs from</th>
<th>Maximum design cost to be allowed as a percentage of related cost</th>
<th>Maximum consultancy cost to be allowed as a percentage of related cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Head office</td>
<td>75 percent to 80 percent</td>
<td>70 percent to 75 percent</td>
</tr>
<tr>
<td>Affiliates</td>
<td>80 percent to 90 percent</td>
<td>75 percent to 80 percent</td>
</tr>
<tr>
<td>Third parties</td>
<td>85 percent to 90 percent</td>
<td>80 percent to 85 percent</td>
</tr>
</tbody>
</table>

Macedonia

Transfer pricing provisions in the Macedonian Corporate Profit Tax Law stipulate that revenues and/or expenses incurred on transactions between related parties are recognized for tax purposes at market prices. The law prescribes the comparable uncontrolled prices or the cost-plus method as the basis for determining any differences. The definition of related parties is provided in the Macedonian Trading Companies’ Law.

As per recent amendments to the legislation on taxation of corporate profits, taxpayers are obliged to present sufficient information and analysis on the conditions under which transfer prices were set, upon request of the tax authorities. However, there are no further requirements regarding the content or type of documentation which should be provided.

Also the Macedonian Personal Income Tax Law provides that expenses incurred between related parties are recognized for tax purposes up to the level of the prices which would have been agreed on the domestic market (i.e. the Macedonian market), or on a comparable foreign market between unrelated parties.

The Macedonian tax legislation does not have explicit transfer pricing documentation provisions.

Malawi

Malawi has standing transfer pricing regulations under Chp. 41:01 (Taxation Act) of the laws of the Malawi. The Malawi Government has now enacted regulations governing transactions which involve transfer pricing. These regulations are known as Taxation Transfer Pricing Regulations 2009.

The purposes of these regulations are, amongst other things, to:

- Provide guidelines to be applied by enterprises in determining the arm’s length prices of goods and services in relevant transactions.
- Provide administrative rules, including the types of records and documents to be submitted to the Commissioner of Taxes by the person involved in transfer pricing arrangements.

These regulations are applicable to:

- Transactions between associated enterprises within a multinational company where one company is a Malawi taxpayer.
- Transactions between a permanent establishment and its head office or related branches in Malawi and in that case the permanent establishment will be treated as a distinct and separate enterprise from its head office and related branches.
<table>
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<tr>
<th>Country</th>
<th>Answer</th>
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<tbody>
<tr>
<td>Malawi (continued)</td>
<td>The transactions subjected to the adjustment of prices under these regulations include:</td>
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<tr>
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<td>• the sale or purchase of goods</td>
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<td></td>
<td>• the sale, purchase or lease of tangible assets</td>
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<td></td>
<td>• the transfer, purchase or use of intangible assets</td>
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<td></td>
<td>• the provision of services</td>
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<tr>
<td></td>
<td>• the lending or borrowing of money</td>
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<td></td>
<td>• any other transactions which may affect the profit or loss of the enterprise involved.</td>
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<td></td>
<td>A taxpayer may choose a method to employ in determining the arm’s length pricing, provided that the methods used comply with Section 127A of the Taxation Act, and that such methods are appropriate for the enterprise regarding the nature of transaction, class of transaction, or class of the related persons or function performed by such persons in relation to the transaction. The available methods are similar to those in the OECD Guidelines.</td>
</tr>
<tr>
<td></td>
<td>The Commissioner of Taxes may, where necessary, request the person to whom these regulations apply to provide information, including books of accounts and other documents relating to transactions where transfer pricing is applied.</td>
</tr>
<tr>
<td>Mauritius</td>
<td>No transfer pricing regulations in Mauritius. Transactions between related parties should be at arm’s length.</td>
</tr>
<tr>
<td>Netherlands Antilles</td>
<td>As a result of constitutional changes within the Kingdom of the Netherlands, the Netherlands Antilles ceased to exist on October 10 2010. Prior to that date, the Netherlands Antilles consisted of Curaçao, St Maarten, Bonaire, St Eustatius, and Saba, and formed, together with the Netherlands and Aruba, the Kingdom of the Netherlands. Since October 10 2010, Bonaire, St Eustatius and Saba, also referred to as the BES islands, have, as public entities, become part of the Netherlands. Curaçao and St Maarten obtained the autonomous status (“status aparte”) and became separate countries within the Kingdom of the Netherlands.</td>
</tr>
<tr>
<td></td>
<td><strong>Bonaire, Saba and St Eustatius (BES islands)</strong></td>
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<tr>
<td></td>
<td>As of 1 January 2011, a new tax regime entered into force on the BES islands. According to the new tax regime, all companies that are residing (established) on the BES islands are deemed to be subject to the corporate tax regime applicable in the Netherlands. However, qualifying companies can request to be subject to the BES islands’ property tax and distribution tax instead of being subject to the Dutch corporate income tax and Dutch dividend withholding tax. Under the BES tax regime, no profit tax is levied and thus no transfer pricing regulations apply as of 1 January 2011.</td>
</tr>
<tr>
<td></td>
<td><strong>Curaçao and St Maarten</strong></td>
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<td></td>
<td>Until new legislation is adopted, Curaçao and St Maarten, barring a few changes, maintain the former tax regulations of the Netherlands Antilles. Although no specific regulations have been introduced, transactions between related parties should be at arm’s length.</td>
</tr>
<tr>
<td>Nigeria</td>
<td>There are no special transfer pricing rules in Nigeria. However, the tax authority is empowered to adjust the tax liability of a company if it considers any transaction of a company, which reduces or would reduce the amount of any tax payable, to be artificial or fictitious. A transaction may be considered artificial where it does not appear to be at arm’s length.</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>There are no standing/specific transfer pricing regulations in Saudi Arabia.</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>There are no transfer pricing regulations in Trinidad and Tobago.</td>
</tr>
<tr>
<td></td>
<td>However, the Income Tax Act provides that where the Board of Inland Revenue is of the opinion that any transaction which reduces or would reduce the amount of tax payable by a person is artificial or fictitious, the Board may disregard such transaction and the person concerned shall be assessable accordingly.</td>
</tr>
<tr>
<td></td>
<td>The Government recently indicated that it would be introducing a transfer pricing regime based on the principles embodied in the OECD Guidelines.</td>
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<tr>
<td>United Arab Emirates</td>
<td>Currently no transfer pricing regulations exist.</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>For all trading transactions there is general anti-avoidance legislation that the Commissioner can use if transactions do not occur at arm’s length.</td>
</tr>
</tbody>
</table>
Country Overviews
Argentina

KPMG observation

When documenting transfer pricing in Argentina, careful consideration must be given with regard to the tested party rule, since local IRS General Resolution (RG 1122) requires that, no matter the circumstances, the tested party should always be the Argentinean entity.

In terms of audits and transfer pricing scrutiny, there is an increasing tendency for the Administración Federal de Ingresos Públicos (AFIP) to challenge transfer prices for taxpayers that present systematic losses beyond a specific fiscal year, mainly among resellers. There are no particular types of transactions under scrutiny and AFIP has initiated audits in different industries. The AFIP does pay special attention to the analysis criteria applied to the different fiscal years, mainly with respect to the use of multi-annual periods for the tested party.

KPMG believes the new AFIP requirement issued during the year 2011 increases the burden of proof borne by the taxpayer since the information that must be included in the new annual form is complementary to that required by the current transfer pricing annual form (F743) (See Transfer pricing disclosure overview below).

Basic information

Tax authority name
Administración Federal de Ingresos Públicos (AFIP).

Citation for transfer pricing rules
Income Taxes Act Articles 14–15 and supplementary regulations.

Effective date of transfer pricing rules
December 1998.

What is the relationship threshold for transfer pricing rules to apply between parties?
Based on voting power; share capital; other. The rules do not discriminate among different thresholds; rather they apply equally to all levels of ownership. Furthermore, and beyond the company capital interest, under the Local Income Tax Law, there are several other relationships to which the transfer pricing rules apply, such as functional or other kinds, whether contractual or otherwise, that influence the decision-making power to direct or define the activities of the operations. Also transactions with unrelated companies located in low-tax jurisdictions are subject to transfer pricing scrutiny.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from 1 January of the year after the filing date. Law 26.476 states that for fiscal years 2003 to 2007 the statute of limitations is six years from 1 January of the year after the filing date.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Transfer pricing documentation is required to be submitted. The Transfer Pricing Study and Transfer Pricing Return (Form F743) shall be filed with the fiscal authorities within 14 days of the eighth month subsequent to year-end. Additionally, prior to fiscal year-end, taxpayers must file with the tax authorities a transfer pricing mid-term form (Form F742).

In addition, on 15 June 2011, the Argentine tax authorities published a new resolution that establishes the need to file an additional annual transfer pricing return containing data about transactions with related parties abroad (Form F969). The deadline for filing this form is 15 running days after the income tax return deadline. This is applicable for fiscal years ended from 31 December 2010 onwards.

In addition to the above obligations regarding transactions with related parties abroad, taxpayers must also disclose on an annual basis (Form F867) the information involving import and export of tangible goods with non-related parties, providing that the amount exceeds 1 million Argentine pesos (ARS) during the fiscal year.
What types of transfer pricing information must be disclosed?
Business description/overview; functional analysis; risk analysis; description of controlled transactions; method selection; rejection of alternative methods; identification of comparables; economic analysis; identification of the foreign counterparty with whom the transactions had been conducted. Determination of the median and the interquartile range. Transcription of the statement of income of the comparable companies corresponding to the fiscal years necessary for the comparability analysis, with an indication of the sources of such information. Description of the corporate activity and the characteristics of the business carried out by the comparable companies. Rejection matrix with criteria followed to discard companies as comparables. Conclusions obtained.

What are the consequences of failure to prepare or submit disclosures?
The taxpayer is subject to penalties imposed by the tax authorities in case of failure to file the transfer pricing report and the corresponding transfer pricing returns.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions, there is a statutory requirement. Compliance penalties: Taxpayer’s failure to timely file the required returns and documentation is subject to a fine of ARS10,000 (approximately USD2,600), which increases to a fine of ARS20,000 (approximately USD5,200) for foreign-owned entities.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
Penalty elimination, penalty reduction, and shift burden of proof.
Material penalties: The transfer pricing tax adjustment is subject to a fine that ranges from one to four times the unpaid tax amount. To determine the fine within such range, the tax authorities will take into account the taxpayer’s compliance with transfer pricing returns and documentation. In case of fraud the penalties will increase from two-to-ten times the unpaid tax amount.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
See Transfer pricing disclosure overview.

What are the major elements required or recommended to be included in a transfer pricing study?
See Transfer pricing disclosure overview.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
The transfer pricing report must be submitted to the Tax Authorities along with a certification issued by an independent Certified Public Accountant (CPA).

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and transactional net margin method.
Is there a priority among the acceptable methods?
Not applicable.
If there is no priority of methods, is there a ‘best method’ rule?
Yes.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Documentation must be submitted with the tax return. Tax authority requests are normally expected to be submitted within 15 days of the request.
If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?
The taxpayer can appeal to different Justice Court instances. The order of appeal for an adjustment proposed by the tax authorities is as follows:
• first level: National Tax Court
• second level: National Court of Appeals
• third level: Supreme Court of Justice.
If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
See Transfer pricing study overview.

To what extent are transfer pricing penalties enforced?
Often.

What defenses are available with respect to penalties?
Compliance with the filing of documentation required by the tax authorities. See Transfer pricing disclosure overview.

What trends are being observed currently?
AFIP has initiated audits in different industries, with special attention being placed on transactions structured through international traders and, specifically, when these transactions are commodities with internationally known market prices.
There is a tendency by the AFIP towards increasing audit proceedings to industries other than the first-targeted industries like automobile, pharmaceuticals and agribusiness. Recently there were several rulings issued by the National Tax Court (Tribunal Fiscal de la Nación).

Special considerations
Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
As a consequence of the absence of local comparables, the tax authorities have accepted the use of comparables mainly from the American market. In this sense, it is important to have the support of the relevant documentation. Additionally, in some cases, European or Asian comparables might be used; however, the lack of supporting information about these comparables may cause their exclusion by the tax authorities.

Do tax authorities have requirements or preferences regarding databases for comparables?
No preferences in the use of databases are observed by the tax authorities.

What level of interaction do tax authorities have with customs authorities?
Medium.

Are management fees deductible?
Yes. For fees to be considered deductible, the Argentine entity must show that the management fees were carried out in order to obtain, maintain, and preserve profits assessed by Argentine tax. In addition, there should be sufficient proof that such expenses relate to the Argentine entity's operations. In this regard, the company should obtain a certificate supporting its expenses or a detailed report of the imputed amount providing a level of accuracy sufficient to determine the local expenses.

Are management fees subject to withholding?
Withholding tax applies on payments to non-residents for Argentine-source income. Services provided in Argentina would be considered Argentine-sourced, whereas services provided outside Argentina would not. However, the fees and other remuneration arising from technical, financial, or other types of consultancy supplied from abroad are considered to be of Argentine origin. This rule applies when the benefit of the consultancy arises in Argentina, i.e. the payer will be able to exploit the knowledge received in some way. If a payment were for Argentine sourced income as determined under the above-stated rules, an effective withholding of 31.5 percent would apply to such payment unless a tax treaty reduces the withholding tax.

Other unique attributes?
An additional method included in the Local Income Tax Law establishes that in case of exports to related parties of commodities and, in general, any assets having a known quotation in transparent markets, involving an international broker who will not be the effective receiver of the goods, it shall be deemed as the best method for the purpose of determining the export's Argentine-source income, the highest of the good's quotation in the transparent market on the date of shipment or the price that would have been agreed with the international broker. This methodology does not have to be followed provided the international broker complies with certain requirements.

Other recent developments
On 15 June 2011, the Argentine tax authorities published a new resolution that establishes the need to file an additional annual transfer pricing return containing data about transactions with related parties abroad (see Transfer pricing disclosure overview).

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
Not applicable.

When may a taxpayer submit an adjustment to competent authority?
No formal rules.

May a taxpayer go to competent authority before paying tax?
No formal rules.
Advance pricing agreements

What APA options are available, if any?
No APAs or advance rulings of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language

In which language or languages can documentation be filed?
Spanish.
KPMG observation

The transfer pricing landscape in Australia continues to change across a range of important areas.

As a result of the Federal Government increasing transfer pricing resources, a large number of companies have been reviewed over the past year as part of a Strategic Compliance Initiative. Transactions with respect to related party loans and guarantees, royalty arrangements, business restructuring, the transfer of intellectual property and the mining industry have continued to receive particular scrutiny by the ATO.

In June 2011, the Full Federal Court dismissed the Commissioner’s appeal against the decision of the Federal Court in SNF (Australia) Pty Ltd v. Commissioner of Taxation (SNF case) and emphasized a practical application of the CUP method over TNMM. As a result of the SNF case, the ATO has issued a Decision Impact Statement containing the ATO’s interpretation of the decision, accompanied by considerations regarding its application to current transfer pricing rules. As a consequence of the SNF case, the Government released a consultation paper for a review of the transfer pricing rules under income tax law and Australia’s tax treaties. In March 2012, exposure draft legislation was released for comment. The draft legislation, if passed by Parliament, will introduce additional transfer pricing rules where a tax treaty applies and is proposed to have retrospective application to years of income commencing on or after 1 July 2004. Further legislative proposals involving wider reforms to Australia’s transfer pricing rules have also been flagged.

Basic information

Tax authority name
Australian Taxation Office (ATO).

Citation for transfer pricing rules

Effective date of transfer pricing rules
1981.

Effective date of transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.
What types of transfer pricing information must be disclosed?
The ATO has introduced a new International Dealings Schedule (IDS) to be lodged with 2012 income tax returns. The IDS requires far more detailed disclosures about international related party dealings than the Schedule 25A which it replaces. Description and amounts of related party transactions, disclosures related to transactions of special interest to the tax authority, disclosures relating to arm's length transfer pricing methods used and whether documentation has been prepared.

Under the ATO’s APA program, the taxpayer is required to prepare and submit an Annual Compliance Report to the ATO disclosing the covered transactions, according to the requirements of Practice Statement Law Administration PS LA 2011/1.

There is no formal requirement to provide the transfer pricing documentation to the ATO as part of the tax return disclosures.

What are the consequences of failure to prepare or submit disclosures?
An administrative penalty may apply for failure to prepare or submit the IDS.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
Penalty mitigation by establishing a reasonable arguable position (RAP); requirement in practice/expectation of authorities. The existence of a transfer pricing study can help reduce the risk of a transfer pricing audit and may mitigate penalties if there is an adjustment following a transfer pricing audit.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Should be prepared contemporaneously with the tax return.

What are the major elements required or recommended to be included in a transfer pricing study?
Functional analysis, industry analysis which focuses on the Australian taxpayer, company overview, selection and application of method, description of comparables, conclusions and the establishment of an annual review process.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Traditional methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and transactional net margin method.

Is there a priority among the acceptable methods?
No, although the ATO recognizes that the CUP method provides the most direct comparison where sufficiently reliable information is available. The recent SNF case emphasized a practical application of the CUP method over the TNMM.

If there is no priority of methods, is there a ‘best method’ rule?
The ATO seeks to adopt the method that is most appropriate to the circumstances of the specific case.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Normal ATO practice is to expect documentation to be supplied within 28 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?
Where agreement cannot be reached with the ATO, the taxpayer can take the matter to court or to the Administrative Appeals Tribunal. Recently, there have been some very high profile transfer pricing cases in Australia.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. Standard penalty rate is: 25 percent of the tax avoided for transfer pricing adjustments where the taxpayer does not have a reasonably arguable position; 50 percent of the tax avoided, where the sole or dominant purpose was to avoid tax and the taxpayer does not have a RAP.

To what extent are transfer pricing penalties enforced?
Often.

What defenses are available with respect to penalties?
RAP through maintaining documentation of a sufficiently high quality, commercial realism analysis; cooperation with the ATO in providing the information requested; voluntary disclosure, preferably before the audit notification.
What trends are being observed currently?

In recent years, the ATO has been very active in scrutinizing taxpayers’ transfer pricing practices with a view to protecting Australia’s revenue base. The ATO has increased its transfer pricing capability through external recruitment and has reviewed and commenced audits for a number of Australian taxpayers. Transactions with respect to related party loans and guarantee arrangements, royalty arrangements, business restructuring, the transfer of intellectual property and the mining industry have continued to receive scrutiny by the ATO.

The recent SNF case emphasized a practical application of the CUP method over the TNMM. The Court determined that where internal or external CUP data is available (both inside and outside of Australia) and reliable adjustments can be made, the CUP(s) may be used to test the pricing of international related party transactions involving Australian taxpayers. In this case, the Court accepted the CUP method as being more appropriate than the TNMM and agreed that losses incurred by the Australian taxpayer were the result of commercial factors, not transfer pricing. Given the ATO’s general preference for the TNMM, the SNF case represents a significant development in the Australian transfer pricing landscape.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

Yes.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes, provided that management fees comply with the arm’s length principle and meet general income tax deductibility requirements.

Are management fees subject to withholding?

No.

Other unique attributes?

None.

Other recent developments

Over the past couple of years, the ATO released a number of taxation rulings on key transfer pricing focus areas: how business restructuring of multinational enterprises interacts with the transfer pricing provisions; and the interaction between thin capitalization and transfer pricing rules in relation to intra-group finance guarantees and loans.

As a result of the recent SNF case, the ATO has issued a Decision Impact Statement containing the ATO’s interpretation of the decision, accompanied by considerations regarding its application to current transfer pricing rules.

The Government also released a consultation paper in November 2011 for a review of the transfer pricing rules in the income tax law and Australia’s tax treaties. In March 2012, exposure draft legislation was released for comment. The draft legislation, if passed by Parliament, will introduce additional transfer pricing rules where a tax treaty applies and is proposed to have retrospective application to years of income commencing on or after 1 July 2004. Further legislative proposals involving wider reforms to Australia’s transfer pricing rules have also been flagged.

The ATO has also entered into a pilot program with the US Internal Revenue Service to conduct joint transfer pricing audits. There are three cases currently running under this program.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

When may a taxpayer submit an adjustment to competent authority?

After an adjustment is proposed to the taxpayer. This will usually be in the form of a position paper.

May a taxpayer go to competent authority before paying tax?

Permitted.
Advance pricing agreements

What APA options are available, if any?
Unilateral, bilateral, and multilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes. The ATO publishes an annual report on recent developments of its APA program through its official website.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
Following a review of its APA program, the ATO issued PSLA 2011/1 in March 2011, which sets out available APA products and the ATO’s policies and procedures in relation to APA applications. A key feature of the new APA program is the introduction of three APA products to deal with simple, standard and complex international related party dealings, as well as a streamlined APA renewal process. While the Commissioner supports both unilateral and bilateral APAs, a bilateral approach is generally favored for its ability to resolve double taxation. To date, the ATO has concluded bilateral APAs with the revenue authorities of the USA, UK, Canada, Japan, Korea, Switzerland, New Zealand, Denmark and Singapore. In 2010–11, 30 APAs were completed with large businesses (turnover more than AUD250 million) and 23 APAs were completed with small/medium enterprises.

Language

In which language or languages can documentation be filed?
English.

KPMG in Australia

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As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com.au if you are unable to contact us via the information noted above.
Basic information
Tax authority name
Bundesministerium Für Finanzen (Federal Ministry of Finance).

Citation for transfer pricing rules

Effective date of transfer pricing rules

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of greater than 25 percent.

What is the statute of limitations on assessment of transfer pricing adjustments?
Generally, a six year limitation from the tax year-end applies, which can be prolonged under certain circumstances.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
In our opinion, Austrian law does not impose specific statutory documentation requirements but there is an expectation of authorities/requirement in practice. Transfer pricing guidelines state that the obligation for a study can be derived from the general provisions of the Austrian Administrative Code, whereas KPMG in Austria believes that these provisions only require the taxpayer to provide factual evidence (invoices, contracts) that prove the agreements/transactions between the related parties. From a legal perspective, guidelines do not bind the taxpayer or a tax court but are binding on the tax auditors/the tax administration.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
There is no requirement to file transfer pricing disclosures with the tax returns. The tax administration, however, is of the opinion that documentation must be prepared contemporaneously and be ready when the tax return is filed.

What types of transfer pricing information must be disclosed?
Please see discussion under Transfer pricing study overview.

What are the consequences of failure to prepare or submit disclosures?
There is no specific penalty for failure to prepare transfer pricing disclosures. Please see discussion under Transfer pricing study.

KPMG observation
On 28 October 2010, the Austrian Federal Ministry of Finance published the Austrian Transfer Pricing Guidelines. This publication shows the importance that transfer pricing issues are given by the Austrian tax administration, a fact that is proven in nearly every tax audit.
A transfer pricing study helps defend the transfer pricing vis-à-vis the tax authorities and places the burden of proof also factually on their side. Further, it should help eliminate/reduce withholding taxes on deemed dividends due to transfer pricing findings.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The tax administration is of the opinion that documentation must be prepared contemporaneously with the filing of the tax return, or might even be required before the transaction is carried out (for withholding tax protection).

What are the major elements required or recommended to be included in a transfer pricing study?
Generally, according to Austrian Transfer Pricing Guidelines (TPG), documentation in line with OECD Guidelines is sufficient. Such documentation includes a functional analysis, industry analysis, company overview, selection of method and a description of comparables. The Austrian TPG also declare that documentation prepared in accordance with the Code of Conduct on transfer pricing documentation for associated enterprises in the EU fulfils the documentation requirements in Austria. For management fees, the taxpayer must be able to provide a specific, detailed basis for all charges imposed by foreign group companies for services rendered (case law) and a detailed contract should be prepared and signed.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
In Austria, only approved tax advisors or lawyers are allowed to perform tax advisory services and to represent taxpayers vis-à-vis the tax authorities.

Transfer pricing documentation most likely will qualify as tax advisory services.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Generally, all methods as provided for in the OECD Guidelines. Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit-split method and transactional net margin method.

Is there a priority among the acceptable methods?
Austria follows the OECD Guidelines, whereby the most appropriate method has to be chosen. In practice, the comparable uncontrolled price method is preferred over other transaction methods.

If there is no priority of methods, is there a ‘best method’ rule?
The most appropriate method as described in the OECD Guidelines is to be used.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Normal administrative procedural rules apply.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?
Taxpayers can dispute proposed adjustments according to Austrian appeals procedures, through mutual agreement procedures, and under the EU Arbitration Convention.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
No. The actual tax burden is levied. Interest is levied.

To what extent are transfer pricing penalties enforced?
In cases of tax fraud and willful and abusive tax evasion.

What defenses are available with respect to penalties?
Not applicable.

What trends are being observed currently?
As mentioned above, transfer pricing is a focus area of the tax authorities. We observe a variety of factors being taken into account in determining which taxpayers to audit and focus areas during tax audits, including the existence of evidence of business restructurings, the profitability of the local taxpayer, the nature of related party transactions, the volume of related party transactions and findings from previous audits of the taxpayer. A specific focus is currently given to the automotive, consumer products, pharmaceutical and high-tech industries, as well as intra-group financing transactions in general (including guarantee fees).

Special considerations
Are secret comparables used by tax authorities?
Sometimes they are used in practice, but formally they are not allowed because the tax authorities are barred from publishing such data.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No, there is no such requirement as, due to the size of the Austrian market and missing publicly available data in the
past, often no comparables are available, a fact that is recognized by the Austrian tax authorities.

Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authority uses Orbis. Nevertheless, any publicly available database can be used.

What level of interaction do tax authorities have with customs authorities?
Low. Customs and tax authorities communicate for VAT purposes. For transfer pricing, there is no interaction known at this time.

Are management fees deductible?
Yes, if a payee can prove benefits from the services and that the fee is at arm’s length. Documentation required.

Are management fees subject to withholding?
Withholding of 20 percent according to domestic law for economic and technical advice carried out in Austria and for personnel lease where work is performed in Austria; generally removed by double tax agreements; otherwise no withholding.

Other unique attributes?
None.

Other recent developments
Publication of the first domestic Transfer Pricing Guidelines in 2010 and provisions for unilateral APAs entered into force on 1 January 2011.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to competent authority?
Generally after (revised) assessment notes on tax audit findings are issued.

May a taxpayer go to competent authority before paying tax?
Permitted.

Advance pricing agreements
What APA options are available, if any?
No explanations on APAs are included in the Austrian Transfer Pricing Guidelines. Rules on advance rulings (unilateral only) have been included in Article 118 Federal Fiscal Code and entered into force on 1 January 2011.

Bi or multilateral APAs:
No formalized procedure available – they occur in practice based on the competent authority provisions of the DTAs.

Is there a filing fee for APAs?
Yes, for the formalized advance ruling procedure that became effective in January 2011. Depending on the taxpayers’ sales, the filing fee for unilateral APAs is between 1,500 and 20,000 euros (EUR). For groups of companies that are required to file consolidated accounts, the fee of EUR20,000 always applies.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
In general, the APA program is successful. Due to the lack of publicly available data we have no indication that there is a geographic preference or reluctance.

Language
In which language or languages can documentation be filed?
Formally, if documentation and/or supporting documents are not available in German, the tax authorities have the right to require a translation (on taxpayer’s expense). In practice, documentation is also accepted in English.
Belgium

KPMG observation

Multinational groups having subsidiaries or permanent establishments in Belgium should make sufficient efforts in order to support and document the arm’s length nature of the pricing of their intra-group transactions. Practice shows that it pays off to be well prepared for a transfer pricing audit and to pro-actively map all intra-group transactions and support the arm’s length nature of the transfer prices being applied. Furthermore, transfer pricing documentation plays a key role in tax planning in Belgium. Indeed, when making use of tax features such as the Notional Interest Deduction, the Patent Income Deduction or hosting an Entrepreneur or Principal Entity in Belgium, setting the transfer prices right is key.

Basic information

Tax authority name
Federale Overheidsdienst Financiën; Service Public Fédéral Finances (Belgian Tax Authorities).

Citation for transfer pricing rules
Domestic law provisions in relation to transfer pricing: Article 26 Belgian Income Tax Code (BITC); Article 49 BITC; Article 54-56 BITC; Article 79 BITC; Article 185, Section 2 BITC; Article 207 BITC; Article 344, Section 2 BITC; Circular of 28 June 1999 (Administrative Transfer Pricing Circular); Circular of 7 July 2000 and 25 May 2003 (Administrative Circular on the European Arbitration Convention); Circular of 14 November 2006 (Administrative Circular on Transfer Pricing Documentation and Transfer Pricing Audits); Reporting obligation of certain material non-arm’s length intra-group transactions in their annual accounts (Royal Decree dated 10 August 2009); Reporting obligation for direct and indirect payments to tax havens (Article 307 BITC).

Effective date of transfer pricing rules
Effective July 2004. Reporting obligations regarding certain payments to tax havens from 1 January 2010.

What is the relationship threshold for transfer pricing rules to apply between parties?
Not specified in the law. However, in order to assess whether entities are dependent, not only legal criteria are relevant, but also factual control elements such as common management.

What is the statute of limitations on assessment of transfer pricing adjustments?
Three years from the year-end; seven years from the year-end in the case of fraud; longer if a company is incurring losses (deferral to momentum losses being used).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
No tax return disclosures are required. However, certain intra-group transactions need to be reported in the company’s annual accounts. These annual accounts have to be enclosed with the tax return. Furthermore, certain payments to tax havens need to be reported in a specific document (form 275F) that has to be enclosed with the tax return.

What types of transfer pricing information must be disclosed?
Certain material non-arm’s length intra-group transactions and off-balance sheet arrangements must be disclosed in the annual accounts following the provisions of Royal Decree dated 10 August 2009. This reporting obligation applies to the following corporations:
• Corporations listed on a stock exchange.
• Corporations whose shares are traded on a multilateral trading facility (MTF).
• Corporations that meet more than one of the criteria to be considered a large group as defined in the Belgian Companies Code.

These corporations must report all non-arm’s length transactions with related parties in the annual accounts and provide relating amounts, the nature of the relationship and all other information
needed to ensure an accurate view of the financial position of the company. Transactions involving wholly owned subsidiaries are, however, excluded from this reporting obligation.

• Furthermore all direct and indirect payments to tax havens need to be reported in an annex to the tax return, if they amount to at least €100,000 euros (EUR) and are made to persons located in tax havens as defined in Royal Decree of 7 May 2010 and Administrative Circular of 30 November 2010.

What are the consequences of failure to prepare or submit disclosures?
Payments to tax havens which have not been reported or, if they have been reported, for which the taxpayer does not prove that they are made in the context of genuine and bona fide transactions and outside of artificial constructions, are non-deductible business expenses. Genuine and bona fide transactions are transactions that really satisfy an industrial, commercial or financial need and that normally find or must find compensation in the whole of the activity of the company. An artificial construction has no link with economic reality (development of a real activity) and is meant to evade the tax due in Belgium.

In the context of an investigation of the payments concerned, a transfer pricing investigation by the Belgian tax authorities is always possible and the general conditions for the deduction of expenses (mentioned in Article 49 and 54 BITC) remain applicable.

The simultaneous application of the tax on secret commissions (309 percent) is also possible, but only if the conditions of Article 219 BITC are met. However, in case the 309 percent tax is levied, the costs which have not been justified by individual statements will be considered as deductible business expenses.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No. But practice reveals that the absence of a transfer pricing study increases substantially the risk of taxpayers being unable to survive a transfer pricing audit without adjustments.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
Preparing a transfer pricing study in advance is strongly recommended as the special transfer pricing audit department expects it (or at least the kind of information included in a transfer pricing study) to be present and the preparation of such a study forces the Belgian taxpayer to pro-actively reflect on his position and arguments to put forward to the audit department.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
When requested by the tax authorities, supporting information and documentation must be submitted within 30 days of the request. However, in justified cases an extension can be requested from the tax authorities.

What are the major elements required or recommended to be included in a transfer pricing study?
The transfer pricing study should include a functional analysis, industry analysis, company overview, selection of method, description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transactional methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and transactional net margin method.

Is there a priority among the acceptable methods?
The most appropriate method should be used. Belgium follows the OECD Guidelines. Profit-based methods (in particular TNMM) are commonly accepted by the Belgian tax authorities.

If there is no priority of methods, is there a ‘best method’ rule?
No.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
When requested by the tax authorities, supporting information and documentation must be submitted...
within 30 days of the request. However, in justified cases an extension can be requested from the tax authorities. The administrative circular of 14 November 2006 recognizes that for request of transfer pricing information, 30 days is a short period and that granting an extension may be appropriate.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority? Yes. Domestic procedures are available enabling the taxpayer to challenge the adjustment.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions? Yes. General tax penalties apply. Penalties range from 10 percent to 200 percent of the additional tax assessed.

To what extent are transfer pricing penalties enforced? Rarely.

What defenses are available with respect to penalties? No penalty will be assessed when the taxpayer proves that the incorrect reporting was due to circumstances beyond its control and action was taken in good faith (assuming that transfer pricing documentation is present at the start of the tax audit).

What trends are being observed currently? Since the establishment of a special transfer pricing audit department, the tax officers of that department have manifested themselves very actively within their client base, mainly being Belgian subsidiaries or permanent establishments of foreign multinational groups. They use more or less standardized, lengthy requests for information, through which they solicit detailed input from the taxpayer on all sorts of intra-group transactions and on any other information (e.g. legal and operational structure, business trends, etc.) that may be relevant to assess whether the taxpayer respects the arm’s length principle. A wide variety of industries have in the meantime been selected for a thorough transfer pricing audit. Experience from these audits shows that it pays to be well prepared and to pro-actively map all intra-group transactions and support the arm’s length nature of the transfer prices being applied. Also adherence to the provisions and conditions laid down in intra-group agreements should be monitored with great care. Indeed, by not complying with the provisions of their own agreements, taxpayers are quite often a sitting duck for the special transfer pricing audit department of the Belgian tax authorities. Currently there is a clear focus on loss-making companies and groups in Belgium which have undergone a business restructuring. The deductibility of losses and restructuring costs are challenged if it appears that they are not supported by the function and risk profile of the taxpayer. Furthermore, the Belgian tax authorities are also focusing on the correct application of the transfer pricing policy in the operational transfer prices at business line, product group or product level.

Special considerations
Are secret comparables used by tax authorities? No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set? No. The Belgian tax authorities accept the use of pan-European comparables.

Do tax authorities have requirements or preferences regarding databases for comparables? Any comparables which pass the comparability test can be used. In practice, however, often Amadeus and Belfirst (a local database) are used.

What level of interaction do tax authorities have with customs authorities? Low.

Are management fees deductible? Yes, if the fees are at arm’s length and relate to management services effectively received and related directly to the business.

Are management fees subject to withholding? No.

Other unique attributes? No.

Other recent developments
A special transfer pricing audit department of the Belgian tax authorities is auditing in depth a wide range of industries. Transfer pricing rulings are very popular and are often used to obtain certainty for existing and intended business structures. Also for Belgian tax features (such as notional interest deduction, patent income deduction, and excess profit rulings) transfer pricing plays a key role.
**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to competent authority?
An application for a MAP should be filed within two or three years (or a shorter period depending on the relevant treaty provisions) as from the first notification of the proposed transfer pricing adjustment communicated to the taxpayer in writing.

May a taxpayer go to competent authority before paying tax?
Permitted. As long as the MAP is pending usually suspension of tax collection is granted.

**Advance pricing agreements**

What APA options are available, if any?
Unilateral, bilateral, multilateral, and advance rulings.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes. Most unilateral rulings are published (in Dutch or French) on the website of the Belgian tax authorities.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Both the multi and bilateral ruling program (Service International Agreements of the Central Tax Authorities) and the unilateral ruling program (Service for Advanced Decisions in Tax Matters, or the Ruling Commission) of the Belgian tax authorities are very successful. APAs in Belgium are therefore seen as a very workable and suitable tool to obtain certainty for the taxpayer over a given period.

**Language**

In which language or languages can documentation be filed?
Official language depends on the company’s location in Belgium. Therefore, in principle, Dutch or French is acceptable. In practice, documentation in English may be accepted.
Bosnia and Herzegovina

KPMG observation

Bosnia and Herzegovina (BiH) consists of two territorial and administrative entities: the Federation of Bosnia and Herzegovina (FBiH) and the Republic of Srpska (RS), as well as the District of Brcko (BD). Corporate Profit Tax legislation is enacted on the level of the FBiH, the RS and the BD. Given that the BD represents approximately 1 percent of BiH, it will be given no further consideration in information presented here.

Companies doing business in BiH should be aware that different transfer pricing rules apply in the FBiH and in the RS.

Basic information

Tax authority name
Federalno Ministarstvo finansija, Porezna uprava FBiH (Federal Ministry of Finance, Tax Authority of the FBiH).

Citation for transfer pricing rules
Articles 45 to 48 of the FBiH Corporate Profit Tax (CPT) Law. Arm’s length principle applies.

Effective date of transfer pricing rules
1 January 2008.

What is the relationship threshold for transfer pricing rules to apply between parties?
The definition of “related parties” is very broad and includes a physical or legal entity which has significant influence or control on business decisions (no specific thresholds). Applies to transactions between residents and non-residents.

What is the statute of limitations on assessment of transfer pricing adjustments?
Statute of limitations is five years and it commences from the date when the tax return was submitted or from the date when the tax liability arose, counting from the date that comes later (e.g. for the 2011 year, the statute of limitations expires at the end of 2017).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

The FBiH CPT Law requires a taxpayer to disclose on the annual tax return transactions with related parties and market prices. Even though there is no official guidance on this subject, we are of the view that this applies only to transfer prices which are not at arm’s length. The tax base should be adjusted for the difference between market and transfer prices which are not at arm’s length. There is no guidance on how market prices should be determined (information on available methods follows), and there is no developed practice on which to rely.

Apart from disclosures on the tax return, no other requirements to disclose are prescribed.

What are the consequences of failure to prepare or submit disclosures?
See Transfer pricing disclosure overview.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
Although it is not a legal requirement to prepare a transfer pricing study, KPMG in Bosnia and Herzegovina strongly recommend the preparation of one. If timely and correctly prepared, documentation shifts the burden of proof to the FBiH Tax Authority (TA) and also provides penalty protection should the FBiHTA audit the intra-group transactions and sustain an adjustment.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Currently, there are no requirements or official guidelines, but if a taxpayer chooses to prepare a transfer pricing study, it should be prepared by the time the annual corporate profit tax return is submitted (i.e. by 30 March of the current year for the previous year).

What are the major elements required or recommended to be included in a transfer pricing study?

There are no official guidelines or developed practice on this subject, but a typical transfer pricing study should include the following: description of related parties and their transactions, company and group overview, industry analysis, functional analysis, explanation on how transfer prices are assessed, selection of transfer pricing methods and the economic analysis including benchmarking analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: CUP and cost plus method.

Is there a priority among the acceptable methods?

CUP is the preferred method.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

There are no provisions for the requirement to prepare transfer pricing documentation (other than information prescribed by the Law as described previously) or a deadline for the submission of such documentation. Although the preparation of a transfer pricing study is not required by the legislation, best practice would prescribe that the documentation be available immediately upon request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

An adjustment is proposed following a tax audit or the basis of a tax assessment issued by the FBiH TA. The taxpayer can appeal against the tax assessment to an independent second degree body within the FBiH Ministry of Finance. In the case of a negative ruling by the independent second degree body the taxpayer can appeal to the Cantonal Court. However, the taxpayer can appeal to the Cantonal Court only after receiving a negative ruling by the independent second degree body and after paying the corporate profits tax assessed and any penalty interest (see next topic).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Additional tax assessed is subject to the standard corporate profit tax rate of 10 percent increased by the penalty interest of 0.04 percent per every day of default in payment.

To what extent are transfer pricing penalties enforced?

Given that transfer pricing is a relatively new topic in the FBiH, currently, it is not common for the FBiH TA to scrutinize transactions with related parties.

What defenses are available with respect to penalties?

None.

What trends are being observed currently?

The topic of transfer pricing is relatively new in the FBiH. In practice KPMG in Bosnia have not seen many examples of the competent tax authority performing transfer pricing audits. However, based on experience in the region it is expected that the FBiH tax authority will increase performing audits of related party transactions.

Special considerations

Are secret comparables used by tax authorities?

There are no specific rules in the transfer pricing provisions.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

Low to moderate.

Are management fees deductible?

Yes, assuming documentary support exists and economic benefit can be proven.
Are management fees subject to withholding?
Yes, if provided in the FBiH.

Other unique attributes?
No.

Other recent developments
Not applicable.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.

Treaties are negotiated on the level of BiH, but are applicable to both entities. A number of tax treaties signed by the former Socialist Federal Republic of Yugoslavia apply. New treaties are being signed by BiH.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to competent authority?
No formal rules.

May a taxpayer go to competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance rulings of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
Not applicable.

Language
In which language or languages can documentation be filed?
Although there is a possibility of maintaining transfer pricing documentation in another language and translating it upon a request issued by the FBiH TA, KPMG in BiH recommends having a local language translation prepared in advance.

The Republic of Srpska (RS)
Basic information
Tax authority name
Ministarstvo finansija RS, Porezna uprava RS (RS Ministry of Finance, Tax Authority of the RS).

Citation for transfer pricing rules
Article 9 of the RS Corporate Profit Tax (CPT) Law and Article 37 and Article 38 of the RS CPT Regulation. Arm’s length principle applies.

Effective date of transfer pricing rules
1 January 2007.

What is the relationship threshold for transfer pricing rules to apply between parties?
The definition of “related parties” includes physical or legal entities that directly or indirectly have greater than 10 percent of shares in a legal entity. Applies to transactions between residents and non-residents.

What is the statute of limitations on assessment of transfer pricing adjustments?
Statute of limitations is five years and it commences from the date when the tax liability arose, counting from the date that comes later (e.g. for the 2011 year the statute of limitations expires at the end of 2017).

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
The RS CPT Law requires a taxpayer to separately disclose in the annual tax return transfer prices for transactions with related parties and market prices for such transactions. The tax base is adjusted for the difference between transfer prices and the prices which would have occurred if the transactions were at arm’s length. There is no guidance on how the market price should be determined (information on available methods follows), and there is no developed practice to rely on.

The RS CPT Regulation prescribes that a taxpayer must submit information on related parties and business relations with the tax return.

What types of transfer pricing information must be disclosed?
The taxpayer must submit information on related parties and business relations, such as legal status and business activities of a taxpayer and characteristics of these activities; identification of transactions between related parties, i.e. the volume and conditions under which transactions have been conducted in the last five years; list of activities and information on business partners relevant for the transactions; description of transfer pricing method used. This information is provided along with the annual tax return.
What are the consequences of failure to prepare or submit disclosures?
Failure to prepare and submit disclosures may result in the RS TA challenging transactions between related parties.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
Although it is not a legal requirement to prepare a transfer pricing study, in practice, it is strongly recommended that taxpayers do so. If timely and correctly prepared, the study shifts the burden of proof to the RS TA and at the same time provides penalty protection, should the RS TA audit the intra-group transactions and sustain an adjustment.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Currently, no requirements or official guidelines exist, but if a taxpayer chooses to prepare a transfer pricing study, it is our view that it should be prepared by the time the annual corporate profit tax return is submitted (i.e. by 30 March of the current year, for the previous year).

What are the major elements required or recommended to be included in a transfer pricing study?
There are no official guidelines or developed practice on this subject, but a typical transfer pricing study should include the following: description of related parties and their transactions, company and group overview, industry analysis, functional analysis, explanation on how transfer prices are assessed, selection of transfer pricing method and the economic analysis (including benchmarking analysis).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
CUP, resale price method, net profit, cost plus gross profit, profit split method.

Is there a priority among the acceptable methods?
CUP is the preferred method.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
There are no provisions that require transfer pricing documentation other than information prescribed by the Law as detailed above or a deadline for the submission of such documentation. Although the preparation of a transfer pricing study is not prescribed by the legislation, the documentation should be available immediately upon the request as a form of best practice.

If an adjustment is proposed following a tax audit on the basis of a tax assessment issued by the RS TA, the taxpayer can appeal against the tax assessment to an “independent second degree body” within the RS Ministry of Finance. In case of a negative ruling by the “independent second degree body” the taxpayer can appeal to the County Court. However, the taxpayer can appeal to the County Court only after receiving a negative ruling by the “independent second degree body” and after paying the corporate profits tax assessed and any penalty interest (see below).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Additional tax assessed is subject to the standard corporate profit tax rate of 10 percent increased by the penalty interest of 0.06 percent per every day of default in payment.

To what extent are transfer pricing penalties enforced?
Given that transfer pricing is a relatively new topic in the RS, currently, it is not common for the RS TA to scrutinize transactions with related parties. In practice we have seen limited cases of the RS TA inspecting transactions with related parties.

What defenses are available with respect to penalties?
None.

What trends are being observed currently?
The topic of transfer pricing is relatively new in the RS. In practice KPMG in Bosnia and Herzegovina have not seen many examples of the competent tax authority performing transfer pricing audits. However, based on experience in the region it is expected that the RS tax authority will increase performing audits of related party transactions.

Special considerations
Are secret comparables used by tax authorities?
There are no specific rules in the transfer pricing provisions.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No.

What level of interaction do tax authorities have with customs authorities?
Low to moderate.

Are management fees deductible?
Yes, assuming documentary support exists and economic benefit can be proven.

Are management fees subject to withholding?
Yes, regardless of where the service is provided.

Other unique attributes?
No.

Other recent developments
Not applicable.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.
Treaties are negotiated on the level of BiH, but are applicable to both entities. A number of tax treaties signed by the former Socialist Federal Republic of Yugoslavia apply. New treaties are being signed by BiH.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to competent authority?
No formal rules.

May a taxpayer go to competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance rulings of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
Although there is a possibility of maintaining transfer pricing documentation in another language and translating it upon a request issued by the RSTA, KPMG in Bosnia and Herzegovina recommends having a local language translation prepared in advance.
Brazil

KPMG observation

Brazil does not follow OECD Guidelines, but rather imposes unique standards for evaluating transfer prices. Brazilian rules apply to transactions with low-tax and other ‘privileged’ listed jurisdictions. However, despite the rigidity of law, the provisions are in some aspects flexible, for instance allowing the taxpayer to change the method on a yearly basis with no justification or economic reasons.

Basic information

Tax authority name
Secretaria da Receita Federal.

Citation for transfer pricing rules
Law n. 9.430/96 and IN SRF 243/02 and MP (Provisional Measure) 563/2012.

Effective date of transfer pricing rules

What is the relationship threshold for transfer pricing rules to apply between parties?
Companies are deemed to be related when they are under common control; one of them is located in a low-tax jurisdiction or privileged tax regime.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years as from tax return filing date.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
A summary of related party transactions and transfer pricing calculations must be disclosed in the annual tax return. This includes identification of the related parties, the amount involved per transactions (goods, services and rights), the methodologies adopted for testing and adjustments made, if any.

What are the consequences of failure to prepare or submit disclosures?
There are no specific penalties for not presenting transfer pricing information within the tax return. However, the presentation of the complete tax return is mandatory and the penalty is applied for not presenting it.

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
The benefit of preparing the transfer pricing documentation upfront is to have a document that supports the application of the methodology.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The Brazilian transfer pricing regulation does not require that the transfer pricing documentation include a functional, industry and comparable analysis. The major component of the documentation is the selection of the method and the support of its application (spreadsheet including calculation of prices or fixed margins).

What are the major elements required or recommended to be included in a transfer pricing study?
Not applicable.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods

Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus (including fixed gross margin). Also safe harbor rules can be applied for exports of goods or services or rights.
Is there a priority among the acceptable methods?
No.

If there is no priority of methods, is there a 'best method' rule?
No.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Within 20 days of request, after which an extension may be negotiated with the tax authority, depending on the complexity of documentation required.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority? Tax court and administrative disputes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
No.

To what extent are transfer pricing penalties enforced?
No specific penalties for transfer pricing; general tax penalties are applied on corporate taxes.

What defenses are available with respect to penalties?
• adjustment miscalculated by the tax authority
• misinterpretation of law or facts by the tax authority.

What trends are being observed currently?
None.

**Special considerations**

Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No.

What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
Yes.

Other unique attributes?
Brazil does not follow the arm’s length standard.

**Other recent developments**

Changes to transfer pricing rules were introduced by the MP (Provisional Measure) 563, 3 April 2012, which are effective beginning in 2013 or, at the taxpayers election, for the transactions entered into as from 1 January 2012.

The most important changes are:

i) The statutory margins required to apply the resale price method are defined according the taxpayers sector and vary between 20–40 percent.

ii) The inbound and outbound transactions with commodities are to be tested in accordance with specific methods based on price quotation as recognized on an international futures and commodities exchange.

ii) The loan agreement is included in the scope of transfer pricing analysis regardless of the register of transactions with Brazilian Central Bank, being the interests deductible for corporate taxes purposes only up to an amount not exceeding the Libor rate for six month US dollar deposits, increased by annual spread to be defined by the Finance Minister.

**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to competent authority?
No formal rules.

May a taxpayer go to competent authority before paying tax?
No formal rules.

**Advance pricing agreements**

What APA options are available, if any?
None.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
No experience.

**Language**

In which language or languages can documentation be filed?
Portuguese.

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Basic information

Tax authority name
Canada Revenue Agency (CRA).

Citation for transfer pricing rules
Section 247 of the Income Tax Act of Canada, RSC 1985, Chapter 1 and 2 (Fifth Supplement), as amended.

Effective date of transfer pricing rules
In general, section 247 is applicable for taxation years beginning after 1997. However, the transfer pricing penalties (pursuant to subsection 247(3)) are applicable for taxation years beginning after 1998.

For taxation years prior to 1998, there were different transfer pricing provisions of the Income Tax Act that were applicable.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of more than 50 percent; however, parties may still be found to be non-arm’s length even where there is less than 50 percent ownership (de facto control).

What is the statute of limitations on assessment of transfer pricing adjustments?
Generally, seven years (six years in specific cases) from the date of issuance of the notice of original assessment. The notice of original assessment is generally received three to six months after the filing of the tax return.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes, as long as related party transactions are above a certain dollar threshold.

What types of transfer pricing information must be disclosed?
A form called the T106 must be completed. The T106 requires detailed information about transactions with non arm’s length non-resident entities, including types and quantum of transactions, transfer pricing methodologies used, whether there has been a change in methodology, whether the methodology is based on an APA with another tax authority, and whether contemporaneous documentation exists with respect to such transactions. A T106 is required if the amount of the total reportable transactions for all the non-residents combined is more than 1 million Canadian dollars (CAD). Where a reporting person’s total amount of transactions with a particular non-resident during the taxation year is below CAD25,000, certain information is not required.

What are the consequences of failure to prepare or submit disclosures?
A late filing penalty or multiple late filing penalties for more than one T106 slip may be assessed if the T106 is filed after the due date. The penalty is equal to the greater of CAD100 and CAD25 per day, up to a maximum of 100 days.

A failure to file penalty may be assessed where the reporting persons knowingly fail to file T106 documentation. The minimum penalty is CAD500 per month, to a maximum of CAD12,000 for each failure to comply. The failure to file penalty is reduced by any late filing penalties assessed.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No. Technically, the preparation of transfer pricing studies is not required per se. However, failure to prepare transfer pricing studies on a contemporaneous basis can automatically trigger the application of the transfer pricing penalty if the CRA levies adjustments above certain thresholds.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
• penalty protection
• reduce the risk of adjustment
• proactively manage the facts and analysis
• shift the burden of proof to the tax authority.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

In order to be contemporaneous, the transfer pricing analysis and documentation must be prepared by the taxpayer’s filing due date (i.e., within six months after fiscal year-end) and must be provided to the CRA within three months of a written request.

What are the major elements required or recommended to be included in a transfer pricing study? Section 247(4)(a) sets out six required elements:

(i) The property or services to which the transaction relates.
(ii) The terms and conditions of the transaction and their relationship, if any, to the terms and conditions of each other transaction entered into between the participants in the transaction.
(iii) The identity of the participants in the transaction and their relationship to each other at the time the transaction was entered into.
(iv) The functions performed, the property used or contributed and the risks assumed, in respect of the transaction, by the participants in the transaction.
(v) The data and methods considered and the analysis performed to determine the transfer prices or the allocations of profits or losses or contributions to costs, and the case may be, in respect of the transaction.
(vi) The assumptions, strategies and policies, if any, that influenced the determination of the transfer prices or the allocations of profits or losses or contributions to costs, as the case may be, in respect of the transaction.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Traditional transaction methods: comparable uncontrolled price, resale price, and cost plus.

Transactional profit-based methods: profit split, and transactional net margin method.

Is there a priority among the acceptable methods?

Canada follows OECD guidance regarding the use of the most appropriate method. However, there remains somewhat of a preference for traditional transaction methods and Canadian courts have shown a general preference for the CUP method. In Competent Authority or APA proceedings, transactional profit methods are often used.

If there is no priority of methods, is there a ‘best method’ rule?

No.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Three months.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Aside from requesting competent authority assistance, taxpayers can also file a notice of objection with the Appeals division of the CRA and, if necessary, can pursue an appeal before the Tax Court of Canada.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes.

The legislation provides for the imposition of a penalty equal to 10 percent of the total transfer pricing adjustment, in certain cases. The penalty is intended to be compliance-related, focusing on the efforts that a taxpayer makes to determine and use arm’s length pricing. The penalty equals 10 percent of the net amount of adjustments made in a tax year, but only where the net adjustments exceed the lesser of 10 percent of the taxpayer’s gross revenue for the year or CAD5 million. The net amount of the adjustment is based on:

- Upward adjustments relating to transactions for which the taxpayer does not have adequate documentation
- Downward adjustments relating to transactions for which the taxpayer has adequate documentation.

To what extent are transfer pricing penalties enforced?

They are enforced aggressively.

What trends are being observed currently?

Penalties may be avoided where a taxpayer has made ‘reasonable efforts’ to comply with the dual obligation to determine and use arm’s length prices pursuant to subsection 247(4) of the Income Tax Act and CRA’s TPM-09 (reasonable efforts under section 247 of the Income Tax Act). To demonstrate that a reasonable effort has been made, complete and accurate documentation must be prepared and updated on an annual basis. Penalties may be reduced or eliminated based on subsequent competent authority settlements.

What do special considerations include?

Are secret comparables used by tax authorities?

Yes, but very infrequently.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes. Generally the CRA prefers the use of local comparables, but accepts the use of North American comparables.

Do tax authorities have requirements or preferences regarding databases for comparables?
Taxpayers are free to use a database of their choice. The CRA uses the Standard and Poor’s Capital IQ database.

What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
Yes. However, this is generally nullified by the relevant income tax convention if the payee does not have a permanent establishment in the payer’s country.

Other unique attributes?
Generally, the CRA does not support the use of multi-year averaging. In an audit setting, results are evaluated on a year-by-year basis.

Use of the interquartile range is not supported by the CRA.

Other recent developments
Ongoing transfer pricing enforcement continues to be a focus area for the CRA, particularly in regard to financial transactions, including guarantee fees. A recent transfer pricing decision by the Tax Court of Canada reaffirmed the judicial preference for the use of the CUP method, even where the application of a CUP may be subject to comparability issues. The 2012 Federal Budget included proposals aimed at clarifying the deemed dividend treatment of secondary adjustments, that arise in transfer pricing cases. In certain cases, higher rates of withholding tax may apply, compared to the rates under the CRAs current administrative practices. Deemed dividend treatment may be avoided where repatriation is effected, subject however to the concurrence of the CRA. These proposals take on 29 March 2012.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive: there are currently 89 treaties in force.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always: in more than 90 percent of cases.

When may a taxpayer submit an adjustment to competent authority?
After receipt of a notice of reassessment from the CRA.

May a taxpayer go to competent authority before paying tax?
Yes. However, in most cases, the taxpayer will have to either post security or pay half the amount of the tax payable, once a reassessment is issued.

Advance pricing agreements
What APA options are available, if any?
Unilateral, bilateral, and multilateral.

Is there a filing fee for APAs?
Yes: out-of-pocket expenses for the CRA in negotiating the APA.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes, the CRA issues an APA Program Report which provides statistics for that year and a summary of key findings.

Please provide some information on how successful the APA programme is and whether there are any known difficulties.
While currently experiencing resourcing constraints, Canada has a long established and generally well functioning APA program. Increased early stage due diligence on proposed APAs by the CRA has created some delays. In total, since the inception of the APA program, there have only been four instances in which the CRA has been unable to conclude an agreement with a taxpayer and/or a foreign tax administration. The current average time to conclude a bilateral APA is approximately 49 months. It is currently the CRAs stated policy that it will not negotiate APAs concerning business restructuring transactions.

Language
In which language or languages can documentation be filed?
English or French.
1. The UTM (Unidad Tributaria Mensual) is a currency unit, expressed in Chilean pesos, that is adjusted monthly in line with the Consumer Price Index.

KPMG observation

In addition to transfer pricing audit activity that began in 2010 and continued to increase significantly during 2011, the Chilean tax authority has outlined the central aspects of the Draft Bill on Transfer Pricing. These include: i) Clarification of the transfer pricing methods (OECD methods); ii) Transfer Pricing Informative Return; iii) APAs; iv) Corresponding Adjustments.; and v) Contemporaneous documentation.

Contemporaneous documentation is not a requirement, although the tax authority will expect the taxpayer to have support that intra-group transactions were set based on the arm’s length principle. The text of the draft bill will be released once it is sent to Congress for discussion.

Basic information

Tax authority name
Servicio de Impuestos Internos (Internal Revenue Service, or IRS).

Citation for transfer pricing rules
Article 38 of the Chilean Income Tax Law.

Effective date of transfer pricing rules
1 January 1997.

What is the relationship threshold for transfer pricing rules to apply between parties?
Parties are related when there is participation (directly or indirectly) in management, control or capital. It is presumed parties are related when they enter into exclusive or joint action agreements, preferential treatment or the parties are economically or financially dependent. Transactions with entities located in a jurisdiction listed as a tax haven are presumed related.

What is the statute of limitations on assessment of transfer pricing adjustments?
The applicable general rule for the statute of limitation is three years, starting from the latest date at which the tax should have been paid.

Regarding taxes for which returns must be filed, this period extends to six years, in the case when a return has not been presented, or in cases of tax fraud.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Chilean taxpayers are not obliged to submit transfer pricing documentation to the tax authorities.

What types of transfer pricing information must be disclosed?
Taxpayers must keep a registry of persons with whom they carry out transactions or participate with, related parties, keeping both the registry and the documentation that supports those transactions available for IRS examination upon request. In addition, general informative returns containing information about related party transactions must be filed on an annual basis.

What are the consequences of failure to prepare or submit disclosures?
The direct penalties for not submitting the registry and the documentation that supports those intra-group transactions, once the tax authority requested them, range from UTM1–121 (approximately USD77.50–USD930).

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
Although no contemporaneous documentation is required, the tax authorities expect in the case of an audit or transfer pricing review that the taxpayer could support that transactions were set based on a transfer pricing policy that follows the arm’s length principle. Additionally, from next year (2013) if the taxpayer cannot present the
transfer pricing documentation within a month (or two if extended) of receiving a legal notice, it may not be accepted as evidence in subsequent stages of the audit.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
No.

What are the major elements required or recommended to be included in a transfer pricing study?
A transfer pricing study should include a functional analysis, industry analysis, company overview, support for selection of method and a description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit based methods: transactional net margin method.

Is there a priority among the acceptable methods?
No.

If there is no priority of methods, is there a ‘best method’ rule?
No.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Not applicable.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?
In case of transfer pricing adjustments, taxpayers are entitled to submit a tax claim on the charges and to start the regular litigation procedure.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. In case of adjustment a 35 percent sanction tax is applicable, plus inflation adjustments, interest and penalties.

To what extent are transfer pricing penalties enforced?
The application of penalties has increased in recent years. Considering the growth of transfer pricing audits, it is expected the application of penalties will intensify in future.

What defenses are available with respect to penalties?
During a transfer pricing audit, the tax authority requests from the taxpayer relevant documents, which the taxpayer is obliged to supply. At this stage, it is highly recommended to also present transfer pricing documentation, as evidence to demonstrate the compliance with the arm’s length principle of the intra-group transactions under review.

If a taxpayer does not agree with the determination of tax due, the taxpayer may ask the Chilean IRS to reconsider (via the administrative process) the determination. If a reconsideration request is presented and rejected, the taxpayer may interpose a claim before the Tax Court.

If no reconsideration or appeal is presented, the tax authority issues a payment order, which is the amount of outstanding taxes, inflation-linked adjustments, interest, and fines and issues an order to pay.

Taxpayers can exercise the right to appeal when they are in disagreement with the determinations of tax due and other administrative determinations made by the tax authority.

What trends are being observed currently?
The strategy followed by the tax authority in the audit process is to notify the four or five leading companies of an industry, to make a selection, with a comparison between them, of companies which could have a transfer pricing contingencies and conduct a deeper review. It is important to note that many of transfer pricing audits have been targeted at symbolic companies (with important global brands).

Special considerations
Are secret comparables used by tax authorities?
Not officially, but secret comparables have been used in some transfer pricing audits.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
To date there is insufficient evidence to determine whether there is any preference of the tax authority.

Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authority has not officially stated anything.

What level of interaction do tax authorities have with customs authorities?
In the past, low. However, many of the recent transfer pricing audits have been supported with information provided to the tax authority by the customs authority.

Are management fees deductible?
Yes, if the management fees comply with the general requirements of the income tax law.

Are management fees subject to withholding?
Yes, management fees for services related to technical or professional services in fields such as engineering, finance, human resources, planning, accounting, controlling or legal matters, are subject to a withholding tax at a rate of 15 percent if payments are to an unrelated person or entity and the payee is not resident in a jurisdiction listed as a tax haven. Otherwise a 20 percent withholding tax applies. A 35 percent withholding applies for other types of services. However, in case there is an applicable treaty with the countries involved, management fees should generally be treated as business profits, which would not be subject to tax in Chile if the service provider has no permanent establishment in Chile to which the fees can be attributed.

Other unique attributes?
None.

Other recent developments
After Chile became a member of the OECD, the tax authority expressly declared that transfer pricing is a main focus. They have also stated that in general terms Chile will follow OECD Guidelines.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Chile has 24 tax treaties in effect and three signed treaties waiting for Congressional ratification.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to competent authority?
No formal rules.

May a taxpayer go to competent authority before paying tax?
Unclear.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance rulings of any kind. However, the draft bill on transfer pricing supposedly will contemplate the possibility of obtaining an APA.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
Spanish.

KPMG in Chile

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KPMG observation

In China, the general focus continues to be on transfer pricing issues among large enterprises, as well as targeted investigations of certain industries. The Chinese tax authorities have been more focused on transfer pricing issues involved in business restructuring, transfer of equity and intangibles, outbound investment and public listing. The popularity of APAs and MAP applications has also been increasing. The Chinese tax authorities continue to expand their team by recruiting and training more transfer pricing specialists.

Basic information

Tax authority name
The State Administration of Taxation at the central level and various state tax bureau and local tax bureau under its administration.

Citation for transfer pricing rules

Effective date of transfer pricing rules
1 January 2008 – when the comprehensive transfer pricing regulation, Circular 2, came into force. Prior to that there had been various transfer pricing rules since 1991 but none took a systematic approach.

What is the relationship threshold for transfer pricing rules to apply between parties?
25 percent ownership, be it direct or indirect ownership, or control. This applies whether one party owns another or two parties are owned by a common party.

The formula for calculating indirect shareholdings percentage has changed: 25 percent ownership or over is now counted as 100 percent when multiplying the shareholding percentages of each level of indirect shareholdings. Other criteria including loans, control of management, or other types of control can also be taken into account.

What is the statute of limitations on assessment of transfer pricing adjustments?
10 years from the year in which the related party transaction occurs.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Disclosure of related party transactions must be submitted to the tax authority along with the annual corporate income tax return.

What types of transfer pricing information must be disclosed?
• Description and amounts of related party and non-related party transactions broken down by type (purchases, sales, services, intangible assets, tangible assets) as well as by counterparty location (domestic or overseas). For tangible assets and intangible assets, the information must be further broken down into several sub-categories.
• Information on financing received from related parties including time period, interest rate and expenses, and guarantor information such as guarantee fee and fee rate.
• A full list of all related parties as well as the address, taxpayer number, legal representative and type of related party relationship.
• Extensive information on outbound investment (outbound from China) including information on the invested enterprise, including its profit level, income tax payable, effective tax rate, and shareholders.
• Information on outbound payments to related and unrelated parties broken into 17 subcategories, along with information on taxation of these payments.

What are the consequences of failure to prepare or submit disclosures?
Penalties up to 10,000 Renminbi (RMB) and negative impact on reputation.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study? Yes, for certain transactions. When certain thresholds of related party transactions are reached (e.g. annual amount of related party purchases and sales totaling RMB 200 million or
higher, or the amount of other types of related party transactions totaling RMB40 million or higher), the preparation of a transfer pricing study becomes a must. However, materiality shall be observed.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Protection from interest surcharge in the event of a tax adjustment; shifting of burden of proof.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study must be prepared within five months after the end of the calendar year and must be submitted within 20 days upon request by the tax authority in charge.

What are the major elements required or recommended to be included in a transfer pricing study?

The following elements are required: organizational structure, overview of business operations, information on related party transactions, comparability analysis, transfer pricing method selection and application. Functions and risks, information on assets employed, explanation of assumptions, judgments and adjustments are also required.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Comparable uncontrolled price, resale price, cost plus, profit split, transactional net margin method, and other methods in compliance with the arm’s length principle.

Is there a priority among the acceptable methods?

No, although the SAT recognizes that the traditional transaction methods provide the most direct comparison where data are available. In practice, however, the transactional profit method (primarily TNMM) is commonly used by both the authorities and tax payers.

If there is no priority of methods, is there a ‘best method’ rule?

While there is no specific mentioning of a best method rule in Circular 2, the SAT seeks to adopt the method that is best suited to the facts and circumstances of each particular transaction and provides the most reliable measure of an arm’s length price.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

20 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Apart from direct discussion/negotiation with the tax authorities, the taxpayers are, in principle, allowed the options of administrative appeal and litigation. However, such proceedings have strong procedural focus and are thus not likely viable in practice.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

There are no penalties on transfer pricing adjustments. Interest may be imposed on tax adjustments which relate to transactions taking place on or after 1 January 2008. This interest rate shall be equal to the People’s Bank lending rate plus five percentage points. This interest is non-deductible for corporate income tax purposes. However, if the company supplies relevant materials, such as a transfer pricing study, the 5 percent extra charge may be dropped.

To what extent are transfer pricing penalties enforced?

There are no penalties on transfer pricing adjustments. However interest, or punitive interest in absence of a transfer pricing documentation, is always enforced.

What defenses are available with respect to penalties?

Not applicable.

What trends are being observed currently?

The Chinese tax authorities are expanding their work to include domestic enterprises, service industries, intangible assets transactions, equity transfer transactions and other new anti-avoidance measures. They have also been conducting joint investigations on certain industries and across-region investigations on certain intra-group companies.
Special considerations

Are secret comparables used by tax authorities?
Yes.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Preference for local comparables is observed but a broader geographic set is also acceptable, depending on the circumstances.

Do tax authorities have requirements or preferences regarding databases for comparables?
The Chinese transfer pricing regulations do not dictate the choice of database for benchmarking purposes. However, KPMG in China’s experience shows that the Chinese tax authorities have subscribed to a few databases such as Bureau van Dijk’s Osiris database, and Standard and Poor’s Research Insight database. In practice, the former is currently widely used within the Chinese tax authorities.

What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
No. The Chinese corporate income tax law does not permit the deduction of management fees. While not clearly defined in the law, the Chinese concept of management fees can generally be interpreted as remuneration for shareholder activities. In addition, Chinese tax authorities are likely to deny the deductibility of any charges that are literally labeled as management fees, even if the charges are not related to shareholder activities.

Are management fees subject to withholding?
Management fees cannot be remitted out of the People’s Republic of China. Within China, management fees are not subject to withholding.

Other unique attributes?
According to Circular Guoshui Fa [2008] No. 86, parent companies will need separate signed agreements with their subsidiaries in order to charge management service fees to the latter and claim the charges as deduction in the hands of the subsidiaries, provided that the management service fees are determined at the arm’s length.

Circular Guoshuihan [2009] No. 363 says that China-based enterprises with limited functions and risks should not bear market or “business” risks related to the financial crisis, and if such companies do generate losses, they must submit transfer pricing documentation to the tax authorities in charge.

Other recent developments
The Chinese tax authorities have been broadening the scale for collection of transfer pricing documentation which may even be spread to all the qualified taxpayers in some regions. Focus on the group-wide transfer pricing audits and industry-focused investigations will continue to be trends. The Chinese tax authorities are focusing on new areas of transfer pricing investigations such as equity transfer, outbound investment and publically listed companies.

Tax treaty.double tax resolution

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Limited experience.

When may a taxpayer submit an adjustment to competent authority?
After receiving from the tax authority in charge a written tax determination that may cause or have caused double taxation of the same income in different treaty jurisdictions.

May a taxpayer go to competent authority before paying tax?
No.

Advance pricing agreements

What APA options are available, if any?
The options include unilateral, bilateral and multilateral APAs. In order to be eligible for APA, applicants must have over RMB40 million in annual related party transactions and have prepared and/or submitted annual filing and contemporaneous documentation in accordance with the Chinese transfer pricing regulations.

Is there a filing fee for APAs?
No.
Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

The State Administration of Taxation published its first APA annual report in December 2010 and will issue periodic disclosure on developments of the APA program.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

Based on the statistics in the APA annual report, more and more taxpayers in China are seeking tax certainty and thus pursuing an APA, a bilateral APA being preferred. In the future, the Chinese tax authorities will recruit and train a larger pool of tax officers with transfer pricing expertise to support the APA program, thereby alleviating the current bottleneck between application and conclusion.

Language

In which language or languages can documentation be filed?

Chinese.
The Colombian Tax Authority has increased scrutiny regarding transfer pricing requirements. They are closely reviewing the Informative Transfer Pricing Return and have assessed fines when those informative returns are filed incorrectly. They have also requested transfer pricing documentation from approximately 90 percent of the taxpayers with documentation requirements. They have initiated transfer pricing audits based on red flags detected in the informative return and the transfer pricing studies. It is expected that there will be more detailed audits and assessments due to the experience gained by the Colombian Tax Authority since last year’s reviews.

Basic information

Tax authority name
Dirección de Impuestos y Aduanas Nacionales, (DIAN – National Administration of Taxes and Customs).

Citation for transfer pricing rules
- Tax Code, Chapter XI, Sections 260-1 to 260-11
- Commerce Code, Sections 260, 261, 263 and 264
- Law 222 of 1995, Section 28
- Tax Code, Sections 450 to 452
- Economic Sanctions, Tax Code, Sections 260-10, 260-11 and 647
- Decree 4349 of 2004
- Deadlines, according to an annual decree, issued at the end of the respective taxable year.

Effective date of transfer pricing rules
1 January 2004.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of greater than 50 percent, based on voting power, share capital, and under common control.

If a company obtained more than 50 percent of its revenue from a non-affiliated enterprise, affiliation is assumed and the Colombian taxpayer has to comply with transfer pricing legislation.

What is the statute of limitations on assessment of transfer pricing adjustments?
The statute of limitations is five years from the filing date. Tax Code Article 260-4 and regulatory decree state the obligation of preparing and keeping, for at least, five years, all documentation that evidence the application of transfer pricing rules in Colombia.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
It has to be submitted on annual basis.

What types of transfer pricing information must be disclosed?
Colombian taxpayers are required to file an annual Informative Transfer Pricing Return related to their intra-group transaction including the amount of the intra-group transactions, related party, type of transaction, method, inter-quartile range and other information related to the intra-group transactions.

The taxpayer is also required to annually perform and submit under request of the Tax Authority a Transfer Pricing Study for all transactions that exceed 500 Minimal Monthly Wage (MMW) (10,000 Taxable Unit Value (UVT), i.e. for 2011: 251,320,000 Colombian pesos (COP)).

The minimal threshold for taxpayers complying with these two transfer pricing requirements is either a gross equity higher than 5,000 MMW (100,000 UVT, for 2011: COP2,513,200,000) or gross income higher than 3,000 MMW (61,000 UVT, for 2011: COP1,533,052,000).

What are the consequences of failure to prepare or submit disclosures?
The transfer pricing penalties are included in Sections 260-10 and 260-11 of the Tax Code. In general, if the taxpayer submits late or amends the informative disclosure, the penalty is 1 percent of the value of the intra-group transactions. If it is not filed, the penalty can reach 20 percent of the value of the intra-group transaction.
Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, the taxpayer is required to prepare a transfer pricing study that can be requested by the tax authority. However, only those operations exceeding 500 MMW (10,000 UVT, for 2011: COP251,320,000) should be subject to the transfer pricing analysis. There are formal penalties for untimely submission of either the Informative Return or the Transfer Pricing Study.
Transfer pricing rules shift the burden of the proof to the taxpayers, while allowing them to develop their transfer pricing policies, and to document all their related party transactions subject to the transfer pricing rules.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
None. The Transfer Pricing Study will provide the taxpayer with a tool to mitigate a risk by supporting the arm’s length principle, by correctly describing the facts and circumstances surrounding the intra-group transaction.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The Transfer Pricing Study should be prepared and made available to the DIAN. When requested, it must be submitted within 15 calendar days of request.

What are the major elements required or recommended to be included in a transfer pricing study?
Functional analysis (general information of the company and other specific information), industry analysis, company overview, selection of method, description of comparables, local economy overview and annex information.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transfer pricing rules specify the methods for the Transfer Pricing Study. Section 260-2 of Tax Code states six transfer pricing methods:
1. Comparable Uncontrolled Price (CUP)
2. Resale Price Method (RPM)
3. Cost Plus Method (CPM)
4. Profit-Split Method (PSM)
5. Residual Profit-split Method (RPSM)
Is there a priority among the acceptable methods?
Transfer pricing rules do not establish a legal priority in the application of transfer pricing methods.
If there is no priority of methods, is there a ‘best method’ rule?
The transfer pricing rules do not establish a best method rule. Nevertheless, the selection of the method must be based on the characteristic of the transaction under analysis. The method selected should be the one that best reflects the economic reality of the transaction, provides the best information and requires the fewest adjustments.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Normal practice is to submit documentation within 15 days of tax authority’s request.
If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?
Yes, the taxpayer can dispute the adjustment of the tax authority under administrative appeal and normal tax litigation.
If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
There aren’t any specific transfer pricing penalties more than those mentioned in Sections 260-10 and 260-11 of the Tax Code. Nevertheless, there are Income Tax penalties linked to a transfer pricing adjustment. Those penalties could rise to 160 percent of the underpayment in tax, plus additional penalties and interests.
To what extent are transfer pricing penalties enforced?
Always.
What defenses are available with respect to penalties?
There are not specific defenses available for penalties.
What trends are being observed currently?
Tax authorities have begun to make audits in a more substantive way. The main revisions have been made to taxpayers with expenses on technical assistance, technical services or royalties.
Special considerations
Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No, tax authorities expect the taxpayer to provide enough information regarding identification and determination of comparable parties used, information sources, inquiry dates and indication of the rejection criteria of non-accepted comparable parties.

It is also important to present technical adjustment descriptions and, when needed, a generic description of the principal differences between Colombian accounting practice and the practice in those countries where the comparable parties are located.

What level of interaction do tax authorities have with customs authorities?
High. Customs and tax authorities are part of the same organization (DIAN). Therefore, the officials of DIAN oversee both audits.

Are management fees deductible?
Yes. Deductibility of management fees paid for services rendered abroad are subject to the limitation applicable to all expenses paid abroad not subject to withholding tax, which cannot exceed 15 percent of the taxable income before applying such expenses. If services related to management fees are rendered within the Colombian territory, they are subject to a 33 percent withholding tax and are fully deductible.

Are management fees subject to withholding?
Yes. If services related to management fees are rendered within the Colombian territory, they are subject to a 33 percent withholding tax.

Other unique attributes?
None.

Other recent developments
None.

Tax treaty.double tax resolution
What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to competent authority?
No formal rules.

May a taxpayer go to competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
Unilateral and multilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No information regarding APA data is published.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
As of 30 October 2011, no APA had been signed.

Language
In which language or languages can documentation be filed?
Spanish.
### Croatia

#### KPMG observation

The Croatian Tax Authorities (CTA) have commenced performing detailed transfer pricing audits, primary targets being large taxpayers. Other audit triggers, apart from size, include a sharp fall in profit, continuing losses and companies that are part of multinational groups.

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#### Basic information

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<thead>
<tr>
<th>Tax authority name</th>
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<tbody>
<tr>
<td>Ministarstvo Financija, Porezna uprava (Ministry of Finance, Tax Authorities).</td>
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<table>
<thead>
<tr>
<th>Citation for transfer pricing rules</th>
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<tr>
<td>Croatian Corporate Profit Tax (CPT) Law, Article 13, and CPT Regulations, Article 40. Arm’s length principle applies. Standard OECD methodology and documentary requirements.</td>
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<tr>
<th>Effective date of transfer pricing rules</th>
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<td>1 January 2005, 1 July 2010, March 2012</td>
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What is the relationship threshold for transfer pricing rules to apply between parties?

The definition of related parties is very broad and includes parties that directly or indirectly participate in the management, supervision, or capital of the other party (no specific thresholds).

What is the statute of limitations on assessment of transfer pricing adjustments?

Statute of limitation is three years and it commences after the end of the year in which any tax liabilities should have been assessed (e.g. for the 2011 year the statute of limitations expires at the end of 2015). Under certain conditions the absolute statute of limitations of six years may apply.

#### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No, unless specifically requested by the Croatian Tax Authorities (CTA).

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to prepare or submit disclosures?

Not applicable.

#### Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions with foreign related parties and in certain cases transactions with domestic related parties (more specifically, in transactions between two domestic related parties if one of them has a preferential tax position, e.g. is entitled to a preferential CPT rate, is CPT exempt or has tax losses available for utilization). In the case of an inspection, the CTA may impose penalties if a transfer pricing study is not available.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

If the transfer pricing study is timely and correctly prepared, it shifts the burden of proof to the CTA and at the same time represents penalty protection.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

There are no specific provisions indicating when the transfer pricing study should be prepared. However, in practice, it is expected to be prepared by the time the annual corporate profit tax return is submitted (i.e. four months after the year-end).

What are the major elements required or recommended to be included in a transfer pricing study?

Croatian tax legislation prescribes mandatory elements of the transfer pricing study and in that regard generally follows the OECD requirements. A typical transfer pricing study would need to include the following:

- description of related parties and transactions between them
- company and group overview
- industry analysis
• functional analysis
• explanation on how transfer prices in intra-group transactions are assessed
• selection of appropriate transfer pricing method and an economic analysis
• including a benchmarking analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split and transactional net margin method.

Is there a priority among the acceptable methods?
No.

If there is no priority of methods, is there a ‘best method’ rule?
No.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
The documentation should be available immediately upon request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
An adjustment is proposed following a tax audit on the basis of a tax assessment issued by the CTA. The taxpayer can appeal against the tax assessment to an “independent second degree body” within the Ministry of Finance. In case of a negative ruling by the “independent second degree body” the taxpayer can appeal to the Administrative Court. However, the taxpayer can appeal to the Administrative Court only after receiving a negative ruling by the “independent second degree body” and after paying the corporate profits tax assessed, penalty interest and any penalties.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. The CPT Law prescribes penalties between 2,000 and 200,000 Croatian Kunas (HRK). Additional tax assessed is subject to the standard corporate profit tax rate of 20 percent increased by the penalty interest of 14 percent per annum, which has decreased to 12 percent per annum as of 1 July 2011.

To what extent are transfer pricing penalties enforced?
Transactions with foreign related parties are often scrutinized by the CTA and in the case of any non-compliance with the provisions of the tax legislation the CTA would adjust the tax base and assess an additional tax liability, along with penalty interest. In addition, the CTA may impose fixed penalties. Tax audits are regularly performed by the CTA. Domestic transactions in certain circumstances will also be focused on with similar implications.

What defenses are available with respect to penalties?
Timely prepared transfer pricing documentation.

What trends are being observed currently?
As in previous years, the CTA has shown increasing interest in related party transactions and transfer pricing documentation. Audit triggers, apart from size, include a sharp fall in profit, continuing losses and companies that are part of multinational groups.

Special considerations
Are secret comparables used by tax authorities?
There are no specific rules in the transfer pricing provisions; however, often used by the CTA in practice.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
There is no requirement regarding the inclusion of the local comparables in the benchmarking set. However, it would be recommended as local comparable entities are affected by the same developments, such as industry and economic trends, as the tested party.

Do tax authorities have requirements or preferences regarding databases for comparables?
There is no requirement regarding the use of a certain database for performing searches for comparables. However, due to the fact that the CTA uses the Amadeus database, it may be advantageous to use the same database, if possible.

What level of interaction do tax authorities have with customs authorities?
High.
Are management fees deductible?
Yes, assuming documentary support exists and economic benefit can be proven.

Are management fees subject to withholding?
Generally yes, but depends on the actual service that is provided. Domestic withholding tax is 15 percent, but can be reduced or eliminated under an effective double taxation treaty.

Other unique attributes?
No.

Other recent developments
As of the latest amendments of the Croatian CPT legislation of 1 March 2012 in relation to the provisions on transfer pricing, the Comparable Uncontrolled Price Method is no longer considered to be the preferred method in justifying that the transfer prices applied in related party transactions are at arm’s length. The above amendments of Croatian CPT legislation are in line with the amendments of the OECD Guidelines of July 2010, proposing that the most appropriate method for determining the arm’s length nature of the applied transfer prices is selected based on the given circumstances.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Limited practical experience with application of competent authority proceedings.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance rulings of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
Croatian taxation legislation stipulates that if accounting and other documentation is maintained in a language other than Croatian, the CTA will require a Croatian translation of the same. Therefore, for filing/submission purposes, transfer pricing documentation must be in Croatian. Although there is a possibility of maintaining transfer pricing documentation in another language and translating it upon a request issued by the CTA, KPMG in Croatia recommends having a Croatian translation prepared in advance.

KPMG in Croatia

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Czech Republic

KPMG observation

Transfer pricing in the Czech Republic has gained in importance recently. The local transfer pricing environment can be viewed as in line with OECD and EU approaches. Relevant OECD and EU recommendations are reflected in the official guidelines issued by the tax authority. Taxpayers have the chance to apply for an APA to effectively minimize transfer pricing risks.

The tax authority has announced plans to increase its focus on transfer pricing audits. Today, transfer pricing is included in every tax inspection of large taxpayers. At the same time, the number of inspections has significantly increased. The amount of additional tax collected only supports this trend.

Adequate documentation serves as a tool to prove that prices applied are at arm’s length. Despite the fact that documentation is not directly required by tax legislation, it is in practice expected to demonstrate compliance with the arm’s length principle.

Basic information

Tax authority name
Finanční úřad (Tax Authority).

Citation for transfer pricing rules
IncomeTax Act 23 (7); legally non-binding regulations D-332, D-333, and D-334.

Effective date of transfer pricing rules
1 January 1993.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of greater than 25 percent based on voting power, share capital, common control, and entering a business relationship predominantly for tax evasion purposes.

What is the statute of limitations on assessment of transfer pricing adjustments?
General limits for additional tax assessment apply. Additional tax may be assessed within three years after the end of the respective taxable period. Theoretically, this deadline may be extended up to 10 years in case of repeated tax audits. Special rules further extend the deadline for companies with tax incentives and/or tax losses.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Transfer pricing disclosure is not required by tax legislation. The Corporate Tax Return Form contains only information about the existence of a link to foreign entities which can be viewed as a transfer pricing risk indicator. Limited information about transactions with related parties is a part of the enclosure to the financial statements.

What types of transfer pricing information must be disclosed?
The enclosure to the financial statements should include an overview of significant related party transactions that do not follow the arm’s length principle.

What are the consequences of failure to prepare or submit disclosures?
Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No. No statutory requirement regarding transfer pricing studies exists. On the other hand, it is assumed by the tax authority that the documentation is a basic tool to defend the prices applied.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
The main benefits are meeting the expectation of the tax authority for transfer pricing documentation during a tax audit, shifting the burden of proof from the taxpayer to the tax authority and the consequent reduction of probability of additional tax assessment and the related penalty as a result of improper transfer pricing.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

During a tax inspection, the tax authority can ask that the taxpayer justify prices used in transactions with related parties. In this situation it is practically expected that the taxpayer will provide transfer pricing documentation. The usual deadline set by the tax authority is within 15 days of the request. Tax authorities may provide a longer deadline if requested by the taxpayer.

What are the major elements required or recommended to be included in a transfer pricing study?

All elements according to the OECD transfer pricing documentation requirements should be included, i.e. particularly functional analysis, company overview, selection of method, detailed description of transfer prices, description of comparables. The recommended scope is included in the Ministry of Finance Regulation D-334. (e.g. functional analysis, industry analysis, company overview, selection of method, description of comparables).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No specific designation is necessary. Taxpayers can prepare transfer pricing documentation on their own or via their advisors. On the other hand, it is possible to have it officially prepared by a designated expert approved by the Interior Ministry. KPMG in the Czech Republic is one of a few companies with this authorization.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: transactional net margin method, profit split, and method.

All OECD methods are acceptable.

Is there a priority among the acceptable methods?

No strict rules apply. OECD Guidelines approach is followed.

If there is no priority of methods, is there a ‘best method’ rule?

Nothing is explicitly mentioned in the legislation.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The tax authority commonly expects documentation as a basic tool, assisting the taxpayer to justify its prices, within 15 days of request. This deadline is usually prolonged by the tax authority upon the taxpayer’s request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes, the taxpayer can initiate an appeal to the superior tax authority before finally going to a regional court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties apply.

A penalty of 20 percent of the avoided tax or 1 percent (5 percent for tax liabilities before 2011) of the overstated tax loss is assessed when a transfer pricing adjustment is made by the tax authority. Furthermore, interest for late payment of approximately 15 percent is assessed (Czech National Bank REPO rate + 14 percent). This interest is determined from the fifth working day after the original maturity day. This interest charge is applicable for a maximum period of five years. In specific cases, withholding tax on a deemed dividend is assessed (together with penalty and interest).

Companies with investment incentives granted in the form of tax holidays may forfeit the right to the tax holidays (even retroactively).

To what extent are transfer pricing penalties enforced?

Tax sanctions are enforced.

What defenses are available with respect to penalties?

Only shifting the burden of proof through using proper documentation or defense files.

What trends are being observed currently?

The number of tax audits with transfer pricing focus has increased considerably. The main focus is on services (benefit test) and profitability ratios. We have also experienced interest rates being challenged by tax authorities.

The tax authorities have specialized teams for transfer pricing and international tax. The Ministry of Finance regularly attends EU Joint Transfer Pricing Forum (EUTJPF) meetings and is part of the international information exchange within the EU.

Special considerations

Are secret comparables used by tax authorities?

Yes.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, there is a preference to have local comparables in a benchmarking set. Not having local comparables does not automatically mean that the benchmark will be rejected. Broader geographic sets can be used where relevant.
Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authority usually uses the Amadeus database. Nevertheless, other sources of information can be used as well.

What level of interaction do tax authorities have with customs authorities?
Very close.

Are management fees deductible?
Generally yes. However, taxpayers are often asked to document that the services were actually provided and consumed for benefit of the taxpayer.

Are management fees subject to withholding?
No. (Yes, if services rendered in the Czech Republic by a company from a country with which Czech Republic has not concluded a double taxation treaty).

Permanent establishment risk exists if the services are physically rendered in the Czech Republic.

Other unique attributes?
None.

Other recent developments
Specialized transfer pricing teams at tax directorate level have been established. A special supreme tax authority for both the biggest clients and financial institutions was established on 1 January 2012. This authority has replaced the original local tax authorities. It is expected that transfer pricing expertise will be available under this supreme tax authority.

Tax treaty.double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to the competent authority?
The taxpayer should submit an additional tax return by the end of the month following the month in which the taxpayer discovered the reason for the tax base increase or tax loss decrease.

May a taxpayer go to the competent authority before paying tax?
No formal rules exist except for APAs.

Advance pricing agreements
What APA options are available, if any?
An APA for transfer pricing methods is available.

Is there a filing fee for APAs?
10,000 Czech Koruny (CZK).

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Only information about the number of APA applications is published.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Tens of APAs are approved each year. The APA process usually takes between six and nine months to conclude.

Language
In which language or languages can documentation be filed?
Tax authorities may require all documents in Czech. This is usually the case if they want to scrutinize transfer prices. However, some authorities also voluntarily accept documentation in English, and taxpayers may agree with the tax authorities on which documents must be translated into Czech.

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KPMG observation

The Danish tax authorities, SKAT, are focusing on loss-making companies and business restructurings, in particular the outbound transfer of intangible assets. Financial transactions are also increasingly subject to scrutiny.

It is observed that during tax audits, SKAT increasingly seeks to take a standpoint that what has normally been considered acceptable OECD-compliant transfer pricing documentation does not fulfill the specific Danish transfer pricing documentation requirements. As a result of this approach, the Danish legislation provides an opportunity for SKAT to issue a discretionary adjustment, which essentially shifts the burden of proof to the taxpayer. As such, it is recommended to prepare localized transfer pricing documentation for Danish activities.

SKAT’s Central Transfer Pricing office focuses on negotiations between competent authorities in Denmark and foreign tax authorities, and there has been an increase in the number of cases processed (e.g. MAPs and APAs) as well as a reduction in the processing time. Companies are encouraged to consider APAs as a way of managing their transfer pricing risks in Denmark.

Basic information

Tax authority name
The Danish Tax Authorities (SKAT).

Citation for transfer pricing rules
- The Tax Assessment Act (Ligningsloven), section 2
- The Tax Control Act (Skattekontrolloven), sections 3 B and 17, paragraph 3
- The Corporation Tax Act (Selskabsskatteveloven), section 11
- Executive Order no. 42 of 24 January 2006

Effective date of transfer pricing rules
June 1998.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of more than 50 percent and de facto, based on voting power, share capital, and under common control (subjective judgment, no ownership requirement).

What is the statute of limitations on assessment of transfer pricing adjustments?
The limitation on assessment of transfer pricing adjustments is five years. As such, notice of transfer pricing adjustments must be given to the taxpayer by 1 May in the sixth year after the end of the income year subject to adjustment. The final income adjustment must be given to the taxpayer by 1 August in the sixth year after the end of the income year. In the case of a corresponding adjustment (income adjustment made by a foreign tax authority), the Danish tax authorities are not bound by any time limitation.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Taxpayers with controlled transactions must attach an appendix to the income tax return. The appendix is a form that must report certain high-level data regarding the taxpayer and the controlled transactions. The form is called Form no. 05.021 (Danish version) or Form no. 05.022 (English version). The form can be downloaded from SKAT’s homepage.

SKAT expects the company to prepare transfer pricing documentation for intra-group transactions, and to be able to submit this within 60 days of request.
What types of transfer pricing information must be disclosed?
The main business activity of the taxpayer, the exact number of entities that are parties to the taxpayer’s controlled transactions, their location and joint taxation status. When the value of the controlled transactions exceeds 5 million Danish Kroner (DKK), a range of information regarding the controlled transactions must also be submitted.

What are the major elements required or recommended to be included in a transfer pricing study?
The Danish transfer pricing legislation sets out very specific minimum requirements for a transfer pricing study, which should be addressed in order to comply with the documentation requirements.

The documentation must include a company overview, including the legal structure and the organizational structure of the enterprise, the turnover and operating income for the company, the parties to the controlled transactions for the latest three years, a high-level description of the history of the company and a description of the business in which the company is involved.

The documentation must also include an industry analysis and an analysis of the functions performed, risks assumed and assets used by the company in the controlled transactions (functional analysis).

In addition, the documentation must include the choice of method and a comparability analysis. Only upon request is a company obliged to provide a database analysis.

Finally, the documentation should include an overview of how transfer prices are implemented and a list of intra-group agreements.

What are the consequences of failure to prepare or submit disclosures?
Penalties will be applied. Furthermore, there is a risk that SKAT will propose income adjustments based on an assessment of the underlying facts, claiming that they have asked for certain information which was not provided to them.

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Penalty protection, avoiding the risk of shifting the burden of proof and tax authorities issuing an estimated assessment.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The preparation deadline coincides with the tax return deadline, i.e. within six months of fiscal year-end. The submission deadline is within 60 days of request. Database searches (comparable searches) must also be provided within 60 to 90 days upon request from SKAT.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Penalty protection, avoiding the risk of shifting the burden of proof and tax authorities issuing an estimated assessment.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The preparation deadline coincides with the tax return deadline, i.e. within six months of fiscal year-end. The submission deadline is within 60 days of request. Database searches (comparable searches) must also be provided within 60 to 90 days upon request from SKAT.

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: transactional net margin method, and profit split method.

Is there a priority among the acceptable methods?
The Danish transfer pricing regulations are as, a starting point, drafted in accordance with the OECD Guidelines. Where the 2010 edition of the OECD Guidelines no longer has a hierarchal preference and suggests the most appropriate method, the Danish guidelines still refer to the former OECD preference, i.e. that the traditional transaction methods are preferred over profit-based methods. However, in practice it is our experience that the Danish tax authorities will rely on the current OECD Guidelines, and in many cases, prefer the profit-based methods.

If there is no priority of methods, is there a ‘best method’ rule?
No, but in the Code of Guidance regarding transfer pricing documentation, SKAT recommends that supporting documentation be provided through secondary method/ratio analyses.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
No more than 60 days after request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?
Yes, the taxpayer can file a complaint with the Danish National Tax Tribunal. The complaint must be filed no later than three months after the date of the adjustment.
If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Documentation-related penalties can be imposed if the transfer pricing documentation requirement is not observed either intentionally or due to gross negligence. It is not a condition for levying penalties that an income adjustment is made. The penalty is determined as 200 percent of the costs saved for not having prepared the transfer pricing documentation in the first place. The penalty can be reduced by 50 percent if the documentation required is produced subsequently. Adjustment-related penalties can be imposed as well, and are calculated as an amount corresponding to 10 percent of an income increase. In cases where the applied transfer prices are considered tax evasion, the penalty can be significantly higher.1

To what extent are transfer pricing penalties enforced?

SKAT has started to exercise the option to enforce transfer pricing penalties more and more often. An extended enforceable penalty regime is applicable for income years starting 2 April 2006 or later. For income years starting after this date, penalties can be expected.

What defenses are available with respect to penalties?

The penalty of twice the saved costs for not preparing the transfer pricing in the first place can be reduced if the documentation is subsequently submitted. Penalties, e.g. tax surcharges and accrued interest, may be part of the negotiations in the settlement of a transfer pricing audit.2

What trends are being observed currently?

SKAT has increased the number of field tax auditors specializing in transfer pricing audits, and since 15 August 2011, the field tax auditors have had the authority to make income adjustments. Prior to this, any transfer pricing adjustment had to be approved by SKAT’s Central Transfer Pricing office.

In tax audits, companies are requested to submit a copy of their transfer pricing documentation to SKAT. Thereafter, a meeting with the field tax auditor is held after SKAT has read the company’s transfer pricing documentation. It is therefore important that on a standalone basis the documentation fulfills the documentation requirements and explains the financial results for the period under review.3

SKAT has initiated a project focusing on loss-making entities. As such, companies facing income years with consecutive losses are likely to be challenged in a transfer pricing audit. In addition, the level of tax audits is increasing as are the number of tax audits that result in income adjustments. In 2010, SKAT made transfer pricing adjustments of DKK6.3 billion, and in 2011 the figures were DKK6.2 billion.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, there is a preference, but not a requirement, for local comparables in a benchmark set. However, European comparables are often produced in the case of a limited number of local comparables.

Do tax authorities have requirements or preferences regarding databases for comparables?

SKAT has no database preference. However, the most commonly used databases include Amadeus, Orbis and RoyaltyStat. For financial transactions SKAT applies Moody’s RiskCalc, Bloomberg and Thompson Reuters LPC LoanConnector.

SKAT often does not accept dependent companies within the final set of companies in a benchmark study, claiming that the databases should test the earnings of independent parties.

What level of interaction do tax authorities have with customs authorities?

Low, but expected to increase going forward.

Are management fees deductible?

Management fees are deductible provided that the company has taxable income. A recent ruling by SKAT establishes that for the company to obtain deduction for management fees the fees must qualify as operating costs (i.e. the costs must relate to the company acquiring, securing and

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1 During editing of this book, a legislative proposal, which is likely to be enacted in 2012, introduces specific documentation-related penalties. According to this proposal penalties can be imposed if the transfer pricing documentation requirements are not observed either intentionally or due to gross negligence. If a company has prepared insufficient or failed to prepare transfer pricing documentation, the penalty is DKK250,000 (approximately USD44,000) per company per income year. In addition, 10 percent of the increased income determined by SKAT would be added to this amount in calculating the penalty. If a company has attempted to avoid preparing transfer pricing documentation by providing wrong or misleading information, the penalty could range upwards to DKK2 million.

2 The legislative proposal also suggest to adopt this mechanism.

3 The legislative proposal will allow SKAT to order certain companies to procure an auditor’s statement when they have a duty to prepare transfer pricing documentation for their controlled transactions.
Denmark

maintaining taxable income. Based on the ruling there is a considerable risk that companies where the income consist solely of tax exempted dividends would not qualify for tax deduction on management fees (e.g. holding companies).

Are management fees subject to withholding? None.

Other unique attributes? None.

Other recent developments

The Danish tax authorities continuously focus on intra-group financing, restructuring and outsourcing, permanent establishments, management fees, transactions with countries located in tax havens, simultaneous audits (Nordic), intangible assets (transfers/royalties), and loss-making companies (no tax payment in Denmark in the last couple of years).

It is currently being discussed to introduce a special auditors’ report for companies that have had losses over a certain number of years and companies with transactions with non-EU/non-EEA countries with whom Denmark does not have a double tax treaty. If enacted, the proposal suggests that an auditor will need to state whether they have found anything to show that the company does not comply with the arm’s length principle.

In August 2009, the Danish tax authorities issued guidelines concerning the valuation of business enterprises and ownership interests in business enterprises, including the valuation of goodwill and other intangible rights. The guidelines are not legally binding, but provide general descriptions and recommendations regarding valuation methods and documentation. Since then, the Danish tax authorities have had great focus on the valuation of intangible assets.

The Danish tax authorities favor the use of APAs. Denmark was the first European country to enter into bilateral APA’s with China.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network? Extensive.

If extensive, is the competent authority effective in obtaining double tax relief? Almost always.

When may a taxpayer submit an adjustment to the competent authority? After the adjustment has been proposed to the taxpayer.

May a taxpayer go to the competent authority before paying tax? Permitted.

Advance pricing agreements

What APA options are available, if any? Unilateral (advance ruling), bilateral, and multilateral.

Is there a filing fee for APAs? There is currently no filing fee for bilateral and multilateral APAs. There is a filing fee of DKK300 for an advance ruling/unilateral APA.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums? SKAT publishes APA data each year. The information is provided in a published response to the Danish Parliament. The information contains the number of ongoing APAs, the number of closed APAs and the number of APAs started in the year in question.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

Observers in Denmark note that the Danish tax authorities have recently encouraged taxpayers to enter into bilateral APAs. Denmark has entered into 20 bilateral APAs, and is currently involved in negotiating additional bilateral APAs. The Danish tax authorities have employed a large number of transfer pricing specialists of which a team – SKAT’s Central Transfer Pricing Office – is dedicated to handling negotiations with foreign tax authorities and negotiating APAs.

Seen from a government perspective, bilateral APAs not only provide certainty and stability for companies, but are also a driving factor for increasing investments and trade between the countries involved.

As of June 2011, Denmark and China have entered into three bilateral APAs, with these being the first three between a European country and China. The processing of the APAs has been considered very effective, and the third APA was originally filed in 2010 and signed in 2011.

Language

In which language or languages can documentation be filed? Danish, English, Swedish, or Norwegian.
Dominican Republic

KPMG observation

Transfer pricing in the Dominican Republic was established in Law 11–92, by Article 281, Validity of Legal Acts Between Associated Taxpayers, but its rules were established in General Standard 04–2011, published on 2 June 2011. Even though the legislation is new, it includes many aspects also included in other Latin American countries, based on the fact that the tax authority sought advice from different tax authorities in the region. The legislation includes some issues that are common in practice but not addressed in the transfer pricing legislation in other countries, such as:

- the use of foreign comparables
- the use of adjustments for accounts receivable, accounts payable, inventory and property plant and equipment
- when a party enjoys exclusive agent, distributor or dealer status for the sale of goods, services or rights and characters have contracts with “preferential” terms, these will be considered as related parties.

Based on comments by the tax authority, it seems that they will be very active in the area of transfer pricing, as can be seen from the information requirements.

Basic information

Tax authority name
Dirección General de Impuestos Internos (DGII)

Citation for transfer pricing rules
Law 11–92, Article 281 Validity of Legal Acts Between Associated Taxpayers.


Effective date of transfer pricing rules
The rules start with taxable years concluded after 31 March 2011. It is important to note that in the Dominican Republic, taxable years can conclude on any of the following dates:
- 31 March
- 30 June
- 30 September
- 31 December.

What is the relationship threshold for transfer pricing rules to apply between parties?
More than 50 percent direct or indirect ownership of capital, administration or control, by a foreign resident in a Dominican entity, including tax havens and Free Tax Zones.

Parties are deemed to be related when:
- directly or indirectly participating in the management, control or capital of one of them. (For management: when one party occupies a position of senior management in both companies. For control or capital: having an interest of at least 50 percent of the capital or voting control)
- when one of the parties resident in the country has permanent establishments abroad
- when a permanent establishment in the country has its headquarters abroad.
- when one of the parties enjoys exclusive agent, distributor or dealer status for the sale of goods, services or rights and characters have contracts with “preferential” terms
- when one of the parties agrees to contractual terms with “preferred” conditions
- when one of the parties assumes responsibility for any loss or expense of the other
- when a company or business is a decision unit, or when a society is a “partner” of another company.

What is the statute of limitations on assessment of transfer pricing adjustments?
Three years from the filing date of the tax return, if the taxpayer filed the return, or five years if no tax return was filed.
Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

All companies must submit the Informative Return for Transactions with Related Parties (DIOR). This must be filed annually electronically, no later than 60 days after the deadline for filing the corporate income tax return. In the first year of application of this rule, the Tax Administration may grant an additional period up to 30 days.

The deadline for filing the Corporate Income Tax return is 120 days after the fiscal closing date.

What types of transfer pricing information must be disclosed?

Among other information:
- related parties with which the transactions were performed
- type of transaction
- amount of the transaction
- documentation supporting the transaction, as well as the methodology used to support the arm's length nature of the transaction
- number of the invoice or document that contains the transaction with related parties.

What are the consequences of failure to prepare or submit disclosures?

No specific consequences, but general rules apply for underpaying taxes, including interests and penalties.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions subject to transfer pricing rules.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The burden of proof is shifted to the tax authority when a company has transfer pricing documentation.

Also, having documentation will reduce the risk of a disallowance of the deduction for tax purposes of the transactions performed with related parties.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

There is no specific date to have the documentation in place. However, it should be ready when filing the DIOR, which is due 60 days after the deadline for filing the Corporate Income Tax return. The deadline will be according to the fiscal closing date.

What are the major elements required or recommended to be included in a transfer pricing study?

- name or corporate name, domicile and tax residence of the related parties that carry out the controlled transactions, as well as documents evidencing the direct or indirect participation between or among the related parties
- information relative to functions or activities, assets used and risks borne by the taxpayer for each type of operation
- information and documents relative to the controlled transactions carried out by the related parties and the amount thereof, detailed by related party and by type of transaction/operation.
- the transfer pricing methodology used pursuant to General Standard 04–2011, including the information and documents on comparable transactions or companies by type of transaction/operation.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

In order of preference, these are the six methods allowed, taking into consideration which is the more appropriate in the circumstances:

Transaction methods: CUP, cost plus, and resale price

Profit-based methods: comparable profit split, residual profit split, and transactional net margin.

Is there a priority among the acceptable methods?

Yes. CUP should be applied first, then cost plus method, resale price, and then the profit-based methods.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The law does not indicate a timeframe.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes, taxpayers can appeal to tax court.

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If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions? Yes. However, since the Transfer Pricing Methodology is new in the Dominican Republic, there is no practical experience on how the authorities will act or interpret its application. However, general tax penalties, interest and surcharges will apply (interest 1.73 percent monthly and 10 percent for the first month, then 4 percent monthly) on the adjustment.

To what extent are transfer pricing penalties enforced? No experience to date, since legislation only came into force in June 2011.

What defenses are available with respect to penalties? Same as for tax adjustments.

What trends are being observed currently? No experience to date, since legislation only came into force in June 2011.

Special considerations
Are secret comparables used by tax authorities? No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set? No experience to date, since legislation only came into force in June 2011.

Do tax authorities have requirements or preferences regarding databases for comparables? No experience to date, since legislation only came into force in June 2011.

Advance pricing agreements
What APA options are available, if any? Unilateral. Only for the hotel industry, through its chamber.

Is there a filing fee for APAs? No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums? No.

Please provide some information on how successful the APA program is and whether there are any known difficulties. The only APA submitted is still in process. The DGII has not agreed on methodology and comparables.

Other recent developments
Transfer pricing rules were established in General Standard 04–2011, published on 2 June 2011.

Tax treaty/Double tax resolution
What is the extent of the double tax treaty network? Minimal, only with Canada.

If extensive, is the competent authority effective in obtaining double tax relief? Not applicable.

When may a taxpayer submit an adjustment to the competent authority? Not applicable.

May a taxpayer go to the competent authority before paying tax? Not applicable.

Language
In which language or languages can documentation be filed? Spanish.
Ecuador

KPMG observation

Since 2005, the Tax Administration, Servicio de Rentas Internas (SRI), has increased the compliance requirements for transfer pricing. Taxpayers now need to submit a transfer pricing study to the SRI. This has resulted in an increase in the number of transfer pricing audits, and by the end of 2010 the SRI had collected around 170 million audits.

Basic information

Tax authority name
Servicio de Rentas Internas (SRI).

Citation for transfer pricing rules
• unnumbered article following Article 4 of the Internal Tax Regime Law (LRTI)
• second section of Chapter 4 of the LRTI
• unnumbered article following Article 22 of the LRTI
• Articles 4 and 84 to 91 of the Ruling for Application of the Internal Tax Regime Law (RALRTI)
• General Resolution of the SRI No. NAC-DGER 2008–0464
• General Resolution of the SRI No. NAC-DGERCGC 09–00286
• supplementary regulations.

Effective date of transfer pricing rules
1 January 2005.

What is the relationship threshold for transfer pricing rules to apply between parties?
The following, among others, are considered related parties:
• The Head Office and its subsidiaries, affiliates or permanent establishments.
• The branches, subsidiaries or permanent establishment among them.

The parties in which the same natural person or society, participate indistinctly, directly or indirectly in the management, administration, control or capital of such parties.

The parties in which the decisions are made by governing entities consisting of mostly the same members.

The parties in which the same member group, partner or stockholder, participate indistinctly, directly or indirectly in the administration, management, control or capital of these.

Members of governing bodies of the companies in respect of the same, as long as it is established among them that relations are non-inherent to their position.

The administrators and commissioners of the society in respect of the same, as long as it is established among them that relations are non-inherent to its position.

A society in respect of the spouse and relatives until the fourth degree of consanguinity, or second degree of affinity of the executives, administrators, or commissioners of the society.

A natural person or society, and trusts in which they have rights.

When a natural person or society is a direct or indirect holder of 25 percent or more of the social capital or equity capital in another society.

The societies in which the same partners, stockholders or their spouses/husbands or their relatives until the fourth degree of consanguinity or second degree of affinity participate directly or indirectly in at least 25 percent of the social capital, or own funds or have commercial transaction, provide services or are in a dependent relationship.

When a natural person or a company is a direct or indirect holder of 25 percent or more from the common stock or own funding in two or more companies.

When a natural person or a society, whether domiciled or not in Ecuador, performs 50 percent or more of its sales or purchases of goods, services or another type of operations, with a natural person or society, whether domiciled or not in the country.

The tax authority may presume that there is a relationship between the parties when their transactions do not follow the arm’s length principle. Related parties are also considered to include those parties carrying on transactions with companies located in low-tax jurisdictions or tax havens.
What is the statute of limitations on assessment of transfer pricing adjustments?
Three years from the date of the income tax return filing, and six years if the company did not fulfill overall tax compliance obligations.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
• Taxpayers must include in their annual income tax return the total amount of transactions performed with related parties abroad differentiated between fiscal haven and other regimes disaggregated as follows: assets, liabilities, income, and expenses.
• Transfer pricing report.
• Transfer pricing appendix.

What are the consequences of failure to prepare or submit disclosures?
If the taxpayer does not submit either a transfer pricing appendix or a transfer pricing report, the Internal Tax Regulations state that a penalty of USD15,000 will be assessed.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for certain transactions.

Taxpayers performing transactions with related parties abroad for an accumulated amount exceeding USD3 million and/or those performing transactions between USD1 million and USD3 million when the proportion of such transactions exceeds 50 percent of revenues, must file a transfer pricing appendix. If the total amount exceeds USD5 million, the taxpayer must file a transfer pricing report.

The SRI might request a transfer pricing report to support the arm’s length pricing even if the taxpayer does not meet the requirements listed above.

The rules permit the tax administration to request information about the transaction performed with local related parties.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
None.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The transfer pricing appendix and the transfer pricing report must be filed within two months after the return’s filing date (the corporation’s income tax returns are due between 10 April and 28 April, depending on the ninth digit of the tax identification number).

What are the major elements required or recommended to be included in a transfer pricing study?

Transfer pricing appendix: the following information by type of transaction and by related party: names, country and tax identification of related parties, type of relationship, type of transactions, and the corresponding amounts, the transfer pricing method used, and difference obtained on each reported transaction.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, residual profit split, and transactional net margin method.

Is there a priority among the acceptable methods?
Yes. The Application Ruling to the Internal Tax Regime Law sets forth the following order:
(i) comparable uncontrolled price
(ii) resale price
(iii) cost plus
(iv) profit split
(v) residual profit split and
(vi) transactional net margin method.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.
Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal practice is to expect documentation within 20 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

Yes, a taxpayer may challenge the adjustment in the respective fiscal court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. 20 percent of the income tax payable, as determined by the tax authority.

To what extent are transfer pricing penalties enforced?

To the extent that the company did not submit, or submitted an erroneous, appendix or transfer pricing report.

What defenses are available with respect to penalties?

The challenge of the Act of Determination submitted to SRI.

What trends are being observed currently?

Since the transfer pricing regime came into force, the tax authority has primarily focused on controlled transactions of international business groups dedicated to exports, such as banana, flower and pharmaceutical companies.

Special considerations

Are secret comparables used by tax authorities?

Yes.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No, due to the lack of local information.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

High, since customs provide information to the SRI when it is required by this organization.

Are management fees deductible?

Yes, provided that the fees are used to obtain, maintain, and improve income of an Ecuadorian source. Additionally, and with the purpose of ensuring the expense deductibility, the SRI demands the existence of the economic substance and clear confirmation that the service was provided.

Are management fees subject to withholding?

Yes. 24 percent in 2011, 23 percent in 2012 and 22 percent in 2013 and thereafter, withholding tax is generally imposed on management fees paid abroad. Certain bilateral tax treaties provide for a reduced rate. There are treaties to avoid double taxation with countries such as Belgium, Canada, France, Chile, Italy, Romania, Switzerland, Spain, Germany, Brazil, Mexico, Uruguay and the Andean Community. Sanctions for not withholding include disallowing deductions for the expense, and also the obligation to withhold the withholding not performed to the payment beneficiary.

Additionally, payment of the omitted withholding tax could be required including the interest related to the omission.

Other unique attributes?

None.

Other recent developments

Since 2010, taxpayers that carry out operations with related parties will be exempt from the application of the transfer pricing regulations provided that:

• The tax incurred is greater than 3 percent of total taxable income.
• They do not carry out operations with residents in fiscal havens or preferential fiscal regimes.
• They do not maintain an agreement with the State for exploration or exploitation of non-renewable resources.

Additionally, regulations allow the tax authority to use secret comparables for the establishment of the arm’s length principle. The tax authority could use all of its information, as well as from third parties, as set forth in the Tax Code and the Internal Tax Regime Law.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.
If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to the competent authority?
This depends on the timeframe allowed by the tax treaty.

May a taxpayer go to the competent authority before paying tax?
No.

**Advance pricing agreements**

What APA options are available, if any?
It is possible for taxpayers to consult with the tax authorities so that a determination can be reached with regard to the correct value of transactions carried out between related parties prior to actually carrying out the transactions.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Local regulations allows taxpayer to negotiate an APA with the tax authorities, nevertheless the tax authority haven’t provided any guidelines to the taxpayer for their practical application. Due to the lack of guidelines, taxpayers haven’t relied on APAs.

**Language**

In which language or languages can documentation be filed?
Spanish.

KPMG in Ecuador

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KPMG observation

Transfer pricing is now one of the most important topics for the Egyptian Tax Authority. The Tax Authority issued the first of three planned parts of transfer pricing guidelines on 29 November 2010. The first part mainly discussed the basis of the arm’s length principle, the arm’s length pricing methods and the importance of documentation. These guidelines are in line with the OECD Guidelines.


There has been no announcement from the Tax Authority regarding the date of issuing the remaining two parts of the guidelines.

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<th>Transfer pricing study overview</th>
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<tr>
<td><strong>Citation for transfer pricing rules</strong></td>
<td>Tax law and tax treaties.</td>
<td>Yes, it is a statutory requirement to mention the transfer price method the company has used for transactions with related parties in the annual tax return.</td>
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<tr>
<td><strong>Effective date of transfer pricing rules</strong></td>
<td>2005.</td>
<td><strong>What types of transfer pricing information must be disclosed?</strong></td>
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<td><strong>What is the relationship threshold for transfer pricing rules to apply between parties?</strong></td>
<td>Ownership of greater than 50 percent, based on voting power or share capital.</td>
<td>The name of the related party, nature of the transactions, amount of transactions and the transfer pricing method used.</td>
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<td><strong>Partnerships, the joint partners, and silent partners therein.</strong></td>
<td>Any two or more companies in which a third person possesses at least 50 percent of the number or value of the shares or voting rights in them.</td>
<td><strong>What are the consequences of failure to prepare or submit disclosures?</strong></td>
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<tr>
<td><strong>What is the statute of limitations on assessment of transfer pricing adjustments?</strong></td>
<td>Five years from the filing date of the corporate tax return (which is four months after the financial year-end).</td>
<td>The tax return will be considered incomplete and the Tax Authority may refuse to accept it.</td>
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<tr>
<td><strong>What is the statute of limitations on assessment of transfer pricing adjustments?</strong></td>
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</tr>
<tr>
<td><strong>Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.</strong></td>
<td>Yes. The Tax Authority may ask for a study of the related party transactions to be presented at the inspection process – if one is initiated.</td>
<td>Statutory requirement and penalty protection. The purpose of the documentation is to support the company’s transfer pricing and avoid or delay fines and penalties which may be raised following a tax audit.</td>
</tr>
</tbody>
</table>
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The law is unclear but preparing as early as possible is recommended.

The taxpayer is required to maintain supporting documents, which can be requested during the tax audit.

What are the major elements required or recommended to be included in a transfer pricing study? Not defined yet, however part one of the guidelines that has been issued is in line with the OECD Guidelines.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study? No.

Transfer pricing methods

Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, transactional net margin method, and comparable profits method.

Plus any other method(s) discussed with and approved by the Tax Authority.

Is there a priority among the acceptable methods?
According to the tax law, the priority is for the comparable uncontrolled price method. If comparable, uncontrolled price is not applicable, thus choose between resale price or cost plus. If these are not applicable, any other method accepted by the OECD Guidelines is generally accepted.

If there is no priority of methods, is there a ‘best method’ rule? Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
There is no time frame stipulated in the law, however according to the practice documents, they should be submitted during the tax audit period.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Yes. If a taxpayer disagrees with the adjustment proposed by the Tax Authority, the taxpayer may appeal to the Internal Committee. If not solved at the Internal Committee level, then the taxpayer may appeal to the High Committee. A formal court action may be taken if not solved at the level of the High Committee.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
There are no special penalties for transfer pricing adjustments. However, if the transfer pricing adjustment has affected the taxable profits, then normal penalties are imposed.

To what extent are transfer pricing penalties enforced?
Not applicable.

What defenses are available with respect to penalties?
Not applicable.

What trends are being observed currently?
Not applicable.

Special considerations

Are secret comparables used by tax authorities?
Unknown.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Unknown. However, there is not an Egypt-specific database that we can use.

Do tax authorities have requirements or preferences regarding databases for comparables?
Unknown.

What level of interaction do tax authorities have with customs authorities?
Unknown.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
Yes, unless services are performed outside of Egypt in a tax treaty country.

Other unique attributes?
None.
Other recent developments

The Tax Authority has not yet disclosed when it will issue formal transfer pricing guidelines on documentation requirements.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
During the next five years after the adjusted year, limited by the Tax Authority inspection.

May a taxpayer go to competent authority before paying tax?
No formal rules.

Advance pricing agreements

What APA options are available, if any?
Unilateral; advance rulings (in the form of pre-approved pricing agreement).

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The Tax Authority has not yet issued any APAs, and it is unclear when the first will be issued.

Language

In which language or languages can documentation be filed?
Arabic. However, the documents can be prepared in English. The Tax Authority may require an official Arabic translation in the case of tax audits.
Estonia

KPMG observation

The Estonian Tax and Customs Board has formed a special audit group focused solely on transfer pricing and have announced that the overall number of tax auditors will be increased significantly in 2012. Transfer pricing issues are to be examined as individual cases and not part of a general tax audit. Accordingly, the number of transfer pricing audits is expected to increase considerably in 2012.

Basic information
Tax authority name
Eesti Maksu- ja Tolliamet (Estonian Tax and Customs Board).

Citation for transfer pricing rules
General rules are established by the Income Tax Act. OECD compliant methods and pricing principles are established with the Decree by the Minister of Finance.

Effective date of transfer pricing rules
Current general rules are effective from 1 January 2000. Amended rules together with documentation requirements are effective from 1 January 2007. New regulations concerning related parties in the Income Tax Act are effective from 1 January 2011.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of at least 10 percent, based on voting power, share capital, having common economic interest, or if one party has a dominant influence over the other (subjective judgement, no ownership requirement).

What is the statute of limitations on assessment of transfer pricing adjustments?
Three years from the filing date of the tax return. In the event of intentional failure to pay or withholding an amount of tax, the limitation period for making an assessment of tax is six years. In Estonia, tax returns are submitted on a monthly basis.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
No.

What types of transfer pricing information must be disclosed?
Not applicable.

What are the consequences of failure to prepare or submit disclosures?
Not applicable.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
For companies which qualify under the documentation requirement, yes, for all transactions.

The documentation requirement applies to:
- Credit and financial institutions and insurance companies.
- If one party of the transaction is a person domiciled in a low tax rate territory.
- A company
  - which employs 250 persons or more including the personnel of its associated companies
  - which has annual turnover (associated persons’ turnover included) of EUR50 million or more for the previous taxation period
  - whose consolidated balance sheet total was EUR43 million or more.
- A non-resident through its permanent establishment registered in Estonia
  - under the same conditions as a resident company.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Penalty protection, shifting the burden of proof.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The transfer pricing study must be submitted within 60 days of request.
What are the major elements required or recommended to be included in a transfer pricing study?

- description of the business and commercial strategy
- industry analysis
- detailed overview of related party transactions
- functional analysis
- explanation about the selection and application of transfer pricing method
- internal or external comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Traditional transaction methods: comparable uncontrolled price method, resale price method, and cost plus method.

Profit-based methods: profit split method, transactional net margin method, and other.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a ‘best method’ rule?

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The documentation must be submitted within 60 days of the tax authorities’ request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Disputes are generally resolved between taxpayers and the tax authorities. If they fail to reach an agreement, the taxpayer has the right to turn to administrative court. There is no tax arbitration institution or a special tax court in Estonia.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

General rules are applicable, but there is no special penalty for transfer pricing. Thus, if the taxpayer fails to submit the documentation, a penalty up to EUR3200 may be imposed.

To what extent are transfer pricing penalties enforced?

So far no penalties have been imposed.

What defences are available with respect to penalties?

Documentation.

What trends are being observed currently?

The Estonian tax authorities have increased their attention on transfer pricing issues which has resulted in a significant increase of audits with a transfer pricing focus in recent years. So far the transfer pricing issues have been part of a general tax audit, but the overall trend is towards individual transfer pricing audits.

Intra-group service transactions are receiving special attention and have been subject to challenge by the tax authorities, regarding the receipt of services and service fees. The tax authorities also have a high focus on loss-making companies. There is also frequent challenge of sets of comparables being presented by the taxpayer.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. Estonian comparables are preferred, but if not available, foreign comparables are accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

Unknown, but in Estonia, tax and customs authorities operate as one institution.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

Management fees are subject to withholding tax only if a non-resident is rendering management services in Estonia. If a double-tax treaty can be applied, the obligation to withhold income tax can be avoided.

Other unique attributes?

None.
Other recent developments
As of 1 January 2011 new regulations covering the definition of related parties came into effect. Based on amended provisions, the transfer pricing regulation may be applied also to transactions between entities that are formally unrelated by following their economic relations. Parties are now seen as related if they share a common economic interest, or if one person has a dominant influence over the other. As an example, parties are considered to share a common economic interest when they cooperate for a common purpose, e.g. input for a development, production or launching of a product or a service, conclude cost-sharing agreements, or conclude agreements to perform a transaction at a price that differs from an arm’s length price in order to share a profit achieved from the avoidance of a tax liability.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
The Double Tax Treaty (DTT) network of Estonia is extensive, with 47 treaties altogether.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules. Basically anytime within three years of the submission of the tax return on the adjusted period.

May a taxpayer go to the competent authority before paying tax?
No formal rules, but yes.

Advance pricing agreements
What APA options are available, if any?
In regards to transfer pricing, APAs are currently not available.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
The documentation may be presented in a foreign language, but the tax authority may request that they be translated into Estonian.

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The Finnish tax authorities have paid more and more attention to transfer pricing matters. This is reflected by an increasing number of transfer pricing audits in recent years, as well as questionnaires relating to transfer pricing issues during the yearly tax assessment.

**Basic information**

**Tax authority name**
Konserniverokeskus (KOVE, Large Taxpayers’ Office)

**Citation for transfer pricing rules**
Sections 14 a-c, 31, and 32 of the Taxation Procedure Act.

**Effective date of transfer pricing rules**
The arm’s length principle was implemented in 1965. The transfer pricing documentation requirements came into force on 1 January 2007.

**What is the relationship threshold for transfer pricing rules to apply between parties?**
A company controls another company if it has:
- direct or indirect ownership of more than 50 percent of the share capital
- direct or indirect ownership of more than 50 percent of the voting power
- direct or indirect right to choose over half of the members of the board or members of other corresponding body
- other control.

**What is the statute of limitations on assessment of transfer pricing adjustments?**
Five years from tax year-end.

**What are the consequences of failure to prepare or submit disclosures?**
Small penalty fees are possible. The tax form is mainly for information collection purposes.

**Transfer pricing disclosure overview**
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

**What types of transfer pricing information must be disclosed?**
All companies must disclose whether they are obliged to prepare transfer pricing documentation. Entities that are required to prepare transfer pricing documentation under Section 14a of the Taxation Procedure Act, are required to file a specific tax form detailing the main functions of the entity, profitability of the entity and the group it belongs to, and its related party transaction volumes during the tax year by transaction type.

**Transfer pricing study overview**
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study? Yes, for all cross-border transactions, only SMEs (as defined in the Commission Recommendation, 2003/361/EC) are exempted.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Penalty protection, shifting of burden of proof.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Preparation deadline: within six months of the end of the fiscal year.
Submission deadline: within 60 days when requested by the tax authorities. Additional information such as comparables analysis must be made available within 90 days.

What are the major elements required or recommended to be included in a transfer pricing study?

The documentation is required to include the following: description of the business, description of relations with the related parties, clarification of transactions with related parties, functional analysis regarding transactions with related parties, comparables analysis including information concerning the comparables, and explanation of transfer pricing method and its application. If the transactions per counterparty amount to less than EUR500,000 during the tax year, functional analysis and comparables analysis are not required.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Traditional transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, transactional net margin method, comparable profits method, and others.

Is there a priority among the acceptable methods?

In practice, priority among acceptable methods is based on the OECD Guidelines (2010).

If there is no priority of methods, is there a ‘best method’ rule?

As specified in the OECD Guidelines.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Within 60 days of the request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. A maximum penalty of EUR25,000 per negligence may be imposed on a company failing to show transfer pricing documentation. In addition, a tax increase (maximum 30 percent of adjusted income) is possible, according to the regulations on general tax penalties.

To what extent are transfer pricing penalties enforced?

More commonly than in the past.

The penalties relating to the submission and quality of transfer pricing documentation have not been used regularly but this is expected to increase. The general tax penalty on adjusted income is imposed basically every time.

What defenses are available with respect to penalties?

Documentation, reasonable cause.

What trends are being observed currently?

The number of transfer pricing related tax audits is increasing every year. The focus has been on business restructurings and intra-group financing but also other transfer pricing issues come up in the audits. The tax offices have also been active during the yearly tax assessment by sending queries on transfer pricing issues.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No, European comparables are typically accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

Low.
Are management fees deductible?
Yes.

Are management fees subject to withholding?
No.

Other unique attributes?
None.

Other recent developments
The Finnish tax authorities have centralized all transfer pricing issues to the Large Taxpayers’ Office in Helsinki in 2012. Also the number of transfer pricing auditors have increased.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Sometimes.

Advance pricing agreements
What APA options are available, if any?
Advance rulings (unilateral APAs). In theory, bilateral and multilateral APAs also are possible according to the tax treaties concluded by Finland. However, there is no formal legislation or guidelines nor case law concerning APAs.

Is there a filing fee for APAs?
Based on the complexity of the case and actual time needed to conclude the ruling, the filing fee for advance ruling is EUR1,480 or EUR2,200.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
No experience.

Language
In which language or languages can documentation be filed?
According to the Finnish rules, transfer pricing documentation can be prepared in Finnish, Swedish or English. If the documentation is prepared in English, a Finnish or Swedish translation is required only in exceptional cases.

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France

KPMG observation

2011, for French companies that are under the scope of the new transfer pricing requirements, was the first year during which they had to make available to the French Tax Authorities (FTA) full and updated transfer pricing documentation.

The French government introduced in 2010 documentation requirements, which were issued in tax instruction 4 A–10–10 published in 2011, for certain companies. In practice, it is too early to clearly identify the expectations of the FTA with regard to the content of the documentation.

The FTA continues to increase the technical knowledge of its audit teams by providing training to less experienced inspectors.

The FTA continues to believe that any company that buys tangible products from related parties, which it then sells into the market, cannot make losses and the FTA consistently reassesses such loss-making distributors. However, recent case law has not gone the FTA’s way and the courts’ favorable decisions (to the taxpayer), based on a lack of evidence provided by the FTA, have already put the French tax auditors on notice that standards will need to rise further.

The FTA’s specialist transfer pricing department, housed in the Direction des Vérifications Nationales et Internationales (DVNI) (National and International Audit Department) department, therefore continues to look for transfer pricing talent and has also recruited a few valuation specialists to deal with certain difficult valuation issues (e.g. transfer of intellectual property).

Basic information

Tax authority name
Direction des Vérifications Nationales et Internationales (DVNI) (National and International Audit Department): for companies with a turnover higher than EUR152.4 million (higher than EUR76.2 million for service providers), subsidiaries of such companies, and headquarters.

Directions Interrégionales de Contrôle Fiscals (DIRCOFI) (Interregional Tax Audits Department): for companies with a turnover ranging from EUR1.5 million to EUR152.4 million (up to EUR76.2 million for service providers), companies the DVNI gave power to DIRCOFI to audit.

Directions des Services Fiscaux (DSF) (Departmental Tax Services Department): for small companies with turnover lower than EUR1.5 million.

Citation for transfer pricing rules

Effective date of transfer pricing rules
Transfer pricing regulation, 1933 (Article 57).
Reversal of the burden of proof in certain audit situations, April 1996 (Article L13 B).
APA regulations: January 2005 Article L 80 B 7° legalized the procedure launched in September 1999.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of more than 50 percent considered for companies to be under common control.

What is the statute of limitations on assessment of transfer pricing adjustments?
Three years, based on calendar year-end. Five years when the FTA uses the international administrative assistance procedure (Article L 188A of the French procedure code). When the FTA demonstrates the existence of tax fraud, they can also extend the statute of limitations from three to a maximum of five years (Article L 187). In the case of tax loss carry forwards, the statute of limitation is extended under certain limits and conditions.
Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

What types of transfer pricing information must be disclosed?

Not applicable.

What are the consequences of failure to prepare or submit disclosures?

Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions:

- A new transfer pricing documentation requirement, codified as Article L 13 AA, was enacted into law in France in December 2009 and issued by the FTA in tax instruction 4 A–10–10 dated 23 December 2010. The scope of the new transfer pricing documentation requirements is limited to entities established in France that meet a turnover or balance sheet threshold (set at EUR400 million) or that own (or are owned by), directly or indirectly, more than half of a corporate entity’s capital or of a corporate entity’s voting shares, established in France or outside of France, meeting this EUR400 million threshold. The new requirement applies to financial years commencing on or after 1 January 2010.
- All intra-group transactions which affect the audited company’s profit and loss account and/or balance sheet are within the scope of the law.
- If the taxpayer does not respond or partially responds to the requirement, they may face a penalty of up to 5 percent of the gross amount reassessed with a minimum of EUR10,000 per audited financial year.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The benefits of complying with the requirement are mainly penalty protection.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing documentation should be made available to the FTA at the outset of a tax audit. If not, the FTA may require that the taxpayer provides or completes the documentation within 30 days.

What are the major elements required or recommended to be included in a transfer pricing study?

The transfer pricing study will include information on the group of which the French taxpayer is part (including but not limited to, general business overview, general description of the legal and operational group structure, general description of the functions performed and risks assumed by group entities that transact with the audited company, list of the main intangible assets owned or used by the French entity, a general description of the Group’s transfer pricing policy) and information on the French company itself (activities, functional analysis, intra-group transactions, list of cost sharing, Rulings or APAs, selection of transfer pricing methods and description of comparables).

French entities that do enter into transactions with related companies located in non-cooperative states or territories will need to provide additional information (balance sheet and profit and loss account of those related parties).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, and transactional net margin.

Is there a priority among the acceptable methods?

The revised OECD Guidelines are generally followed by tax authority inspectors. Therefore, the most appropriate method should be chosen based on – among others – comparability factors. In practice, the transactional net margin method is used quite often by the FTA.

If there is no priority of methods, is there a ‘best method’ rule?

No.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal FTA practice is to expect documentation within 30 days of a request. When the FTA applies the L 13 B procedure, the documentation should...
be provided within two months, though a one month extension may be granted upon request.

However, as previously mentioned, companies that fall within the merit of Article L. 13 AA have 30 days to comply with a (written) request from the FTA to provide transfer pricing documentation. Article L 13 AA applies for financial years starting on or after 1 January 2010.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority? Yes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions? Yes, for general tax penalties only (in limited cases, 40 percent of the tax avoided in case of bad faith behavior (where the purpose was to pay no or less tax), or 80 percent of the tax avoided in case of acts of fraud).

In addition, transfer pricing reassessments are considered to be deemed transfers of a benefit, which attract the same treatment as a deemed distribution of a dividend. Therefore, if the relevant Double Tax Agreement allows for it, withholding taxes will be calculated on the reassessed amounts and therefore penalize the taxpayer.

For companies falling within the merit of Article L 13 AA: a minimum of EUR10,000 per year audited for which no (or insufficient) transfer pricing documentation is available, with a maximum of 5 percent of gross amounts reassessed.

To what extent are transfer pricing penalties enforced? The penalty regime was introduced in 2010, therefore it is too early to comment on whether penalties will be enforced, but it is expected they will be.

What defenses are available with respect to penalties? The exact amount of the penalties described above depends on the level of insufficiencies in the documentation. Although it has been judged that tax penalties cannot be, in general, revisited by the tax courts, the fact that the penalties for insufficient documentation may vary could open possibilities to have the degree of insufficiencies, and hence of penalties, being revisited by French tax courts.

What trends are being observed currently? Recent audits have focused on transfer of intangibles resulting from group reorganizations, financial services (namely guarantee fees) and unidentified embedded transactions in complex services agreements.

For penalties and transfer pricing documentation, it is too early to observe any trend as this obligation has only applied from 2011 and has not been subject to audits yet.

Special considerations Are secret comparables used by tax authorities? Yes, but in specific situations and very infrequently. Tax auditors use their knowledge of other cases they have audited and may refer to industry standards. However, such secret comparables cannot be used in the context of court cases.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set? No but preferable if relevant.

Do tax authorities have requirements or preferences regarding databases for comparables? No specific requirements have been officially requested.

What level of interaction do tax authorities have with customs authorities? Low, but trend is to increase relationships.

Are management fees deductible? Yes. Management fees paid by a French company are deductible for corporate tax purposes provided they meet the following tax deductibility conditions:

1. the French entity must actually benefit directly from the services rendered and
2. the amount charged (costs and relevant markup, if appropriate) to the French company should be consistent with the services rendered and should not be excessive.

Are management fees subject to withholding? No, unless it is demonstrated that the management fees lead to a transfer of profit abroad (please refer to deemed distribution comment earlier).

Other unique attributes? None.
Other recent developments

In addition to the recent comments of the tax authority on the transfer pricing documentation (tax instruction 4 A–10–10), they issued a transfer pricing handbook specifically designed for small and medium-sized companies. These guidelines notably feature a presentation of the issues related to transfer pricing and the different OECD methods that can be applied to set and benchmark the transfer pricing policy undertaken by these companies.

In addition, a specific and lighter APA procedure has been put into place for small companies.

This tends to indicate that the tax authorities will take a closer look at transfer prices applied by smaller companies, and not only turn to big international groups.

Finally, the tax authorities have issued guidance on valuations, which has translated to increased audit activity on the deductibility of certain provisions and on the transfers of intellectual property.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive (approximately 120 double tax treaties concluded with France). A mandatory arbitration clause has been introduced in the US-French double tax treaty.

If extensive, is the competent authority effective in obtaining double tax relief?

No official statistics available in the public domain.

When may a taxpayer submit an adjustment to the competent authority?

Depends on the double tax treaty, but usually within three years after an adjustment leading to double taxation is proposed to the taxpayer.

May a taxpayer go to the competent authority before paying tax?

Permitted. In such cases, the collection of tax is suspended until a decision is taken by the competent authorities.

Advance pricing agreements

What APA options are available, if any?

Unilateral (under strict conditions), bilateral, and multilateral.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

The APA program is successful in France (at least 50 agreements were granted since the creation of this program). However, the average processing time for obtaining an APA exceeds 18 months due to insufficient resources, and seems likely to increase.

Language

In which language or languages can documentation be filed?

By statutes, for procedural purposes, all documents provided to the FTA are required to be drafted or translated in French. However in practice, tax auditors may prove to be more flexible and accept English versions of documents provided by the group or a foreign affiliate. Nevertheless, it should be noted that the FTA has the right to demand a translation and that, from a practical standpoint, DIRCOFI is less familiar with foreign language documents than the DVNI and are consequently more inclined to request translations.

KPMG in France

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Germany

KPMG observation

Transfer pricing is one of the highest priority issues for the German tax authorities and is receiving increased attention and discussion in German tax audits. From our experience, German tax auditors often assume a case of insufficient transfer pricing documentation in order to make significant transfer pricing adjustments to the taxable income by way of an estimate. Particular attention is currently being paid to the outbound transfer of functions and risks. In this regard, the new regulations focusing on business restructurings as of fiscal year 2008 allow German tax authorities to aggressively audit business restructurings.

Basic information

Tax authority name
Federal Ministry of Finance (Bundesministerium der Finanzen – BMF); Federal Tax Office (Bundeszentralamt für Steuern – BZSt).

Citation for transfer pricing rules
German Foreign Transactions Tax Act (Außensteuergesetz – AStG) Section 1, General Tax Code (Abgabenordnung – AO) Section 90 Para. 3 and Section 162 Para. 3 and 4, Corporate Income Tax Act (Körperschaftsteuergesetz – KStG) Section 8 Para. 3.

Effective date of transfer pricing rules
The legal basis for the determination of intra-group transfer prices has not materially changed in Germany since the revision of Section 1 of the Foreign Transactions Tax Act in 2008. Documentation requirements were introduced in 2003, and penalties in 2004.

What is the relationship threshold for transfer pricing rules to apply between parties?
The taxpayer holds direct or indirect ownership of 25 or more percent in the related party, or has direct or collateral possibility to exert a dominating influence to the related party; a third party holds a share of 25 percent or more in the taxpayer and the related party or exerts indirectly or collaterally a dominating influence.

What is the statute of limitations on assessment of transfer pricing adjustments?
In general, four years from tax filing year-end, but the respective tax rules and provisions are much more comprehensive.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Disclosures related to transfer pricing are not required to be submitted to the revenue authority on an annual basis, e.g. with filing a corporate income tax return. The transfer pricing documentation for so-called extraordinary transactions has to be prepared within six months after the business year-end in which the respective transaction took place. However, it is strongly recommended to prepare contemporaneous transfer pricing documentation.

In general, the transfer pricing documentation for all types of intra-group transactions has to be provided to the revenue authority upon request, typically for the purposes of a tax audit. The time limit for submitting the documentation to the revenue authority is 60 days following the request (30 days in case of extraordinary transactions).

What types of transfer pricing information must be disclosed?
No specific disclosure required. If management identifies incorrect transfer pricing after filing the tax return, this needs to be indicated and corrected without delay.

What are the consequences of failure to prepare or submit disclosures?
Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No. In general, there is no obligation to prepare a complete study or a report. However, it is a quite common practice to prepare a transfer pricing report in order to summarize all relevant information and to reduce penalty risks. Therefore, the taxpayer can not be penalized for not having prepared a transfer pricing study or report.

If the taxpayer does not provide upon request appropriate transfer pricing documentation within the above
mentioned timeframe, the results may be considerable sanctions and penalties (e.g. additional tax payments, estimation of transfer prices and income corrections to the disadvantage of the taxpayer and cash penalties).

A taxpayer is eligible for relief if the remuneration received for intra-group deliveries of tangible goods amounts to less than EUR5 million, and less than EUR500,000 for all other categories of transactions. For the relief, the taxpayer’s remuneration for both types of intra-group transactions must be below the thresholds. Relief is granted for the current business year if neither threshold has been exceeded in the preceding business year. To avoid inappropriate arrangements, domestic related companies are assessed in total if the companies are jointly audited.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The preparation and maintenance of a transfer pricing study cannot be regarded as a simple compliance issue but rather as a proactive risk management exercise with regard to upcoming tax audits. In order to reduce the risk of double taxation it is best practice to have proper and consistent transfer pricing studies across the group. Additionally, a transfer pricing study plays an important role in defending against penalties in case of an adjustment.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The deadline for submitting transfer pricing documentation to the revenue authority is 60 days following the tax audit request. The documentation of extraordinary business transactions must be prepared within six months after the year-end, in which the extraordinary business transaction took place and should be submitted to the revenue authority within 30 days following the tax audit request.

What are the major elements required or recommended to be included in a transfer pricing study?

Company overview (history and business activity of the group, organizational chart with company law relationships, internal organizational structure of the group, description of the product portfolio); analysis of transactions (identification of cross-border transactions per corporation, definition of aggregated groups based on comparable functions, risks and market conditions, identification and description of extraordinary business transactions); competition and market analysis (market environment, competitive landscape, business strategy of the group); analysis of functions and risks; choice of transfer pricing method (identification of appropriate profitability ratio, practicability check of the method with respect to the reporting system and the quality of the data); financial analysis (profit and loss statement corresponding to the group transactions structure, identification of appropriate aggregation units on a product level and of appropriate periods under observation); arm’s length comparison.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

The German tax authorities do not require a specific designation for the preparation or submission of relevant transfer pricing documentation. However, it is strongly recommended to look for professional advice and the assistance of a transfer pricing specialist /practitioner in all transfer pricing issues due to the local knowledge and experience they possess.

Transfer pricing methods

Which transfer pricing methods are acceptable?

The transfer pricing method that is acceptable for the determination of a transfer price depends on the availability of comparable data. Therefore, although in principle the following methods are recognized by German fiscal authorities, each method may not be applicable in an individual case.


Is there a priority among the acceptable methods?

In cases where unrestrained comparable data can be determined, priority is, by law, with the comparable uncontrolled price, resale price and cost plus method. If no such data is available, data with limited comparability may be used within an adequate transfer pricing method. In case no comparable data is available, the taxpayer needs to follow the hypothetical transfer price approach. Here, the transfer price needs to be determined within the range (typically at the mean) of the maximum price of the benefit recipient and the minimum price of the provider.

German fiscal authorities prefer the comparable uncontrolled price over anything else, but in practice it is frequently dismissed as being not comparable; resale price for distribution functions and cost plus for service functions are most common. Transactional net margin method can be used only for entities with routine functions, that is, entities involved in only one type of transaction.
If there is no priority of methods, is there a ‘best method’ rule?
No.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
See previous commentary.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
In principle the taxpayer can choose to litigate, a strategy rarely chosen because of the lack of economic experience at fiscal courts leading to unforeseeable results.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. Section 162, Paragraph 4, General Tax Code provides that in the absence of any useful documentation the higher of either EUR5,000 or a fraction of 5 percent to 10 percent of the transfer pricing adjustment made has to be assessed. Therefore, a penalty cannot be removed if no documentation exists, but the exact amount of the penalty is subject to the tax authorities’ discretion which may depend on the taxpayer’s degree of compliance or the nature of the transfer pricing adjustments. The same applies for penalties sanctioning late filing (maximum surcharge of EUR1 million, with a minimum of EUR100 for each day after the 30/60 days time limit is exceeded) and the tax administration’s ability to use the full arm’s length range to the detriment of the taxpayer in case no useful documentation exists.

To what extent are transfer pricing penalties enforced?
Always.

What defenses are available with respect to penalties?
With regard to cross-border transfer pricing issues, preparation of comprehensive transfer pricing documentation is required to avoid penalties and surcharges.

However, if penalties are assessed they can occasionally be negotiated with local tax authorities to a lower level.

What trends are being observed currently?
From our experience, German tax auditors often assume a case of insufficient transfer pricing documentation in order to make significant transfer pricing adjustments to the taxable income by way of an estimate. Particular attention is currently being paid to the outbound transfer of functions and risks. In this regard, the new regulations focusing on business restructurings as of fiscal year 2008 allow German tax authorities to aggressively audit business restructurings.

Special considerations
Are secret comparables used by tax authorities?
Yes, occasionally used, but they have a lesser evidence value in court.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
There are no legal requirements to have local comparables. However, German tax authorities prefer local comparables in benchmarking studies. Benchmarking studies that have no local comparables are sometimes challenged with regard to comparability.

Do tax authorities have requirements or preferences regarding databases for comparables?
There are no legal requirements to use any particular database. It is most common to use the Amadeus database for pan-European comparables searches, which is published by Bureau van Dijk. The German tax authorities have licensed the database and have started to use it although in practice the application on the side of the tax authorities is yet limited. The tax authorities require that the information from databases is verified through internet research, i.e. to determine the comparability of a certain company; it is insufficient to rely only on the information which is provided by the database. Furthermore, the Dafne database with German comparables and the Orbis database for non-European comparables searches might be additionally used.

What level of interaction do tax authorities have with customs authorities?
Low interaction with customs authorities. The customs service occasionally requests transfer pricing documentation.

Are management fees deductible?
In general, management fees are deductible, assuming that the services were rendered to the benefit of the service recipient (benefit test). It is generally not sufficient to just provide the costs of the service provider and a general description of the services rendered. The tax authorities usually require the taxpayer to provide examples of services being rendered specifically for the German subsidiary. A second question then is whether the services can be regarded as shareholder costs.
Are management fees subject to withholding?
No.

Other unique attributes?
No.

Other recent developments
Section 1, Foreign Transactions Tax Act has been revised with effect from fiscal year 2008. The section now contains comprehensive provisions regarding the shift of functions and corresponding exit payments. The guiding principle is the acting of two prudent and diligent business managers.

The long-awaited administrative principles on business restructurings were published by the German tax authorities on 13 October 2010. The administrative principles are effective from fiscal year 2008. Overall, the “Principles on the assessment of income allocation between related taxpayers in cases of cross-border transfers of functions” provide some clarification on the tax administration’s stance. However, taxpayers are still left with a high degree of uncertainty and numerous question marks, and face disadvantageous positions taken by the authorities on a number of issues.

Advance pricing agreements
What APA options are available, if any?
Bilateral and multilateral. The German tax authorities do not support unilateral APAs except in cases where no tax treaty is in place.

Is there a filing fee for APAs?
Yes. An application fee of EUR20,000 and a fee of EUR15,000 for a renewal of an APA. Moreover, in case of a change in the application, a fee of EUR10,000 is applicable. When the transaction volume covered by an APA is less than EUR5 million for the transfer of goods and less than EUR500,000 for other cases, the aforementioned fees are reduced to EUR10,000, EUR7500, and EUR5,000.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The attitude of the German tax authorities on APAs recently changed in a positive way, insofar as the tax authorities now actively welcome and support APAs for transfer pricing purposes. Multinational companies actively use the APA program in their transfer pricing policies.

Tax treaty double tax resolution
What is the extent of the double tax treaty network?
There is an extensive double tax treaty network. As at 1 January 2011, about 90 double tax treaties with other countries were effective.

If extensive, is the competent authority effective in obtaining double tax relief?
Yes, the competent authority is almost always effective in obtaining double taxation reliefs.

When may a taxpayer submit an adjustment to competent authority?
After an adjustment is proposed to the taxpayer.

May a taxpayer go to the competent authority before paying tax?
Yes, it is permitted to go to the competent authority before paying taxes.

Language
In which language or languages can documentation be filed?
The official language is German. The taxpayer may apply for a submission of transfer pricing documentation in a foreign language (normally English); however, approval is subject to the individual case.
The transfer pricing environment in Greece is new and has not yet been tested by the supervising authorities, who have just commenced their audits. The fact that, as explained below, there are two parallel transfer pricing regimes in Greece, creates burdensome obligations on entities that must comply with different procedures and requirements set by the two regimes.

The first transfer pricing regime was implemented by virtue of Law 3728/2008 by the Ministry of Development in December 2008 and the second one was implemented by the Ministry of Finance in July 2009 (Law 3775/2009 amending Article 39 of Greek Tax Law 2238/1994) and was recently amended by Law 3842/2010.

The Ministry of Development has started transfer pricing audits but they have not been completed and therefore the position of the authorities on transfer pricing issues is still unknown. On the other hand, no audits have been started yet by the Ministry of Finance and it remains to be seen where they will focus their audits. Heavy penalties apply for noncompliance with both regimes.

Based on the recent Ministerial Decision 1159/2011 (applicable to financial years ending 30 June 2011 onwards), regarding the issuance of Annual Tax Certificates under Article 82 of the Income Tax Code, by the certified auditors of entities having the legal form of AE and EPE, a company is required to have transfer pricing documentation available to the certified auditors in order for the latter not to issue an Annual Tax Certificate “with reservation” as regards the inability to express an opinion on the arm’s length nature of the transaction, which in turn will result in the tax authorities initiating a tax audit to the respective company’s tax affairs. On this basis, the transfer pricing documentation for tax purposes is required to be completed prior to the company submitting its corporate income tax return for the respective year so as to provide sufficient time for the review of the file by the certified auditors.

KPMG observation

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The first transfer pricing regime was implemented by virtue of Law 3728/2008 by the Ministry of Development in December 2008 and the second one was implemented by the Ministry of Finance in July 2009 (Law 3775/2009 amending Article 39 of Greek Tax Law 2238/1994) and was recently amended by Law 3842/2010.

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Pricing Study Overview.

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes according to Law 3728/2008 a list with all intra-group transactions must be submitted every year. For the preparation and submission of transfer pricing studies, see comments in Transfer Pricing Study Overview.

What is the relationship threshold for transfer pricing rules to apply between parties?

For Transfer Pricing Legislation (Law 3728/2008) introduced by the Ministry of Development, the threshold relationship is associated companies by virtue of the provisions of Article 42e and 96 Paragraph 1 of Law 2190/1920 (majority of shareholding or in the management or significant control, etc.).

For transfer pricing legislation introduced by the Ministry of Finance (Law 2238/1994 as amended) the threshold relationship is substantial control or dependence.

What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from tax year-end. The five year period commences at the end of the year in which the annual corporate income tax return was filed with respect to the previous accounting year. Under certain conditions, 10 years. No clear statute for the provisions of Law 3728/2008 but it should follow the rules of Law 2238/1994.

What types of transfer pricing information must be disclosed?

According to Law 3728/2008 all types of companies whose turnover is above EUR1 million must submit to the Ministry of Development a list of all their intra-group transactions within four months and 15 days from the end of their financial year (an exemption for turnovers below EUR1 million applies under certain conditions only if the turnovers are below EUR1 million for two consecutive years). This list includes all intra-group transactions irrespective of value.

What are the consequences of failure to prepare or submit disclosures?

No filing of the list of intra-group transactions to the Ministry of Development is subject to a 10 percent tax on the value of the transactions.

The late filing of the list of intra-group transactions will trigger a one-off administrative fine of EUR10,000 plus a late filing fine of EUR1,000 per each calendar date of delay. The total fine imposed for late filing of the list cannot exceed EUR100,000.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for certain transactions.

The preparation of a transfer pricing study is required by both transfer pricing regimes. Penalties are imposed in case of failure to submit, late submission of the documentation file or where there is insufficient documentation.

More specifically, enterprises falling under the transfer pricing provisions of the Ministry of Development (Law 3728/2008) i.e. companies whose turnover is above EUR1 million (an exemption for turnovers below EUR1 million applies under certain conditions only if the turnovers are below EUR1 million for two consecutive years) are required to document their intra-group transactions exceeding EUR200,000 and therefore must submit a Transfer Pricing Study to the competent authorities of the Ministry of Development within 30 days of receipt of a relevant request.

According to the transfer pricing provisions implemented by the Ministry of Finance (Law 2238/1994 as amended), domestic enterprises which are members of multinational groups must prepare a transfer pricing study for intra-group transactions exceeding EUR100,000 and submit it to the competent tax authorities in the course of an audit, upon the auditor’s request and within 30 days of receiving the request.

Please also note that, as referred to above, for the purposes of the issuance of the Annual Tax Certificate (POL 1159/2011) the transfer pricing study is required to be completed prior to the company submitting its corporate income tax return for the respective year.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

It is advisable to prepare and maintain the documentation file prior to the time it is requested, since the timeframe of 30 days from the day of request of the Ministry of Development and/or
the Ministry of Finance is not sufficient and high penalties apply. The benefits of preparing the Transfer Pricing Study are the avoidance of penalties for nonsubmission or late submission, the shifting of the burden of proof from the Company to the supervising authority and the mitigation of the risk of the tax authority making adjustments.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study must be submitted to the competent authority within 30 days of request as referred to in our comments above. For the purposes of the Annual Tax Certificate, the transfer pricing study is required to be completed prior to the company submitting its corporate income tax return for the respective year.

What are the major elements required or recommended to be included in a transfer pricing study?

For transfer pricing legislation introduced by the Ministry of Development (Law 3728/2008) the Basic Documentation File (which must be prepared by companies with a Greek parent company) includes information concerning the group (such as description of the organizational, legal and operational structure of the group, financial data, business strategy etc.) as well as information concerning the company (such as audited transaction, a comparative analysis, a description as the transfer pricing method selected, etc.).

Groups of companies with a foreign parent company and foreign companies operating in Greece under any type or form (e.g. branch) must prepare the Greek Documentation File which must contain almost the same information included in the Basic Documentation File.

For transfer pricing legislation introduced by the Ministry of Finance, domestic enterprises which are members of multinational groups must prepare and maintain a Documentation File consisting of:

a) the Basic Documentation File including the data in the basic file of the Ministry of Development, as well as certain additional data, that is: general description of the affiliated companies of the group which participate in the transactions being audited, description of all the transactions among those affiliates, list of cost allocation agreements, list of court decisions which concern the members of the group, related to the determination of the transactions’ prices, and a written declaration of each enterprise member of the group providing supplementary information.

b) the Greek Documentation File which supplements the Basic Documentation File and contains additional information related to the Greek enterprises of the group (this information seems to also be included in the Greek Documentation File of the Ministry of Development).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No such requirement is provided in either of the two transfer pricing regimes.

Transfer pricing methods

Which transfer pricing methods are acceptable?

The transfer pricing methods are the comparable uncontrolled price method, the resale price method and the cost plus method.

Where none of the above traditional transfer pricing methods can be implemented, other transfer pricing methods such as the transactional net margin method and the profit split method may be used.

Is there a priority among the acceptable methods?

The order in which they are set out above is the priority order set by law. One must justify why each method cannot be used.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The Documentation File must be submitted to the competent authorities within 30 days of request. Failure to submit the Documentation File is subject to a 10 percent penalty (in the case of the Ministry of Development) and a 20 percent penalty (in the case of the Ministry of Finance) which is calculated on the value of the transactions. For the Ministry of Finance, the penalty applies also for late filing of the Documentation File or for unsatisfactory documentation.

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1 More clarifications with respect to the content of the Documentation Files as well as the respective “declaration” are expected to be provided by virtue of a Ministerial Decision to be issued by the Ministry of Finance.
If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

No, unless the taxpayer seeks recourse to the courts.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

For both regimes the adjustments are stipulated by Article 39 of Greek Income Tax Law 2238/1994 as amended by Law 3842/2010 and applying from fiscal years ending 31 August 2010 onwards. This provides for an imposition of a one-off fine equal to 20 percent of the amount of difference which arises when domestic affiliated enterprises – or domestic with foreign affiliated enterprises – are involved in transactions for the sale of goods or the provision of services, and the price or the fee is unjustifiably higher or lower than that which would have been agreed in transactions carried out with another enterprise under the market circumstances prevailing at the time the transaction took place. This applies for fiscal years ending before 31 August 2010.

According to Article 39 of the Greek Tax Law 2238/1994 as amended by Law 3842/2010 applying from fiscal years ending 31 August 2010 onwards, a fine of 20 percent of the amount of difference which arises is imposed on enterprises which do not abide by the arm’s length principle.

What trends are being observed currently?

As already referred to above, the Ministry of Development has commenced transfer pricing audits but none have been completed yet and therefore the position of the authorities remains to be seen. From the companies selected for audit the authorities appear to be focusing on entities trading consumer goods as well as pharmaceuticals.

Special considerations

Are secret comparables used by tax authorities?

Yes. In practice, up to now (before the introduction of transfer pricing legislation per se) the tax authorities sought to benchmark the overall profitability of the Greek entity by using the net profit rates as defined by the Ministry of Finance for each type of business activity. This is an approach that may be followed in practice, despite the fact that these rates have not been established for transfer pricing purposes but are applied in case of an off-book computation of taxable profits, if the books of an entity are rejected by the tax authorities as a valid basis for determining taxable profits, as a result of tax violations committed by the entity.

For the purposes of Law 3728/2008 there are currently no secret comparables.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Although not explicitly provided for in the Greek transfer pricing legislation, it is advisable to carry out pan-European benchmarking (this is the unofficial position of the Ministry of Development).

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes (but may be subject to audit and proper documentation).

Are management fees subject to withholding?

Yes, subject to tax treaty provisions.

Other unique attributes?

None.

**Other recent developments**

The Ministry of Finance and the Ministry of Development are discussing applying a new transfer pricing regime which will combine the two transfer pricing regimes already applying in Greece. According to relevant publications there are discussions for the legislative regime introduced by the Ministry of Development (Law 3728/2008) to be abolished and Law 2238/1994 to be amended to incorporate the provisions of Law 3728/2008.

**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Greece has limited experience with MAP.

When may a taxpayer submit an adjustment to the competent authority?

Within a three year period under the double tax treaty and the Arbitration Convention. However, please note that the right to appeal to the Administrative Courts in Greece is within a 60 day period.

May a taxpayer go to the competent authority before paying tax?

There are no formal rules.

**Advance pricing agreements**

What APA options are available, if any?

No APAs or advance rulings of any kind.

Is there a filing fee for APAs?

Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No, there are no APAs in Greece.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

Not applicable.

**Language**

In which language or languages can documentation be filed?

According to Law 3728/2008, documentation must be filed in Greek. For tax purposes Law 2238/1994 does not explicitly refer to the language of the documentation, however clarifications in this respect are expected to be provided by virtue of a Ministerial Decision to be issued by the Ministry of Finance.
Greenland has tightened its transfer pricing legislation and documentation requirements from 1 May 2007. Also, transfer pricing audits are now being initiated by the Greenlandic tax authorities. It is accordingly advised that extra attention should be paid to business enterprises’ transfer pricing policy and documentation when starting business in Greenland.

The transfer pricing legislation is generally based on the OECD Guidelines and the Danish transfer pricing legislation. The Greenlandic tax legislation is therefore widely interpreted in accordance with Danish tax legislation.

Basic information

Tax authority name
Skattestyrelsen (part of the Department for Finances).

Citation for transfer pricing rules
Landstingslov om indkomstskat, Section 36a and 36b; Landstingslov om forvaltning af skatter, Section 19.

Effective date of transfer pricing rules
General provision effective from the income year 1980. The provisions were changed/tightened effective from 1 May 2007.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of greater than 50 percent and de facto, based on voting power, share capital, and under common control (subjective judgment, no ownership requirement).

What is the statute of limitations on assessment of transfer pricing adjustments?
Six years from the end of the income year. Notice of transfer pricing adjustments must be given to the taxpayer no later than 31 October in the fifth year after the end of the income year, and the final income adjustment must be given to the taxpayer no later than 31 January in the sixth year after the end of the income year.

The statute of limitations is suspended where the tax authorities – despite due caution – are unaware of the taxpayer’s arrangements through no fault of their own, for example, where the taxpayer has not filed relevant information.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Disclosure of number of entities with which the taxpayer has had controlled transactions. Disclosure of type and amount of controlled transactions.

What are the consequences of failure to prepare or submit disclosures?
Penalties, risk of shifting burden of proof, and tax authorities issuing an estimated assessment.
### Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all controlled transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Minor penalty protection, shifting of burden of proof and avoiding tax authorities issuing an estimated assessment due to lack of documentation.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Transfer pricing documentation must be submitted upon request to avoid penalties – in principle often a maximum of 10 days after a request.

What are the major elements required or recommended to be included in a transfer pricing study?
Description of method (how the prices and terms of the controlled transactions have been determined), company overview, functional analysis, and description of third party comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

### Transfer pricing methods

Which transfer pricing methods are acceptable?
Any method is acceptable as a starting point. However, preference is given to the traditional transaction methods (comparable uncontrolled price, resale price, cost plus) and to the net profit split method.

Is there a priority among the acceptable methods?
No.

If there is no priority of methods, is there a ‘best method’ rule?
No.

### Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
No exact deadline, however in principle a maximum of 10 days after a request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
It is possible to file a complaint to Skatteraadet (an administrative body). After the case has been tried or rejected by Skatteraadet, the case can be brought before the courts.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
No, however a surcharge of 8 percent is added in excess of taxes as a result of an adjustment.

### To what extent are transfer pricing penalties enforced?
Not applicable.

### What defenses are available with respect to penalties?
Not applicable.

### What trends are being observed currently?
Transfer pricing audits are now being initiated by the Greenlandic tax authorities. The following issues should in particular be considered as it is our experience that they are subject to an increasing focus from the Greenlandic tax authorities:
- allocation of R&D expenses
- allocation of startup costs/losses
- ownership of intangible assets and coherence between the above and the subsequent transfer pricing policy.

### Special considerations

Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No. The database used should be publicly available, and any preferences for choice of database will generally rely on what is stated in the Danish guidelines.
What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
Yes, as long as there is a benefit to the recipient and this can be documented.

Are management fees subject to withholding?
No.

Other unique attributes?
None.

Other recent developments
None.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal: Denmark*, Faroe Islands, Iceland, Norway, Isle of Man.

*The scope of the double tax treaty between Denmark and Canada also partly applies to Greenland.

If extensive, is the competent authority effective in obtaining double tax relief?
Not applicable.

When may a taxpayer submit an adjustment to the competent authority?
After an adjustment is proposed to the taxpayer.

May a taxpayer go to the competent authority before paying tax?
Permitted.

Advance pricing agreements
What APA options are available, if any?
Not applicable.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
Greenlandic and Danish.

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Hong Kong

KPMG observation

The Hong Kong Inland Revenue Department (IRD) released comprehensive transfer pricing guidelines in December 2009 with potential retroactive effect. The guidelines were released in the form of Departmental Interpretation and Practice Notes (DIPN) No. 46 and they indicate the IRD’s interpretation and practices regarding transfer pricing methodologies and related issues.

DIPN 46 is generally consistent with the OECD Guidelines and with international transfer pricing practices. DIPN 46 states that the IRD will apply the arm’s length principle to determine the appropriate price in the context of controlled transactions entered into by taxpayers and related parties located in other tax jurisdictions (whether or not Hong Kong has signed a Double Taxation Agreement (DTA) with these jurisdictions). DIPN 46 follows the preference of traditional transaction methods over the profit-based methods instead of the most appropriate method approach outlined in the revised OECD Guidelines in 2010. However, The Hong Kong IRD released DIPN No.48 Advance Pricing Arrangement in March 2012 establishing the procedure for enterprises seeking an Advance Pricing Agreement in Hong Kong. APAs are generally available on bi- or multilateral basis with counterparty jurisdictions with which Hong Kong as a DTA, although unilateral APAs are possible in certain limited circumstances.

Basic information

Tax authority name
Inland Revenue Department (IRD).

Citation for transfer pricing rules
DIPN 46 refers to relevant articles of double taxation treaties signed by Hong Kong when applicable, and to sections 14, 16(1), 17(1)(b), 17(1)(c), 20 and 61A of the Inland Revenue Ordinance (IRO) in other circumstances.

DIPN 45, which was also released during 2009, provides guidance with regard to relief from double taxation arising from transfer pricing adjustments in the context of DTAs.

DIPN 48, released in 2012 establishes the procedure for enterprises seeking an APA in Hong Kong.

Effective date of transfer pricing rules
No specific date, provisions of DIPN 46 may apply retroactively to all open tax years. APA applications will be considered as of April 2012 onwards.

What is the relationship threshold for transfer pricing rules to apply between parties?
No numeric threshold. Association is established via common management control or shareholding.

What is the statute of limitations on assessment of transfer pricing adjustments?
The IRD is empowered to raise additional assessment(s) for a year of assessment at any time within six years after the end of that year of assessment if it considers that the taxpayer has been under-assessed, or has not been properly assessed, for that year.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Transaction amounts and jurisdiction(s) of related parties with which transactions have been conducted.
What are the consequences of failure to prepare or submit disclosures?
In case of a failure to prepare or submit the tax return where the taxpayer does not have a “reasonable excuse” for the offence, the maximum penalty that can be imposed is 10,000 Hong Kong dollars (HKD) plus three times the amount of tax undercharged.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Transfer pricing documentation is explicitly recommended by the IRD under DIPN 46. Further, taxpayers are required to maintain sufficient documents to substantiate their compliance with the arm’s length principle under Section 51C of the IRO. The IRD are increasingly addressing transfer pricing as part of general tax audits and transfer pricing documentation will increasingly represent a mechanism to mitigate the risk of a transfer pricing adjustment.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Preparation deadline: Not applicable.
Submission deadline: Upon request. Generally within 30 days, subject to extension.

What are the major elements required or recommended to be included in a transfer pricing study?
In terms of documentation DIPN 46 refers to the OECD Guidelines guidance for the type of information which would be useful. There are no specific or unique requirements noted.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Methods generally adhering to the OECD principles:
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and transactional net margin method.
Unspecified methods are also allowed.

Is there a priority among the acceptable methods?
Traditional transaction methods are preferred over profit-based methods under DIPN 46. In practice, profit based methods are commonly applied.

If there is no priority of methods, is there a ‘best method’ rule?
No.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Generally within 30 days of request, subject to extension.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?
Yes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. General tax penalties apply. The extent of these penalties depends on the degree of the offence. Where the taxpayer does not have a “reasonable excuse” for the offence, the maximum penalty that can be imposed is HKD10,000 plus three times the amount of undercharged tax.

To what extent are transfer pricing penalties enforced?
Penalties are less common in practice.

What defenses are available with respect to penalties?
Preparation of transfer pricing documentation. Generally, in the absence of fraud or tax evasion the penalties may not be enforced.

What trends are being observed currently?
There are increasing tax cases which involve transfer pricing issues and the tax authority is continuously seeking to develop its transfer pricing resources and skills. Further, tax audits or enquiries are increasingly including transfer pricing issues within their scope and it is expected that this will become more prevalent in the future. Hong Kong is actively expanding its double tax treaty network which brings with it the potential for an increased number of corresponding adjustments, APA negotiations and MAPs.

Special considerations
Are secret comparables used by tax authorities?
Generally local comparables are preferred but in practice regional comparables are accepted.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

Low.

Are management fees deductible?

Yes. Subject to the general requirement that the expense must be incurred in earning profits chargeable to tax.

Are management fees subject to withholding?

No.

Other unique attributes?

None.

Other recent developments

The Hong Kong IRD released guidance establishing an APA program in Hong Kong to commence in April 2012. DIPN No.48, Advance Pricing Arrangement, establishes the procedures for enterprises to attain certainty regarding the acceptability of their transfer prices with the Hong Kong tax authority and with the tax authorities of one or more other countries.

Tax treaty,double tax resolution

What is the extent of the double tax treaty network?

Minimal but developing.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience yet due to relatively limited (but expanding) treaty network.

When may a taxpayer submit an adjustment to the competent authority?

Subject to applicable DTA, generally only after the first notification of actions giving rise to taxation not in accordance with the DTA has been issued by the DTA State.

May a taxpayer go to the competent authority before paying tax?

Currently no formal rules, but the IRD may be prepared to consider.

Advance pricing agreements

What APA options are available, if any?

A resident enterprise or non-resident enterprise with a permanent establishment in Hong Kong may apply for a bilateral or multilateral APA. A unilateral APA may be available in cases when the DTA partner(s) do not wish to participate in developing an APA, agreement stalls with the DTA partner(s) when negotiating a bilateral or multilateral APA and in cases when a non DTA state is prepared to agree a unilateral APA regarding transactions that are integrally linked to the controlled transactions covered by a bilateral or multilateral APA. The IRD has also set a threshold for an application of HKD80 million for each year covered in the APA if the controlled transactions involve sale and purchase of goods, a threshold of HKD40 million per annum if the application relates to services and a threshold of $20 million if the application relates intangible properties. The threshold may be wavered on a case by case basis following review by the Commissioner.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Program commenced in April 2012 therefore no data has been generated as yet.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

Program commenced in April 2012 therefore no evidence is yet available.

Language

In which language or languages can documentation be filed?

English or Chinese.
Basic information

Tax authority name
Nemzeti Adó- és Vámhivatal (NAV) – National Tax and Customs Administration of Hungary.

Citation for transfer pricing rules
Act on Corporate Income Tax and Dividend Tax (CIT): Section 4 (23) a–e determines the concept of related parties. Section 18 regulates the determination of the arm’s length price and the applicable methods. Section 18 (5) determines transfer pricing documentation requirements for taxpayers. Decree 22/2009 of the Ministry of Finance effective from 1 January 2010 determines the formal requirements for transfer pricing documentation.

Section 23 (4) (b) (notification of related parties), Section 172.16 (default penalty), Section 132 (a) and 132 (b) (APA) and Section 178.17 of the Act XCII of 2003 on Rules of Taxation.

Effective date of transfer pricing rules
The new decree on detailed regulation of transfer pricing documentation is effective from 1 January 2010 and is generally applicable for the 2010 financial year. However, if a company wished, the new regulations could be also applied for the fulfillment of the obligations in connection with financial year 2009. From 1 January 2011, Section 18 of CIT has incorporated profit split and transactional net margin methods as equivalent approaches with traditional transactional methods, although please note that this modification shall only be applied for business years started in 2011 onwards.

As of 1 January 2012 certain sections of 22/2009 MF Decree have been changed. These modifications aim to decrease the administrative burden of the taxpayers. However, please note that the understanding of the new regulation is currently uncertain due to possible differences in the interpretation of the wording of the new sections. Further clarification is expected to be published.

For 2009 and prior financial years, transfer pricing obligations were regulated by the 18/2003 MF decree.

What is the relationship threshold for transfer pricing rules to apply between parties?
Direct or indirect ownership with greater than 50 percent voting power, or the existence of majority control. Majority control shall mean when any party has the right to appoint or dismiss the majority of executive officers and supervisory board members.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years after the last day of the calendar year in which the taxes should have been declared or reported, or paid in the absence of a tax return or declaration.

Transcript pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes, the company should prepare the transfer pricing documentation and the underlying calculations before the submission of its tax return at the latest, and it should declare on the tax return form that it has prepared the transfer pricing documentation, but the documentation does not have to be submitted to the Tax Authority.

What types of transfer pricing information must be disclosed?
The company should declare in the tax return that it has transfer pricing documentation for the relevant financial year.

What are the consequences of failure to prepare or submit disclosures?
If the taxpayer doesn’t declare in the tax return that it has transfer pricing documentation, a default penalty can be imposed.

KPMG observation
The Tax Authorities are paying special attention to transfer pricing issues. Previously, the availability of transfer pricing documentation could have sufficed, but according to our recent experience, tax audits are moving in the direction of more in-depth analysis of the transactions (testing comparables, challenging benchmarking studies) and the comprehensive review of documentation (including contracts, calculations which support the arm’s length pricing of transactions and deductibility of costs).
Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all intra-group transactions. However, there are different transfer pricing documentation requirements (e.g. simplified, standalone, European transfer pricing documentation).

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The preparation of transfer pricing documentation is obligatory based on the relevant Hungarian regulations. If the company fails to prepare its documentation or the documentation prepared is incomplete, it will be subject to a default penalty of up to 2 million Hungarian forints (HUF) (approximately EUR7000) per missing documentation per year.

In the case where a taxpayer repeatedly fails to comply with the transfer pricing documentation obligation the upper cap of the default penalty to be levied can be doubled; and in the case of repeated transgression, four times the general penalty might be applicable. As a consequence, the upper cap of the default penalty can reach approximately EUR28,000 per missing documentation per business year.

Furthermore, the taxpayer shifts the burden of proof to the tax authority by preparing a transfer pricing study.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing documentation should be prepared for every financial year. The deadline is the submission date of the corporate tax return. However, this date must not be later than the 150th day after the end of the financial year. If the Tax Authority requests the documentation during the audit of the company, the documentation must be presented within three days of the request.

What are the major elements required or recommended to be included in a transfer pricing study?

The preparation of transfer pricing documentation is a strict regulation for companies with intra-group transactions. Among other things, the transfer pricing documentation should contain details identifying the related party concerned by the transaction (name, seat, tax number), functional analysis, industry analysis, company overview, selection of method and description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods – comparable uncontrolled price, resale price, and cost plus.

Profit-based methods – profit split, transactional net margin method, comparable profits method, and others.

Is there a priority among the acceptable methods?

Up until 31 December 2010, the traditional methods (comparable uncontrolled price, resale price, cost plus) were preferred. Basically, the traditional methods should have been applied, but if these methods were not applicable, other methods could have been used.

Whilst the traditional transaction methods are still preferred by the Hungarian Tax Authority, according to the new modification of Section (18) of CIT, from 1 January 2011, the transactional net margin method and profit split method should be treated equally with the traditional transaction methods.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal practice is to expect documentation within three days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

After the unsuccessful exhaustion of administrative procedures, the company is entitled to bring the matter before the competent court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Special tax penalty of up to HUF2 million for each missing transfer pricing documentation or if the documentation is not in line with the existing regulations. Also, if the applied price is not in line with arm’s length prices, it will have an effect on the amount of tax payment and therefore the default interest and default allowance.

To what extent are transfer pricing penalties enforced?

Unknown.

What defenses are available with respect to penalties?

Default penalties can only be avoided by complying with statutory transfer pricing requirements.

What trends are being observed currently?

More and more attention is being paid to transfer pricing requirements during tax audits, and the inspectors of the Hungarian Tax Authority are being trained accordingly. Although special industry focus or transaction focus has not been observed to date, management fees and royalties are usually inspected thoroughly, as well as benchmarking studies (the screening steps, geographical selection, qualitative screening, etc.).
Special considerations
Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes. The Hungarian Tax Authority prefers local comparables. Where existing local comparables are left out of the benchmarking set, the Tax Authority may challenge the benchmarking study prepared by the taxpayer and perform its own search.

Do tax authorities have requirements or preferences regarding databases for comparables?
The preferred database is Amadeus, published by BvD, but its application is not required.

What level of interaction do tax authorities have with customs authorities?
Medium – but cooperation is increasing due to a merger (the Tax and Customs Administration merged in 2011).

Are management fees deductible?
In principle yes, but only if it can be supported that the management fees incurred are in the interest of the business entity.

Are management fees subject to withholding?
No.

Other unique attributes?
None.

Other recent developments
None.

Tax treaty.double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
If the exact arm’s length price could not be established or the subject of the agreement is only the methodology, the filing fee is the minimum amount of the fees shown above.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Unilateral APAs are quite common nowadays due to the recent decrease in procedure fees. Contemporaneously bilateral APAs, nontraditional approaches or more complex cases may cause difficulties for the Hungarian Tax Authority.

Advance pricing agreements
What APA options are available, if any?
Advance rulings and APAs have been available from 1 January 2007 (unilateral, bilateral and multilateral). Completion of an APA can help mitigate transfer pricing-related risks arising from price setting. Please note that the taxpayer has to prepare statutory transfer pricing documentation as well as an APA.

Is there a filing fee for APAs?
Yes. The filing fee depends on the type of APA (unilateral, bilateral, or multilateral procedure) and on the type of applicable approach (transfer pricing methods).

• for unilateral procedures with traditional methods, the fee payable is from HUF500,000 to HUF5 million
• for unilateral procedures with other methods, the fee payable is from HUF2 million to HUF7 million
• for bilateral procedures the fee payable is from HUF3 million to HUF8 million
• for multilateral procedures the fee payable is HUF5 million to HUF10 million.

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The Indian Transfer Pricing regulations were introduced in 2001 and are largely in line with the OECD Guidelines.

Since their introduction, the Indian Transfer Pricing regulations have come of age – both in terms of quality of audits as well as the revenue generated for the Indian Government. Further, over the past few years, there has been significant guidance from Income Tax Tribunals and higher Appellate Authorities on various fundamental transfer pricing issues across industries.

The Indian Government proposed significant amendments relating to transfer pricing in the Draft Direct Taxes Code Bill, 2010 (DTC). It is proposed that the DTC, if enacted into a law, will come into force on 1 April 2013 and will replace the current Indian Income Tax and Wealth Tax laws (which have been in force for almost five decades). The 2009 Union Budget saw the introduction of safe harbor provisions and the setting up of the Alternate Dispute Resolution Panel. In addition, the draft DTC proposed the introduction of GAAR, thin capitalization, rationalization of penalty provisions and changes in various other administrative procedures. Taking these changes forward, the Finance Bill 2012 proposed additional provisions which include applicability of transfer pricing to certain 'Specified Domestic Transactions', enlargement of the definition of 'International Transaction' to include guarantees; any debt arising during course of business; business reorganizations or restructuring irrespective of whether the same has an impact on current year's profits, income, losses or assets; intangible properties including marketing intangibles, human assets, technology related intangibles, etc. In addition, the Advance Pricing Agreement (APA) regime has been introduced in India.

**Basic information**

**Tax authority name**
Central Board of Direct Taxes (CBDT).

**Citation for transfer pricing rules**

**Effective date of transfer pricing rules**
1 April 2001.

**What is the relationship threshold for transfer pricing rules to apply between parties?**
The transfer pricing provisions incorporate a very wide definition of associated enterprises to include direct and indirect participation in the management or control of capital as well as certain conditions wherein two enterprises are “deemed” to be associated enterprises.

**Significant conditions among these include:**
- Direct/indirect shareholding giving rise to 26 percent or more of voting power.
- Ninety percent or more purchase of raw materials/sale of manufactured goods by one enterprise from/to the other enterprise at prices and conditions influenced by latter.
- Authority to appoint more than 50 percent of the board of directors or one or more of the executive directors.
- Dependency in relation to intellectual property rights (know-how, patents, trademarks, copyrights, trademarks, licenses, franchises, etc.) owned by either party.
- Dependency relating to borrowings i.e. advancing of loans amounting to not less than 51 percent of total assets or provision of guarantee amounting to not less than 10 percent of the total borrowings, etc.

**What is the statute of limitations on assessment of transfer pricing adjustments?**
Typically, 33 months from the end of the assessment year (the year immediately following the tax year). The tax year in India is the financial year i.e. 1 April – 31 March. By virtue of the newly introduced Finance Bill 2012 proposals, the time limit for completion of the above TP audit would be extended by 3 months, i.e. by 36 months.

However, even after the 36 months have passed, if the tax authority has reason to believe that at least 100,000 Indian rupees (INR) of income chargeable to tax has escaped assessment for any assessment year, they may reopen the assessment for those particular years, provided they issue the required notice for reopening the assessment within six years from the end of the relevant assessment year.
Further, the Finance Bill 2012 has also proposed to amend the existing provisions of the Act, to provide that in all cases where it is found that an international transaction has not been reported either by non-filing of report or otherwise by not including such transaction in the Accountant’s Report, then such non-reporting would be considered as a case of deemed escapement of income and such a case can be reopened under the provisions of the Act.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Filing of Accountant’s Report in Form No. 3CEB certifying the arm’s length nature of the international transaction with Associated Enterprises is required to be prepared by the taxpayer and submitted to the revenue authorities by the Company. The report has to be obtained from a Chartered Accountant and must be submitted to revenue authorities by the statutory due date (presently 30 November after the end of the financial year).

What types of transfer pricing information must be disclosed?

As stated above, the Accountant’s Report is required to certify that appropriate documentation has been maintained by the taxpayer and the information disclosed in the certificate is true and correct.

The following information is generally disclosed therein:

- name, address, permanent account number and status of the taxpayer
- name, nature of relationship and other details (as prescribed) of the Associated Enterprise with whom the taxpayer has entered into international transactions during the year
- description of the international transactions entered into, including quantity, value, paid/payable, received/receivable and the method adopted to test the arm’s length criterion, etc.

What are the consequences of failure to prepare or submit disclosures?

The Indian Transfer Pricing regulations have penal provisions for failure to prepare or submit disclosures:

- Failure to maintain prescribed information/documents: 2 percent of value of international transaction.
- Failure to furnish accountant’s report: INR100,000 (approximately USD2,000).
- Per the Finance Bill 2012 proposals, failure to report any international transaction which is required to be reported would attract penalty of two percent of value of international transaction and furnishing incorrect information or documents would also attract penalty of two percent of value of international transactions.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, in cases where the aggregate value of international transactions exceeds INR10 million.

Failure to maintain the prescribed information in the documentation contemporaneously attracts a penalty of two percent of the value of the international transaction. Further, failure to furnish information/documents during a transfer pricing audit can also attract an additional penalty of two percent of the value of the international transaction.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Maintenance of transfer pricing documentation assists in demonstrating that the taxpayer made bonafide attempts to determine and ensure that its transfer prices are at arm’s length. In such cases where the taxpayer has determined its transfer prices as above, should the tax authorities question the taxpayers’ approach towards transfer pricing, the burden of proof shifts to the tax authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing documentation must be prepared on a contemporaneous basis, and should be maintained by the taxpayer for a period of nine years from the end of the relevant financial year. Generally, the notice of audit (issued by the revenue authorities to the taxpayer, initiating a transfer pricing audit) specifies the period within which the taxpayer is required to furnish information as specified in the notice.

What are the major elements required or recommended to be included in a transfer pricing study?

The transfer pricing regulations have prescribed an illustrative list of information and supporting documents required to be maintained by taxpayers entering into an international transaction. The prescribed documentation includes information (such as corporate overview, Indian operations, etc.) on the parties involved in the international transactions, as well as specific information relating to the reportable international transactions.

More specifically, such documentation is required to incorporate:

- Description of ownership structure of the taxpayer, Profile of the multinational group, including names, Addresses, legal status and country of tax, and Relationship with all associated enterprises.
- Business overview of the taxpayer and of associated enterprises and description of industry in which the taxpayer operates.
- Description of functions performed, risks assumed, assets utilized of transacting parties.
- Nature, terms, volume and value of each international transaction and details of property/service involved, commercial agreements, assumptions and policies with respect to the transactions with associated enterprises and third parties, if any.
- Record of comparable uncontrolled transactions and economic analysis performed to evaluate their comparability with the relevant international transaction.
- Description of methods considered, explanation regarding selection and application for determining the arm’s length price in relation to each international transaction.
- Details of comparable data used in applying most appropriate method and adjustment made to account for differences between controlled and uncontrolled transactions.
- Underlying supporting documentation such as copies of invoices, contracts, etc.
Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Generally, the notice of audit issued by the revenue authorities to the taxpayer, initiating a transfer pricing audit specifies the period within which the taxpayer is required to furnish information as specified in the notice. The revenue authorities generally require the information to be submitted within the time frame specified in the notice and expect adequate back up documentation in support of all information being furnished in the course of the audit proceedings.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

In case the taxpayer contests an adjustment proposed by the revenue authorities, there is an appellate mechanism available. The appellate machinery has several stages including:

1. Appellate Commissioner (complemented by Dispute Resolution Panel)
2. Jurisdictional Appellate Tribunals
3. Jurisdictional High Courts and lastly
4. National Supreme Court.

For a taxpayer to get a conclusive decision by the Indian judiciary, it could take between three to eight years.

The assessment/appellate procedure in India is generally rule based and the authorities typically do not have the room to come to a negotiated settlement with the taxpayer.

Use of the mutual agreement procedure (MAP) under the tax treaties could also be invoked as an alternative dispute resolution mechanism. India has entered into various double taxation avoidance agreements (tax treaties) with the primary objective to potentially avoid such tax disputes whether jurisdictional conflicts or matters of interpretation.

In matters pertaining to potential double taxation or taxation not in accordance with a double tax convention, the option available before or after exhaustion of any domestic administrative appeals process is either to apply for MAP under the relevant tax treaty; or litigate the matter through the courts.

The introduction of APAs in the Finance Bill 2012, would provide the taxpayers with an alternate mechanism for resolution of potential TP disputes,

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

The Indian transfer pricing regulations have prescribed the following penalty provisions summarized below.

<table>
<thead>
<tr>
<th>Default</th>
<th>Penalty</th>
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</thead>
<tbody>
<tr>
<td>In case of a post-inquiry adjustment, there is deemed to be a concealment of income</td>
<td>100-300 percent of tax on the adjusted amount</td>
</tr>
<tr>
<td>Failure to maintain documents</td>
<td>2 percent of the value of transaction</td>
</tr>
<tr>
<td>Failure to furnish documents</td>
<td>2 percent of the value of transaction</td>
</tr>
<tr>
<td>Maintaining or furnishing incorrect information or documents (proposed as per Finance Bill 2012)</td>
<td>2 percent of the value of transaction</td>
</tr>
<tr>
<td>Failure to furnish accountant’s report</td>
<td>INR100,000 USD2,000</td>
</tr>
<tr>
<td>Failure to report a transaction in accountant’s report (proposed as per Finance Bill 2012)</td>
<td>2 percent of the value of transaction</td>
</tr>
</tbody>
</table>

To what extent are transfer pricing penalties enforced?

The above imposition of penalties is discretionary and depends upon the facts and circumstances of each individual case.

What defenses are available with respect to penalties?

Please refer to information provided previously. In addition, the intent of the taxpayer is also given due consideration, i.e. whether the intent is mala fide or whether the taxpayer had made bona fide attempts to comply with the prescribed regulations. Establishing bona fide intent can provide some defense for the taxpayer.

What trends are being observed currently?

There is increased administrative focus on transfer pricing matters among the Indian revenue authorities. This includes a steep expansion of Transfer Pricing Officers (TPOs),
a coordinated all-India transfer pricing approach, and coordination between customs and transfer pricing authorities, resulting in significant adjustments being made to companies in IT, pharmaceuticals, financial services, automobiles, chemicals and related sectors.

To illustrate, in the most recently completed round of TP audits concluded, the Indian TP authorities have made adjustments to the tune of USD 9.5 billion1 (which ironically appears to equal the adjustments made in the earlier cumulative six rounds of TP audits conducted).

TPOs are becoming increasingly aggressive in the course of conducting transfer pricing audits and in addition to targeting taxpayers who have been reporting consistent losses or low profit margins, have also widened their focus to examine cases involving high royalty/technical fee payouts, high advertising and marketing expenses, cost recharges, management fee payouts, cost allocations, loans and guarantees, etc. In addition, restructuring of transactions has also become one of the key audit triggers and is being increasingly scrutinized.

The Finance Bill, 2012 proposes to extend the existing transfer pricing regulations for international transactions to certain domestic transactions defined as “Specified Domestic Transactions” (SDT) covering the following:

- Payments (i.e. only expenditure) to specific related parties (as referred to in Section 40A(2)(b) of the Indian Income-tax Act, 1961).
- Transactions between tax holiday eligible units and other business of the same taxpayer.
- Computation of ordinary profits of tax holiday unit of the taxpayer where there are transactions with entities with close connection.
- Such other transactions, as may be prescribed.

These provisions are proposed to be made applicable in cases where the aggregate amount of all such domestic transactions exceeds INR50 million in a financial year.

Accordingly, taxpayers entering into such SDTs would be required to file Accountant’s Report and maintain prescribed TP documentation. Non-maintenance of mandatory documentation can result in a penalty of two percent of the value of the SDTs between related parties. In addition, the Finance Bill 2012 has also proposed additional penalties of two percent of the transaction value for non-reporting of transactions and for incorrect maintenance/submission of documents.

Enlargement/ Clarification of definition of ‘International Transaction’

The Finance Bill 2012 also proposes to expand the definition of international transactions to include guarantees, extended credit period on outstanding receivables, business reorganisations or restructuring, (irrespective of whether the same has an impact on current year’s profits, income, losses or assets) intangible properties including marketing intangibles, human assets, technology related intangibles etc.

Special considerations

Are secret comparables used by tax authorities?

Yes, although the transfer pricing regulations contain no guidance on the use of secret comparables. Practically, the Indian revenue authorities have been using secret comparables in the course of transfer pricing audits. Recent judicial decisions have held that secret comparables (which are not available to the taxpayer at the time of setting its transfer prices) should not be used in the course of transfer pricing audits against the taxpayer.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. In transfer pricing audits conducted, the Indian revenue authorities have consistently shown a marked preference for selecting Indian comparables and accordingly, in accepting the corresponding economic analysis. The tax authorities prefer local comparables in the benchmarking set and often reject foreign comparables on the basis of geographical differences or cite lack of data availability as reasons.

Do tax authorities have requirements or preferences regarding databases for comparables?

The tax authorities generally use two Indian databases, being Prowess and CapitalinePlus. In practice these two databases are also widely used by the taxpayers.

What level of interaction do tax authorities have with customs authorities?

There is a lack of consistency between customs valuation procedures and transfer pricing regulations under tax laws. The departments work at divergent purposes in relation to the same transactions. Suitable methods for valuation of imported goods should be established which are acceptable to both customs law and the transfer pricing regulations. To this end, the Indian revenue authorities set up a Joint Working Group, comprising of transfer pricing and customs officers. Considering the lack of synchronization, this initiative was undertaken by the revenue authorities in order to bring greater harmonization, coordination and communication between the two departments as regards valuation of imported goods.

Are management fees deductible?

Management fees are deductible; however, a commercial expediency test and benefits test are rigorously applied by tax authorities with respect to payment of management fees.

Are management fees subject to withholding?

Management fees are subject to withholding tax and the rates specified in the domestic tax laws/the relevant tax treaty, whichever is more favorable to the taxpayer would apply.

Other unique attributes?

Arm’s length range

The transfer pricing regulations require the arm’s length price in relation to an international transaction to be determined by any of the prescribed methods, whichever is the most appropriate method. In a case where more than one price is determined by the most appropriate method, the arm’s length price will be the arithmetical mean of such prices. Further the transfer pricing

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1. Source – DNA Money newspaper publication, November 15, 2011
regulations also incorporate the option of a five percent variation in the arithmetic mean, in determining the arm’s length price. However, the transfer pricing laws have been amended effective 1 October 2009, whereby the price of the international transaction is deemed to be arm’s length in cases where the difference between the arm’s length price determined and the price at which the international transaction took place does not exceed five percent of the latter.

The Finance Bill 2011 had proposed that instead of a variation of five percent, the allowable variation would be such percentage as may be notified by Central Government in this behalf. The Finance Bill 2012 appears to have taken the above initiative forward and has provided that the upper ceiling would be three percent when the Central Government notifies the tolerance range. The Government has narrowed the above tolerance band indicating that considering the TP regulations have been introduced more than a decade ago and have come of age, MNEs and Indian companies alike should at present be in a much better position to determine the appropriate ALP in relation to their international transactions.

The same shall be effective from 1 April 2013, and shall apply in relation to FY 2012–13 onwards.

Considering the above, it is worthwhile to note that currently there is no clarity on the rate of variation applicable for FY 2011–12. Even the 3 percent variation is the upper ceiling and there is a possibility that a lesser percentage or industry wise percentage (within the ceiling of 3 percent) could be notified later.

Multiple-year data

The Indian regulations do not generally permit use of multiple-year data. The data pertaining to the relevant financial year has to be benchmarked against comparable data of the same financial year. Comparable data of two previous years may only be considered if it is substantiated that the previous years have had an impact on the current year data of the comparables. However, there is no leeway to use the previous year’s data for the tested party.

Other recent developments

The transfer pricing authorities continue to adopt aggressive positions, including higher markups for “services” companies, non-tolerance of losses for routine distributors, and seeking appropriate benefit tests for cross-charges. Further, granting of interest-free loans between associated enterprises has also been discouraged. It has been held that the interest rate on a cross-border loan transaction between associated enterprises should be computed on an arm’s length basis. Other recent approaches adopted include compensation for sourcing services determined on the basis of value of goods sourced instead of a cost plus markup, etc.

The introduction of the APA regime in the 2012 Union Budget, is expected to assist in reducing litigation and bring about certainty on contentious transfer pricing issues.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

India has an extensive tax treaty network and has entered into comprehensive tax treaties with 86 countries. India is also party to a series of treaties under negotiation.

If extensive, is the competent authority effective in obtaining double tax relief?

India’s general experience with MAPs is quite recent. Most MAP cases that the Indian Competent Authority has dealt with have been with the US, Japan and a few countries in Europe.

In practice, MAP as a mechanism for dispute resolution in regard to transfer pricing has not been found to be very successful until recently in India. The reason is that even after the consultation process has commenced, the process lasts for a long time and its outcome is uncertain. However, recent experience indicates that this may be changing.

When may a taxpayer submit an adjustment to competent authority?

No formal rules.

May a taxpayer go to competent authority before paying tax?

Yes, however before invoking MAP procedures, in some cases a bank guarantee generally needs to be submitted for the tax demand in question. This has been the procedure to date in MAP cases involving the US and UK.

Advance pricing agreements

What advance pricing agreement (APA) options are available, if any?

APAs have been introduced in the Finance Bill 2012 and the salient features of the same are as follows:

- APA provisions have been introduced with effect from 1 July 2012.
- The ALP shall be determined on the basis of prescribed methods or any other method.
- Valid for a maximum of consecutive five years unless there is a change in provisions of the Code having a bearing on the international transaction.
- In case APA covering a particular year is obtained after filing the return of income, modified return to be filed based on the APA and assessment or reassessment to be completed based on such modified return.
- APA to be declared void ab initio if obtained by fraud or misrepresentation of facts.

The detailed rules governing the APA regime would be notified by the CBDT soon. The proposal of introduction of APAs in India is a positive step and ought to be a welcome relief to taxpayers.

Is there a filing fee for APAs?

To be notified once the Detailed APA Rules are notified by CBDT.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Currently not applicable.

Please provide some information on how successful the APA programme is and whether there are any known difficulties?

Currently not applicable.

Language

In which language or languages can documentation be filed?

English.

KPMG in India

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KPMG observation

Indonesian transfer pricing has seen a flurry of activity since 2009 with the introduction of a number of transfer pricing-related regulations and a concurrent, at times what may be considered as premature, drive by the Indonesian Tax Office (ITO) to enforce these.

It is increasingly important for Indonesian taxpayers to ensure that they are abreast of the developments to allow for both offensive and defensive strategies to avoid potentially significant adjustments and the prospect of difficult and costly dispute resolution. While they can provide no guarantee, experience shows that robust documentation and a sound understanding of transfer pricing policies can mitigate the impact of what may be seen as an aggressive approach by the ITO against even the most straightforward related party arrangements.

In many cases, documentation which may be seen as compliant in other jurisdictions is not accepted by the ITO and this increases the burden on the taxpayer. As the ITO moves into new phases of development in transfer pricing application, we expect to see an increase in trained resources and an accompanying increase in sophistication in approach and scope.

Basic information

Tax authority name
Directorate General of Taxation/Indonesian Tax Office (ITO).

Citation for transfer pricing rules

Effective date of transfer pricing rules
1984 – ability of tax authority to adjust related party transactions.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of 25 percent, under common control, and family relationship.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from tax year-end filing date, phased in by 2013 from previous 10 years.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Details of transactions with related parties including amounts, pricing methodologies and reasons, together with declarations by way of 15 yes/no questions regarding the existence of transfer pricing documentation.

What are the consequences of failure to prepare or submit disclosures?
It is likely that lack of disclosure will lead to increased attention by the ITO with the ultimate outcome being the need to submit documentation.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
There is no specific penalty for failure to provide a study. However, in practice the absence of Indonesian or OECD-compliant documentation has resulted in transfer pricing adjustments upon tax audit. Such documentation is recommended to fulfill compliance disclosure requirements and to shift the burden of proof in tax audit situations.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Declarations that certain documentation is available are necessary contemporaneously with the tax return. In addition, specific regulations (PER43/2010 amended by PER32/2011) covering transfer pricing guidance and documentation requirements state that there is a need to submit documentation, although no date is yet specified. In a tax audit situation, documentation must be submitted within 30 days of request.

What are the major elements required or recommended to be included in a transfer pricing study?

Information on comparable transactions, price-setting policy, functional analysis, industry analysis, company overview, selection of method, description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split and transactional net margin method.

Is there a priority among the acceptable methods?

No. Transaction methods are stated within the law (profit methods appear in the Elucidation) and the original transfer pricing regulation (PER43/2010) clearly favored a hierarchical approach. However, the amendment to the regulation (PER32/2011) now takes a “most appropriate” method approach.

If there is no priority of methods, is there a ‘best method’ rule?

Yes, as of November 2011.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

According to the Tax Procedures Law, within 30 days of request. In practice certain questionnaires are issued and the taxpayer is given seven days to complete them. However, practical experience has shown that in many cases these deadlines are flexible.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

The taxpayer is able to object to a transfer pricing assessment and further appeal an unfavorable decision in the same way as with any tax assessment.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only: 2 percent per month on late payment of resulting tax; 50 percent surcharge if an objection to an assessment is lost. Surcharge increases to 100 percent if the amount is appealed and the appeal is lost.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

Penalties will be imposed on late payment of taxes following an adjustment. The defenses against penalties are therefore the same as those against adjustments – robust documentation and a good working knowledge of how it relates to the taxpayer’s situation.

What trends are being observed currently?

During seminars in 2011, ITO outlined a continued massive focus on transfer pricing and stipulated the following red flags which may lead to an audit:

- declaration of consistent losses
- minimal taxes paid
- significant related party transactions
- variations from commercial norms
- lack of appropriate supporting documentation.

The commercial norms referred to are those shown by the ITO’s own benchmarking figures (published). Documentation requirements are set out in the transfer pricing regulations but in practice OECD compliant documentation modified for local purposes is recommended. A significant modification which is often required is the inclusion of argumentation dismissing any potential CUPs, as Indonesian regulations originally applied a hierarchical approach and this approach may still be seen at the field audit level. In addition to the use of these criteria, the ITO has initiated plans to select ten taxpayers for review from each of its tax offices. Of the ten taxpayers selected for review, four taxpayers will be chosen to undergo full audit procedures. The selection process has begun within the large and medium-sized offices as well as those dealing with numerous foreign investors.
Special considerations

Are secret comparables used by tax authorities?
Yes. However should not be admissible to Tax Court.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes, but there is a recognition that choices are limited and in practice pan-Asian sets may be accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?
The ITO uses Osiris and Oriana but has publicly stated that any database may be used. In practice they also perform internet searches in an attempt to apply CUPs.

What level of interaction do tax authorities have with customs authorities?
None. Some discussion, but no action.

Are management fees deductible?
Yes, if properly documented.

Are management fees subject to withholding?
Yes, but subject to treaty relief.

Other unique attributes?
Focus on evidence on price-setting mechanism even where benchmarking tests show prices are at arm’s length. Denial of certain related party transactions at tax audit stage – deferring decision to Tax Court. Adjustments assessed without full analysis or sound basis.

Other recent developments

Initial discussions are being held regarding a number of APA applications. As of the date of publication, no formal applications have been submitted.

At the date of publication it is also understood that revisions to transfer pricing regulations have been drafted and are awaiting approval.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
Yes. Taxpayers may object to assessments and this defers the payment date, subject to sanctions on any losses at objection or later appeal. In the meantime, the issue may be raised to competent authority.

Advance pricing agreements

What APA options are available, if any?
Implementing regulation covering unilateral and bilateral APAs introduced 31 December 2010.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable yet, but unlikely to be the case when APAs are concluded.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language

In which language or languages can documentation be filed?
Tax return disclosure is in Indonesian. Documentation currently accepted in English. Indonesian translation may be required in dispute cases.

KPMG in Indonesia

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### Ireland

**KPMG observation**

Ireland has introduced new transfer pricing legislation for accounting periods beginning on or after 1 January 2011. The transfer pricing legislation is generally based on the OECD Guidelines and the legislation specifically mentions OECD reports on intangible property and on cost contribution arrangements. The Irish authorities recently stated that the first transfer pricing audits to take place under Ireland’s new transfer pricing legislation will occur in late 2012, with more audits to follow in 2013, following the first filing of tax returns under the Finance Act 2010 in September 2012.

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<tr>
<th>Basic information</th>
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<tbody>
<tr>
<td><strong>Tax authority name</strong></td>
</tr>
<tr>
<td><strong>Citation for transfer pricing rules</strong></td>
</tr>
<tr>
<td><strong>Effective date of transfer pricing rules</strong></td>
</tr>
</tbody>
</table>

**What is the relationship threshold for transfer pricing rules to apply between parties?**

Persons are associated where one of the persons participates in the management, control or capital of the other, or the same person participates in the management, control or capital of each of the two persons. A person participates in the management, control or capital of another person only if that other person is a company and controlled by the first person. A person will have control over a company if they are able to control the affairs of the company in such a way that they are conducted in accordance with their wishes by virtue of their shareholding, voting power or articles of association.

**What is the statute of limitations on assessment of transfer pricing adjustments?**

No specific limitations for transfer pricing. General rule: Four years from end of year in which tax return is filed.

**Transfer pricing disclosure overview**

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No.

What types of transfer pricing information must be disclosed?

There are no requirements on return disclosures or related party disclosures.

What are the consequences of failure to prepare or submit disclosures?

Not applicable.

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No. There is a statutory requirement to prepare and retain supporting transfer pricing documentation for large companies but there are no detailed specifications for the format or extent of the documentation.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

General tax penalties will apply to transactions under the transfer pricing rules that are not subject to arm’s length terms. An appropriate transfer pricing study should assist in substantiating compliance with the arm’s length principle. Under Ireland’s self-assessment system, the burden of proof, in the event of an audit by the Irish tax authorities, will fall on the taxpayer.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

There are no detailed documentation requirements. The OECD approach is followed, Irish legislation stating that documentation must be prepared on a timely basis. It is best practice that the documentation is prepared at the time the terms of the transaction are agreed upon. In order for a company to be in a position to make a correct and complete tax return, appropriate transfer pricing documentation should exist at the time the tax return is filed i.e. nine months after accounts year-end. There is no requirement for documentation to be kept in a standard form. The company may have the required documentation kept in the form of its own choosing. Transfer
pricing documentation must be sufficient to demonstrate a company’s compliance with the transfer pricing rules. The Irish tax authorities have stated that the form and manner that the documentation takes will be dictated by the facts and circumstances of the transactions and that the costs involved in preparing the documentation should be commensurate with the risk involved. Additionally, if documentation exists in another territory which supports the Irish arrangement, this will also be sufficient from an Irish transfer pricing perspective as long as the documentation is in English.

What are the major elements required or recommended to be included in a transfer pricing study?

There are no specific requirements set down in the legislation, but the relevant documentation must clearly identify:

- associated persons for the purposes of the legislation
- the nature and terms of transactions within the scope of the legislation
- the method or methods used to determine the price of the transactions, including any study of comparables and any functional analysis undertaken
- how that method has resulted in arm's length pricing, or, where it has not, what computational adjustments were required and how they were calculated
- any budgets, forecasts or other papers containing information relied on in arriving at arm's length terms etc. or in calculating any adjustment made in order to satisfy the requirements of legislation
- the terms of relevant transactions with both third parties and associates.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, transactional net margin method.

Is there a priority among the acceptable methods?

Yes. Ireland follows the OECD Guidelines and the guidance contained within on the determination of the most appropriate method.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Documentation should be prepared on a timely basis, but no specific time deadline is outlined. Normal practice is to expect documentation within 28 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes. The standard tax appeal procedures are available.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. No specific transfer pricing penalties are included within the legislation, so the standard interest and general tax penalty provisions will apply. Under general tax penalties provision, interest arises on underpaid tax at a daily rate of 0.0219 percent. The Irish tax authorities charge penalties for three categories of negligence on the part of the taxpayer (Insufficient care, gross carelessness and deliberate default). These penalties can range from 20–100 percent of the underpayment of tax.

To what extent are transfer pricing penalties enforced?

It remains to be seen how the Irish tax authorities will apply penalties to transfer pricing transactions, as transfer pricing audits are not expected to commence until late 2012, but penalties are expected to be enforced in the same manner as general tax penalties.

What defenses are available with respect to penalties?

Sufficient documentation.

What trends are being observed currently?

Not applicable.

Special considerations

Are secret comparables used by tax authorities?

Not applicable (transfer pricing audits have not yet commenced).

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

Not applicable.

What level of interaction do tax authorities have with customs authorities?

Low.

Are management fees deductible?

Yes.
Are management fees subject to withholding?
No.

Other unique attributes?
None.

Other recent developments
The new Irish transfer pricing regime came into effect on 1 January 2011. The new regime includes many features expected of a jurisdiction introducing transfer pricing rules for the first time. It endorses the arm’s length principle and the OECD Guidelines. Its scope is confined to related party dealings that are taxable at Ireland’s corporate tax rate of 12.5 percent. There is also the inclusion of a “grandfather” clause whereby arrangements entered into between related parties prior to 1 July 2010 are excluded from the new transfer pricing rules. The new regime applies to domestic and international related party arrangements and there is an exemption for small and medium enterprises (SMEs). An SME is regarded to have fewer than 250 employees and a turnover of less than EUR50 million, or assets less than EUR43 million.

Advance pricing agreements
What APA options are available, if any?
There is no legislation that specifically empowers the Irish Revenue to enter into formal APAs. In practice, it is possible to agree on guidelines in advance of a transaction, and the Irish Revenue will adhere to them.

May a taxpayer go to the competent authority before paying tax?
No.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
The Irish double tax treaty network is extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
The Irish Competent Authority is the Director of the Direct Taxes Interpretation and International Division. There is no specific form for making a Competent Authority request. There is no specific document requirement.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
No official APA programs or requirements are in place, but the Irish tax authorities have been willing to negotiate and conclude bilateral APAs with treaty partners. The Irish tax authorities have been willing to enter into such negotiations once a case has been successfully accepted into the APA program of the other jurisdiction. It remains to be seen whether Ireland will formalize its APA procedures in light of the recent introduction of the new transfer pricing rules.

Language
In which language or languages can documentation be filed?
English and Irish.
Basic information

Tax authority name
Israel Tax Authority.

Citation for transfer pricing rules
Israel Tax Ordinance Section 85A and Israel Tax Regulations (Market Conditions Determination), 2006.

Effective date of transfer pricing rules
29 November 2006.

What is the relationship threshold for transfer pricing rules to apply between parties?
In general, any special relationship (controlled directly or indirectly by the same interest). Specifically (but not limited to): ownership or control of 50 percent or more.

What is the statute of limitations on assessment of transfer pricing adjustments?
Three years from end of year of tax return submission. May be extended in special cases.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes. The Market Conditions Survey should be prepared and a special declaration form should be submitted with the corporate tax return (form 1385).

What types of transfer pricing information must be disclosed?
Ongoing or one-time transaction, description of intra-group transaction, details and location of foreign related party to the transaction, and total transaction price. The form must be signed under the declaration that the transaction was conducted under ‘market conditions’ as described in Section 85A and the transfer pricing regulations.

What are the consequences of failure to prepare or submit disclosures?
Statutes of Limitations begins following full submission. Burden of proof falls on taxpayer.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes for all transactions, unless it is a one-time transaction with prior approval from the tax assessor.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
Penalty reduction, and shifting of burden of proof to the tax authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Transfer pricing analysis must be prepared before submission of tax return and a full study must be submitted within 60 days of request.

What are the major elements required or recommended to be included in a transfer pricing study?
Functional analysis, industry analysis, companies overview, economic analysis, selection of method, and description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods, profit split, and transactional net margin method/comparable profits method.
Plus unspecified methods.
Is there a priority among the acceptable methods?
Comparable uncontrolled price is preferable to all other methods. The transaction-based methods (cost plus or resale price) have priority over the transactional net margin method.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Within 60 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Yes — appeals, courts treaties.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
No specific transfer pricing penalties; general tax penalties.

To what extent are transfer pricing penalties enforced?
Not applicable.

What defenses are available with respect to penalties?
Documentation or negotiation.

What trends are being observed currently?
Restructuring and IP migration are under scrutiny.

Special considerations
Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No specific requirements. (In practice, Israeli tax authorities use Osiris and Amadeus databases).

What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
Yes, if conducted at arm’s length terms.

Are management fees subject to withholding?
No.

Other unique attributes?
No.

Other recent developments
Not applicable.

Tax treaty.double tax resolution
What is the extent of the double tax treaty network?
Extensive, approximately 40 countries.

If extensive, is the competent authority effective in obtaining double tax relief?
Sometimes.

When may a taxpayer submit an adjustment to the competent authority?
No formal domestic rules — depends on treaties.

May a taxpayer go to the competent authority before paying tax?
No formal domestic rules, depends on treaties.

Advance pricing agreements
What APA options are available, if any?
Unilateral and advance rulings.

Is there a filing fee for APAs?
At this stage, there are no filing fees.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA procedure is lengthy.

Language
In which language or languages can documentation be filed?
English or Hebrew.

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KPMG observation

Transfer pricing is an area of focus in Italy. The number of multinationals under scrutiny for transfer prices has largely increased, following instructions by the Italian tax authorities on tax inspection activities and the introduction of transfer pricing documentation rules.

Basic information

Tax authority name
Ministero dell’Economia e delle Finanze (Italian Ministry of Economy and Finance).

Citation for transfer pricing rules
Basic transfer pricing rules are contained in Article 110 (7) of the Italian Income Tax Code (Presidential Decree of 22 December 1986, no. 917 and subsequent amendments).

The penalty protection regime for taxpayer preparing transfer pricing documentation is contained in Article 1, paragraph 2-ter of Legislative Decree of 18 December 1997, no. 471, introduced by Article 26 of Law Decree no. 78 of 31 May 2010, converted into Law no. 122 of 30 July 2010.

Documentation rules are contained in the Decision of the Commissioner of Italian Revenue Agency dated 29 September 2010.

Effective date of transfer pricing rules
1 January 1988.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of greater than 50 percent, based on voting power, share capital, and parties that are under common control.

What is the statute of limitations on assessment of transfer pricing adjustments?
Four years from filing date of the relevant tax return. The exact term is 31 December of the fourth year subsequent to the one in which the tax return is filed. In the event of a violation implying criminal sanctions as provided for by the tax criminal law (legislative decree no. 74 dated 10 March 2000), the terms for an assessment of the tax periods during which the crime was committed are doubled.

What are the consequences of failure to prepare or submit disclosures?
The disclosure of existence of transfer pricing documentation is one of the conditions required to prevent application of the ordinary tax penalties that would apply in the case of transfer pricing adjustments. Therefore, a failure to prepare or submit disclosures would mean that penalties are applied to taxpayers.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Disclosure of the existence of intra-group relationships and, from fiscal year 2010, of transfer pricing documentation, is requested in the tax return. The amount of costs and revenues relating to intra-group transactions must also be disclosed in the tax return. A description and amount of intra-group transactions must also be indicated in the annual financial statements.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No, but documentation is required for penalty protection.

There is no materiality threshold for having to prepare transfer pricing documentation. Nevertheless, entities classified as small-to-medium sized, whose turnover is less than EUR50 million, will benefit from simplified procedures for the updating/preparation of the documentation.
Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Penalty protection has recently been introduced for taxpayers that make transfer pricing studies available during a tax audit. In addition, preparing and maintaining a transfer pricing study may reduce the risk of challenges, and consequent claims for additional taxes, on intra-group transactions.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

In order to benefit from penalty protection, the existence of transfer pricing documentation must be communicated to the tax authorities in advance, and as previously noted, documentation must be considered to be “appropriate” by the Italian tax authorities. Documentation must be contemporaneous and, in any event, it must be handed over to the tax authorities upon their request during a tax audit in a timely manner (10 days).

What are the major elements required or recommended to be included in a transfer pricing study?

The recent Decree Law no. 78/2010 makes reference to the guidance provided by the OECD Guidelines and the EU Code of Conduct on Transfer Pricing Documentation for the content of the transfer pricing documentation. Consequently, the documentation must follow the “Masterfile/Country specific documentation” concept, depending on the qualification of the company (i.e., holding, sub-holding or subsidiary) and contain at least:

- general description of the business
- general description of the multinational group
- description of the intra-group transactions
- functional analysis; description of the transfer pricing policy
- comparability analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Methods indicated in the OECD Guidelines.

Is there a priority among the acceptable methods?

The OECD hierarchy of methods is applied: the comparable uncontrolled price method is recommended, followed by the other traditional transactional methods (resale price, cost plus).

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The documentation must be submitted in a timely manner, i.e., within 10 days from request. Supplementary information must be provided within seven days of request or in a longer time period depending on the complexity of the transaction, to the extent that such period is consistent with the time of the audit. According to Italian law, tax audits must be finalized in a maximum of 30 working days, which can be extended by an additional 30 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes. The taxpayer may choose from a range of different dispute resolution options.

- Agreement on the “note of inspection” (adesione al pvC), which implies accepting in full all the adjustments proposed subsequently to a tax inspection and paying the relevant taxes, penalties and interest due within 30 days. Under this procedure, penalties are reduced to one-sixth of the amount of taxes due.
- So-called “voluntary assessment procedure” (accertamento con adesione), which implies a negotiation with the tax authorities, in order to reduce the amount of the adjustment and consequent additional taxes, penalties and interest. Under this procedure, the amount of penalties is reduced to one-third of the final amount of taxes resulting from the agreement. This procedure interrupts the terms for litigation and – if an agreement is reached – no further litigation is possible.
- “Judicial conciliation” (conciliazione giudiziale), which consists of reaching an agreement with the tax authorities during the litigation phase but before the first hearing of the tax court. In this case, a reduction of penalties is provided up to 40 per cent of the amount of taxes resulting from the agreement.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. If the taxpayer does not qualify for the penalty protection regime, general tax penalties apply in an amount ranging from 100 to 200 percent of the additional taxes resulting from the transfer pricing adjustments.

What defenses are available with respect to penalties?

“Appropriate” documentation, as detailed previously. In cases where no documentation is prepared, or if it is not be considered as “appropriate” to qualify for penalty protection, penalties can be reduced under the above described dispute resolution options.

What trends are being observed currently?

Over the last few years, the attention of tax authorities on intra-group transactions during tax audits has increased and the number of audits (i.e. inspections and assessments) on intra-group transactions within multinational groups has risen. Transfer pricing audits are usually carried out by more skilled officials and/or specifically dedicated departments of the tax authorities.
Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

In principle, the presence of local comparables in a benchmarking set is preferred, although it is recognized that the choice between local comparables and broader sets depends on the geographical scope of the transaction under analysis.

Do tax authorities have requirements or preferences regarding databases for comparables?

No. The database should be selected depending on whether the benchmarking study is performed in order to identify local comparables (Aida) or international comparables (Amadeus).

What level of interaction do tax authorities have with customs authorities?

Low. The interaction appears to be very low in practice, although in principle it has been expressly admitted that in some cases the tax authorities may take into consideration the value defined for customs purposes in order to appraise the transfer prices.

Are management fees deductible?

Yes. However, note that deduction of management fees, in addition to compliance to transfer pricing rules, is also subject to certain domestic rules requiring compliance to the so-called “inherence” requisite. Accordingly, apart from respect of the arm’s length principle, deduction of management fees requires the demonstration of the actual provision of services and of the potential benefit for the recipient, to be provided by means of appropriate documentation, supplementary to transfer pricing documentation.

Are management fees subject to withholding?

No. Withholding tax is not applied on services. However, should the management fee include compensation for the exploitation of an intangible property or industrial, commercial, or scientific equipment, the withholding tax should be applied.

Other unique attributes?

Some indications about arm’s length royalty rates have been provided in the Instructions of the Italian Ministry of Economy and Finance, which are currently used as reference during tax audits and, in some cases, also by tax courts. However, their widespread application is under discussion.

Other recent developments

Additional clarifications on the newly issued transfer pricing documentation rules were provided with Circular Letter no. 58/E, dated 15 December 2010.

Tax treaty/ double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

It is generally effective within the EU under the EU Arbitration Convention. Outside the EU, competent authority procedures cannot be considered as effective. However, there are some initial signs of improvement.

When may a taxpayer submit an adjustment to the competent authority?

The procedure is regulated in accordance with the applicable tax treaties (if any) either by referring to the corresponding adjustment provided by Article 9 (2) of the OECD Model Tax Convention or to the mutual procedure provided by Article 25 of the OECD Model Tax Convention. In addition, for adjustments between EU countries, the Arbitration Convention would apply.

May a taxpayer go to the competent authority before paying tax?

No formal rules.

Advance pricing agreements

What APA options are available, if any?

Unilateral advance rulings are expressly provided by the law but bilateral and multilateral advance rulings are also admitted in practice.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

Yes, the APA office sometimes issues public reports containing statistics on APAs under discussion or concluded.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

The number of APAs under discussion in Italy has largely increased, although the timing for the conclusion of an APA is rather long (average time required is 18–20 months), as the tax authorities have limited resources dedicated to APAs.

Language

In which language or languages can documentation be filed?

Italian. The only exception is for the Masterfile prepared by an EU holding company and submitted by an Italian sub-holding company, which can be drafted in English. Intra-group agreements, which must be attached to the transfer pricing report, may also be provided in English.

KPMG in Italy

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Japan

KPMG observation

The 2011 Tax Reform, following on from the 2010 one that included the Japanese version of a transfer pricing documentation rule, introduces several important concepts and tries to follow the 2010 OECD Guidelines, such as the most appropriate method rule, arm’s length range and secret comparables etc. Transfer pricing is a key focus of Japanese tax authorities on international taxation, and there will be increased enforcement activity in this area going forward.

Basic information

Tax authority name
Kokuzei-cho; National Tax Agency (NTA).

Citation for transfer pricing rules
Special Taxation Measures Law, Article 66–4 and Enforcement Cabinet Order of Special Taxation Measures Law, Article 39–12(8).

Effective date of transfer pricing rules
1 April 1986, in general.
1 April 2004, for transactional net margin method.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of 50 percent or greater.

What is the statute of limitations on assessment of transfer pricing adjustments?
Six years after the fiscal year-end in principle but details are complicated.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes, with the tax return.

What types of transfer pricing information must be disclosed?
Need to disclose the nature of the transaction and name of the counterparties, the selected transfer pricing methods, the amounts of the transactions, and whether any transactions are subject to an APA. This information is required on specific forms within the tax return.

What are the consequences of failure to prepare or submit disclosures?
Nothing special in the regulations.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No, but see below.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Preparation of transfer pricing documentation significantly reduces the risk of presumptive taxation. If the taxpayer fails to present or submit, without delay, certain information (essentially a transfer pricing study) requested by the transfer pricing examiner during a transfer pricing audit, the tax authorities have the authority to “presume” an arm’s length price based on, for instance, information gathered through “secret” inquiries and inspections of the taxpayer’s peer companies (such authority to gather information from peer companies is specified under Article 66–4(9) (now 66–4(8)), and to reassess the taxpayer’s taxable income accordingly. The presumptive taxation provision is essentially a taxpayer sanction, and the “presumed” arm’s length price does not necessarily have to be an arm’s length price, which is defined in other sections of the Japanese transfer pricing-related regulations.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The taxpayer must present or submit the transfer pricing study upon request from the transfer pricing examiner “without” delay. The law does not specify what constitutes a delay. However, it is expected the tax authorities will use 30 days from the date of the request as a general reference period.

What are the major elements required or recommended to be included in a transfer pricing study?
Specific documents required are listed under Special Taxation Measures Law (STML) Enforcement Regulations Order, Article 22–10, but major elements include...
company overview, description on intra-group transactions, functional and risk analysis, industry analysis, selection of method, description of comparables, and economic analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No, but if KPMG in Japan wishes to attend the transfer pricing audit to support the taxpayer, it would need an appropriate license. KPMG in Japan’s member firm professionals have this license.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and transactional net margin method.

Is there a priority among the acceptable methods?
OECD Guideline’s “most appropriate method.”

If there is no priority of methods, is there a ‘best method’ rule?
See above.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
No specific rule, but normally 30 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Domestic administrative protest procedures available to the taxpayer include a request for reinvestigation followed by a request for reconsideration and appeal at District court level.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. General tax penalties only.

To what extent are transfer pricing penalties enforced?
Not applicable to the same extent as general tax penalties. In practice, there are no transfer pricing penalties per se; if there is an adjustment based on transfer pricing, additional tax will be assessed.

What defenses are available with respect to penalties?
Not applicable.

What trends are being observed currently?
More audits on intangible transactions. Also on transactions within Asia.

Special considerations
Are secret comparables used by tax authorities?
In very limited cases. If used, they have reduced evidence value in court.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Definitely yes. It is usually not acceptable to include no Japanese comparables where the Japanese entity is the tested party.

Do tax authorities have requirements or preferences regarding databases for comparables?
They have access to Osiris, but they have no special preferences.

What level of interaction do tax authorities have with customs authorities?
Very low.

Are management fees deductible?
Yes, if they are arm’s length.

Are management fees subject to withholding?
No.

Other unique attributes?
None.

Other recent developments
See KPMG observation on 2011 Tax Reform, above.
**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to the competent authority?
Where double taxation occurs, or the possibility of occurrence of double taxation is very high. In practice, after an assessment is issued and tax is paid.

May a taxpayer go to the competent authority before paying tax?
Please see above.

**Advance pricing agreements**

What APA options are available, if any?
Unilateral, bilateral, and multilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Very successful.

**Language**

In which language or languages can documentation be filed?
Japanese.

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KPMG in Japan

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Kenya

KPMG observation

As the introduction of the transfer pricing rules in Kenya is fairly recent, the KRA (tax authority) is still in the process of developing capacity to conduct transfer pricing audits. It is expected that in the coming years a significant number of transfer pricing adjustments will be made as the KRA will become more experienced and capable of conducting transfer pricing audits.

Basic information

Tax authority name
Kenya Revenue Authority (KRA).

Citation for transfer pricing rules
Legal Notice no. 67 of 2006 and Section 18 (3) of the Income Tax Act (ITA).

Effective date of transfer pricing rules
1 July 2006.

What is the relationship threshold for transfer pricing rules to apply between parties?
An enterprise will be deemed to be related to another:

• If one of the enterprises participates directly or indirectly in the management, control or capital of the other enterprise or a third person participates directly or indirectly in the management, control or capital of both enterprises.

• Where an individual who participates in the management, control or capital of the business of one, is associated by marriage, consanguinity or affinity to an individual who participates in the management, control or capital of the other.

The transfer pricing rules apply to cross-border transactions and to transactions undertaken between a permanent establishment and its head office or other related branches.

What is the statute of limitations on assessment of transfer pricing adjustments?
Seven years from the year to which the income relates.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
The ITA does not require taxpayers to include copies of transfer pricing documentation when submitting the annual tax return.

However, transfer pricing documentation should be reviewed annually to ensure that it remains relevant with changes in the business environment. According to the transfer pricing rules, (Rule No. 10), documentation can be requested at any time by the Commissioner and, therefore, only needs to be supplied upon request.

What types of transfer pricing information must be disclosed?
• the selection of the transfer pricing method and the reasons for the selection

• the application of the method, including the calculations made and price adjustment factors considered

• the global organization structure of the enterprise

• the details of the transaction under consideration

• the assumptions, strategies, and policies applied in selecting the method

• other background information as may be necessary regarding the transaction.

What are the consequences of failure to prepare or submit disclosures?
The consequences of failure to prepare or submit transfer pricing documentation which contains related party disclosures, includes the risk of shifting the burden of proof, penalties, interest on additional taxes, higher audit risk and the risk of double taxation.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, there is a statutory requirement to prepare a transfer pricing policy for the following transactions:

• the sale or purchase of goods

• the sale, purchase or lease of tangible assets

• the provision of services

• the transfer, purchase or use of intangible assets
the lending or borrowing of money
other transactions which affect the profit or loss of the enterprise involved.

Failure to document a transfer pricing policy may result in price adjustments and subsequent tax on the adjusted transaction price.

Compliance penalties: Taxpayer’s failure to timely file the required returns and documentation is subject to an additional tax of 5 percent of the normal tax or 10,000 Kenyan shillings (KES), whichever is higher.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
• shifting burden of proof
• penalty protection
• reduced tax exposures
• helps the company in the realignment of its activities, risks and assets
• reduces the risk of tax audits and adjustments
• if KRA requests documentation they expect the taxpayer to have documentation prepared for submission.

Where the Commissioner has made a transfer pricing adjustment that results in the collection of any tax due and unpaid, such tax shall be deemed to be additional tax which, under the ITA will attract penalties (20 percent of the unpaid tax) and interest for the period of time the tax has been understated (2 percent per month or part thereof shall be charged on the amount of tax remaining unpaid for more than one month after the due date until payment).

Any taxpayer who, in relation to any year of income, knowingly omits from his return of income any amount shall be liable to additional tax equal to double the difference between the tax chargeable according to the return made by him, and the normal tax properly chargeable in respect of the total income assessable. If the taxpayer acted with negligence, a penalty equal to one half of such additional tax is payable.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Where a person claims to apply arm’s length pricing on transactions with related non-resident entities such person is required to develop and document an appropriate transfer pricing policy.
Such documentation should be provided to the Commissioner on request.

What are the major elements required or recommended to be included in a transfer pricing study?
A comprehensive transfer pricing study should include:
• industry overview
• company overview including global organization structure of the enterprise
• intra-group transactions under consideration
• analysis of functions, risks and assets
• selection of transfer pricing method and the reasons for the selection, including the assumptions, strategies and policies applied in selecting the method
• economic analysis including the application of the method, the calculations made and price adjustment factors considered
• other background information as may be necessary regarding the transaction.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and transactional net margin method.

Other method as may be prescribed by the Commissioner from time to time, where in his opinion and in view of the nature of transactions, the arm’s length price cannot be determined using any of the methods set out previously.

Is there a priority among the acceptable methods?
Rule No.4 of the transfer pricing rules states that the taxpayer may choose a method to employ in determining the arm’s length price from among the methods set out in Rule No.7 (these include the methods set out above).

However, the Commissioner may from time to time prescribe such other methods where in his opinion and in view of the nature of transactions, the arm’s length price cannot be determined using any of the above stated methods.

If there is no priority of methods, is there a ‘best method’ rule?
Yes, the taxpayer should apply the most appropriate method regarding the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction.
The best method is seen as the method that:
• best approximates the arm’s length
• uses the most reliable data
• has the fewest adjustments to the data.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
KRA may require a taxpayer to furnish documentation within no less than 30 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
An aggrieved taxpayer has recourse through an appeal procedure system established under the Income Tax Act. The order of appeal for an adjustment proposed by the tax authorities is as follows:
• first level: Local Committee
• second level: High Court of Kenya
• third level: Court of Appeal
• fourth level: Supreme Court of Kenya.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
A sustained adjustment results in unpaid corporation tax. Any assessment raised is arrived at based on the impact of the existing transfer pricing policy on taxable profits and consequently on corporation tax. Therefore, in arriving at the tax payable on the revised taxable profit, the KRA applies the corporation tax rates of 30 percent on residents and 37.5 percent on non-residents.
Under the Income Tax Act, penalties accrue on unpaid taxes at the rate of 20 percent. Additionally, the principal tax outstanding attracts interest at 2 percent per month over the period it remains unpaid. However, in applying the in duplum rule, the interest is capped to a maximum of the principal tax assessed on adjustment.

To what extent are transfer pricing penalties enforced?
Transfer pricing penalties are enforceable to the full extent of the Income Tax Act. The Commissioner may recover the taxes due from the person assessed e.g. through attaching bank balances including fixed assets.

What defenses are available with respect to penalties?
Documentation forms the basis for penalty protection. A taxpayer is expected to capture all justification in the transfer pricing documentation for arm’s length prices charged on intra-group transactions.

What trends are being observed currently?
The tax authority is vigilant on training its staff on transfer pricing to ensure enforcement of the transfer pricing rules. Additionally, the tax authority has subscribed to Orbis as a benchmarking tool. This tool has over 50 million companies in its database and is more advanced than the benchmarking tools currently in use by most tax advisors.

The KRA is conducting more audits on multinational corporations and levying penalties on sale of goods and services, financial transactions, shared services etc.

Special considerations
Are secret comparables used by tax authorities?
No secret comparables are used by the revenue authorities.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No. The revenue authorities have not prescribed any databases. However, they have expressed a preference for local comparables and have intimated possibilities of making country risk adjustments where comparables from different geographical locations such as Europe are used.

Do tax authorities have requirements or preferences regarding databases for comparables?
No.

The KRA does not have requirements or preferences regarding databases to be used for comparables. However the larger the database to be used, the more optimal the transfer pricing benchmarking results. As stated earlier, KRA is at an advantage as it uses a database (Orbis) with more company information. This may result in differing benchmarking results as compared to other databases, consequently resulting in tax exposures to the particular companies involved.

What level of interaction do tax authorities have with customs authorities?
In Kenya, all domestic taxes are administered under the Commissioner of Domestic Taxes of the KRA. These domestic taxes include: Customs and Excise Duties, Value Added Tax, and Corporation Tax among others. As such,
the level of interaction amongst these tax administration departments is relatively high.

Are management fees deductible?
Yes, except if the management fees are paid by a branch to its non-resident head office.

Are management fees subject to withholding?
Management fees are subject to withholding tax at the rate of 20 percent if paid to a non-resident person. However, this rate may vary depending on whether Kenya has a Double Tax Agreement (DTA) with the country which the management fees are being paid to.

On the other hand, withholding tax is not applicable on management fees paid by a branch to its non-resident head office.

Other unique attributes?
Before the issuance of the specific transfer pricing legislation, the KRA has engaged two Kenyan multinationals in the High Court with regard to transfer pricing issues.

The KRA has also proposed to amend the annual tax return to include a section on transfer pricing disclosures.

Other recent developments
From a country perspective, the Government has embarked on the enhancement of the capacity of the KRA in terms of staff skills in the area of transfer pricing, not only for the purposes of keeping abreast of emerging tax planning trends, but also to ensure that adequate measures are put in place to address tax avoidance whenever it arises.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
Not applicable.

When may a taxpayer submit an adjustment to the competent authority?
Not applicable.

May a taxpayer go to the competent authority before paying tax?
Not applicable.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance rulings of any kind are available. However, a taxpayer may seek a nonbinding opinion from the KRA on the interpretation or administration of the tax provisions.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
English.
A written transfer pricing study is not required under the current legislation. Nevertheless, in practice, the tax authority always requests supporting documentation when inspecting transactions between related entities, which is becoming more and more common in the current environment. This can make life easier at first, as the tax authority initially will accept whatever supporting documentation is provided but, on the other hand, it is difficult to predict how much and which evidence will ultimately be needed to show that arm’s length prices were used.

**Basic information**

**Tax authority name**

Valsts ienemumu dienests.

**Citation for transfer pricing rules**

General rules are set in the Latvian law “On Corporate income tax.” The related Cabinet of Ministers regulations No. 556 of 21 December 2009 provide the methods to be used when determining arm’s length prices. However, there are no specific transfer pricing rules issued yet. The tax legislation allows using the OECD Guidelines when choosing a transfer pricing method since the methods approved in Latvia are the same as approved and proposed by the OECD.

**Effective date of transfer pricing rules**

1 April 1995, in general. 1 July 2006, for transactional net margin method and profit split.

**What is the relationship threshold for transfer pricing rules to apply between parties?**

Ownership of greater than 20 percent, based on voting power, share capital, and are under common control.

**What is the statute of limitations on assessment of transfer pricing adjustments?**

Three years from filing date.

**Transfer pricing disclosure overview**

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g., with the tax return)?

Yes, an entity is required to submit disclosures on transfer pricing to the tax authority through the annual corporate income tax return.

**What types of transfer pricing information must be disclosed?**

Description and amounts of related party transactions, and transfer pricing rules applied or a confirmation that prices have not been at arm’s length.

**What are the consequences of failure to prepare or submit disclosures?**

A penalty can be applied for late filing of a tax return varying from 50–500 Latvian lati (LVL) (EUR71–711). If no return is filed, the maximum penalty can be applied i.e., LVL500 (EUR711).

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e., can the taxpayer be penalized for mere failure to prepare a study?

No.

The proposed draft legislation that has not yet come into force states that if the annual net turnover of a Latvian resident or a permanent establishment in Latvia exceeds LVL1 million (EUR1,422,871) there is a requirement to prepare a transfer pricing study.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Shifting of burden of proof, and requirement in practice/expectation of authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

There are no specific regulations. However, the practice of the tax authority shows that it allows the taxpayer to submit the transfer pricing study within 30 days of the tax authority’s request for justification of the transfer prices applied.
Based on KPMG in Latvia’s experience, an extension of this term could also be possible, but it has to be negotiated individually for each case.

What are the major elements required or recommended to be included in a transfer pricing study?

There are no rules on the mandatory contents of the transfer pricing study, although the tax authority has published on its website the following recommendations to evidence the arm’s length of prices:

- taxpayer’s industry description
- information about the taxpayer’s organizational and legal structure
- information on the taxpayer’s business strategy
- description of transactions with related parties and the legal provisions
- information about the functions performed by related parties, risks undertaken and assets used, as well as the description of roles and responsibilities of the parties involved
- description of how the most appropriate transfer pricing method was chosen
- description of comparables
- other documents justifying the transactions between related parties, such as mutual agreements, company council’s decisions etc.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, and transactional net margin method.

Is there a priority among the acceptable methods?

Comparable uncontrolled price method, resale price method and cost plus method have priority.

If there is no priority of methods, is there a ‘best method’ rule?

No.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal Valsts ienemumu dienests (tax authority) practice is to expect documentation within 30 days of request. However, practice shows that the term could be extended if the entity agrees this individually with the tax authority.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes. If the taxpayer disputes the decision of the tax authority on transfer prices, it can submit an application to the Transaction Evaluation Commission (in Latvian – Darijumu novertējuma komisija) which has been established under the Ministry of Economics of the Republic of Latvia. Generally the Commission issues a decision on the market value of the particular transaction within 30 days after the receipt of the taxpayer’s application. If the tax authority does not agree to it and the matter is taken to court, the Commission’s decision has a recommendation nature.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only: 30 percent to 50 percent of the tax avoided for transfer pricing adjustments, 70 percent of the tax avoided where the purpose is to pay little or no tax, and 100 percent if the assessment is made for a repeated adjustment.

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

Transfer pricing documentation.

What trends are being observed currently?

The tax authority’s interest in transfer pricing has increased and therefore pricing in all intra-group transactions may be questioned.

Special considerations

Are secret comparables used by tax authorities?

Unknown i.e. KPMG in Latvia has no information about the usage of any secret comparables.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, if local comparables can be found. If local comparables are not available, a European benchmarking study would be acceptable.

If local comparables are found by the tax authority but they are not included in the entity’s benchmarking study that covers a broader geographical area, the tax authority could reject the results of the entity’s transfer pricing study.
Do tax authorities have requirements or preferences regarding databases for comparables?
No.
The tax authority itself uses the Amadeus database. However, there are no requirements or recommendations as to the use of any specific database. Some entities prefer to use the Amadeus database because it is more likely that the tax authority would obtain the same or at least similar benchmarking study results as the entity.

What level of interaction do tax authorities have with customs authorities?
High. It is a combined authority.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
Yes.

Other unique attributes?
None.

Other recent developments
In May 2011, amendments in the local legislation were proposed relating to the introduction of transfer pricing rules on APAs, the content of transfer pricing reports, and other issues. However, it is not known exactly when such amendments could be effective (They were expected to come into force at the end of 2011. However, it now seems they may come into force during the 2012 calendar year or even 2013).

The draft legislation states the following criteria for entities that will be required to prepare transfer pricing documentation:
- If a local entity has related foreign entities and they engage in intra-group transactions.
- If the net turnover of the local entity exceeds LVL1 million (EUR 1,422,871) and it has intra-group transactions with foreign related entities, the transfer pricing report has to include particular information as listed in the draft legislation (very similar to the present tax authority’s recommendations as previously mentioned).
- The transfer pricing report has to be maintained for a period of five years and it has to be provided to the tax authority within one month after the tax authority’s request.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
No formal rule.

May a taxpayer go to the competent authority before paying tax?
Yes.

Advance pricing agreements

What APA options are available, if any?
Advance rulings, no practice. One of the amendments proposed to the tax legislation in 2011 relates to the introduction of APAs.

They were expected to come into force at the end of 2011. However, it now seems they may come into force during the 2012 calendar year or even 2013.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language

In which language or languages can documentation be filed?
Based on general requirements, all documents could be requested in Latvian.
Lithuania

KPMG observation

Transfer pricing rules have been implemented in Lithuania as of 1 January 2004 and generally are a condensed form of the OECD Guidelines. To date, there have been no transfer pricing cases investigated by the courts; therefore the Lithuanian transfer pricing regulations are in the development process.

During the past few years there has been an increasing focus on transfer pricing; the tax authorities have started requesting that companies would submit their transfer pricing documentation for review. Furthermore, the Lithuanian tax authorities have direct access to the Amadeus database which allows the tax authorities to analyze the benchmarking studies and perform adjustments.

Also, the tax authorities are increasing their investigation of transactions involving various types of services and management fees.

Basic information

Tax authority name
Valstybine mokesciu inspekcija (State Tax Authority).

Citation for transfer pricing rules
Order No. 1K-123 of the Minister of Finance (9 April 2004).

Effective date of transfer pricing rules
1 January 2004.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership higher than 25 percent, based on voting power, or under common control, or in cases where the parties can otherwise influence each other.

What is the statute of limitations on assessment of transfer pricing adjustments?
Generally the current year and five previous taxable years.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Disclosures related to transfer pricing (form FR0528 – transactions with related parties) must be submitted to the tax authorities with the tax return. Transfer pricing documentation must be prepared but shelved.

What types of transfer pricing information must be disclosed?
Annual statement (form FR0528) should include the following information:
- associated parties
- number of transactions
- type of transactions performed with each associated party (sale/purchase of tangible fixed assets, sale/purchase of intangibles; sale/purchase of raw materials, goods, production items; provision/acquisition of financial services; provision/acquisition of other services; sale/purchase of shares, derivatives; lease of real estate and other property, as well as any other transactions).

The statement will specify income received/expenses incurred for each type of transaction.

A transfer pricing study must be prepared every year (if the criteria is met) but submitted to tax authorities only on a request.

What are the consequences of failure to prepare or submit disclosures?
Penalties from 200 to 500 Lithuanian Litas (LTL) for non-submission may be imposed.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions.
A requirement to prepare a written transfer pricing study is applicable to companies if at least one of the criteria listed below is met:

- Sales income of the entity before the taxable year when the transaction was actually carried out exceeded LTL10 million (approximately EUR2.9 million).
- Financial companies, credit institutions or insurance companies.
- Foreign entities engaged in activities through permanent establishments, if their foreign entities’ attributable income exceeded LTL10 million (approximately EUR2.9 million).

If one of these criteria is met, a transfer pricing study should include all transactions with associated parties.

Failure to provide a written transfer pricing study may result in an administrative penalty.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The following benefits can be identified:

- Shifting of burden of proof; tax authorities will accept the methods used by the taxpayer unless it is proved that the methods are inappropriate.
- Mitigating the risk that the tax authority will propose adjustments based on secret comparables (the tax authorities are entitled to use comparables/information not available to the taxpayer if the taxpayer has provided incorrect information).
- Penalty protection.
- Meets the tax authority’s expectations.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The law states that the taxpayer should be in possession of transfer pricing documentation. There are no guidelines on when the transfer pricing documentation should be prepared. Documentation must be submitted within 30 days of a written request from the tax authorities.

What are the major elements required or recommended to be included in a transfer pricing study?

A transfer pricing study will include these major elements:

- company overview
- industry analysis
- functional analysis
- selection of method
- description of comparables
- comparability analysis (benchmarking).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, and transactional net margin method.

Is there a priority among the acceptable methods?

Yes. There is a priority rule in Lithuanian legislation: first, a taxpayer has to choose the comparable uncontrolled price method. If the information available is not sufficient, the resale price method or the cost plus method will be chosen before the application of the profit-based methods.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal tax authority practice is to expect documentation within 30 days of the request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

The procedure of ordinary dispute resolution should be followed, i.e. the taxpayer may file a claim with the central tax authorities or with the Commission of Tax Disputes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Generally, the tax penalties imposed range from 10 to 50 percent of the outstanding tax amount.

To what extent are transfer pricing penalties enforced?

Often.
What defenses are available with respect to penalties?
The penalties can be reduced by up to 10 percent of the outstanding corporate income tax if the taxpayer properly communicates with the tax authorities and presents all requested documents/explanations/requested information.

What trends are being observed currently?
Number of tax audits (by the tax authority) related to transfer pricing issues is increasing, also number of disputes and proposed tax adjustments has increased.

Special considerations
Are secret comparables used by tax authorities?
Yes, the tax authorities can use comparables which are not disclosed to the taxpayer.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No.

What level of interaction do tax authorities have with customs authorities?
High.

Are management fees deductible?
Generally, yes.

Are management fees subject to withholding?
No.

Other unique attributes?
Not applicable.

Other recent developments
As of 1 January 2012 it is possible to apply for an APA.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive. Currently, Lithuania has 48 double tax treaties.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience (in transfer pricing cases).

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
Not permitted.

Advance pricing agreements
What APA options are available, if any?
Unilateral and bilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No information yet.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable yet.

Language
In which language or languages can documentation be filed?
Documentation can be prepared in any language but it must be translated into the Lithuanian at the request of the tax authorities.

KPMG in Lithuania

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KPMG observation

Transfer pricing is becoming a hot topic in Luxembourg. The focus is currently on financing structures but it is rapidly expanding to include allocation of profits to branches, licensing, change of business models and restructuring.

Basic information

Tax authority name
Ministère des Finances.

Citation for transfer pricing rules
Luxembourg Income Tax Code; General Tax Law, Article 56, Article 97 (1), Article 164; paragraph 5 and 6 StAG. Circular LIR 164/2 of 28.01.11. Circular LIR 164/2 bis of 08.04.11.

Effective date of transfer pricing rules
28 January 2011 for intra-group financing activities. Not applicable for all other cases.

What is the relationship threshold for transfer pricing rules to apply between parties?
Transactions with non-residents, whether directly or indirectly, which do not comply with the arm’s length principle (Article 56 LIR) and such transactions with direct or indirect shareholders or persons close to them (Article 164 LIR). No thresholds apply. For intra-group financing transactions, threshold as defined by Article 9(1) of the OECD Model Tax Convention for associated enterprises.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from the issuance of the tax assessment by the tax authorities (10 years in the case of fraud).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes for intra-group financing activities. Not applicable for all other cases.

What types of transfer pricing information must be disclosed?
On a general basis, there is no specific required information to be disclosed. However, disclosures related to transactions of special interest to the tax authority or related to specific computations/tax treatment must be made in the tax returns in order to evidence that the pricing and/or tax treatment previously agreed is respected. These disclosures are not listed in any specific regulation and are mainly based on the Luxembourg administrative practice. Where an APA is submitted to the tax authorities (frequently for intra-group financing activities), a transfer pricing study must be enclosed.

What are the consequences of failure to prepare or submit disclosures?
Where no APA has been concluded, the tax authorities may consider readjusting the remuneration of a company, potentially leading to an increase of the taxable base and, thus, of the overall tax charge.

With regard to intra-group financing activities, there is a risk of exchange of information with the country of residence of the borrower and hence a potential non-application of the benefit of the double tax treaties with resultant withholding tax issues.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study? No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
For intra-group financing transactions, a transfer pricing study enclosed with an APA submission enables the taxpayer to obtain binding information from the Luxembourg Tax Authorities.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Where an APA is requested by the taxpayer, the transfer pricing study needs to be done when the APA is filed with the tax authorities.

If no APA is requested, the transfer pricing study must only be prepared in case the tax authorities challenge the arm’s length character of a remuneration in the tax returns of the company and ask for a transfer pricing justification.

What are the major elements required or recommended to be included in a transfer pricing study?

Elements based on the 2010 version of the OECD Guidelines.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, transactional net margin method, and any other method appropriate to the circumstances of the case.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a ‘best method’ rule?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

None.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

No.

Other unique attributes?

Not applicable.

Other recent developments

Transfer pricing documentation is still not required by law. However, the Luxembourg tax authorities issued on 28 January 2011 a Circular on intra-group financing companies, completed by a new circular on 8 April 2011. This reinforces the administrative practice that has been evolving over the last few months in the sense that documentation of transactions and prices is recommended (and required for intra-group financing transactions in order to obtain binding agreement from the Luxembourg tax authorities).

This circular gives taxpayers performing intra-group financing activities the opportunity to get an agreement from the tax authorities on the arm’s length character of their remuneration, where they respect specific conditions of economic and organizational substance. Many taxpayers already comply with this circular in order to get certainty on their financing transactions.
**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Almost always.

When may a taxpayer submit an adjustment to the competent authority?

After an adjustment is proposed to the taxpayer.

May a taxpayer go to the competent authority before paying tax?

Permitted.

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**Advance pricing agreements**

What APA options are available, if any?

APAs are available.

Is there a filing fee for APAs?

No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?

No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.

Currently, the APAs can be filed by the tax authorities without constraint. However, KPMG in Luxembourg is watching the administrative practice with interest as to how this will evolve.

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**Language**

In which language or languages can documentation be filed?

The documentation can be filed in English, German and French.
Malaysia

KPMG observation

Malaysia is currently in the eighth year since the official introduction of transfer pricing guidelines in 2003. While the Malaysian tax authority continues its scrutiny on the traditional related party transactions involving sales and purchases of goods and provision of intra-group services, they are now starting to enquire more on matters relating to royalty and trademark payments, as well as intra-group financing arrangements. In addition, they are also developing new concepts on marketing intangibles. This is a reflection of the fact that the Malaysian tax authorities’ level of transfer pricing sophistication has increased.

KPMG in Malaysia observe that transfer pricing audits are intensifying year by year. Previously, taxpayers might have been able to sail through a transfer pricing audit with minimum documentation. But in the last one or two years, many taxpayers are now fighting an uphill battle during transfer pricing audits, given that the Malaysian tax authorities are becoming more demanding in terms of documentation or evidence to be kept to support arm’s length pricing. As a result, some companies have taken the Malaysian tax authority (MIRB) to court. We understand that the first transfer pricing case was heard in 2010, but a decision has not been made by the court to date.

The Malaysian tax authorities are also encouraging taxpayers to apply for APAs to achieve certainty on their transfer prices rather than wait for an audit.

Basic information

Tax authority name
Lembaga Hasil Dalam Negeri (Malaysian Inland Revenue Board, or MIRB).

Citation for transfer pricing rules
The arm’s length provision is set out in Section 140A of the Malaysian Income Tax Act 1967 (the Act). Section 140A requires taxpayers to determine and apply the arm’s length price for their transactions with an associated person for the acquisition or supply of property or services. Along with the introduction of Section 140A, the concept of thin capitalization was also introduced (but implementation has been deferred until 1 January 2013).

Effective date of transfer pricing rules
Section 140A became effective from 1 January 2009. Prior to this date, transfer pricing adjustments were made based on the general anti-avoidance provision. Please note that transfer pricing guidelines have been in issue since 2003.

What is the relationship threshold for transfer pricing rules to apply between parties?
Generally, a relationship is deemed to exist if there is a shareholding relationship of more than 50 percent. However, the Malaysian transfer pricing guidelines also consider a relationship to exist if one party participates directly or indirectly in the management, control, or capital of the other party (associated parties).

What is the statute of limitations on assessment of transfer pricing adjustments?
The statute of limitation is six years upon the expiration of a particular year of assessment, except in cases of fraud, wilful default, or negligence. Malaysia is currently in year of assessment 2011. For example, in year of assessment 2011, an assessment can be issued as far back as year of assessment 2005.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Only the amount of transactions with associated persons needs to be disclosed in the annual tax return forms.

What types of transfer pricing information must be disclosed?
The amount of transactions with associated persons for the following types of transactions:
• sales to associated persons
• purchases from associated persons
• other payments to associated persons
• loans to/from associated persons
• receipts from associated persons.

What are the consequences of failure to prepare or submit disclosures?
The disclosures are part and parcel of the annual tax return forms. Failure to furnish information relating to the disclosures could render the annual tax return form as an incorrect return, which on conviction, could result in a fine of not less than 1,000 Malaysian ringgits (MYR) and not more than MYR10,000 (approximately USD3,000).

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Under the self-assessment system, the burden of proof is on the taxpayer to show that its transactions with associated persons have been carried out on an arm’s length basis. For taxpayers to prove that their transactions with associated persons are carried out on an arm’s length basis, taxpayers would be required to prepare contemporaneous transfer pricing documentation based on the Malaysian transfer pricing guidelines.

Also, the documentation serves as a first line of defense in the event of a tax audit and enables the taxpayer to appeal for a lower penalty rate with the MIRB in tax audit situations where an assessment has been revised.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Documentation should be prepared contemporaneously (that is, prepared when developing or entering into the transaction with associated persons or updated when there have been material changes in the transaction with associated persons).

There is no requirement to submit the documentation but it must be readily available upon request by the MIRB.

What are the major elements required or recommended to be included in a transfer pricing study?
The Guidelines specify that the following should be included: business description/overview; organizational structure; functional analysis; risk analysis; industry analysis; financial performance; intra-group agreements; description of controlled transactions; method selection; rejection of alternate methods; identification of comparables; economic analysis; pricing policy over the past seven-year period, product price list, and product manufacturing costs (where applicable).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
The Malaysian transfer pricing guidelines are largely based on the OECD Guidelines. They also endorse the five methods:

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, and transactional net margin.

Is there a priority among the acceptable methods?
The Malaysian transfer pricing guidelines provide that transactional methods should be considered first before profit-based methods.

If there is no priority of methods, is there a ‘best method’ rule?
As indicated above, the preference is for transactional methods, but the Malaysian transfer pricing guidelines also state that the method requiring the fewest adjustments and providing the most reliable measure of an arm’s length result is preferred by the MIRB.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
In tax audit situations, the MIRB typically expects the documentation to be available within 14–21 days from the date of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
The dispute resolution option available to taxpayers, apart from the competent authority process, is to appeal through the judicial system. In Malaysia, the first level of appeal is generally to the Special Commissioner of Income Tax through the submission of a Form Q.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Transfer pricing adjustments made during a tax audit which result in additional tax payable will be subject to a general penalty rate of 35 percent of the additional taxes payable. Based on our experience dealing with the MIRB, companies that are able to produce...
contemporaneous transfer pricing documentation may appeal for a lower penalty rate.

To what extent are transfer pricing penalties enforced?
Always.

What defenses are available with respect to penalties?
The availability of a local transfer pricing documentation prior to a tax audit will assist taxpayers to appeal for a lower penalty rate. In addition, if the taxpayer has acted in good faith and extended full cooperation during the tax audit, the MIRB will also take into account these factors.

What trends are being observed currently?
Transfer pricing audits have intensified and will continue to intensify in Malaysia. In addition to the usual focus on transactions involving sales and purchases of goods, the Malaysian tax authorities are also increasing their scrutiny on payments for intra-group services as well as looking into intra-group financing arrangements.

Common audit triggers include companies exhibiting consistent losses, fluctuating profitability or those making very low profits. Companies with significant amounts of related party transactions, especially payments for intra-group services, are also likely to be selected for a tax audit.

Where transfer pricing adjustments are made resulting in payment of additional taxes, penalties will always be imposed.

Special considerations
Are secret comparables used by tax authorities?
Yes, based on MIRB’s internal database.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes, it is a preference of the MIRB to use local comparables. The usage of foreign comparable companies in a benchmarking analysis will most likely not be sufficient to convince the MIRB of the arm’s length outcome.

Do tax authorities have requirements or preferences regarding databases for comparables?
In Malaysia, a local benchmarking analysis is carried out manually based on publicly available directories and by extracting financial accounts from the Companies Commission of Malaysia.

What level of interaction do tax authorities have with customs authorities?
Presently low. However, based on the recent 2012 Budget announcement, the Malaysian Prime Minister has stressed that enforcement measures will be enhanced through the implementation of integrated operations with other relevant agencies. As such, it is expected that there will be an increase in the level of interaction between MIRB and the Malaysian Royal Customs.

Are management fees deductible?
Yes. However, the MIRB is intensifying their review on payments for intra-group services during transfer pricing audits to determine whether the payments comply with the arm’s length principle. The MIRB has been very strict and in many recent transfer pricing audits, companies are finding it difficult to produce sufficient and reliable evidence to justify the arm’s length nature of their payments.

Are management fees subject to withholding?
Yes, if payment of the management fees is for services performed by non-residents in Malaysia. If services were performed outside Malaysia, withholding would not be applicable.

Other unique attributes?
None.

Other recent developments
In July 2011, the tax authority introduced a new form – Form MNE [1/2011] to collect certain information from selected taxpayers relating to their cross border transactions. This is in addition to the information already disclosed in the tax returns whereby the information requested via Form MNE is more detailed and specific.

The data collected through this Form will enable the MIRB to assess the transfer pricing risk of the selected taxpayers. Briefly, the Form MNE [1/2011] can be segregated into four sections:

• general information
• particulars of transaction with foreign related companies
• particulars of financial assistance with foreign related companies
• other information (this section requires the taxpayer to declare whether transfer pricing documentation has been prepared for the relevant year and to provide an overall characterization of the company).

The implementation of the Form will now allow the MIRB to prioritize their targets for transfer pricing audits. Furthermore,
the introduction of this Form can be viewed as a major step towards the introduction of formal transfer pricing returns in the future.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Sometimes.

When may a taxpayer submit an adjustment to the competent authority?
Normally, a taxpayer may initiate a mutual agreement procedure if there is a risk of double taxation and there is a treaty agreement with the foreign counterparty. In most cases, this is after being issued with the Notice of Additional Assessment. However, some taxpayers may choose to initiate a competent authority negotiation even before the issuance of the Notice of Additional Assessment.

May a taxpayer go to the competent authority before paying tax?
Yes, as mentioned above, the taxpayer is permitted to go to the competent authority even before being issued with the Notice of Additional Assessment and paying taxes. Once the Notice of Assessment is issued, the taxpayer needs to remit payment within 30 days, otherwise a penalty for late payment will be imposed.

Advance pricing agreements

What APA options are available, if any?
Effective 1 January 2009, Section 138C was introduced in the Act. Section 138C allows taxpayers to apply for APAs to reach an agreement with the MIRB on prices of goods and services that would be transacted in the future with associated persons.

An application for an APA is done via a prescribed form which contains details as may be required by the Director General of the MIRB. The MIRB has recently updated the relevant APA application forms to encourage taxpayers to consider applying for APAs.

Is there a filing fee for APAs?
At the moment, to encourage taxpayers to apply for APAs, no fees are required.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable as there are no published data on concluded APAs.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language

In which language or languages can documentation be filed?
The documentation can be prepared in Bahasa Malaysia or English.

KPMG in Malaysia

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As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com.my if you are unable to contact us via the information noted above.
Mexico has been very active in transfer pricing. The tax authority has been performing a considerable number of audits, on different industries. One hot topic is service fees paid to a foreign related party. A frequent concern is lack of sufficient evidence to establish that the services were provided, and that there was a business reason to pay for them. In many cases, the deductibility of such service fees is being challenged. Also, documentation and reporting requirements have increased considerably, so it is very important to prepare transfer pricing documentation. Failure to do so may result in non-deductibility of payments to related parties.

### Basic information

**Tax authority name**
Servicio de Administración Tributaria (SAT).

**Citation for transfer pricing rules**
Ley del Impuesto Empresarial a Tasa Unica (Mexican Business Flat Tax Law) Article 18-III.

**Effective date of transfer pricing rules**

What is the relationship threshold for transfer pricing rules to apply between parties?
Direct or indirect ownership of capital, administration or control. No specific threshold for the entities to be considered related parties (i.e. even if there is a 1 percent ownership of the shares, the entities are considered related).

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from filing date of the tax return.

### Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?

- **Transfer Pricing Information Return for Cross-border Intra-group Transactions:**
  This information return must be filed by all companies conducting cross-border intra-group transactions with their foreign related parties, with the exception of transactions covered by the Maquila program.

  Companies that file a statutory tax audit report must also submit the following appendices with regard to transfer pricing:
  - **Appendix 32 of the Statutory Tax Audit Report (Dictamen Fiscal):**
    There is certain information that must be disclosed in this appendix, such as the details of the intra-group transactions carried out by the related party, information related to the related party, as well as some details of the analysis. The filing of this appendix is the responsibility of the taxpayer.
  - **Appendix 33 of the Statutory Tax Audit Report (Dictamen Fiscal):**
    Different information must be provided with regard to whether the taxpayer has documented the arm’s length nature of all domestic and cross-border intra-group transactions, and some tax implications derived from transfer pricing. The filing of this appendix is the responsibility of the taxpayer.

- **Transfer Pricing Questionnaire:**
  The external auditors of the Mexican taxpayer filing the Statutory Tax Audit Report will also have to complete a transfer pricing questionnaire. This questionnaire is the auditor’s responsibility, and it covers what the auditor reviewed relating to transfer pricing documentation.

Companies that meet the threshold for filing the Dictamen Fiscal but choose not to do so must also submit additional information that is similar to the Appendices 32 and 33 of the Dictamen Fiscal.
What are the consequences of failure to prepare or submit disclosures?

Tax authorities might deny the tax deductions of the intra-group transactions that represent expenses for the Mexican taxpayer, (i.e. inbound transactions), if the Mexican taxpayer did not comply with the obligation of preparing the transfer pricing study or in those cases where the information return of cross-border intra-group transactions was not filed.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions. Transfer pricing documentation is required by Mexican legislation. However, taxpayers whose revenues during the previous fiscal year did not exceed 13 million Mexican pesos (MXN) are not required to produce supporting documentation with regard to cross-border Intra-group transactions. This exception to producing documentation does not apply to domestic intra-group transactions. In addition, there is no exception to the requirement of conducting the transactions at arm’s length.

According to the Federal Fiscal Code, there is no specific penalty for not preparing supporting transfer pricing documentation. However, if a taxpayer does not comply with the transfer pricing documentation requirements stated in Fractions XII and XV of Article 86 of the Mexican Income Tax Law, Mexican tax authorities might deny the deduction of expenses resulting from the intra-group transactions with foreign related parties.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Article 76 of the Federal Fiscal Code provides for a 50 percent reduction in the penalty imposed for underpaid taxes or for excess tax loss filed due to transfer pricing, if the taxpayer keeps supporting transfer pricing documentation.

The burden of proof is also shifted to the tax authority, when a company has transfer pricing documentation.

Also, having documentation will reduce the risk of a disallowance of the deduction for tax purposes of the transactions performed with related parties.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Companies filing the Dictamen Fiscal:
The transfer pricing information must be filed in the appendices of the Dictamen Fiscal, which is due on 30 June. In addition, the Transfer Pricing Information Return for Cross-border Intra-group Transactions must be filed contemporaneously with the Dictamen Fiscal.

Companies not filing the Dictamen Fiscal: Both the Transfer Pricing Information Return for Cross-border Intra-group Transactions and the transfer pricing documentation must be ready by the time the income tax return is due, i.e. 31 March.

What are the major elements required or recommended to be included in a transfer pricing study?

- Domestic Intra-group Transactions: methodology used to show that the transactions were conducted in accordance with the arm’s length principle.
- Cross-border intra-group transactions:
  - name or corporate name, domicile and tax residence of the related parties that carry out the controlled transactions as well as documents evidencing the direct or indirect participation between or among the related parties
  - information relative to functions or activities, assets used and risks borne by the Mexican taxpayer for each type of operation
  - information and documents relative to the controlled transactions carried out by the related parties and the amount thereof, detailed by related party and by type of transaction/operation
  - the transfer pricing methodology used pursuant to Article 216 of the Mexican Income Tax Law, including information and documents on comparable transactions or companies by type of transaction/operation.
Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No. However, companies filing the Dictamen Fiscal must disclose the personal tax identification number of the person that prepared the transfer pricing study or that provided transfer pricing assistance to the taxpayer.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: comparable profit split, residual profit split method, and transactional net margin method.

Is there a priority among the acceptable methods?

Yes. Comparable uncontrolled price should be applied first, then the resale price or cost plus methods, and then the profit-based methods.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The taxpayer has 15 business days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes, taxpayers can submit the resolution to an administrative area within the Ministry of Finance, in order to object to the procedures. Also, taxpayers may appeal to tax court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only: 55 to 75 percent of the omitted income tax or 30 to 40 percent of excess loss if due to transfer pricing. However, if the taxpayer prepared transfer pricing documentation, they may be entitled to a 50 percent discount of the penalty.

To what extent are transfer pricing penalties enforced?

Often.

What defenses are available with respect to penalties?

Article 76 of the Federal Fiscal Code allows the Mexican tax authority to assess penalties (i.e. 55 to 75 percent of the omitted income tax or 30 to 40 percent of excess loss if due to transfer pricing) in cases in which it deems a company’s transfer pricing is not consistent with the arm’s length standard under the Mexican transfer pricing regulations detailed in the Income Tax Law (LISR). The article also provides for a 50 percent reduction in the penalty imposed for underpaid taxes or for excess tax loss filed due to transfer pricing, if the taxpayer keeps transfer pricing supporting documentation. However, if imposed, penalties cannot be negotiated.

What trends are being observed currently?

Current audits focus on business restructuring, domestic intra-group transactions, sales of shares that trigger tax losses and management fees that Mexican tax authorities might consider to be pro rata expenses.

**Special considerations**

Are secret comparables used by tax authorities?

Yes. Any information to which the tax authority has access may be used. However, use of secret comparables is not very common.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

Mexican tax authorities use Compustat (i.e. North American public companies) and RoyaltyStat.

What level of interaction do tax authorities have with customs authorities?

Low.

Are management fees deductible?

Yes. When supporting evidence can be provided that the services were actually rendered. If no support can be provided, then the tax authority will consider them as nondeductible.
Are management fees subject to withholding?
Yes. However, tax treaties may disallow withholding.

Other unique attributes?
Pro rata expenses (cost-sharing) made to foreign entities are considered nondeductible.

Other recent developments
None.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
Sometimes.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules. Depends on the time frame allowed by the tax treaty.

May a taxpayer go to the competent authority before paying tax?
Permitted after the assessment, or before the audit starts, through an APA.

Advance pricing agreements
What APA options are available, if any?
Unilateral and bilateral.

Is there a filing fee for APAs?
Yes. Approximately USD1,000 for the first year and USD100 for a review to be conducted every year of the APA term.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
As of October 2011, there is no official publication of APA data. However, APA information is usually disclosed by Mexican tax authorities in public forums.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA program can be viewed as successful if we compare the number of APAs filed with the number of APAs that have been concluded. However, there are still opportunities to reduce the length of the process.

Language
In which language or languages can documentation be filed?
Mexican tax authorities require all documentation to be in Spanish. However, in those cases in which the initial documentation is provided in English, a translation by a certified translation will be subsequently required. The time to provide the information will be 15 business days.

Advance pricing agreements
What APA options are available, if any?
Unilateral and bilateral.

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Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA program can be viewed as successful if we compare the number of APAs filed with the number of APAs that have been concluded. However, there are still opportunities to reduce the length of the process.
Montenegro

KPMG observation

Transfer pricing rules have been present for more than a decade in Montenegrin corporate income tax (CIT) legislation, but specific and detailed regulations on the application of these rules have never been published by the Ministry of Finance. However, due diligence should be taken with respect to the transfer pricing rules stipulated in the CIT Law (even though they are not applied in practice) since the Tax Authorities may change their current practice retroactively.

Basic information

Tax authority name
Tax Administration of Montenegro.

Citation for transfer pricing rules
Articles 19, 20 and 38 of the Corporate Income Tax Law.

Effective date of transfer pricing rules
1 January 2002.

What is the relationship threshold for transfer pricing rules to apply between parties?
A company is defined as being related to another company or an individual if this other company or the individual has a direct effect on the conditions or economic results of the transactions between these entities.

Special conditions are: participation in the capital or in the voting power of at least 25 percent the existence of a subordinated relationship between two entities or if one entity is under control (direct or indirect) of another entity the two subsidiaries of the same entity or entities are under direct or indirect control of a third entity.

What is the statute of limitations on assessment of transfer pricing adjustments?
Generally five years from the end of the year in which a tax liability should have been determined. The absolute period of limitation is 10 years. There is no special statute of limitations on assessment of transfer pricing adjustments.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Income and expenses generated from related party transactions during the year must be separately disclosed in the CIT return.

What are the consequences of failure to prepare or submit disclosures?
No consequences are defined in the CIT Law for failure to prepare or submit disclosures.

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No. However, supporting documentation for disclosed transfer prices is recommended (specific form is not prescribed).

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Montenegrin entities should possess copies of transfer pricing studies/policies designed exclusively for their group, which should be localized to Montenegrin legislation and translated in order to provide support in case of tax audit.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
No specific requirements.
What are the major elements required or recommended to be included in a transfer pricing study?
As there is no required documentation necessary to support transfer prices applied, we advise general elements: industry analysis, company overview, functional analysis, selection of method and description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Traditional transaction methods: comparable uncontrolled price, resale price, and cost plus.

Is there a priority among the acceptable methods?
Yes. When comparable uncontrolled price is not possible, the cost plus method or the resale price method should be used.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
The taxpayer should in principle possess documentation to support transfer prices declared at the moment of request from the Tax Authorities. Time may be granted for the preparation of documentation during the tax audit.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Adjustments assessed by the tax authorities must be applied and then the taxpayer has an option to appeal to the second instance degree procedure with the tax authorities or finally to the administrative court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
No penalties are defined in the CIT Law for underpayment of tax due to transfer pricing.

To what extent are transfer pricing penalties enforced?
Not applicable.

What defenses are available with respect to penalties?
Not applicable.

What trends are being observed currently?
The government is currently rarely doing transfer pricing audits due to lack of experience and a relatively low corporate income tax rate (9 percent), which results in much more attention paid to indirect and payroll taxes. Taking into account that the tax authorities in neighbouring countries in South Eastern Europe have started to pay much more attention to transfer pricing, it may be expected that this trend will spread to Montenegro as well.

Special considerations
Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No, none in practice.

What level of interaction do tax authorities have with customs authorities?
Interaction between tax and customs authorities regarding value added tax (VAT) is high. However, it is not possible to estimate the level of interaction regarding transfer pricing.

Are management fees deductible?
Generally, yes. Please note that non-documented costs are nondeductible as well as costs that are not incurred for business purposes.

Are management fees subject to withholding?
Yes, 9 percent withholding tax, unless there is a double taxation treaty between Montenegro and the country of the beneficial owner of the income.

Other unique attributes?
Not applicable.
Other recent developments
Not applicable.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.
If extensive, is the competent authority effective in obtaining double tax relief?
No experience.
When may a taxpayer submit an adjustment to the competent authority?
No formal rules.
May a taxpayer go to the competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance rulings of any kind are available.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
Montenegrin.
Namibia introduced transfer pricing legislation on 14 May 2005. The legislation in the form of Section 95A to the Namibian Income Tax Act is aimed at enforcing the arm’s length principle in cross-border transactions carried out between connected persons. During September 2006, the Directorate of Inland Revenue issued Practice Note 2 of 2006 (PN 2/2006) containing guidance on the application of the transfer pricing legislation. We note that the Directorate of Inland Revenue has recently started raising transfer pricing related queries with clients.

**Basic information**

- **Tax authority name**
  Directorate of Inland Revenue (DIR).

- **Citation for transfer pricing rules**
  Section 95A of the Income Tax Act and Practice Note 2 of 2006.

- **Effective date of transfer pricing rules**
  14 May 2005.

- **What is the relationship threshold for transfer pricing rules to apply between parties?**
  In relation to a company, the following are regarded as connected persons:
  - its holding company
  - its subsidiary
  - any other company, where both companies are subsidiaries of the same holding company
  - any person (other than a company) that holds individually or jointly with any connected person in relation to that person at least 20 percent of the equity share capital or voting rights in the company
  - any other company that holds at least 20 percent of the equity share capital, where no other shareholder holds the majority shares
  - any other company if that other company is managed or controlled by a connected person in relation to the first company or a connected person in relation to the first connected person.
  
  Additionally, Practice Note 2 also provides that the transfer pricing rules apply to transactions between a head office and a branch and branches of the same person dealing with each other.

- **What is the statute of limitations on assessment of transfer pricing adjustments?**
  In terms of section 69 of the Income Tax Act, the Commissioner may at any time issue additional assessments – there is no statute of limitations.
  
  In practice, Inland Revenue allows for amended tax returns to be submitted by the taxpayer until the taxpayer is assessed. In terms of section 71 of the Income Tax Act a taxpayer has only 90 days to object to a notice of assessment by the Commissioner.

**Transfer pricing disclosure overview**

- **Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?**
  The disclosures in the tax return are not specific to connected persons, except dividends to shareholders.
  
  There is currently no statutory requirement that the transfer pricing policy should be submitted to the Directorate of Inland Revenue as part of the Annual Income Tax Return.

- **What types of transfer pricing information must be disclosed?**
  Not applicable.

- **What are the consequences of failure to prepare or submit disclosures?**
  Not applicable.
Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

There is a requirement set out in Practice Note 2 that the taxpayer should exercise judgment in determining the level of documentation required.

In terms of section 64 of the Income Tax Act, the Directorate of Inland Revenue may require a taxpayer to produce certain documentation. Where a taxpayer fails or neglects to furnish documentation required by the Directorate of Inland Revenue, that person shall be guilty of an offence and will be liable upon conviction to a fine not exceeding 300 Namibian dollars (NAD) and/or imprisonment not exceeding three months. If subsequently the taxpayer fails to furnish the information in the time period allowed, they will be guilty of an offence and liable on conviction to a fine of NAD30 for every day the default continues, or imprisonment not exceeding three months.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Penalty protection; shift burden of proof; requirement in practice. In addition where the Directorate of Inland Revenue makes transfer pricing adjustments, it would be difficult for the taxpayer to rebut these in the absence of adequate transfer pricing documentation.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and transactional net margin method.

Is there a priority among the acceptable methods?
DIR follows the OECD Guidelines, so there is no priority when using the acceptable methods.

If there is no priority of methods, is there a ‘best method’ rule? No.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
The Income Tax Act does not specify a time period. However, Practice Note 2 says that the taxpayer must be in possession of transfer pricing documentation.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Objections to assessments may be made, in writing, within 90 days after the date of issue of the assessment. If the taxpayer is not happy with the Minister’s response on the objection, the taxpayer may appeal to a special court for hearing income tax appeals or a tax tribunal if all the requirements are met. Such notice of
appeal must be furnished to the Minister within 30 days after the notice issued by the Minister on the objection.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes.

On late payment:
- 10 percent penalty on tax outstanding on due date
- interest at 20 percent per annum

On underestimation of the second provisional payment:
- additional tax of 20 percent of the difference between:
  - estimated tax payable and
  - the lesser of 90 percent of finally assessed tax and tax on last year assessed

To what extent are transfer pricing penalties enforced?
The Inland Revenue generally always enforces penalties if errors are detected. Only recently have we seen the Inland Revenue starting to question transfer pricing matters.

What trends are being observed currently?
The Directorate of Inland Revenue has not raised transfer pricing queries in the past. However, we have recently seen an increase in transfer pricing queries i.e. to substantiate values of cross-border connected person transactions.

Special considerations

Are secret comparables used by tax authorities?
Not as far as we are aware.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No. Practice Note 2 provides that the taxpayer should exercise judgment in determining the level of documentation required.

Do tax authorities have requirements or preferences regarding databases for comparables?
Not that we are aware of.

What level of interaction do tax authorities have with customs authorities?
Unknown, but we expect minimal as regards corporate tax matters (import VAT matters are handled with reference to customs documentation).

Are management fees deductible?
In order to be deductible fees charged for management services must be at arm’s length and the services must in fact have been rendered.

What trends are being observed currently?
The Directorate of Inland Revenue has not raised transfer pricing queries in the past. However, we have recently seen an increase in transfer pricing queries i.e. to substantiate values of cross-border connected person transactions.

Are management fees subject to withholding?
No withholding tax applies on payments to either residents or non-residents.

Other unique attributes?
DIR will work closely with the South African Revenue Service (SARS) and the OECD. It is also envisaged that SARS will assist the Namibian Revenue authorities in the performance of transfer pricing audits, especially in situations where the audited multinational entity has affiliates or establishments in both countries.

Other recent developments

Not applicable, other than that it appears that the Directorate of Inland Revenue is focusing more on connected person transactions.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
Not applicable.

When may a taxpayer submit an adjustment to the competent authority?
The adjustment would be submitted in the tax return. Refer to discussion under ‘Transfer pricing audit and penalties’ for adjustments after assessment. In practice a taxpayer may submit a revised tax return to the Inland Revenue.
May a taxpayer go to the competent authority before paying tax?
A taxpayer can apply for a ruling in respect of the treatment of certain items.

**Advance pricing agreements**

What APA options are available, if any?
No APAs. However, a company may obtain from the tax authorities a ruling on the application of particular provisions in the tax law.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable. No APAs are issued.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable. No APAs issued.

**Language**

In which language or languages can documentation be filed?
English.
The Dutch tax authorities are fully compliant with the OECD Guidelines when it comes to transfer pricing. The Netherlands also has a flourishing APA/Advance Tax Ruling (ATR) practice. The Dutch tax authorities have a transfer pricing specialist coordination group. Transfer pricing is becoming ever more important in the Netherlands.

Basic information

Tax authority name
Dutch Tax Authorities (DTA).

Citation for transfer pricing rules
Decree IFZ 2001/295M, 30 March 2001;
Decree IFZ 2004/680M, 21 August 2004;
Decree IFZ 2004/126M, 11 August 2004;
Decree IFZ 2004/127M, 11 August 2004;
Decree DGB 2004/1338M, 11 August 2004;
Decree DGB 2004/1339M, 17 August 2004;
Decree IFZ 2004/124M, 11 August, 2004;

Effective date of transfer pricing rules
1 January 2002.

What is the relationship threshold for transfer pricing rules to apply between parties?
OECD definition (direct or indirect participation in management, control or capital).

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from the tax year-end plus any extensions granted for filing of tax return. In certain (international) cases this period may be extended to 12 years.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
The annual Dutch corporate income tax return includes one question on whether there are any transactions with related companies.

What types of transfer pricing information must be disclosed?
If the reply is yes, a (brief) description needs to be included on the corporate tax return form.

What are the consequences of failure to prepare or submit disclosures?
Potential reversal of the burden of proof and (general tax) penalties, where the DTA requests documentation and it is not submitted to the DTA in time.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions it is a statutory requirement and transfer pricing documentation is not optional. Penalties apply although not specifically for noncompliance with transfer pricing documentation requirements.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
In the absence of sufficient documentation, the penalty is that the burden of proof will shift from the DTA to the Dutch taxpayer to demonstrate that the transfer prices are at arm’s length.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Preparation deadline: Not applicable. Submission deadline is within 30 days of request; this may be extended by the DTA to three months, depending on the complexity of the case.

What are the major elements required or recommended to be included in a transfer pricing study?
The documentation should detail how the transfer prices were determined and provide sufficient information to enable the DTA to assess the arm’s length nature of the established transfer pricing. This should include: business description/overview, organizational structure, functional analysis, risk analysis, industry analysis, financial performance, intra-group agreements, description of controlled transactions, method selection, and economic analysis. Benchmarking helps to demonstrate that transfer prices are
at arm’s length, and the DTA accept pan-European benchmarks, provided they meet the Dutch requirements e.g. the strict Dutch independence screening criteria.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Transactional methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, transactional net margin method, and other.

Is there a priority among the acceptable methods?

No, as long as the outcome is at arm’s length.

If there is no priority of methods, is there a ‘best method’ rule?

No. Where a traditional transaction method and a transactional profit method (e.g. the transactional net margin method) can be applied in an equally reliable manner, the former is preferred over the latter method.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Within 30 days of request. This may be extended by the DTA to three months.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Local litigation or mediation, or requesting a unilateral Dutch APA with a roll back provision.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes, general tax penalties only.

To what extent are transfer pricing penalties enforced?

No specific transfer pricing penalties. General tax penalties (up to 100 percent) may apply in case of an intentional act (e.g. the taxpayer took a non-defendable standpoint) leading to the underpayment of taxes.

What defenses are available with respect to penalties?

To argue that any incorrect transfer pricing is not intentional and also not because of gross negligence.

What trends are being observed currently?

The number of transfer pricing audits has been increasing over time.

1. Exit (valuation) discussions, in which the DTA are using the German type of base shifting principles/arguments. The DTA uses new and alternative technical arguments compared to those typically seen during past Dutch tax audits.

2. Despite applicable thin capitalization ratios as laid down in Dutch tax legislation, under the arm’s length principle, the DTA may deny Dutch interest tax deductions, again on the basis of different technical arguments from those typically seen during past Dutch tax audits.

**Special considerations**

Are secret comparables used by tax authorities?

Yes, but only for case selection.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No, pan-European benchmarks are generally accepted, albeit that the DTA has specific local benchmarking requirements, in particular with respect to independence criteria.

Do tax authorities have requirements or preferences regarding databases for comparables?

Yes, a strong preference for the Amadeus database. For financial and licensing transactions, other databases may be used.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

No, unless such fees are requalified by the DTA as dividends and may then attract Dutch dividend withholding tax. Furthermore, the aforementioned 21 August 2004 Decree covers in great depth the transfer pricing treatment of any other management fees.

Other unique attributes?

No.
Other recent developments

• A new Decree was issued in January 2011 on the attribution of profits and transfer pricing of permanent establishments, which explains how the DTA is to apply the 2010 OECD report on permanent establishments.
  – Enhanced attention on restructurings, thin capitalization and captive insurance transactions.
  – Integrated transfer pricing, VAT and customs actions by the Dutch tax/customs authorities, with rulings possible.
  – DTA is pursuing a high-level of transparency with taxpayers and is prepared to commit itself to high-speed resolution/response of issues. It is stressing the taxpayer’s need for a tax control framework.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Extensive – the Netherlands has one of the largest tax treaty networks in the world.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
The Netherlands aims to eliminate double taxation at the earliest possible moment. Therefore, in the Dutch Decree of 29 September 2008, IFZ2008/248M, dealing with MAPs, a distinction is made between “ordinary,” “accelerated” and “extra-accelerated” procedures. If a Dutch taxpayer can show that due to an action by foreign tax authorities there will be taxation which is not in accordance with the tax treaty, and either no extension for payment of any tax is available or the assessment will trigger substantial interest which might cause immediate financial difficulties for the taxpayer, the Dutch competent authority is willing to assist the taxpayer by commencing bilateral discussions immediately, namely an extra-accelerated MAP. The Dutch competent authority might even contact its foreign counterparts before any tax assessment (including a transfer pricing adjustment) is received by the Dutch taxpayer in the other state, and before a position paper is received from the other state’s competent authority.

May a taxpayer go to the competent authority before paying tax?
Yes, see above.

Advance pricing agreements

What APA options are available, if any?
Unilateral, bilateral, multilateral, and combined APA/ATRs.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No, only statistical data, once a year.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA program is very successful, and Dutch APAs may be concluded within short time frames. In particular, new investments into the Netherlands are welcomed under the Dutch APA program.

Language

In which language or languages can documentation be filed?
Dutch is the official language for documentation. In practice, however, documentation in English is usually also accepted. Other languages are not common. If documentation is drafted in a foreign language, the DTA may request a translation when needed to understand the documentation.

KPMG in the Netherlands

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Focus areas for the Inland Revenue in 2011 include interest rates, thin capitalization and the importation of losses through outbound low-risk structures. The level of analysis required for an interest rate review has also increased in the last two years.

Inland Revenue supports the concept of implicit credit support in relation to intra-group financial arrangements and this influences the perceived credit-worthiness of related party borrowers, with the potential to have a significant impact on Inland Revenue’s determination of an arm’s length interest rate.

Unilateral advance pricing agreements (APAs) remain popular and tend to be resolved quickly (six to 12 months) at a relatively low cost to taxpayers.

**Basic information**

**Tax authority name**

Inland Revenue.

**Citation for transfer pricing rules**


**Effective date of transfer pricing rules**

1997.

**What is the relationship threshold for transfer pricing rules to apply between parties?**

Cross-border arrangement between associated persons, based on 50 percent or greater common shareholding or effective control.

**What is the statute of limitations on assessment of transfer pricing adjustments?**

Four years from the end of year in which the tax return is filed.

**Transfer pricing disclosure overview**

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes, for New Zealand-owned outbound multinational groups. Disclosures are required for controlled foreign companies (CFC).

What types of transfer pricing information must be disclosed?

The primary activity of the CFC, details of gross revenue, royalty income, earnings before interest and tax, among other detailed financial information.

What are the consequences of failure to prepare or submit disclosures?

None specifically related to the failure to prepare or submit the disclosure.

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No statutory requirements, but requirements in practice.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Penalty protection, shifting of burden of proof, requirement in practice/expectation of authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

No.
What are the major elements required or recommended to be included in a transfer pricing study?
Functional analysis, risk analysis, industry analysis, business/company overview, organizational structure, financial performance, intra-group agreements and transactions, selection of method, identification and description of comparables, economic analysis.

The documentation that Inland Revenue would expect a taxpayer to maintain will vary depending on the taxpayer’s circumstances. Not all categories referred to will be applicable to all taxpayers.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, and comparable profits method.

Is there a priority among the acceptable methods?
No.
If there is no priority of methods, is there a ‘best method’ rule?
Yes.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Normal Inland Revenue practice is to specify a due date (generally at least 28 days).

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Yes. Taxpayers can follow a prescribed dispute resolution process which includes:
- Inland Revenue issuing a notice of proposed adjustment to the taxpayer
- a conference between taxpayer and Inland Revenue
- disclosure by both parties
- adjudication and review
- assessment/amended assessment by Inland Revenue
- litigation, if both parties cannot reach an agreement in the earlier steps of the process.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. General tax penalties only, normally 20 to 40 percent of the tax shortfall.
To what extent are transfer pricing penalties enforced?
Sometimes.
What defenses are available with respect to penalties?
Specific legislative and Inland Revenue ruling requirements dictate when penalties may be imposed. Taxpayers may be able to make a case that the penalty provisions should not apply in their circumstances (e.g. reasonable care has been taken in relation to their transfer prices evidenced through supporting documentation), or may be able to apply for a reduction in penalties on the basis of prior compliance with income tax rules.

What trends are being observed currently?
KPMG in New Zealand has observed a significant increase in the level of transfer pricing audit activity, with transfer pricing questionnaires being issued in all general income tax audits of multinationals in the last 12 to 18 months. There is also an increasing trend to use APAs to resolve audit disputes.

Special considerations
Are secret comparables used by tax authorities?
Yes, but only for the purposes of transfer pricing risk assessment by Inland Revenue prior to an audit.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.
Do tax authorities have requirements or preferences regarding databases for comparables?
No specific database required.
What level of interaction do tax authorities have with customs authorities?
Moderate. Inland Revenue and the New Zealand Customs Service have entered into a Memorandum of Understanding allowing the sharing of information. KPMG in New Zealand are aware of the sharing of information for the purposes of enforcing the transfer pricing rules.
Are management fees deductible?
Yes, provided they meet the requirements of the normal deductibility rules.
Are management fees subject to withholding?
No, unless they include an amount that is subject to the withholding tax rules (such as royalties or interest).
Other unique attributes?
The Inland Revenue has reserved its position on Article 7 of the OECD Model Tax Convention. The Inland Revenue supports the single entity concept rather than the separate legal entity concept for branch taxation.
Other recent developments
None.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Medium. New Zealand’s double tax treaty network is focused on countries with strong trading and investment ties to New Zealand, as well as developing countries that New Zealand may have trading ties with in the future.

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to the competent authority?
Depends on the mutual agreement provisions of the relevant double tax agreement.

May a taxpayer go to the competent authority before paying tax?
Permitted.

Advance pricing agreements
What APA options are available, if any?
Unilateral, bilateral, and multilateral.

Is there a filing fee for APAs?
316.90 New Zealand dollars (NZD).

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Unilateral APAs are highly successful and most APAs are concluded in a timely manner. Bilaterals are generally reserved for high value or high risk transactions.

Language
In which language or languages can documentation be filed?
English.
Norway | 147

**KPMG observation**

The focus on transfer pricing in Norway remains strong. There are several court cases being decided on transfer pricing issues and the Norwegian tax authorities have increased the number of tax audits conducted on various transfer pricing topics. Furthermore, there is a particular focus on the quality of the comparability analyses presented to the tax authorities. This is in line with the updated OECD Guidelines and there is an expectancy to have a much more analytical approach to the determination/evaluation of the transfer prices/margins applied. In particular, intra-group financial arrangements and the treatment of intangible assets seem to be areas of great interest to the Norwegian tax authorities these days. Finally, the Norwegian tax authorities have stated that they will continue to scrutinize Norwegian subsidiaries/branches with low margins or losses.

**Basic information**

**Tax authority name**
Norwegian Tax Authorities (Skatteetaten in Norwegian).

**Citation for transfer pricing rules**
Section 13–1 in the General Tax Act (GTA). Income can be adjusted based on the general clause in section 13–1 of the GTA.

New transfer pricing documentation requirements based on the OECD Guidelines came into force on 1 January 2008.

**Effective date of transfer pricing rules**
Specific new transfer pricing documentation requirements commenced on 1 January 2008.

**What is the relationship threshold for transfer pricing rules to apply between parties?**
Direct or indirect ownership or control of at least 50 percent.

**What is the statute of limitations on assessment of transfer pricing adjustments?**
10 years from tax year-end if the taxpayer has not provided sufficient factual information about the transfer pricing in an appendix to the tax return. If taxpayers include an appendix to the tax return setting out sufficient factual information about the transfer pricing, the statute of limitations will be two years after the income year.

**Transfer pricing disclosure overview**

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes. From financial year 2007, taxpayers are obliged to file the form RF–1123 regarding intra-group transactions with the annual tax return, if the total amount of controlled transactions exceed 10 million Norwegian krone (NOK), or the total amount of outstanding accounts exceeds NOK25 million.

**What types of transfer pricing information must be disclosed?**
The value range of related party transactions for each category such as services, tangible property transactions, loans and interest etc. On the front page of the yearly tax return taxpayers have to confirm whether they are covered by the formal transfer pricing documentation requirements and/or reporting requirements (RF–1123). There is no requirement to file the transfer pricing study before being requested by the tax authorities to do so. In cases of uncertainty one should consider an appendix to the tax return in order to limit the open years of reassessment to two years after the income year and/or avoid tax penalties if an adjustment is sustained.

**What are the consequences of failure to prepare or submit disclosures?**
If affected taxpayers do not submit form RF–1123 the tax filings can be deemed incomplete. Providing insufficient or wrongful information can lead to penalty taxes being imposed on adjusted transfer pricing amounts in tax audits.
Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

There is a requirement for affected taxpayers to prepare transfer pricing studies for each financial year. Taxpayers are given 45 days to submit the documentation upon written request from the Norwegian tax authorities, so there is some time to finalize the report if targeted by the tax authorities. There is no penalty for failing to prepare a study. However, there is a risk that a subsequent reassessment made by the tax authorities in a tax audit will attract penalty tax due to providing insufficient information.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

The benefits of having a prudent transfer pricing study are meeting the expectation of the tax authorities, i.e. mitigating the risk of the tax authority making adjustments using secret comparables, since they will focus on the comparables presented by the taxpayer. Furthermore, preparing a prudent transfer pricing study will shift the burden of proof onto the tax authorities and preserve the ability to appeal an adjustment to the tax assessment board or the courts.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study must be submitted within 45 days of a written request from the tax authorities. Generally, no extensions are granted.

What are the major elements required or recommended to be included in a transfer pricing study?

There are specific transfer pricing documentation regulations which must be adhered to. The study must thus include company overview, industry analysis, functional analysis, selection of transfer pricing method and comparability analyses. There is no specific requirement to perform a database search although this is advisable if a net margin method is applied. The tax authorities can request such an analysis and the taxpayer will get an additional 60 to 90 days to file according to the transfer pricing documentation regulations in Norway.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

All of the transfer pricing methods as mentioned in the OECD Guidelines will be accepted i.e. comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin.

Is there a priority among the acceptable methods?

In theory, all methods should be acceptable to the tax authorities as long as the application is in accordance with the arm’s length principle. However, the Norwegian tax authorities show a preference for the transactional profit methods these days.

If there is no priority of methods, is there a ‘best method’ rule?

The Norwegian tax authorities acknowledge the 2010 version of the OECD Guidelines so any of the methods should be accepted as long as it is considered suitable for the business model applied by the taxpayer.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

The taxpayer can bring the case to the tax assessment board and/or the courts. From fiscal year 2008 this right can be forfeited if the tax authorities have made a written request for the transfer pricing documentation and it is not received within 45 days.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only: 30 percent of the tax avoided for transfer pricing adjustments is the most common. The penalty exposure can be reduced through an appendix to the tax return where the intra-group transactions and methods applied are described in a correct and sufficient manner.

To what extent are transfer pricing penalties enforced?

In recent years we have noted that the tax authorities enforce penalty tax more frequently in transfer pricing cases. On the other hand, an increase in taxable income should, according to a new Supreme Court decision, not automatically lead to penalty tax if the taxpayer has acted in a prudent manner.

What defenses are available with respect to penalties?

Taxpayers are obliged to disclose sufficient and correct information about their transfer pricing. The defense would thus generally be to argue that the taxpayer has complied with these requirements.

What trends are being observed currently?

There is a particular focus on the quality of the comparability analyses presented to the tax authorities. This is in line with the updated OECD Guidelines and there is an expectancy to have a much more analytical approach to the determination/evaluation of the transfer prices/margins applied. In particular, intra-group financial arrangements and the treatment of intangible assets seem to be areas of great interest to the Norwegian tax
authorities these days. There is a wide range of industries being questioned by the tax authorities; however, the pharmaceutical, software and telecommunication industries are often shown particular interest with regard to questions about intangible assets. Finally, the Norwegian tax authorities have stated that they will continue to scrutinize Norwegian subsidiaries/branches with low margins or losses.

**Special considerations**

Are secret comparables used by tax authorities?
Yes.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
There is no requirement as the Norwegian tax authorities generally acknowledge that it is difficult to find proper comparables looking at the Norwegian market in isolation.

Do tax authorities have requirements or preferences regarding databases for comparables?
There are no specific requirements. The Norwegian tax authorities use several databases when conducting database searches, with Amadeus as the most frequently used.

What level of interaction do tax authorities have with customs authorities?
Medium.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
No.

Other unique attributes?
None.

**Other recent developments**

The use of MAPs has increased. We are still awaiting possible APA rules and there is currently a pilot project on MAP APAs.

**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always. However, there is pressure on the Norwegian tax authorities to handle the MAP more effectively in terms of duration.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
Permitted. Meetings with the relevant tax authorities are possible. However, taxes become payable upon the tax office’s decision being made, so generally taxes have to be paid prior to going to the competent authority. Taxpayers can postpone payment by obtaining a parent or bank guarantee.

**Advance pricing agreements**

What APA options are available, if any?
Advance rulings. Opinions/rulings are only available for companies under the Petroleum Taxation Act. APAs are currently not available for transfer pricing issues.

Is there a filing fee for APAs?
Not applicable since Norway currently does not have APA rules.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable since Norway currently does not have APA rules.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable since Norway currently does not have APA rules.

**Language**

In which language or languages can documentation be filed?
English, Norwegian, Swedish, or Danish.

KPMG in Norway

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Oman

KPMG observation

Related party transactions can be significant and can present a challenge to a company in terms of demonstrating that they have been concluded on an arm’s length basis. The Oman Tax Authority at the time of assessment will usually seek the basis of transactions to determine that all such transactions are at arm’s length, and may make adjustments if they determine that transactions are not at arm’s length.

Oman operates a full tax assessment system and there can be three to five years between the time when a tax return is filed and its assessment. Consequently, during this time people with relevant knowledge could have left the company or documents been misplaced and so on. It is therefore advantageous for a company to gather evidence and documents as soon as possible for each year to support the position that its related party transactions were made on a “third party arm’s length” basis and hold these in readiness for when the Tax Department requests such support.

Basic information

Tax authority name
Oman Tax Authority (referred to as the Tax Department), Ministry of Finance.

Citation for transfer pricing rules
Whilst the new Income Tax Law No. 28/2009 (New Law) does not contain any specific transfer pricing provisions, the Oman Tax Authorities do have the power under the tax anti-avoidance provisions of the law to adjust amounts between related parties to reflect a third party arm’s length basis of charging. They also seek to ascertain whether structures have been adopted solely with a view to avoid or reduce taxes in Oman. The New Law empowers the Tax Authorities to disregard transactions or structures if the sole purpose is to avoid or reduce taxes due to the Omani Government.

Effective date of transfer pricing rules
1 January 2010.

What is the relationship threshold for transfer pricing rules to apply between parties?
There is no threshold specified by the Taxation Authorities.

What is the statute of limitations on assessment of transfer pricing adjustments?
Assessments have to be raised within five years from the end of the year in which the due date falls (the due date is normally six months following the company’s accounting year-end).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
There is no requirement to submit on an annual basis any documentation in support of related party transactions.

What types of transfer pricing information must be disclosed?
Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No, there is no mandatory requirement.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
The Oman Tax Authorities operate a full assessment system and therefore a company’s related party transactions are normally assessed three to five years after the respective tax return has been submitted. It is therefore advisable for a company to obtain supporting documentary evidence as soon as possible to evidence that the prices charged with its related parties were on a “third party arm’s length” basis. This could mitigate the risk of the Tax Authorities making adjustments to the returned income.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

If available, a transfer pricing study should be submitted at the assessment stage in support of the company’s related party transactions to avoid possible adjustment by the Tax Authorities.

What are the major elements required or recommended to be included in a transfer pricing study?

Documentation that supports the “third party arm’s length” nature of charges between its related parties should be produced. This could take the form of invoices to unconnected parties for the same or similar goods and services, or a transfer pricing study. Even though the transfer pricing study is not mandatory, it should contain the required elements sufficient for the Tax Authorities to be satisfied that its conclusions are objective and supported by third party evidence and work undertaken. This could include a functional analysis, industry analysis, company overview, selection of method and relevance, description of comparables and so on.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

The Tax Authorities will consider all of the OECD methods and look to relevance for a method’s application in determining the “third party arm’s length” range for a particular product or service.

Is there a priority among the acceptable methods?

The Tax Authorities normally favor the cost plus method or CUP method.

If there is no priority of methods, is there a ‘best method’ rule?

See above.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

When a company’s tax return is assessed, the Tax Authorities will likely request the company to provide evidence that the prices with its related parties were at arm’s length, framed within the “assessment questions”. A company normally has 30 days to respond, although a time extension may be requested if required.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

If an adjustment is disputed, a taxpayer can raise an Objection, then an Appeal and finally have the matter heard in a Commercial Court.

If an adjustment is sustained, can penalties be assessed?

If so, what rates are applied and under what conditions?

The due date for payment of any additional tax is specified on the respective Assessment Order. Failure to pay by the date specified will attract additional tax (interest) at 1 percent per month on the unpaid amount (or balance thereof) until settled.

To what extent are transfer pricing penalties enforced?

Transfer pricing adjustments form part of the overall assessment of a company’s tax position for a particular year. Any additional tax (interest penalty) arising through nonpayment of the additional liability is normally enforced, but see below.

What defenses are available with respect to penalties?

The Secretary General, under Article 156 of the New Law, can grant exemption, wholly, or partly, from additional tax (interest penalty). However, this will be in accordance with Articles 153 and 154 of the Executive Regulations to the New Law, which came into force on 29 January 2012.

What trends are being observed currently?

The Tax Authorities are very active in requesting taxpayers (companies) to provide documentary evidence to support the fact that their related party transactions were at third party arm’s length.

Special considerations

Are secret comparables used by tax authorities?

Yes, they maintain their own databases and comparative information.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No. The comparables will depend on the nature of the product or service and the most relevant markets or basis for the comparatives.

Do tax authorities have requirements or preferences regarding databases for comparables?

No. But they have internal databases which they use that are not published.

What level of interaction do tax authorities have with customs authorities?

A good level.

Are management fees deductible?

Yes, but subject to the fees being reasonable with respect to the services actually provided to the Omani company.
Are management fees subject to withholding?
Yes, 10 percent.

Other unique attributes?
None.

Other recent developments
The New Law further provides for a corresponding relief to be claimed by the other related party if such other related party is taxable in Oman and a transfer pricing adjustment has been made in the assessments completed of the company.

Please note, however, that this corresponding relief is not granted automatically. A written request should be made to the Secretariat General by the person (company) with whom the transaction is made, within a period not exceeding 12 months from the date of assessment of the person (company) who made the transaction.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Good.

If extensive, is the competent authority effective in obtaining double tax relief?
To our knowledge, the Tax Authorities do accept double tax relief in line with a respective double tax agreement (DTA), subject to the required conditions being fulfilled.

When may a taxpayer submit an adjustment to the competent authority?
At the time of its tax return submission or as part of the assessment process.

May a taxpayer go to the competent authority before paying tax?
A taxpayer may request an advance ruling from the Tax Authorities to determine whether or not double tax relief is able to be claimed in a particular circumstance where the matter is not straightforward.

Advance pricing agreements
What APA options are available, if any?
We have not seen formal APA agreements in Oman with the Tax Authorities.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
English and Arabic.
Panama has recently enacted transfer pricing legislation in order to comply with international standards and to meet the necessary requirements so that the country is excluded from the OECD’s tax haven list. Following the signing of a tax treaty with France, Panama reached the 12 agreements necessary to meet the international standard of transparency and exchange of information. On 7 June 2011, Panama was removed from the OECD’s list of countries that were classified as tax havens and is now on the list of jurisdictions that the OECD considers have substantially implemented the standards for exchange of information.

It is important to mention that according to Article No. 762-Ñ of the Fiscal Code, the taxpayers that are subject to the transfer pricing regulations are those that conduct transactions with related parties that are fiscal residents in countries which qualify as Treaty Partners from the perspective of the Republic of Panama (i.e. countries which entered into Tax Treaties with the Republic of Panama) and therefore may attempt to benefit from more favorable tax rules provided in any relevant tax treaty. An amendment of the regulations is being discussed to include all taxpayers that carry out transactions with related parties abroad.

**Basic information**

**Tax authority name**
Dirección General de Ingresos (DGI).

**Citation for transfer pricing rules**

**Effective date of transfer pricing rules**
1 July 2010. However, due to the fact that these rules are only applicable to taxpayers that conduct transactions with related parties who are fiscal residents in countries which qualify as Treaty Partners, the effective date would be when each treaty came into force.

**What is the relationship threshold for transfer pricing rules to apply between parties?**
Direct or indirect ownership of capital, administration or control. No specific threshold for the entities to be considered related parties (i.e. even if there is a 1 percent ownership of the shares, the entities are considered related).

**What is the statute of limitations on assessment of transfer pricing adjustments?**
Three years from filing date of the tax return.

**Transfer pricing disclosure overview**
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes. The taxpayer must prepare transfer pricing information and this should be available by the time the tax return is filed. The report must include the necessary information to determine the price negotiated between related parties, which should be reflected in the tax return.

The taxpayer must file a transfer pricing return six months after the fiscal year ends.

**What types of transfer pricing information must be disclosed?**
The information must include data related to the group and to the taxpayer, as well as information regarding the transactions with related parties, their nature and amounts.

**What are the consequences of failure to prepare or submit disclosures?**
The tax administration may deny the deduction of costs and expenses resulting from intra-group transactions, which will lead to an increase in the taxable income.
**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions where the taxpayer benefits from the application of the reduced withholding tax rates or any other provision of the applicable Double Tax Convention, transfer pricing documentation is required by Panamanian legislation.

According to the Fiscal Code, there is no specific penalty for not preparing supporting transfer pricing documentation. However, if a taxpayer does not comply with the transfer pricing documentation requirements, the tax authorities might deny the deduction of expenses resulting from the intra-group transactions with foreign related parties, as mentioned above.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Preparing and maintaining a transfer pricing study could help reduce the risk of a disallowance of the deduction for tax purposes of the transactions performed with related parties. The burden of proof is also shifted to the tax authority.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing information must be prepared contemporaneously with the tax return and must be submitted within 45 days following the request from the DGI.

What are the major elements required or recommended to be included in a transfer pricing study?

- Name or corporate name, domicile and tax residence of the related parties that carry out the controlled transactions as well as documents evidencing the direct or indirect participation between or among the related parties.
- Detailed information about the nature, characteristics and amounts of the transactions carried out with related parties, indicating the transfer pricing methodology used, including information and documents on comparable transactions or companies by type of transaction/operation.
- Information relating to functions or activities, assets used and risks borne by the Panamanian taxpayer for each type of operation.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: comparable profit split, and transactional net margin method.

Is there a priority among the acceptable methods?

The priority is among the transactions methods and if the taxpayer cannot apply the transaction methods due to the characteristics of the operations or to the lack of information, the profit-based method should be apply.

If there is no priority of methods, is there a ‘best method’ rule?

Yes, the method that allows to obtain the most reliable result taking into consideration the nature of the transactions.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

45 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes, taxpayers can submit the resolution to an administrative review before the DGI. Subsequently, taxpayers may appeal before the Tax Court. Finally, taxpayers are allowed to submit the case for judicial review before the Supreme Court of Justice (Third Chamber).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Late payment interest of 1 percent per month until final settlement.

To what extent are transfer pricing penalties enforced?

There is globally a strengthening in the application of tax penalties in general. The transfer pricing specific penalty regime was introduced in 2010, therefore it is too early to comment on whether penalties will be enforced, but it is expected they will be.
What defenses are available with respect to penalties?
Not applicable.

What trends are being observed currently?
There is no experience locally yet.

**Special considerations**

Are secret comparables used by tax authorities?
Yes, but in specific situations and very infrequently. Tax auditors use their knowledge of other cases they have audited and may refer to industry standards. However, such secret comparables cannot be used in the context of court cases or for justifying proposals of reassessments.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No but preferable if relevant, if the French market is considered as the relevant market.

Do tax authorities have requirements or preferences regarding databases for comparables?
No specific requirements have been officially requested however in practice FTA may, in the context of an audit, require a comforting benchmark using a French database.

What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
Yes. When evidence can be provided that the services were actually rendered. If no support can be provided, then the tax authority will consider them as nondeductible.

Are management fees subject to withholding?
Yes. However, tax treaties may reduce or eliminate the withholding tax upon certain conditions.

Other unique attributes?
None.

**Other recent developments**

None.

**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules. Depends on the time frame allowed by the tax treaty.

May a taxpayer go to the competent authority before paying tax?
Permitted after the assessment.

**Advance pricing agreements**

What APA options are available, if any?
None.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

**Language**

In which language or languages can documentation be filed?
Panamanian tax authorities require all documentation they request to be in Spanish.
Peru

KPMG observation

The tax authority in Peru has begun transfer pricing audits on a selective basis. There does not seem to be a focus on a specific industry. Audits are very thorough and gathering of experience appears to be one of the aims.

Audits are triggered by size of transactions, continuous losses and analysis of industry ratios performed by the tax authority based on information they have of taxpayers they regard as comparable. The information provided by taxpayers in their transfer pricing return is also used to select taxpayers to be inspected.

The annual transfer pricing return needs to be presented to the tax authority in June of the following year.

Basic information

Tax authority name
Superintendencia Nacional de Administración Tributaria (SUNAT) (National Superintendency of Tax Administration).

Citation for transfer pricing rules
Market value and transfer pricing rules are defined in Articles 32 and 32-A of Income Tax Law.

More specific regulations are included in Articles 108 to 119 of Income Tax Law Rulings.

Penalties are defined in Article 176, numbers 2) and 4); Article 177, numbers 25) and 27); and Article 178 number 1) of the Tax Code.

Thresholds and exceptions issued with Superintendency Resolutions No.167–2006–SUNAT and No.008–2007–SUNAT.

Effective date of transfer pricing rules

What is the relationship threshold for transfer pricing rules to apply between parties?
Direct or indirect ownership greater than 30 percent of capital. Companies can also be considered related if they share common directors, managers or executives with decision power. Additional criteria for determining economic relationship also exist.

What is the statute of limitations on assessment of transfer pricing adjustments?
Four years, counting from 1 January of the year following the date of presentation of the Income Tax Return.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes. A transfer pricing return is required for taxpayers based on certain thresholds (revenues and amounts transacted with related parties and/or existence of transactions with tax havens).

The transfer pricing return has two main parts: the first part refers to identification of the taxpayer, the related parties with which transactions exist, and the types and amounts of transactions.

The second part has to be reported when the taxpayer passes the thresholds and is required to have a transfer pricing study. The taxpayer will need to report in this second part the methodologies used in the analysis and the adjustments, if applicable. The transfer pricing return is not submitted with the Income Tax Return, but it is submitted in June of the year following the fiscal year under analysis.

What types of transfer pricing information must be disclosed?
Information on related parties, types and amounts of related party or tax haven transactions, transfer pricing methods used for the analysis, and adjustments, if applicable.

What are the consequences of failure to prepare or submit disclosures?
In case the taxpayer fails to file its Transfer Pricing Return, a fine of around USD30,000 is applicable. In addition, failing to present the Transfer Pricing Return may trigger an audit by the tax authority on the taxpayer.
Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions, taking into account that the obligation applies once certain thresholds regarding the company income and amount of transactions with related parties are exceeded.

The transfer pricing study needs to be submitted only upon request of the tax authority. If the taxpayer does not present the study required, it may be penalized (maximum penalty is approximately USD30,000).

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Besides helping avoid penalties, preparing and maintaining a transfer pricing study helps shifting the burden of proof towards the tax authority and reduces the risk of unforeseeable adjustments.

For taxpayers that do not formally need to prepare a transfer pricing study it still can be desirable to do so since the tax authority can always require the submission of documentation that sustains the market value of transactions with related parties.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Formally there is no time limit regarding the preparation of a transfer pricing study since it needs to be submitted only upon request. Nevertheless, the methodology and the results of transfer pricing analysis need to be included in the transfer pricing return, which has to be presented in June of the following year, two or three months after having presented the Annual Income Tax return. In practice, the study should be prepared contemporaneously with the tax return.

In case the transfer pricing study is requested, it needs to be submitted within the time limit set by the tax authority (formally, within three working days).

What are the major elements required or recommended to be included in a transfer pricing study?

Functional analysis: company and group overview, transactions overview, industry analysis, assets and risks involved.

Economic analysis: selection of method, process of search of comparables, description of comparables, adjustments and results.

Attachments: financial information of the company and comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transactional methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, residual profit split, and transactional net margin method.

Is there a priority among the acceptable methods?

Although there is no clear priority it seems that in practice the tax authority prefers the comparable uncontrolled price as the initial method.

If there is no priority of methods, is there a ‘best method’ rule?

There is no formal priority of methods. Best method rule applies.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Formally, transfer pricing documentation needs to be provided within three working days of request. Nevertheless, the tax authority usually sets a time limit of one to two weeks, depending on the complexity of the information requested and the stage of the inspection process.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Conceptually yes, but there is no experience yet.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. 50 percent of the tax omitted, plus interest counting from the moment the tax should have been paid.

To what extent are transfer pricing penalties enforced?

There is little experience but some companies have already been assessed, adjusted and charged with penalties.

What defenses are available with respect to penalties?

The main defense is the documentation i.e. the transfer pricing study. Related documentation, such as intra-group contracts, invoices, or other documents, can also be useful as a means of defense.

Penalties can also be reduced if, during an audit from the tax authority, the taxpayer agrees that the transfer pricing adjustment suggested by the tax authority during its review is correct and accepts to pay the omitted tax without further discussion. In this case, the penalties arising from having omitted tax payments can be reduced to 50 percent or 70 percent, depending on the timing of the payment.

What trends are being observed currently?

Over the last year, the Peruvian Tax Authority has significantly increased the number of specific requests to taxpayers to present transfer pricing studies and related documentation. The number of transfer pricing audits has also increased, resulting in adjustments and penalties for some taxpayers.

Currently, the principal of SUNAT is a specialist in transfer pricing.

Special considerations

Are secret comparables used by tax authorities?

Secret comparables may be used to determine which taxpayers should...
be inspected. Nevertheless, there is no evidence that the tax authority uses secret comparables to perform adjustments.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes, but information about local comparables is scarce, so international comparables are also accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authority has a specific database, but does not require that taxpayers use the same database for their studies.

What level of interaction do tax authorities have with customs authorities?
Tax and Customs authorities are part of the same institution (SUNAT). Other than that, we are not aware of regular interaction between the two divisions.

Are management fees deductible?
Generally yes, but proper documentary support is needed and special attention needs to be given to causality.

Are management fees subject to withholding?
Yes. The rule is that if services are rendered in Peru the rate is 30 percent. If the service qualifies as technical assistance, the rate is 15 percent (regardless of the place where services are rendered). If the service qualifies as digital services or royalties, the rate is 30 percent regardless of the place where services are rendered. In all other cases, when services are rendered abroad there is no withholding tax.

Other unique attributes?
Transactions with local related parties might fall into the scope of transfer pricing rulings, depending on certain criteria.

Other recent developments
An increasing number of transfer pricing inspections are under way. Some taxpayers have already been adjusted in relation to transfer pricing. This trend is expected to continue, taking into account that the new tax authority principal is a specialist in transfer pricing.

Tax treatyouble tax resolution
What is the extent of the double tax treaty network?
Minimal. Peru currently has double tax treaties with Brazil, Canada, Chile and the Andean Region. This network is expected to significantly grow in the short and medium term, including countries such as Spain, Mexico and others.

If extensive, is the competent authority effective in obtaining double tax relief?
Sometimes.

When may a taxpayer submit an adjustment to the competent authority?
Not defined.

May a taxpayer go to the competent authority before paying tax?
Peruvian regulations contemplate the possibility of negotiating APAs. Other than that, the Peruvian Tax Authority does not reply to individual taxpayers’ queries.

It only accepts questions or requests from organized groups of companies (such as a Chamber of Commerce).

Advance pricing agreements
What APA options are available, if any?
The law considers APAs, but there is no experience so far.

Is there a filing fee for APAs?
Unknown.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
No APAs have been filed so far.

Language
In which language or languages can documentation be filed?
All documentation, including the financial information of the comparables, needs to be formally translated into Spanish.

KPMG in Peru

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Philippines

KPMG observation

Notwithstanding the absence of transfer pricing regulations, taxpayers should still consider transfer pricing especially for their cross-border transactions, as offshore affiliates may have to comply with transfer pricing rules in their jurisdictions. In addition, even for non-transfer pricing audits, the timely submission of documentation may be useful to contest deficiency tax findings. The documentation may also be a defense against possible benchmarking performed by the tax office based on industry averages.

Basic information

Tax authority name
Bureau of Internal Revenue (BIR).

Citation for transfer pricing rules
Section 50 of the National Internal Revenue Code (Tax Code): Draft Revenue Regulations as of August 2006 (still in the process for approval).

Effective date of transfer pricing rules
Not applicable, currently no formal rules.

What is the relationship threshold for transfer pricing rules to apply between parties?
Direct or indirect common control or ownership.

What is the statute of limitations on assessment of transfer pricing adjustments?
There is no existing law or specific statute of limitations on transfer pricing assessment. However, the statute of limitations under the Tax Code is generally three years from the date of filing of the return or from the date the return should have been filed. Under certain conditions, however, the statute of limitations may be ten years. No specific provisions on statute of limitations are likewise provided under the draft revenue regulations.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
No. However, the audited financial statements must be submitted with the annual income tax return which contains disclosure on related party transactions as prescribed by accounting standards.

What types of transfer pricing information must be disclosed?
Not applicable.

What are the consequences of failure to prepare or submit disclosures?
None.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Mitigation of the risk of the tax authority making adjustments during regular tax audits.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Contemporaneous with the transaction being evaluated during the tax audit.

What are the major elements required or recommended to be included in a transfer pricing study?
Based on the draft revenue regulations, the following elements are required:
- general information on the group
- information on each related party in the Philippines
- details on transactions between Philippine entity and all related parties
- transfer pricing analysis
- other relevant information.
Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
Not yet known in the absence of transfer pricing regulations.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?
Based on draft revenue regulations the OECD methods are acceptable.

Is there a priority among the acceptable methods?
Not applicable. However, the draft revenue regulations indicate that there is no priority.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable, but section 9 of the draft revenue regulations provides for a “best method” rule.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Not applicable, but based on draft revenue regulations, the documentation must be submitted within 45 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
The draft transfer pricing regulations remain silent on transfer pricing-specific dispute resolution options and procedures. However, there are remedies available to taxpayers in the context of regular audits (for taxes of all types), such as protests, appeals and going to the courts. In the event the transfer pricing regulations are finalized and released, it is expected that they will expand on the remedies for taxpayers being subjected to transfer pricing audits.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Not applicable, but the draft revenue regulations refer to the imposition of penalties under the Tax Code (25 percent/50 percent surcharge; 20 percent annual interest; compromise penalties).

To what extent are transfer pricing penalties enforced?
Not yet known in the absence of transfer pricing regulations.

What defenses are available with respect to penalties?
Not yet known in the absence of transfer pricing regulations.

What trends are being observed currently?
In the absence of transfer pricing regulations, no transfer pricing audits are formally being conducted.

**Special considerations**

Are secret comparables used by tax authorities?
Not applicable.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Not yet known in the absence of transfer pricing regulations but since the tax office subscribes to the OECD Guidelines, regional comparables may be argued to be acceptable.

Do tax authorities have requirements or preferences regarding databases for comparables?
Not yet known in the absence of transfer pricing regulations.

What level of interaction do tax authorities have with customs authorities?
High, but the interaction is not in relation to transfer pricing.

Are management fees deductible?
Yes, provided the management fees are ordinary and necessary expenses and are properly substantiated.

Are management fees subject to withholding?
Yes, subject to Philippine situs rules and application of double tax agreements.

Other unique attributes?
None.

**Other recent developments**

In March 2008, the BIR issued Revenue Memorandum Circular No. 26–2008 confirming that it subscribes to the OECD Transfer Pricing Guidelines as its Interim Transfer Pricing Guidelines pending finalization of the draft Revenue regulations. It provides further that until the Revenue Regulations on Transfer Pricing are issued, any and all concerns/issues in the interim related to transfer pricing will be resolved in accordance with the principles laid down by the OECD Guidelines. The Revenue Regulations on Transfer Pricing have still not been issued.
Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
KPMG has no experience in this area.

When may a taxpayer submit an adjustment to the competent authority?
Currently there are no rules.

May a taxpayer go to the competent authority before paying tax?
Currently there are no rules.

Advance pricing agreements

What APA options are available, if any?
No APAs yet in the absence of transfer pricing regulations. However, the draft revenue regulations have provisions for APAs.

Is there a filing fee for APAs?
Not applicable. The draft revenue regulations do not expressly state whether any fees apply to APAs.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable. There are no APAs yet in the absence of transfer pricing regulations.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable in the absence of transfer pricing regulations.

Language

In which language or languages can documentation be filed?
English.
Poland

KPMG observation

In recent years transfer pricing has been mentioned as one of the top priorities in the circular issued each year by the Polish Ministry of Finance to the tax inspectors describing the main areas which should be subject to thorough scrutiny during tax audits. Polish tax authorities prefer to rely on Polish comparables when analyzing benchmarking studies. Due to the economic downturn, transfer pricing restructurings are being implemented in the multinational companies operating in Poland. As some of them may be perceived as abusive by the tax authorities, transfer pricing audits aimed at challenging the new transfer pricing structures are expected. The Polish Ministry of Finance is encouraging taxpayers to conclude APAs for their important transactions, despite the relatively low number of APAs concluded since 2006 when these were first introduced (only 25 successful APAs so far).

Basic information

Tax authority name
Ministerstwo Finansów.

Citation for transfer pricing rules

Decree of the Ministry of Finance of 10 September 2009 on the way and mode of establishing the taxpayers’ income through the assessment of prices, and on the method and procedure for the elimination of double taxation of the legal person in the case of profit adjustments for related parties, in force as of 17 October 2009.

Information requirements: Article 82 and 82a of the Tax Ordinance Act and the Decree of the Ministry of Finance of 24 December 2002 on tax information.

Documentation requirements: Article 9a CIT.

Documentation requirements (sanctions): Article 19, sec. 4, CIT Act.


Effective date of transfer pricing rules

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership greater than 5 percent; share capital; are under common control.

What is the statute of limitations on assessment of transfer pricing adjustments?
Six years from tax year-end.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Information if an entity is obliged to prepare statutory transfer pricing documentation; information on agreements concluded with related parties when the value exceeds EUR300,000 (total value of receivables or liabilities resulting from all agreements concluded with one related party within a fiscal year) or EUR5,000 if an agreement is concluded with a related party which has a permanent establishment in Poland; information on remuneration paid by foreign related parties to foreign individuals providing services (working) for the Polish subsidiary.

What are the consequences of failure to prepare or submit disclosures?
Persons responsible for the company’s tax compliance may be held responsible under the penal-fiscal code for not submitting required tax information.
Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, a transfer pricing study (understood as documentation to related party transactions) is required for transactions exceeding thresholds described below. There is no penalty for a mere failure to possess the documentation, although there have been observed attempts to penalize persons responsible for the company’s tax compliance under the penal-fiscal code for not submitting required tax information.

A taxpayer is required to provide the tax authorities with transfer pricing documentation on their request, within seven days of receiving the request (statutory documentation required under Article 9a of the Polish CIT Act — does not have to include benchmarking study demonstrating that the transfer price complies with the arm’s length standard). Such transfer pricing documentation should be prepared for transactions concluded by a taxpayer with a related party which exceed, in the given tax year, the following thresholds:

- EUR30,000 for transactions involving intangibles and services
- EUR50,000 or 100,000 (if a transaction does not exceed 20 percent of a company’s share capital) for transactions involving goods and tangibles.

Additionally, each transaction exceeding EUR20,000 should be documented if concluded with an entity operating in a country listed by the Ministry of Finance as a “tax haven”.

If the transfer pricing documentation is not presented to the tax authorities within seven days following the request and the price is successfully challenged, the tax authorities may apply the penalty tax rate of 50 percent instead of a standard CIT rate of 19 percent to the amounts adjusted. Obviously, penalty interest for late payment of the outstanding tax is due as well.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Transfer pricing documentation strongly decreases the eagerness of the tax authorities to investigate related party transactions and eliminates the possibility of applying the 50 percent CIT rate to assessed income instead of the usual 19 percent rate.

As statutory transfer pricing documentation does not require the inclusion of a benchmarking analysis, the tax authorities should verify the arm’s length nature of the transactions during the tax audit. It is therefore highly recommended to supplement the documentation with a study demonstrating that the pricing is compliant with the arm’s length standard. It will force the authorities to prepare stronger arguments if they intend to challenge the pricing methodology accepted by the taxpayer.

Transfer pricing documentation and a benchmarking study help to mitigate risk of personal responsibility under the penal-fiscal code for decreasing a company’s tax liability (it can become an issue if the tax authorities assess additional income to the company).

Transfer pricing documentation prevents the tax authorities from shifting the burden of proof to the taxpayer and makes challenging the established prices more difficult.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Transfer pricing documentation must be provided in Polish, within seven days of the tax authorities’ request, which is a very short period, especially with regard to transactions concluded a few years earlier. It is strongly recommended that such documentation is prepared in advance. At the moment of filing the contemporaneous CIT return, the taxpayer must submit information, regardless of whether the obligation to prepare transfer pricing documentation exists.

What are the major elements required or recommended to be included in a transfer pricing study?

The mandatory transfer pricing documentation requires a functional analysis identifying: functions performed, risks borne, and assets employed in the given type of transaction; determination of anticipated types of costs associated with the transaction; description of the method adopted to calculate transaction price; information regarding terms and form of payments for each transaction (e.g. currency of payments, due date of payments, manner of transferring money, periods in which the invoices are issued, etc); data on value of the transaction; determination of the strategy influencing the transfer price (this element becomes obligatory if it influences the value of the transaction); determination of other factors influencing the transfer price (this element becomes obligatory if it influences the value of the transaction); and determination of the benefits expected due to services purchased (regarding the purchase of services or transfer of intangibles).

A benchmarking study or any other comparable economic analysis documenting the compliance of the transaction with the arm’s length standard is highly recommended.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No formal qualifications required to prepare transfer pricing documentation, although commonly it is done by licensed tax advisors. In the case of benchmarking analyses, access to databases (like
Amadeus or Tegiel – a Polish database including information on local companies) is essential in order to prepare the study.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, transactional net margin method. The tax authorities are obliged to use only the above methods, and the taxpayer is free to use any method.

Is there a priority among the acceptable methods?

Yes. If application of the transaction-based methods by the tax authorities verifying the transaction is impossible, the profit-based methods can be applied.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Seven days following request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority? No.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes.

If a taxpayer fails to submit such documentation or provides documentation which does not meet the legal requirements, and the tax authorities therefore assess an additional income, the assessed income will be taxed at the penal 50 percent tax rate (instead of standard rate – currently 19 percent).

To what extent are transfer pricing penalties enforced?

Always.

What defenses are available with respect to penalties?

Documentation provides for penalty protection against 50 percent penalty tax rate for adjusted incomes. Country-specific documentation, including a benchmarking search with local database, confirming the arm’s length standard of the transactions will mitigate the risk of the prices being challenged.

What trends are being observed currently?

- Transfer pricing audits conducted in cooperation with other countries’ tax authorities (cooperation includes, for instance, exchange of information between the tax administrations).
- Transfer pricing audits focusing on more complicated transactions than the ones that were examined in the past (for instance: sale of economic ownership of a trademark).

**Special considerations**

Are secret comparables used by tax authorities?

Secret comparables are not allowed; nevertheless, in practice cases of the tax authorities using secret comparables occur.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. The consequences of not having local comparables depend on the level of comparability between Poland and other markets. The worst-case scenario is challenging the whole search.

Do tax authorities have requirements or preferences regarding databases for comparables?

Preference (but no obligation) to use local database, as it gives higher chance of finding local comparables.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes. Management fees may be tax deductible if all of the following conditions are met: the recipient of the management service can prove that services have been factually rendered; the expense is incurred for the purpose of earning revenue and does not arise from a simple shifting of expenses incurred on the group level with no factual benefit to the recipient (stewardship expense); and the expense
is not listed in Article 16 of the CIT Act, which describes non-tax-deductible expenses.

**Are management fees subject to withholding?**
Yes. Withholding tax regulations apply, unless the double taxation treaty is in force. Therefore, in practice there is no withholding tax on management fees for countries with treaty protection.

**Other unique attributes?**
Polish regulations envisage personal responsibility for decreasing a company’s tax liability (financial penalty; records in the criminal register, imprisonment). Polish tax authorities do exercise this rule and penalize company management.

**Other recent developments**
The taxpayers are requested to disclose information on transactions not compliant with arm’s length standard in the additional information to the financial statement. Consequently if no such a declaration is made, the auditors and tax authorities may request later evidence that the arm’s length nature of the related party transactions was verified. Therefore despite a lack of formal obligation, preparation of comparable analyses and benchmarking studies to the related party transactions is highly recommended.

Attempts to amend the current regulations and to include comparable analysis into the scope of required elements of the transfer pricing documentation have been observed. So far the law has not been changed, but such amendment may be expected in the future.

**Tax treaty/double tax resolution**

**What is the extent of the double tax treaty network?**
Extensive.

**If extensive, is the competent authority effective in obtaining double tax relief?**
Sometimes/only limited experience.

**When may a taxpayer submit an adjustment to the competent authority?**
After acknowledgement that a double taxation occurred.

**May a taxpayer go to the competent authority before paying tax?**
Yes.

**Advance pricing agreements**

**What APA options are available, if any?**
Unilateral; bilateral; multilateral.

**Is there a filing fee for APAs?**
Yes. The filing fee is 1 percent of the value of a transaction with the following provisions: for unilateral agreements with domestic entities, no less than 5,000 Polish zloty (PLN) and no more than PLN50,000; for foreign entities no less than PLN20,000 and no more than PLN100,000; for bilateral or multilateral, no less than PLN50,000 and no more than PLN200,000. Renewal fees are half of the amount of the original filing fee.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Statistics on the number of motions submitted and decisions issued (positive and negative) are presented on request only. No formal annual report or publication.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The Ministry of Finance is open to discussions about all types of transactions and already has some experience with the APA program. However taxpayers are still reluctant to use the APA route.

**Language**

In which language or languages can documentation be filed?
Polish only.

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**KPMG in Poland**

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Portugal

KPMG observation
The Portuguese transfer pricing legislation was effective as of 1 January 2002. The original rules experienced some changes over the years, usually by way of increasing the scope of the rules. One of the most significant changes was the introduction in 2008 of an APA provision. Now taxpayers can significantly reduce transfer pricing risk in Portugal through unilateral, bilateral or multilateral APAs. On the enforcement side, the tax authorities have increased transfer pricing audits across virtually all industries. Currently, given the present economic scenario, transfer pricing has been pointed out as one of the Portuguese Government’s top priorities for the next couple of years.

Transfer pricing documentation is required in Portugal for certain taxpayers with net sales above EUR3 million. In addition, Portugal-to-Portugal transactions are covered by the transfer pricing rules. There are some tax forms that require specific transfer pricing information, including a statement of whether or not the taxpayer has adequate transfer pricing documentation at the time of filing the company’s tax return.

Basic information
Tax authority name
Autoridade Tributária e Aduaneira (AT).

Citation for transfer pricing rules

Effective date of transfer pricing rules
1 January 2002.

What is the relationship threshold for transfer pricing rules to apply between parties?
Any of the following conditions would define the relationship as related party:
• one entity participates directly or indirectly in at least 10 percent of the share capital or voting rights of another entity
• both entities are at least 10 percent owned, directly or indirectly, by the same legal entity
• an entity and the members of its corporate bodies, or any administration, direction, management or supervising boards
• entities in which the majority of the board of directors are constituted by the same persons
• entities related under a subordination agreement or any other agreement of a similar nature
• economic, commercial, financial, professional or legal dependence
• transactions between a resident entity and entities resident in a clearly more favorable tax regime (as listed in Ministerial Order n.º 150/2004).

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Taxpayers usually need to disclose the following:
• selected transfer pricing methods
• amounts of related party transactions, per transaction category, including Portugal to Portugal transactions
• any increase (if applicable) in taxable income related to a transfer pricing adjustment
• whether or not the taxpayer has contemporaneous transfer pricing documentation when filing the income tax return.
What are the consequences of failure to prepare or submit disclosures?

General penalties of up to EUR100,000 apply for refusal to provide information or incorrect or incomplete information.

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes – for certain taxpayers, contemporaneous transfer pricing documentation is required in Portugal for taxpayers with net sales and other revenues above EUR3 million in the fiscal year previous to the one under consideration.

Up until 2011, general penalties may apply (please see above); as of 2012, specific penalties up to EUR10,000 per fiscal year may apply, in case of failure to prepare documentation.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Transfer pricing documentation is a tax obligation in Portugal. It provides penalty protection and simultaneously it shifts the burden of proof to the AT. It also mitigates the risk of unexpected adjustments to the taxpayer’s taxable income.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Transfer pricing should be considered when preparing the tax return.

Generally, the transfer pricing documentation must be prepared by the 15th day of the 7th month following the tax year-end (date of submission of the Annual Return of Simplified Corporate Information (IES/DA)), and usually needs to be submitted only upon request by the AT.

Notwithstanding, further to a recent clarification, transfer pricing documentation was objectively included in the list of documents that form part of the company’s annual tax dossier. Despite the fact that taxpayers should have its transfer pricing documentation prepared until the deadline for submission of the IES/DA, they are only obliged to submit it upon request by the Portuguese Tax Authorities.

What are the major elements required or recommended to be included in a transfer pricing study?

Typical transfer pricing documentation contains a functional analysis, industry analysis, company overview, selection of method, description of comparables, and other supporting documents.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, and transactional net margin method. In case the methods referred to above cannot be applied, or are not deemed to be considered the best method, other unspecified methods may be used.

Is there a priority among the acceptable methods?

Taxpayers must use the most appropriate method. Transactions methods are preferred to profit-based methods. Other unspecified methods are in certain cases permissible.

If there is no priority of methods, is there a ‘best method’ rule?

The most appropriate method rule is applicable.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal practice is to expect documentation within ten days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

General penalties of up to EUR100,000 apply for refusal to provide information or incorrect or incomplete information, to which compensatory interest will accrue (at 4 percent per year).

To what extent are transfer pricing penalties enforced?

Sometimes. Expected to increase in the near future.

What defenses are available with respect to penalties?

The preparation of transfer pricing documentation.
What trends are being observed currently?

Given the current economic scenario in Portugal, the tax authorities are concentrating efforts on transfer pricing audits, as transfer pricing adjustments tend to result in larger tax assessments and tax collection.

Recent audits have focused more on: adjusting operating losses (disregarding the effect of the global economic crisis); financial transactions, especially those relating to complex financial transactions and cash-pooling arrangements, valuation and transfer of intangible assets, as well as business restructuring processes.

Special considerations

Are secret comparables used by tax authorities?

No. In principle secret comparables are not allowed; nevertheless, tax authorities may use them in practice to benchmark a taxpayer’s return in relation to its peers.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. Local comparables (Portuguese and to a certain extent Spanish) are preferred, but others are permitted whenever these are not available.

Do tax authorities have requirements or preferences regarding databases for comparables?

The AT tend to prefer the use of SABI (an Iberian database), which is also the most commonly used. However, if Iberian comparables are not available or sufficient to support the application of the arm’s length principle, generally the Amadeus database (European database) is used. Other databases may be used for specific category transactions or sectors.

What level of interaction do tax authorities have with customs authorities?

Low, although increasing. The taxpayer is sometimes required to deliver its transfer pricing documentation under customs tax inspections.

Are management fees deductible?

Yes, if the management fees reflect the economic benefit and the arm’s length principle. Specific transfer pricing rules apply to intra-group services.

Are management fees subject to withholding?

Yes, except when a tax treaty applies and certain formal requirements are met.

Other unique attributes?

No.

Other recent developments

An increase in transfer pricing audits. In early 2012, the tax authorities established a “large taxpayers unit” with the purpose of increasing the control and inspection of the corporate groups concerning transfer pricing issues. Any tax planning deemed aggressive needs to be disclosed to the tax authorities.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

Sometimes.

When may a taxpayer submit an adjustment to the competent authority?

After an adjustment is proposed to the taxpayer.

May a taxpayer go to the competent authority before paying tax?

Permitted.

Advance pricing agreements

What APA options are available, if any?

Possibility of unilateral, bilateral and multilateral APAs; in addition to advance rulings.

Whenever a taxpayer intends to include in the APA controlled transaction(s) carried with related parties that are located in countries with which Portugal has celebrated a double taxation agreement, the APA request should include the respective competent authorities, under the mutual agreement procedure. In practice this results in a bilateral/multilateral APA.

Detailed requirements and conditions for submitting the request for an APA are defined in Portaria n.º 620–A/2008, of 16 July 2008.

Is there a filing fee for APAs?

The submission of the request in respect of the preliminary phase is free of charge. The submission of the proposal implies the payment of a fee that may vary between EUR3,000 and EUR35,000, depending on the revenue of the taxpayer. Renewals or reviews of APAs.

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require a filing fee, calculated in a similar way, but with a discount of 50 percent of the initial fee.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
To date, one APA has been concluded; a few others have passed the pre-filling phase and are currently in negotiation, being expected additional developments during 2012. The tax authorities tend to be very favorable to these arrangements and consider that it is an area in which taxpayers should put additional effort in order to increase the certainty of taxation (especially in areas with a history of adjustments). Given this, it is expected that successful APAs will increasingly go forward.

**Language**

In which language or languages can documentation be filed?
The relevant transfer pricing information should be prepared in Portuguese. Reports in English tend to be accepted, provided the taxpayer seeks prior approval. Nevertheless, the tax authorities have the right to accept or refuse, and may request a translation of any document written in a foreign language into Portuguese.
Puerto Rico

KPMG observation

After the termination of Internal Revenue Code (IRC) section 936 election, some US companies decided to incorporate as a non-US entity, subjected to Puerto Rico Tax Rules. Therefore, companies should review their intra-group transactions to comply with local transfer pricing requirements.

Basic information

What types of transfer pricing information must be disclosed?
Under the revised statutory audited financial statements requirements, those affected taxpayers that operate in Puerto Rico must file consolidated/combined audited financials and a reconciling audit showing the results of operations of each of the entities and eliminating entries.

Citation for transfer pricing rules
Articles 1047-1 to 1047-4 of the Puerto Rico Tax Regulation and Section 1040.09 of the Puerto Rico Internal Revenue Code of 2011, as amended (PRIRC).

Effective date of transfer pricing rules

What is the relationship threshold for transfer pricing rules to apply between parties?
Parties are related when there is direct or indirect control, either legally established or just exercised. There is presumption of control if the income or deductions are arbitrarily manipulated.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Puerto Rican taxpayers are not obliged to voluntarily submit transfer pricing documentation to the tax authorities.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
It is useful to taxpayers to have a transfer pricing study since it is valued by the tax authorities and allows framing the tax audit.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
No.

Transfer pricing methods

Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price; resale price and cost plus. If the application of any of this method is not appropriate, the taxpayer could apply any other method if it is clearly appropriate.

Is there a priority among the acceptable methods?
Under the provisions of Article 1047-3 of the Regulations, the methods must be evaluated following a hierarchical order. That is, the taxpayer must evaluate the transaction under the following methods in that same order:
- CUP
- resale price
- cost plus
- any other method.
If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Thirty days from the day requested.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
No special procedure is applicable. However, besides the competent authority, the taxpayer could request the assistance of the US IRS in cases involving a US jurisdiction and creating a potential double taxation issue.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes; a deficiency will be assessed upon which interest and surcharges will be determined, which will be collected in the same manner as the tax.

To what extent are transfer pricing penalties enforced?
Not applicable.

What defenses are available with respect to penalties?
Not applicable.

What trends are being observed currently?
The tax authority has indirectly addressed the potential tax issues by virtue of certain provisions under the 2011 Code.

**Special considerations**

Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No, usually US companies are accepted as comparable companies.

Do tax authorities have requirements or preferences regarding databases for comparables?
No specific preferences.

What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
Yes, if the management fees comply with the general requirements of the income tax law. However, management fees are non-deductible for alternative minimum tax (AMT) purposes as well as any other payment for service rendered by a related party which payment is not subject to Puerto Rico income tax.

Are management fees subject to withholding?
No, if services are provided outside of Puerto Rico. Yes, to the extent they are paid to only that portion of services rendered in Puerto Rico and paid to a foreign entity not engaged in a Puerto Rico trade or business, then a 29 percent withholding tax is applicable.

Other unique attributes?
No.

**Other recent developments**

A new AMT formula was adopted by the 2011 Code. Now AMT will be greater of regular AMT and 1 percent of the purchase value of intercompany purchases of tangible personal property, including inventory. This provision is only applied to entities with revenues from its Puerto Rico operations in excess of USD50,000,000. Also if the Secretary of Treasury determines the tax is at arm’s length, the 1 percent AMT is not applicable. The regular AMT will always be applicable.

**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?
Minimal. There is a competent tax authority agreement in place between the Puerto Rican Treasury Department and the IRS intended to resolve disputes when a transaction is treated differently in both tax jurisdictions.

If extensive, is the competent authority effective in obtaining double tax relief?
It has been effective.

When may a taxpayer submit an adjustment to the competent authority?
When a double taxation issue has been identified.

May a taxpayer go to the competent authority before paying tax?
Yes.

**Advance pricing agreements**

What APA options are available, if any?
No APAs or advance rulings of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

**Language**

In which language or languages can documentation be filed?
English or Spanish.
Romania

KPMG observation

The Romanian legislation on transfer pricing documentation follows the principles of the EU regulations on transfer pricing (e.g. the EU Code of Conduct on Transfer Pricing). Transfer pricing has become increasingly a hot topic for multinationals having a business presence in Romania, as the number of transfer pricing audits have increased significantly since 2008.

Basic information

Tax authority name
Ministry of Public Finances; National Agency for Fiscal Administration (ANAF).

Citation for transfer pricing rules
- Article 7 of the Romanian Fiscal Code – defining “related parties”
- Article 11 (2) of the Romanian Fiscal Code and its application Norms – providing for the arm’s length principles and transfer pricing methods
- Article 42 and article 79 of the Romanian Fiscal Procedure Code approved by Government Ordinance no. 92/2003, as further amended and completed – requiring the preparation of a transfer pricing file
- Government Decision no. 529/2007, regarding the procedure of issuing the advance tax rulings and APAs
- Order of the President of National Agency for Fiscal Administration no. 222/2008, regarding the content of the transfer pricing documentation file.

Effective date of transfer pricing rules
1 January 2004, the obligation to comply with transfer pricing principles was reinforced.

In May 2007, the procedure to be followed by taxpayers in order to obtain an APA ruling from the Romanian tax authorities was enforced.

In July 2007, the obligation to have transfer pricing documentation files available was enforced.

In February 2008, the obligation to have specific transfer pricing documentation available was enforced, thus creating a more stable regulatory environment for transfer pricing purposes.

Although the obligation to document domestic intra-group transactions for Romanian transfer pricing purposes was clearly stated in the Fiscal Code as of May-June 2010, there is still a risk that the previous text of the relevant provision of the Fiscal Code could be interpreted in a way that such documentation obligation was also applicable in the past.

What is the relationship threshold for transfer pricing rules to apply between parties?
Direct or indirect ownership of a minimum of 25 percent of the participation titles or voting rights or effective control.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from filing date.

Also, a tax audit can be performed for tax liabilities arising in the last 10 years in case of a fiscal evasion.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
No specific transfer pricing disclosure is required in the annual corporate tax return. A summary of transactions carried out with related parties must be disclosed when preparing the financial statements, but there is no disclosure requirement on the tax return.

What types of transfer pricing information must be disclosed?
Not applicable.

What are the consequences of failure to prepare or submit disclosures?
Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions.

The content of the transfer pricing documentation file is required by Order of the President of National Agency for Fiscal Administration no. 222/2008, regarding the content of the transfer pricing documentation file.
Failure to comply with the transfer pricing documentation requirements is punished with a fine that currently amounts between 12,000 Romanian leu (RON) and RON 14,000 (approximately EUR3,000 to 3,500).

If the transfer pricing documentation file is incomplete, the tax authorities may establish by their own means the arm’s length prices and adjust the taxable profit of the taxpayer accordingly.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

If the taxpayer does not submit the transfer pricing documentation file to the authorities within the provided term, or if the file is incomplete, the tax authorities may than establish by their own means the arm’s length prices and adjust the taxable profit of the taxpayer accordingly for the audited period (16 percent tax will apply to the additional taxable profit). Interest and late payment penalties may also apply to the additional corporate tax due.

Performing a transfer pricing study offers taxpayers the possibility to observe the market level for similar comparable companies and thus to correct its prices if any advantages are noted.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing documentation file must be drafted and submitted to the tax authorities upon their written request. If the taxpayer does not have the transfer pricing documentation file available at the moment when the tax authorities request it, a period of up to three months can be granted by the tax authorities and an extension may be requested for a period equal to the one initially established.

What are the major elements required or recommended to be included in a transfer pricing study?

The major elements required or recommended to be included in a transfer pricing study are:

A. Group information

1. The organizational, legal and operational structure of the group, including shareholdings, history and financials
2. The general description of the business and business strategy of the group, including changes occurred in the business strategy as compared to the previous fiscal year
3. The description and information on the implementation of the transfer pricing methodology within the group, if this is the case
4. The general description of the transactions carried out between the group entities within the EU:
   a. flow of transactions
   b. invoice flow
   c. value of transactions
5. The general description of the functions performed and risks assumed by the related parties, including any changes which have occurred in this respect as compared with the previous year
6. The general description of the intangibles (patents, trademarks, brand names, etc.), ownership map of the group and a description of the royalties paid or received
7. The presentation of the APAs obtained by the taxpayer or by other group entities (except for APAs issued by the relevant Romanian authorities).

B. Taxpayer specific information

1. A detailed description of the transactions carried out by the audited Romanian taxpayer with its related entities:
   a. flow of transactions
   b. invoice flow
   c. value of transactions.
2. A presentation of the comparability analysis:
   a. the characteristics of the goods or services
   b. the functional analysis (functions performed, risks assumed, fixed assets used etc.)
   c. contractual terms
   d. economic circumstances
   e. specific business strategies
   f. information regarding external or internal comparables.
3. The presentation of related parties and their permanent establishment involved in such transactions or agreements
4. The description of the transfer pricing method used and the argumentation of its selection criteria:
   a. where traditional methods are not used to determine transfer prices, the option has to be justified
   b. in all cases where the CUP method is not used, the option has to be justified.
5. A description of other conditions deemed as relevant for the taxpayer.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.
Transfer pricing methods

Which transfer pricing methods are acceptable?
Transaction methods: CUP, resale price, and cost plus. Any other transfer pricing method recognized by the local legislation is represented by profit split method or transactional net margin method.

Is there a priority among the acceptable methods?
According to the local legislation, CUP is the first method to be considered. However, in practice, the trend is to recognize the appropriateness of the profit-based methods.

If there is no priority of methods, is there a ‘best method’ rule?
No.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Based on the local legislation, the transfer pricing documentation file needs to be submitted to the tax authorities upon their written request. From the date of the official request, the taxpayer has three months to submit its documentation, with the possibility of an extension equal to the period.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Yes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
A 16 percent tax will apply to the additional taxable profit. Prior to 1 July 2010, a late payment interest of 0.1 percent per day would be assessed in relation to any upward adjustments made to the corporate income tax due. Beginning October 2010, the late payment interest is 0.04 percent per day, while another late payment penalty (5 percent or 15 percent of the unpaid taxes depending on the period of outstanding debts – between 30 and 60 days or over 60 days) may also be added to such upward adjustments.

To what extent are transfer pricing penalties enforced?
Always.

What defenses are available with respect to penalties?
Comprehensive and proper transfer pricing documentation.

What trends are being observed currently?
Currently, the strategy of the Romanian tax authorities is to focus on loss-making companies and on companies operating in certain economic sectors (such as the oil and gas sector, which has come under a lot of scrutiny in the last year).

Special considerations

Are secret comparables used by tax authorities?
As a matter of principle, Romanian tax authorities use public information and databases. Additional information may be found via exchange of information with other states.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes. For Romanian transfer pricing purposes, in order to determine the arm’s length character of prices charged between a Romanian entity and its related parties, a local market benchmark study has to be carried out first. It is only in the case of insufficiently available information regarding local comparables that Romanian tax authorities will accept a pan-European search. Nevertheless, the search for comparables on the local market has to be documented and justified as ‘not possible’. In practice, we noticed that the Romanian tax authorities are asking for Romanian comparables, and other benchmarks (on the EU market or on extended markets) are usually rejected by the Romanian tax authorities.

Do tax authorities have requirements or preferences regarding databases for comparables?
No. However, the Amadeus database is most commonly accepted by the Romanian tax authorities.

What level of interaction do tax authorities have with customs authorities?
The exchange of information with the customs authorities on transfer pricing adjustments is increasing. Customs base adjustments are also made in accordance with the General Agreement for Trade and Tariffs (GATT).

Are management fees deductible?
General corporate conditions must be cumulatively met: the service is actually rendered; the taxpayer can provide supporting documents attesting that the service was provided (that is, written agreement, timesheets, reports, etc.); and the service is rendered for the benefit of the taxpayer’s business.

In the absence of such supporting documents, tax inspectors may deny the deductibility of these service fees. Management services are often scrutinized by tax inspectors trying to question their deductibility.

Also, management fees should be priced at the market-price level.

Are management fees subject to withholding?
Yes, if there is no protection of a double tax treaty. According to Romanian legislation, a 16 percent withholding tax applies on payments made to foreign service suppliers, and there is only an override if the relevant treaty has a business profits article and the fees are within that article.
the Romanian authorities often seek to classify certain fees as royalty and therefore exclude them from the business profits article.

Other unique attributes?
If a transfer pricing documentation file does not include all the sections required by the legislation, there is a risk that the file may be considered as incomplete, which gives the right to the tax authorities to make adjustments.

Transfer pricing adjustments may be made by the tax authorities based on three independent transactions (qualifying as similar with the one that is being analyzed). The simple average will be used.

In practice, the Romanian tax authorities do not accept loss-making companies to be included in benchmark studies.

Other recent developments
Although the obligation to document domestic intra-group transactions for Romanian transfer pricing purposes was clearly stated in the Fiscal Code as of May-June 2010, there is still a risk that the previous text of the relevant provision of the Fiscal Code could be interpreted in a way that the documentation obligation was also applicable in prior periods.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to the competent authority?
No specific provision in this sense.

May a taxpayer go to the competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
In line with the provisions of the Fiscal Procedure Code, taxpayers who carry out transactions with related parties may address the tax authorities in order to obtain an APA regarding the conditions and methods of determining the transfer pricing within a given period of time. The APA can be either unilateral (concluded with the Romanian tax authorities) or bilateral (involving at least two or more tax authorities).

Is there a filing fee for APAs?
The tariff which would be charged for releasing the APA is EUR10,000 up to EUR20,000 (in the case of large taxpayers, as well as in the case of other categories of taxpayers of which the consolidated value of transactions exceeds EUR4 million). The tariff for amendments of an already-released APA is EUR6,000 up to EUR15,000 (in the case of large taxpayers, as well as in the case of other categories of taxpayers of which the consolidated value of transactions exceeds EUR4 million). It is payable in RON at the National Bank of Romania’s foreign exchange rate, valid at the date of payment.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA program is developing slowly. So far, from unofficial sources, only one APA has been concluded between the Romanian tax authorities and a taxpayer.

Language
In which language or languages can documentation be filed?
Romanian only.
KPMG observation

On 18 July 2011 a federal law was signed which introduces significant changes to Russian transfer pricing rules effective 1 January 2012. Amendments to the new transfer pricing rules are expected in early 2012. The new rules are more specific and in line with international practice and the OECD Transfer Pricing Guidelines.

Basic information

Tax authority name
Federal Tax Service (FTS).

Citation for transfer pricing rules
Chapter 14.1. (Articles 105.1-105.2 of the RF Tax Code) – Associated counterparties.

Chapter 14.2. (Articles 105.3-105.6 of the RF Tax Code) – General provisions on prices and taxation. Information used for comparability analysis.

Chapter 14.3. (Articles 105.7-105.13 of the RF Tax Code) – Transfer pricing methods.


Chapter 14.5. (Articles 105.17-105.18 of the RF Tax Code) – Tax authority monitoring of transactions between associated counterparties.

Chapter 14.6. (Articles 105.19-105.25 of the RF Tax Code) – Advance pricing arrangements. Articles 129.3-129.4 of the RF Tax Code – Penalties.

Certain articles of Chapter 25 of the RF Tax Code stipulate specific transfer pricing rules for securities and derivatives (Article 280 of the RF Tax Code) and interest (Article 269 of the RF Tax Code).

Effective date of transfer pricing rules
1 January 2012.

What is the relationship threshold for transfer pricing rules to apply between parties?
More than 25 percent direct/indirect ownership.

Moreover, parties can be considered related if:

• Parties are controlled by the same CEO or Board of Directors, 50 percent of which are the same persons.
• One party has the right to appoint the CEO, or at least 50 percent of the Board of Directors, for the other party.
• By a court decision on related party status.

What is the statute of limitations on assessment of transfer pricing adjustments?
The tax authorities can audit only the three calendar years preceding the year in which the decision to conduct a transfer pricing audit was taken by the transfer pricing authority.

The new transfer pricing rules also stipulate certain transitional provisions:

• A decision to conduct a tax audit of controlled transactions in 2012 can be taken not later than 31 December 2013.
• A decision to conduct a tax audit of controlled transactions in 2013 can be taken not later than 31 December 2015.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes, a taxpayer must notify the tax authorities about controlled transactions that occurred in each calendar year by 20 May of the following year.

What types of transfer pricing information must be disclosed?
The form of the taxpayer’s notification is still to be confirmed by the Russian tax authorities, but is expected to contain the following:

• calendar year in which a transaction subject to the transfer pricing regulations occurred
• subject matter of the transaction
• information about the parties to the transactions (name, taxpayer’s identification number)
• income received and expenses incurred relating to the transaction.

What are the consequences of failure to prepare or submit disclosures?
Failure to notify the tax authorities about controlled transactions or disclosure of incorrect data may result in a fine of 5,000 Russian rubles (RUB) per taxpayer.
Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, a study is required for each controlled transaction.

In 2012, preparation of transfer pricing documentation will be required only if the total income arising from all controlled transactions with one counterparty exceeds RUB100 million within the calendar year. In 2013, this threshold is set at RUB80 million.

The documentation should be filed only at the request of the tax authorities. No penalty is provided for not filing documentation.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The penalty for underpayment of tax arising from non-compliance with the transfer pricing regulations is 40 percent of the underpaid tax. A taxpayer is exempt from payment of this penalty if the relevant transfer pricing documentation is provided to the tax authorities. This penalty applies starting from 2017.

For 2012-2013, the penalty will not apply. For 2014-2016, the penalty will be 20 percent of the underpaid tax.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Transfer pricing documentation should be filed only at the request of the tax authorities. The documentation can be requested by the tax authorities not earlier than 1 June of the year following the year in which a controlled transaction occurred. A taxpayer must file the relevant transfer pricing documentation within 30 days from the date of the tax authorities’ request.

What are the major elements required or recommended to be included in a transfer pricing study?

Transfer pricing documentation can be presented in any form, but should contain the following:

- indication of the parties to the transaction and their residence, description of their functions, assets and risks attributable to the transactions
- description of the transaction: subject matter, terms and conditions, methodology applied, etc
- justification of the transfer pricing method applied: indication of sources of information used, calculation of the range of arm’s length prices/profitability, amount of income received and/or expenses incurred relating to the transactions and related economic benefits received
- description of adjustments to the tax base (if any) performed by the taxpayer
- other information necessary to justify the transfer prices used.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No specific professional or licensing requirements are set to prepare transfer pricing documentation.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Transactional profit methods: comparable profitability (TNMM), and profit split.

Is there a priority among the acceptable methods?

Yes. CUP is the first priority method and should be applied when information concerning at least one comparable transaction is available. In some cases, the resale price method is the first priority method (for instance, in the case of the resale of goods). Cost plus method, TNMM and profit split methods may be used only if the CUP/resale price method is not applicable, or if application of these methods would not allow for a reasonable conclusion as to the compliance/noncompliance of the actual prices with arm’s length prices.

A combination of several transfer pricing methods can be applied to a specific controlled transaction.

If there is no priority of methods, is there a ‘best method’ rule?

There is no best method concept in the transfer pricing regulations. Methods are prioritized. Certain methods cannot be applied unless non-application of other methods has been justified.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The taxpayer must provide the transfer pricing documentation to the tax authorities within 30 days from the date of the tax authorities’ request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Any additional tax assessments can be contested by a taxpayer to a higher-level tax authority or in court.
If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

If a transfer pricing adjustment results in an additional tax liability, the taxpayer is subject to late payment interest of 1/300 of the currently effective refinancing rate established by the Central Bank of the Russian Federation.

The penalty for underpayment of tax arising from non-compliance with the transfer pricing regulations is 40 percent of the underpaid tax. This penalty applies starting from 2017. For 2012-2013, the penalty will not apply. For 2014-2016, the penalty will be 20 percent of the underpaid tax.

To what extent are transfer pricing penalties enforced?

Articles 129.3-129.4 of the RF Tax Code – Penalties.

What defenses are available with respect to penalties?

If a taxpayer makes a transfer pricing self-adjustment and pays the additional tax liabilities and late payment interest prior to the tax audit, no penalties should apply.

A taxpayer is exempt from the 40 percent penalty if the relevant transfer pricing documentation has been provided to the tax authorities.

What trends are being observed currently?

Not applicable. The new rules are effective as of 1 January 2012.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes. Use of pan-European benchmarking studies for Russian transfer pricing purposes could be challenged by the tax authorities as the new transfer pricing rules stipulate:

- that accounting data of foreign companies can be used to test the arm’s length nature of prices applied by Russian companies (or foreign companies with Russian PE) only if no data of Russian comparable companies is available
- that financial data of foreign companies must be adjusted based on Russian accounting principles. Therefore, adjustments to a pan-European benchmarking study may be required by the Russian tax authorities; however, this may be impossible to do in practice
- an explicit list of search criteria to be used for benchmarking purposes. Therefore, the pan-European benchmarking studies could only be acceptable if performed in accordance with these criteria.

Based on the above, pan-European benchmarking studies would likely be challenged by the Russian tax authorities. Where the results of the benchmarking study performed on the basis of local comparables differ from the results of pan-European benchmarking studies, the local benchmarking study will likely prevail and the Russian tax authorities may have grounds for an additional tax assessment.

Do tax authorities have requirements or preferences regarding databases for comparables?

The results of benchmarking studies aimed at testing the arm’s length nature of prices/margins of Russian companies (or foreign companies with a Russian PE) are more likely to be acceptable if the data for the search were obtained from Russian databases (i.e. SPARK, RUSLANA, etc).

To test the arm’s length nature of prices/margins of European companies, the Amadeus database can be used.

What level of interaction do tax authorities have with customs authorities?

There is some interaction, but generally limited.

Are management fees deductible?

Yes. They must be supported by documentation evidencing the fact that services were actually rendered and that a Russian taxpayer received the economic benefit from such services.

Are management fees subject to withholding?

They are not subject to withholding income tax. However, they are likely subject to Value Added Tax (VAT), which is to be withheld by the Russian taxpayer which is the recipient of the services.

Other unique attributes?

None.
Other recent developments

1. The new Russian transfer pricing rules specify more clearly the range of transactions which are subject to transfer pricing control (so-called controlled transactions):
   - Cross-border transactions:
     These include: (i) transactions between related parties (with no threshold limit); (ii) transactions with commodities quoted on exchanges (exceeding RUB60 million); and (iii) transactions with counter-parties which are residents of certain “black-listed” jurisdictions (exceeding RUB60 million).
   - Domestic transactions:
     These include: (i) transactions between related parties (exceeding RUB1 billion (in 2012 – RUB3 billion, in 2013 – RUB2 billion); and (ii) transactions between related parties where any of the parties either pays mineral extraction tax or uses a special tax regime (exceeding RUB60 million).

2. The new Russian transfer pricing rules abolish the 20 percent permissible deviation of prices from the arm’s length range. Any deviation of prices in controlled transactions from the arm’s length range could lead to an additional tax being assessed.

Advance pricing agreements

What APA options are available, if any?
An APA procedure was introduced by the new Russian transfer pricing rules. APAs (unilateral/bilateral) can initially be concluded for a maximum of three years, and can consequently be extended for another two years.

Is there a filing fee for APAs?
The fee for concluding APA is RUB1.5 million.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
There are no APAs and no data to report so far.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
APAs will be available only for “large taxpayers.” The general qualification criteria for a “large taxpayer” vary depending at which level (federal or regional) such taxpayer is subject to tax administration. A taxpayer is considered “large taxpayer” at the regional level if any of the following criteria is met:
- total amount of annual federal taxes equals RUB75 million to RUB1 billion
- total annual revenue equals RUB2 billion to RUB 20 billion
- total assets equal RUB2 billion to RUB 20 billion.

The qualification criteria for a “large taxpayer” at the federal level are even higher.
It is very likely that in 2012 APAs will not be granted to any taxpayer (even if the above threshold is exceeded).

Language

In which language or languages can documentation be filed?
The official language for all filings is Russian. In practice documentation can be prepared in English, but the tax authorities would likely require a Russian translation which must be available within 30 day period in which a taxpayer has to provide such documentation.
Serbia

KPMG observation

Transfer pricing rules have been present for more than a decade in Serbian corporate income tax (CIT) legislation, but specific and detailed regulations on the application of these rules have never been published by the Ministry of Finance. However, it is our recommendation that due diligence should be taken with respect to the transfer pricing rules stipulated in the CIT Law (even though they are not applied in practice) since the Tax Authorities may change their current practice even retroactively.

Basic information

Tax authority name
Tax Administration of Serbia.

Citation for transfer pricing rules
Articles 59, 60, and 61 of the CIT Law and Article 5 of the Rulebook on Tax Balance.

Effective date of transfer pricing rules
1 July 2001.

What is the relationship threshold for transfer pricing rules to apply between parties?
An entity is deemed a related party if it has the possibility of control or considerable influence on the business decisions made.

Ownership of 50 percent or more of the shares or holding of the biggest share in the capital is considered as the possibility of control.

Possessing 50 percent or more of the voting rights or possessing the biggest portion of the voting right is considered as having an influence on business decisions.

These tests are applied to both direct and indirect ownership.

Furthermore, companies are deemed to be related if the same persons directly or indirectly participate in the management, ownership or control of both companies in the manner described above.

What is the statute of limitations on assessment of transfer pricing adjustments?
The right of the Tax Administration to assess a tax liability is limited to five years from the day when the period of limitation commenced. The period of limitation commences as of 1 January of the year that follows the year when the tax liability became due. The absolute period of limitation is ten years.

There is no special statute of limitations on assessment of transfer pricing adjustments.

What types of transfer pricing information must be disclosed?
Income and expenses generated from related party transactions during the year must be separately disclosed in the CIT return.

What are the consequences of failure to prepare or submit disclosures?
Failure to separately disclose the value of related party transactions in accordance with the “arm’s length” principle carries penalty exposure from 100 to 600 Serbian dinar (TRSD).

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No. However, supporting documentation for disclosed transfer prices is recommended (specific form is not prescribed).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.
Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

There is no predefined transfer pricing documentation content. Transfer pricing rules have been present for more than a decade in Serbian CIT legislation. Specific and detailed regulations on the application of these rules have never been published by the Ministry of Finance. However, it is our recommendation that Serbian entities should possess copies of transfer pricing studies/policies designed exclusively for their Group, which should be localized to Serbian legislation and translated in order to provide support in case of tax audit.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

No specific requirements.

What are the major elements required or recommended to be included in a transfer pricing study?

As there is no required documentation necessary to support transfer prices applied, we advise including these general elements: industry analysis, company overview, functional analysis, selection of method and description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Traditional transaction methods: comparable uncontrolled price, resale price, and cost plus.

Is there a priority among the acceptable methods?

Yes. Comparable uncontrolled price method should be used in determination of the transaction price, and when it is not possible, the cost plus or the resale price method are used.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The taxpayer should in principle possess documentation to support transfer prices declared at the moment of request from the Tax Authorities. An extension may be granted for the preparation of the document during the tax audit.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Adjustments assessed by the Tax Authorities must be applied, and then the taxpayer has an option to appeal to the second instance degree procedure with the Tax Authorities, or finally to the Administrative Court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Penalties may range from TRSD100 to TRSD600 for non-disclosing of transfer prices in the tax balances at “arm’s length.” In addition, there is a potential penalty depending on the additional tax liability assessed by the Tax Authorities. This penalty varies from 1 percent to 25 percent of additional tax liability but not less than TRSD100.

To what extent are transfer pricing penalties enforced?

Rarely.

What defenses are available with respect to penalties?

Not applicable.

What trends are being observed currently?

Outcomes from audits are revealing that the Tax Authorities prefer the CUP method, but apply that method in a very simplified way.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.

What level of interaction do tax authorities have with customs authorities?

The level of interaction between tax and customs authorities with regards to VAT is high. However, it is not possible to estimate the level of interaction between these authorities regarding transfer pricing.

Are management fees deductible?

Generally, yes. Please note that non-documented costs are non-deductible as well as costs that are not incurred for business purposes.

Are management fees subject to withholding?

No.
Other unique attributes?
Not applicable.

Other recent developments
Recently the Tax Authorities have started to audit transfer prices even though experience is limited. Moreover, extensive trainings of tax inspectors have been conducted. It is expected that transfer pricing will become one of the major tax issues for multinationals operating in Serbia in the near future.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance rulings of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
Serbian.
KPMG observation

In the past, the Inland Revenue Authority of Singapore (IRAS) has focused on promoting transfer pricing awareness and encouraging compliance. Coinciding with the addition of Section 34D (transactions not at arm’s length) to the Singapore Income Tax Act in 2010, the IRAS has become considerably more aggressive in enforcing transfer pricing compliance.

Recently, IRAS has been sending out an increasing number of transfer pricing questionnaires to taxpayers, based on computer analytics of their returns. These are usually seven pages in length, with detailed questions on transfer pricing arrangements and supporting documentation. Depending on the responses received, the tax authority may escalate the case through a transfer pricing consultation process that may include further rounds of questioning and field audits.

Basic information

Tax authority name
Inland Revenue Authority of Singapore (IRAS).

Citation for transfer pricing rules
• IRAS Circular – Transfer Pricing Consultation (2008)
• IRAS Supplementary Circular - Supplementary Administrative Guidance on Advance Pricing Arrangements (2008)
• Section 34D of the Singapore Income Tax Act (transactions not at arm’s length) (2010).

Effective date of transfer pricing rules
Transfer pricing guidelines issued in 2006.

What is the relationship threshold for transfer pricing rules to apply between parties?
Under direct/indirect common control or significant influence.

What is the statute of limitations on assessment of transfer pricing adjustments?
From fiscal year 2007, five years from the fiscal year in which the transaction occurred. Prior to fiscal year 2007, seven years from the fiscal year in which the transaction occurred.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
No.

What types of transfer pricing information must be disclosed?
Not applicable.

What are the consequences of failure to prepare or submit disclosures?
Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Not directly. However, if the taxpayer violates the record keeping requirements under Sections 65, 65A, and 65B of the Singapore Income Tax Act, IRAS would not in any way be precluded from enforcing these relevant provisions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
When reasonable efforts have been exercised in preparing and maintaining a transfer pricing study, the transfer prices would be considered, prima facie, arm’s length. Adequate and timely documentation help demonstrate a reasonable effort, and shift the burden of
proof to the tax authorities in an event of a transfer pricing consultation/audit. There are requirements, in practice, to prepare documentation, especially for significant or complex transactions. IRAS warns that scant documentation for significant transactions may result in transfer pricing reviews and challenges.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

It is recommended that the preparation of the transfer pricing study be contemporaneous with the tax return. IRAS has indicated that documentation should be available upon request. From past experience, the timeframe can be as short as two weeks, but examining officers do readily extend the deadline by up to two or three additional weeks.

What are the major elements required or recommended to be included in a transfer pricing study?
The following are recommended under Singapore’s transfer pricing guidelines:

- business description/overview
- organizational structure
- analysis
- functional and risk analysis
- industry analysis
- financial performance
- intra-group agreements
- description of controlled transactions
- method selection
- rejection of alternate methods and rationale thereof
- identification of comparables
- economic analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

Not at this point in time. However, practicing tax and transfer pricing professionals are accredited in Singapore by the Singapore Institute of Accredited Tax Professionals.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Traditional transaction pricing methods: comparable uncontrolled price, resale price, and cost plus.

Transactional profit methods: profit split, and transactional net margin method.

The IRAS will also accept “modified versions” of the five methods with the caveat that the taxpayer maintains and is prepared to provide sufficient documentation to demonstrate that the prices determined under a modified method are still in accordance with the arm’s length principle.

Is there a priority among the acceptable methods?

None.

If there is no priority of methods, is there a ‘best method’ rule?

Yes.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

IRAS is empowered to invoke the relevant sections of the Singapore Income Tax Act to request documentation be submitted within 30 days from the date of notice. The taxpayer may ask for an extension to submit documentation. However, this may lower the taxpayer’s compliance rating and increase the risk of being selected for a full transfer pricing audit.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Up to 400 percent of tax evasion. However, most penalties are in the 100 percent to 200 percent range of tax under-declared. There are also penalties for failure to produce documentation in a timely manner.

To what extent are transfer pricing penalties enforced?

Increasingly so.

What defenses are available with respect to penalties?

Transfer pricing documentation represents the first-line of defense against transfer pricing audits and is crucial for mitigating transfer pricing risk.

What trends are being observed currently?

IRAS has been actively sending out transfer pricing questionnaires to companies. A considerable number of these selected companies have been subject to further queries which ultimately involve field visits and multiple rounds of in-depth information requests. In particular, IRAS has been focusing its efforts on companies in the commodities trading, electronics and semiconductor industries. In addition to transactions involving tangible goods, IRAS has been stepping up its scrutiny of cross-border intra-group services and intra-group loans.

**Special considerations**

Are secret comparables used by tax authorities?

No, as IRAS is of the view that this is not conducive to transparency, especially among treaty partners.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
A pan-Asian comparable set is often used for Singapore transfer pricing purposes, with the appropriate justification.

Do tax authorities have requirements or preferences regarding databases for comparables?
No.

What level of interaction do tax authorities have with customs authorities?
Low interaction as very few items attract custom duties in Singapore.

Are management fees deductible?
Yes. Management fees are generally tax deductible in Singapore if they are charged to the Singapore entity on an arm's length basis and are incurred wholly and exclusively in the production of the taxpayer's income, and not prohibited under any provisions of the Singapore Income Tax Act.

Are management fees subject to withholding?
Yes. Management fees paid to a person not known to be resident in Singapore are generally subject to Singapore withholding tax at the Singapore prevailing rate. There are treaty concessions, under specific circumstances.

Other unique attributes?
Related party transactions between related parties within Singapore should also be documented and conducted on an arm's length basis.

Other recent developments
Taxpayers with cross-border intra-group loans should be on special alert, because the IRAS’ grace period for related party outbound loans to reflect arm’s length conditions expired on 1 January 2011.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive. There are more than 60 comprehensive tax treaties in place.

If extensive, is the competent authority effective in obtaining double tax relief?
Yes.

When may a taxpayer submit an adjustment to the competent authority?
Within the time limit specified in the MAP Article of the relevant double tax treaty.

May a taxpayer go to the competent authority before paying tax?
No. Any late payment will be subject to late penalties.

Advance pricing agreements
What APA options are available, if any?
Unilateral; bilateral; multilateral; advance rulings.

Is there a filing fee for APAs?
There is no filing fee for bilateral or multilateral APAs as the Singapore tax authorities view this as part of their treaty obligations. A filing fee is applicable for unilateral APAs and advance rulings.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes. IRAS discloses APA data in its annual report.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
In 2010/2011, IRAS completed and documented 10 unilateral, bilateral and multilateral APAs and one MAP. IRAS currently has 19 ongoing unilateral, bilateral and multilateral APAs and 11 MAPs at different stages of review. IRAS is particularly encouraging to taxpayers to submit bilateral APA applications. The success rate for bilateral APA applications generally depends on the corresponding APA partner. For example, the success rate has been high for bilateral APA applications with Japan.

Language
In which language or languages can documentation be filed?
English.
After the introduction of mandatory transfer pricing documentation (for taxable periods starting from 2009), transfer pricing became one of the top priorities for the Slovak tax authorities. The tax authorities started to focus on transfer pricing audits and inspect transfer pricing arrangements in more detail than ever before. Transfer prices for transactions with foreign related parties form a greater focus by the tax authorities than the prices used for domestic transactions, since in principle transfer pricing only applies to transactions with foreign related parties in Slovakia. The tax authorities have built specialized transfer pricing teams and it is expected that the number of transfer pricing audits to be carried out on corporate taxpayers is again going to increase.

**Basic information**

**Tax authority name**
Danový úrad (tax authorities).

**Citation for transfer pricing rules**
Article 2 Let. n through, Article 17 (5) through (7), and Article 18 of the Act No. 595/2003 Coll. on the Income Tax.

**Effective date of transfer pricing rules**
General transfer pricing rules have been applicable since the introduction of the first post-communist income tax legislation in the 1990s. An important amendment laying down the obligation to maintain transfer pricing documentation became effective on 1 January 2009.

**What is the relationship threshold for transfer pricing rules to apply between parties?**
More than 25 percent direct or indirect share of voting rights or registered capital, or personal relation (statutory bodies) or business relation solely for the purpose of decreasing tax base/increasing tax loss.

**What is the statute of limitations on assessment of transfer pricing adjustments?**
Five years from the calendar year-end of the filing date. Seven years if the taxpayer carries forward tax losses according to income tax legislation effective from 1 January 2010. Maximum statute of limitations is 10 years. 10 years always applies if international tax treaties are involved.

**Transfer pricing disclosure overview**

**Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?**
Corporate taxpayers are required to disclose in their annual tax return certain information regarding transactions with related parties.

**What types of transfer pricing information must be disclosed?**
Terms of the following transactions concluded with foreign based related parties have to be reported in the annual tax return of a corporate entity (all values stated in EUR):
- interest resulting from provision of loans or credits
- granting license rights
- provision of services
- transfer of tangible
- intangible and financial assets
- transfer of inventory

However, it is not required to disclose any details regarding individual transactions in the annual tax return.

**What are the consequences of failure to prepare or submit disclosures?**
The tax return is not complete and the tax authorities may ask for the completion of the respective information in the tax return after the tax return was filed.
Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions. The Ministry of Finance of the Slovak Republic issued guidelines which specify details regarding the content and the rules for preparing and maintaining documentation of the transfer pricing method applied by the taxpayer to transactions with its foreign based related parties.

According to the guidelines, entities which are obliged to prepare financial statements under International Financial Reporting Standards (IFRS) according to Slovak Accounting Act (IFRS reporters) are required to keep full scope transfer pricing documentation for the respective tax period. It must include a master file and a country file including a transfer pricing study, i.e. internal and external comparables on transactions conducted between independent parties, a comparability analysis, functional analysis, etc.

Other taxpayers not meeting the set criteria for IFRS reporting have to prepare “simplified transfer pricing documentation” that shows compliance with the arm’s length principle in transactions with foreign based related parties.

The documentation must support the fulfillment of arm’s length principles in significant controlled transactions performed by the taxpayer.

Entities which do not perform transactions with foreign related parties are currently not required to maintain transfer pricing documentation.

If the transfer pricing documentation was not provided to the tax authorities based on their request within the set deadline of 60 days, the taxpayer could be penalized up to EUR3,000. With effect from 1 January 2012 the penalty was reduced to up to EUR3,000.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Preparation of a transfer pricing study, including benchmarking, is recommended even for taxpayers who are not obliged to maintain one (i.e. for those entities which do not maintain accounting records under IFRS). If the tax authorities were to challenge the prices applied in related party transactions, the taxpayer would be required to support compliance with the arm’s length principle. Existence of a transfer pricing study may help shift the burden of proof to the tax authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
For relevant taxpayers the deadline for submitting transfer pricing documentation is within 60 days of the tax authorities’ request.

What are the major elements required or recommended to be included in a transfer pricing study?
The content of the full scope transfer pricing documentation prepared by IFRS reporters corresponds with the requirements of the EU Code of Conduct on Transfer Pricing Documentation, i.e. it must include a master file for the group of related parties and country specific documentation for the taxpayer.

Simplified documentation must contain the following major elements:
- list of transactions with related parties, and their nature
- description of major transactions, their volume or percentage from the overall volume of transactions
- information on the volume of incomplete/in-process transactions
- information on prices of completed transactions between the taxpayer and the related parties.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: CUP, resale price, and cost plus.
Profit-based methods: profit split, transactional net margin method, and other.

Is there a priority among the acceptable methods?
Yes. First transactional methods (CUP, resale, and cost plus), then other methods.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
According to Article 18 (6) of the Slovak Income Tax Act, transfer pricing documentation must be made available to the tax authorities within 60 days of request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Most tax treaties which Slovakia has with other OECD countries contain MAPs if the adjustment assessed by the tax authorities results, or is likely to result, in double taxation.
Furthermore, the EU Arbitration Convention lays down mechanisms on how disputes between the authorities of the involved countries should be resolved.

The respective proceedings are rather lengthy and administratively cumbersome procedures with results being difficult to anticipate.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

If a tax difference detrimental to the State budget is assessed as a result of non-compliance with the arm’s length principle, a penalty in the amount of three times the base interest rate of the European Central Bank will be assessed; however, not less than 10 percent from the misstated tax would be levied.

To what extent are transfer pricing penalties enforced?
Always, if a misstatement of tax is identified.

What defenses are available with respect to penalties?
No defenses if the documentation is not provided to the tax authorities within statutory limits. Penalties can be reduced only in extraordinary circumstances stipulated by the tax law.

In the case of penalties arising from additional tax assessments resulting from a tax audit, ordinary and extraordinary legal remedies are available for the taxpayer, including appeal, review beyond appellate proceedings, and renewal of proceedings. An action may be filed by the taxpayer with the court against the decision on tax assessment (confirmed by the appellate tax authorities) against which no ordinary legal remedy is allowed.

What trends are being observed currently?
The tax authorities are more frequently focusing on transfer pricing audits of all types of businesses, and exit taxation issues are starting to be discussed in Slovakia.

**Special considerations**

Are secret comparables used by tax authorities?
Under certain circumstances the tax authorities are allowed to determine tax according to aids at their disposal or procured without cooperation with the taxpayer. This may potentially involve comparables derived from the files of other taxpayers which are not publicly available. However based on other law provisions, the tax authorities are required to clearly demonstrate what aids have been used to assess the specific tax difference.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authorities in Slovakia use the Amadeus database.

What level of interaction do tax authorities have with customs authorities?
Regarding the corporate income tax, the interaction of the tax authorities with the customs authorities is low. However, the responsibilities of both authorities can lead to a higher level of interaction in the area of VAT.

Are management fees deductible?
In general, yes, but subject to documentation requirements and justification of how the management services serve to generate, assure or maintain taxable income of the Slovak company.

Are management fees subject to withholding?
In general no, but if these also comprise intellectual property transfer (know-how) and this is not separately disclosed on invoice, then they could be subject to withholding tax. A “security tax” is withheld in some circumstances, if the entity to which fees are paid has permanent establishment in Slovakia and is a tax resident outside the EU.

Other unique attributes?
Not applicable.
Other recent developments
The Slovak central tax authorities have built a transfer pricing department and therefore more focus by the tax authorities on transfer pricing is expected in the near future.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive. The current double tax treaty network includes 64 tax treaties. New tax treaties are being negotiated.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules, however, at the latest within four to 10 years after the respective taxable period.

May a taxpayer go to the competent authority before paying tax?
Permitted.

Advance pricing agreements
What APA options are available, if any?
Unilateral.

Is there a filing fee for APAs?
No/immaterial.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
It is not common in Slovakia to ask for an APA.

Language
In which language or languages can documentation be filed?
Documentation should be filed with the Slovak tax authorities in the Slovak language, but upon request of the taxpayer the tax authorities may allow the submission of the documentation in another language.

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KPMG observation

The Tax Authority has formed a special group with transfer pricing experts. Consequently, tax audits are more frequent and often specially focused on transactions with related parties. Therefore, in order to minimize the tax risks, it is essential that taxpayers have available up to date transfer pricing documentation.

Basic information

Tax authority name
Ministrstvo za finance, Davcna uprava Republike Slovenije.

Citation for transfer pricing rules
Corporate Income Tax (CIT) Act, Tax Procedure Act, Rules on transfer prices, Rules with the respect to recognized interest rate among related parties.

Effective date of transfer pricing rules
1 January 2007.

What is the relationship threshold for transfer pricing rules to apply between parties?
Direct or indirect ownership of greater than 25 percent. However, two companies can also be considered related parties if one company is controlled due to some agreement concluded between these companies or in case transactions between two companies differ from conditions that would be agreed between unrelated parties in same or similar circumstances (i.e. based on economic or some other control).

What is the statute of limitations on assessment of transfer pricing adjustments?
Transfer pricing adjustments (if any) are assessed in the CIT return. CIT returns are based on taxpayers' self-assessment. The right to assess tax shall fall under the statute of limitation, being five years from the day when the tax should have been announced, calculated, withheld or assessed. The period of limitation on the right to assess tax shall be interrupted by any official act by the Tax Authorities for the purpose of assessing tax, and in respect of which the taxable person has been informed. The tax liability absolutely ceases after 10 years from when the period of limitation first started to run.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Enclosures to the CIT return related to transactions with related parties (i.e. report on the amounts of sale transactions, purchase transactions and loan transactions) have to be submitted to the Tax Authorities on an annual basis together with the CIT return.

Transfer pricing documentation has to be prepared on an annual basis.

What types of transfer pricing information must be disclosed?
In the enclosures to the CIT returns the following information must be disclosed:

- the total amount of loans exceeding EUR50,000 granted to or received from each related party on a yearly basis. In addition, the enclosures shall disclose names of related parties, with whom the Slovenian entity had transactions, the type of relationship between related parties (e.g. mother company, sister company, etc.) and information relating to whether the company has made any adjustments of the tax base due to transfer pricing.

The adjustment of the tax base due to transfer prices is needed in case the transactions between related parties do not correspond to the arm's length principle. However, the adjustment between two related resident companies is not required, unless one of the companies involved in the transaction has an accumulated tax loss from previous years, is exempt from CIT or is entitled to use a lower CIT rate.

What are the consequences of failure to prepare or submit disclosures?
Tax penalties may apply in the range between EUR1,200 and EUR30,000 (depending on the size of the company) for the company and between EUR600 and EUR4,000 for the responsible person of the company.
Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
• penalty protection
• mitigate risk of tax authority making adjustments.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The transfer pricing study must be submitted immediately upon Tax Authorities’ request. If this is not possible, it must be submitted within 30–90 days (the deadline for submission is set by the Tax Authorities).

What are the major elements required or recommended to be included in a transfer pricing study?
According to tax law, transfer pricing documentation shall comprise of a Master File and a Country Specific File.

The Master File shall include at least the following:
• description of taxpayer, the worldwide organizational structure of the companies in the group, and type of connections (through capital, agreement, personal etc.)
• a description of the transfer pricing system, the operations and business strategies, general economic and other factors and competitive environment.

The Country Specific File should contain at least the following:
• the transactions with related parties, especially their description, the type, the value, conditions and frequency
• the outcome of comparability analysis:
  – functional, risks and asset employed analysis
  – contractual conditions
  – the economic and other conditions that may influence on transactions
  – business strategies
  – other factors that are important and relevant for the transactions
• the transfer pricing method(s) used
• other documentation that could be relevant regarding the formation of transfer prices, that proves that the transfer pricings are in line with the arm’s length prices.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods

Which transfer pricing methods are acceptable?
All transaction methods and profit based methods are acceptable.

Is there a priority among the acceptable methods?
Yes. First transaction methods, then profit based methods (profit split, transactional net margin method, and other). Rules on the transfer pricing methods have not yet been harmonized with the latest version of OECD Guidelines.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
The tax authority may request transfer pricing documentation in the case of a tax audit. The taxpayer has to submit it immediately, but if the transfer pricing documentation is not prepared, the tax authority give the taxpayer from 30 to 90 days for the preparation depending on the extent and the complexity of the data.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
In general yes (Ministry of Finance and Administrative court).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. In case the tax base is lower than it should have been, penalties for understated tax liabilities range between 30 to 45 percent (depending if micro/small or medium/large company) of understated tax liability, but not more than EUR150,000 (for micro/small companies) or EUR300,000 (for medium/large companies) and from EUR700 to EUR5,000 (also depending if micro/small or medium/large company) for the company’s responsible person.

To what extent are transfer pricing penalties enforced?
Increasingly.
What defenses are available with respect to penalties?
Prepared transfer pricing documentation containing all the data required by the Slovenian Tax Procedure Act.

What trends are being observed currently?
Tax audits are often triggered in cases when the taxpayer makes a self announcement.
The tax inspectors are mainly focused on cross-border transactions in tax audits.

Special considerations
Are secret comparables used by tax authorities?
KPMG in Slovenia has not yet seen that secret comparables have been used.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
The Tax Authority uses the Amadeus database for searching for comparables, but also other databases are accepted.

What level of interaction do tax authorities have with customs authorities?
High.

Are management fees deductible?
Yes, under the condition that appropriate agreements are in place and that a taxpayer can prove that services were actually needed and rendered.

Are management fees subject to withholding?
No.

Other unique attributes?
No.

Other recent developments
None.

Tax treaty双tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience in transfer pricing field. Slovenia competent authority has limited experience in MAP, and it is too early to tell how successful they are in such resolutions.

When may a taxpayer submit an adjustment to the competent authority?
Prior to the commencement of the tax audit (self announcement procedure).

May a taxpayer go to the competent authority before paying tax?
Not applicable for transfer pricing.

Advance pricing agreements
What APA options are available, if any?
No APAs or binding rulings of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
Not applicable.

Language
In which language or languages can documentation be filed?
In general, the documentation needs to be in Slovenian. However, it could also be prepared in a foreign language but translated upon the Tax Authority’s request, within the deadline set by the Tax Authority (no earlier than in 60 days).

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South Africa

KPMG observation

Transfer pricing in South Africa, and Africa as a whole, has taken on immense importance and is currently under the spotlight. The South African Revenue Authority is upskilling its transfer pricing department to be able to cast its net wider in so far as audits are concerned.

Basic information

Tax authority name
South African Revenue (SARS).

Citation for transfer pricing rules
Section 31 of the Income Tax Act and Practice Note 7.

Effective date of transfer pricing rules
1995.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of greater than 20 percent of the share capital, and are under common control.

What is the statute of limitations on assessment of transfer pricing adjustments?
Three years from date of assessments unless there has been fraud, misrepresentation and/or material nondisclosure by the taxpayer.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes. Transfer pricing documentation, together with justification for the pricing of transactions, should be prepared and available to SARS on request.

What types of transfer pricing information must be disclosed?
• disclosure of related party transactions
• disclosure as to whether the company has transfer pricing documentation
• disclosure of financial assistance to/from an offshore-related party
• disclosure of any APAs in a foreign jurisdiction.

What are the consequences of failure to prepare or submit disclosures?
The annual income tax return requires disclosure relating to transactions with related parties. Failure to provide accurate responses would lead to the prescription period not applying to the return, which would mean SARS could challenge the transfer pricing at any time and would not be limited to the prescription period of three years after assessment.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
• shifting burden of proof
• penalty protection
• if SARS requests documentation they expect the taxpayer to have documentation prepared for submission.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
Must be submitted on request and must be contemporaneous. SARS may grant a 30-day period for submission.

What are the major elements required or recommended to be included in a transfer pricing study?
Functional analysis, industry analysis, company overview, selection of method, and description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.
**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Transaction methods: CUP, resale price, and cost plus.

Profit-based methods: transactional net margin method.

Is there a priority among the acceptable methods?

Yes, the CUP is preferred.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

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**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

No fixed time period. These may vary and applications for extended periods may be submitted to SARS.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

The taxpayer may approach SARS and follow alternative dispute resolution (ADR) procedures. This procedure is between the taxpayer and SARS.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes up to 200 percent of the adjusted tax amount. This is discretionary on the part of SARS.

To what extent are transfer pricing penalties enforced?

Depends largely on the intention of the taxpayer.

What defenses are available with respect to penalties?

The maintenance of contemporaneous documentation evidencing the taxpayer’s intention and that consideration has been given to the transfer prices can be used as a defense against penalties.

What trends are being observed currently?

Extensive audits by SARS across all industries. SARS is focusing on distribution entities, particularly where these have been classified as low-risk distributors. Companies that have effected true-up payments at year-end are also being looked at.

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**Special considerations**

Are secret comparables used by tax authorities?

Not to our knowledge.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

No.

Do tax authorities have requirements or preferences regarding databases for comparables?

No, but it is common practice that the Bureau van Dijk Orbis database is used.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

No.

Other unique attributes?

SARS works closely with the South African Reserve Bank to monitor the inflow and outflow of money from and to South Africa.

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**Other recent developments**

New legislation (which shall come into force in April 2012) has been promulgated to provide a uniform set of transfer pricing rules to deal with artificial pricing or the misallocation of prices within the various components of a single transaction. SARS is to issue a practice note clarifying these amendments early 2012.

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**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?

Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?

No experience.

When may a taxpayer submit an adjustment to the competent authority?

No formal rules.

May a taxpayer go to competent authority before paying tax?

No formal rules.
Advance pricing agreements

What APA options are available, if any?
No APAs or advance rulings in respect of transfer pricing of any kind.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
Not applicable.

Language

In which language or languages can documentation be filed?
Documentation can be submitted in any of South Africa’s 11 official languages. However, on a practical level, English is preferable.
South Korea

KPMG observation

The Korean Transfer Pricing Regulations, namely the Law for the Co-ordination of International Tax Affairs (LCITA) and the Presidential Enforcement Decree of the LCITA (PED of LCITA) were extensively amended in late 2010. The 2010 amendments were made to enable the LCITA and PED of LCITA to be more in line with the OECD Guidelines and also to result in more transparency for interpreting and applying the LCITA. The revised LCITA is expected to require more accountability from a taxpayer with respect to managing its own transfer pricing, and in the event of the tax authorities’ request of transfer pricing documentation.

Basic information

Tax authority name
National Tax Service (NTS).

Citation for transfer pricing rules
Law for the Coordination of International Tax Affairs (LCITA) and Presidential Enforcement Decree of the LCITA (PED of LCITA).

Effective date of transfer pricing rules
1 January 1996.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of greater than 50 percent, based on voting power, are under common control, and under de facto control in substance.

What is the statute of limitations on assessment of transfer pricing adjustments?
The general statute of limitations for transfer pricing adjustment is five years from the date the annual tax return is filed (the annual tax return is to be filed by 31 March). However, in the case where a company utilizes its net operating losses (NOL) incurred after 1 January 2009 to offset taxable income, a different statute of limitations may apply. If the NOL is used within five years, the statute of limitations is still five years. If the NOL is used for a period of up to 10 years, then the statute of limitations is one year greater than the number of years of taxable income offset by the NOL.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
A taxpayer is required to submit with the annual tax return:
- a detailed statement of the overseas intra-group transactions
- summarized income statements of the overseas related companies
- the transfer pricing method selected and description of the reasons for the selection – if (i) the total volume of annual tangible intra-group transactions of the taxpayer is greater than KRW5 billion or the total volume of annual intra-group service transactions of the taxpayer is greater than KRW500 million or (ii) the volume of annual tangible intra-group transactions to each related party is greater than KRW1 billion or the volume of annual intra-group service transactions to each related party is greater than KRW100 million.

In addition, the taxpayer is required to have and maintain transfer pricing documentation that fully supports the arm’s length nature of its overseas intra-group transaction at the time of its annual corporate tax return.

What are the consequences of failure to prepare or submit disclosures?
If the taxpayer fails to prepare the required information with the annual tax return, the under-reporting penalty relief will not be granted to the taxpayer.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
The transfer pricing study must be prepared contemporaneously with the annual tax return, and must be submitted within 60 days upon the NTS’ request in order to avoid the non-compliance penalty that is up to KRW100 million.
Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Complying with the contemporaneous transfer pricing regulation in Korea can be seen as a way to protect bona-fide taxpayers who determined their transfer prices in a good faith (from a reasonable perspective) by allowing under-reporting penalties relief in case of a transfer pricing income adjustment. If the NTS determines the transfer prices used in transactions with overseas related parties were different from the arm’s length price and the taxpayer receives an income tax adjustment from the tax authorities, the taxpayer must pay additional income tax and an under-payment penalty (i.e. interest on the income tax assessed, 10.95 percent per annum). In addition, in the case of a secondary adjustment in the form of a constructive dividend, withholding tax will also be due.

The contemporaneous transfer pricing documentation rule provides an exemption from the under-reporting penalties. However, it does not provide an exemption from the under-payment penalty or withholding tax on the constructive dividend.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

For the under-reporting penalty relief, a transfer pricing study, which satisfies the reasonable test in accordance with the PED of LCITA should be prepared at the time of annual income tax return filing and the taxpayer is required to submit it within 30 days upon the NTS’s request.

What are the major elements required or recommended to be included in a transfer pricing study?

- summary of the business activities (including analysis of the factors that affect the price of assets or service)
- information on the organizational structure of the business (including information on related parties subject to related party transactions)
- information that explains the reason for selecting the transfer pricing methodology applied by the taxpayer
- economic analysis and forecast materials that explain the reason for selecting a particular transfer pricing methodology
- information on comparable companies’ profit level indicator used to calculate the arm’s length price, and details of the adjustment
- information on alternative transfer pricing methodologies and the reason for not selecting them
- additional information after the close of the taxable year up to the filing of the corporate tax return.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

There are no specific requirements to involve an advisor/tax practitioner. However, it is a common practice and generally expected by the NTS that professional transfer pricing specialists are engaged for the preparation of a transfer pricing study.

Transitional profit methods:

- profit split method, and transactional net margin method (with various profit level indicators such as Berry ratio, return on assets, net cost plus mark-up, and operating margin).

Is there a priority among the acceptable methods?

No. The hierarchy of transfer pricing methods was removed with the 2010 amendments to the LCITA and PED of LCITA.

If there is no priority of methods, is there a ‘best method’ rule?

Yes. A taxpayer may select a transfer pricing method that is considered as the most appropriate to support that the taxpayer’s transfer prices are at arm’s length.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

In general, the NTS expects the taxpayer to submit transfer pricing documentation immediately in the case of a tax audit. Otherwise, the taxpayer may lose the opportunity to avoid a non-compliance penalty.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

A taxpayer can appeal to National Tax Service, the National Tax Tribunal or the Board of Audit and Inspection for its ruling on the proposed adjustment.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. Generally speaking, a 10 percent under-reporting penalty and 10.95 percent interest on the income tax assessment
will be levied as penalties for the transfer pricing income adjustment. If the tax authorities conclude that a taxpayer manipulated the transfer pricing at its own will, more severe penalties could apply.

To what extent are transfer pricing penalties enforced?
If a transfer pricing income adjustment is sustained, transfer pricing penalties are likely to be enforced.

What defenses are available with respect to penalties?
The available defenses are a contemporaneous transfer pricing documentation report with comparables.

What trends are being observed currently?
In the recent tax audit cases, we have seen that the tax authorities closely scrutinized intra-group transactions with overseas affiliates.

In our experience, companies who prepared a transfer pricing documentation each fiscal year benefited from under-reporting and non-compliance penalty waiver in the event of transfer pricing income adjustments as a result of the transfer pricing audit. On the other hand, the tax authorities often imposed the penalty on those who did not prepare a transfer pricing documentation each year, or who submitted merely a global or regional transfer pricing report prepared by the headquarters in lieu of the local documentation with Korean comparables.

Special considerations
Are secret comparables used by tax authorities?
Secret comparables are prohibited by the transfer pricing regulations.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Only local comparables should be used in a benchmarking study, as other comparables are likely to be rejected by the NTS.

Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authorities use the local database called Korea Information Service Line (KIS-Line). The KIS-Line database contains financial data on various companies, many of which maintain assets over KRW10 billion and thus are subject to an independent annual audit.

What level of interaction do tax authorities have with customs authorities?
There has been no interaction between tax authorities and customs authorities so far. However, based on the recent tax revision, once a difference between customs valuation and transaction price for income tax purposes arises as a result of customs audit, a taxpayer is entitled to request to adjust the income tax base to the tax authorities. This revision will become effective from 1 July 2012 and accordingly, active interaction between two authorities is expected.

Are management fees deductible?
Yes. Management services fees remitted by a local subsidiary to a foreign parent company will be recognized as deductible expenses if the taxpayer is able to prove that the services were actually provided to the local subsidiary by the foreign parent company, and the services fees are at arm’s length. Documentary evidence is crucial for the deductibility of the management fees.

Are management fees subject to withholding?
Normally, the management fees are not subject to withholding tax if they are classified as business income and the services are not performed through a permanent establishment in Korea.

Other unique attributes?
If the company does not receive remuneration from related parties for the transfer pricing income adjustment levied by the tax authorities, the tax authorities take an administrative measure of secondary adjustment in the form of dividend income, and withholding tax liability will accrue.

Other recent developments
The major recent developments to Korean transfer pricing are as follows:

- The hierarchy of transfer pricing methods is removed, and therefore a taxpayer may select a transfer pricing method that is considered as the most appropriate to support the transfer prices being at arm’s length. Prior to this amendment, the traditional transfer pricing methods (such as CUP method, resale price method and cost plus method) had priority over the transactional net margin method and profit split method.
• The maximum penalty amount for non-submission or misrepresentation of transfer pricing study by a taxpayer upon the tax authorities’ request has increased from KRW30 million to KRW100 million and it is now called a non-compliance penalty.

Tax treaty double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to the competent authority?
The taxpayer can file a request for competent authority procedure within three years from the date when a notice of income tax assessment is issued or before the final court decision is being made in Korea or other jurisdiction.

May a taxpayer go to the competent authority before paying tax?
Yes. In the case of a transfer pricing income adjustment, the taxpayer may elect to pay the taxes first before the conclusion of the competent authorities (CA) negotiations, or may request to suspend the tax payment until the conclusion of the CA negotiations (in this case, if the CA negotiations finally result in a transfer pricing income adjustment, the taxpayer should pay interest on the adjusted amount for the duration of the period of negotiation).

Advance pricing agreements
What APA options are available, if any?
Unilateral, bilateral, and multilateral involving more than two tax authorities.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes, available on the NTS’ website.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
The APA program has become a preferred tool for many multi-national enterprises (MNEs) to manage their transfer pricing risks, given that it provides a certainty to the MNEs’ tax position and protection from the double taxation risk during the course of overseas related party transactions.

Due to the increasing number of APA requests, the CA negotiations are taking longer and therefore more time and resources are required during the CA negotiations.

Language
In which language or languages can documentation be filed?
The document should be filed in Korean. English is acceptable only with the tax authorities’ approval.
Spain

KPMG observation

Spanish tax authorities have expressed concerns with respect to transfer pricing issues and have been paying increasing attention to transfer pricing issues during tax audits. Article 16 of the Spanish Corporate Income Tax Law (CITL), as modified by Law 36/2006, shifted the burden of proof to the taxpayer and introduced the obligation of transfer pricing documentation applicable for fiscal years commenced on or after 1 December 2006.

Although Article 16 of the CITL established that related party transactions should be priced under the arm’s length principle, the formal documentation requirements were not published until 18 November 2008 in Royal Decree 1793/2008, which specifies the compulsory elements that Spanish transfer pricing documentation should contain.

Additionally, recent regulations require that taxpayers disclose specific information with respect to their intra-group transactions when filing their corporate income tax return, such as the typology of the transaction, the relationship of the parties involved, the transfer pricing methodology applied and the amount of each type of transaction disclosed.

Basic information

Tax authority name
Spanish Tax Agency (Agencia Estatal de Administración Tributaria – AEAT).

Citation for transfer pricing rules
Legislation:

Recent legislation:
• Law 6/2010, establishing certain transfer pricing documentation exemptions.

Regulations developing Law 36/2006:
• Royal Decree 1793/2008, on documentation requirements, 18 November 2008.
• Royal Decree 1794/2008, on mutual agreement procedures, 18 November 2008.

Recent regulations:
• Royal Decree 897/2010, establishing the limits in volume of intra-group transactions with respect to the obligation of transfer pricing documentation, 9 July 2010.
• Order EHA/1338/2010, approving the new models for corporate income tax law filing and specifying the information to be included on intra-group transactions, 13 May 2010.

Effective date of transfer pricing rules
New transfer pricing legislation is applicable to fiscal years that commenced before 1 December 2006. Subsequently, Article 16 is applicable as modified by Law 36/2006 and further regulations.

In accordance with Additional Disposition 7.2 of Law 36/2006, the documentation requirements as set forth in Royal Decree 1793/2008 are applicable three months after the date of its publication. Since the official approval on 18 November 2008, these requirements are fully applicable as from 19 February 2009. However, the documentation adopting the new content requirements can only be required by the Spanish tax authorities from the date of the filing of the corporate income tax return, which is 25 July 2010 for fiscal year-end filers.

What is the relationship threshold for transfer pricing rules to apply between parties?
• companies that belong to the same group
• at least 25 percent indirect participation in another related entity
• companies with direct participation of at least 5 percent in another related entity, except when the participant company’s stock is traded on an organized securities exchange, in which case the direct participation threshold is 1 percent.
Also considered related parties in Spain:

- partners, shareholders, board members, directors, and their immediate, collateral, third-degree consanguinity, or affinity spouses or relatives, and the company and their cross relations with other companies of the group
- a company and its permanent establishments
- two companies that are taxed under the cooperative regimen.

What is the statute of limitations on assessment of transfer pricing adjustments?

Four years from the due date of the tax return.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Yes.

What types of transfer pricing information must be disclosed?

For fiscal years that commenced prior to 1 December 2006, taxpayers should be able to verify that their transfer prices meet the arm’s length standard, and specify the transfer pricing methodologies applied to test the same, even though no specific formal documentation requirements were yet in force.

For intra-group transactions carried out on or after 19 February 2009, taxpayers are required to disclose, in their corporate income tax law files, the following information with respect to their intra-group transactions (with certain limitations): the identification of the related parties, the type of relationship between them, the type of intra-group transaction carried out, the volume of the same, and the transfer pricing methodology applied to test the intra-group price applied.

What are the consequences of failure to prepare or submit disclosures?

A delay carries a penalty of 10 percent of the debt paid late, or a fixed penalty if there is no debt. A lack of presentation also carries a fixed fine and/or general sanctions for lack of income.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

The preparation of a transfer pricing study is required for all related party transactions with the following exceptions:

- entities that belong to the same Spanish Tax Consolidated group
- entities with intra-group transactions carried out within groups of economic interest and temporary business alliances
- operations carried out in takeover bids or public offerings processes for sale
- operations of entities with a net business revenue under EUR10 million, and when the total volume of the related party transactions does not exceed EUR100,000
- intra-group transactions realized with the same related party with a total volume of less than EUR250,000 (transaction volume to be understood as market value).

Assuming the transfer pricing documentation requirements are determined to be applicable given the facts and circumstances of the taxpayer, the tax authority may impose formal penalties in the event that the taxpayer fails to prepare documentation in accordance with the formal requirements set forth in the CITL and accompanying regulations.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Penalty elimination, and shifting the burden of proof from the taxpayer to the tax authority.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study or documentation is contemporaneous with the filing of the corresponding Corporate Income Tax return, which is generally due six months and 25 days from the fiscal year-end. However it should only be submitted upon request.

What are the major elements required or recommended to be included in a transfer pricing study?

Similar to requirements of the OECD Guidelines and European Union (EU) Joint Transfer Pricing Forum (JTPF) – master file and country specific concepts.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction-based methods: comparable uncontrolled price, resale price, and cost plus method.

Profit-based methods: profit split, and transactional net margin method.
Is there a priority among the acceptable methods?
Yes. Spanish tax authorities have expressed their preference for the transaction-based methods. Profit-based methods should only be applied if the use of transaction-based methods is not possible due to the complexity or the information of the transactions.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Upon tax audit, the tax inspector will determine the submission deadline on a case-by-case basis with a minimum period of 10 business days counting from the business day subsequent to the request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
The taxpayer may appeal against the proposed adjustment in the Spanish tax courts.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Before the regulation specifying the content requirements of the documentation that came into force on 19 February 2009, the potentially applicable penalty regime was the one set forth in the general tax law. Accordingly, for the fiscal years under this regime, no penalties can be imposed with respect to the failure to comply with the formal documentation requirements. For transfer pricing adjustments based on the new legislation, penalties could amount to 50 percent to 150 percent of the additional tax due, although they have very seldom been applied.

Based on the new penalty regime introduced by Law 36/2006, and applicable from 19 February 2009 onwards, penalties linked to the formal requirements of the documentation are also enforceable and may apply to both (i) the adjustments performed and to (ii) the lack of documentation supporting the related party transactions carried out by the taxpayer, thus establishing the following two types of penalties:

- When there is no transfer pricing adjustment, a fixed fine of EUR1,500 per data and EUR15,000 per group of omitted, inaccurate or misleading data might be imposed on the taxpayer due to faults in the documentation provided.
- When a transfer pricing adjustment is proposed by the tax authorities, a penalty of 15 percent of the additional tax base is applicable in addition to the tax due and the corresponding interest associated with the delayed payment of the additional tax.

To what extent are transfer pricing penalties enforced?
Transfer pricing penalty enforcement is expected to increase significantly in the near future.

What defenses are available with respect to penalties?
Yes, in case of the taxpayer’s conformity, penalties might be reduced or eliminated by the tax agency.

What trends are being observed currently?
An increasing number of audits focusing on sectors like electronics, chemicals, pharmaceuticals and new technologies.

Special considerations
Are secret comparables used by tax authorities?
Secret comparables are not used because the tax authority’s position in front of a court would be very weak and not sustainable.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Although the tax authority had in the past expressed a preference for local comparables, at the moment there is a shift to European comparables in some specific sectors. In those cases, the tax authority may accept – or even impose – the inclusion of non-Spanish comparables.

Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authority uses Bureau van Dijk’s pan-European Amadeus database to perform its own analyses using external comparables.

What level of interaction do tax authorities have with customs authorities?
There is little communication between the income tax and the customs authorities, but such communication is increasing and there is a plan to undertake joint audits.

Are management fees deductible?
Normally yes.

When the management fees apply between a Spanish and a foreign entity, and a tax treaty exists between the countries of residence of the same, the management fees should be treated in line with Article 7 of the tax convention. Should royalty charges be included in the management fee, Article 12 should also be applied.

When tax convention does not exist between the countries where the related parties are based, the Non-Resident Income Tax Law (NRITL, Law 35/2006) shall be applied.

The deduction of these expenses is subject to certain legal requirements established by the Spanish CITL. In addition, services rendered must produce or be expected to produce an advantage or be useful to the taxpayer.

Are management fees subject to withholding?
No. In principle, no withholding tax should be applied on payments made for management services received, unless some components of this fee fall within the concept of royalty (such as information technology, software, and so on).

Other unique attributes?
None.
Other recent developments

- Applicable to transactions realized on or after 19 February 2009, taxpayers should follow the formal documentation requirements specified in Royal Decree 1793/2008 and the applicable penalty regime is that established by the same.

- Also from this date on, the inclusion of the different intra-group transactions in the transfer pricing documentation files is subject to the limits of overall volume thresholds established in Royal Decree 897/2010 (EUR100,000 and EUR250,000 limits, as previously mentioned).

- For transactions carried out on or after 19 February 2009, taxpayers are also required to report the required information on their intra-group transactions in their corporate income tax files, in a specific section.

- In recent months, there appears to have been a significant increase in the number of tax audits undertaken by the Spanish tax authority, in particular with respect to certain industries. This trend is expected to continue as the tax authority devotes more time and resources to enforcing transfer pricing compliance.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently.

When may a taxpayer submit an adjustment to the competent authority?
On 18 November 2008, the Spanish Ministry of Economy and Finance officially published the Royal Decree 1794/2008 of 3 November, which regulates mutual agreement and arbitration procedures.

When a transfer pricing adjustment affects transactions between a Spanish entity and a non-resident, the mechanisms established in the relevant double taxation treaty should be applied. When the non-resident is within the EU, the provisions of the Arbitration Convention regarding the elimination of double taxation can be applied. The Royal decree establishes different regimes, depending on whether the procedures for double taxation are initiated by the Spanish or the foreign competent authorities and depending on which tax administration has made the evaluations.

The timing for competent authority assistance requests varies depending on the tax treaties signed between Spain and the other country in question.

May a taxpayer go to the competent authority before paying tax?
Yes, but if the taxpayer applies for a suspension of collection of taxes it should provide a guarantee in the same terms as if it were appealing to internal courts.

Advance pricing agreements
What APA options are available, if any?
Unilateral, bilateral, and multilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties?
Although the Spanish APA program does not publish an annual report with statistics regarding the program’s success rate, the process has a generally high rate of success, for both unilateral and bilateral agreements. Unilateral APAs are routinely concluded between nine months and one year, while bilateral agreements generally require closer to 18 months.

The success rate and duration of an APA are closely linked with the nature and complexity of the underlying transactions. In particular, transactions involving the sale or licensing of intangible property tend to present more of a challenge and are often heavily scrutinized by the tax authority.

Language

In which language or languages can documentation be filed?
Documentation must be filed in Spanish. In an ordinary tax audit, the tax auditor may accept the transfer pricing documentation in other languages, but a translation into Spanish still may be requested. In litigation, any document used must be written in Spanish, or in the official language of the autonomous region of the taxpayer, that is, Catalan, Basque, Galician, or Valencian.
Sri Lanka

KPMG observation

While transfer pricing documentation requirements were legally promulgated in 2008, there has been no practical enforcement by the Inland Revenue Authorities (IRA) up to date. An IRA circular, indicated that regulations would be enforced from the year of assessment 2010/11.

Basic information
Tax authority name
Department of Inland Revenue.

Citation for transfer pricing rules
Section 104 of the Inland Revenue Act No.10 of 2006 and the Gazette Extraordinary No.1546/10 of 22 April 2008.

Effective date of transfer pricing rules
Practical enforcement (as per recent IRA circular) – 1 April 2010.

What is the relationship threshold for transfer pricing rules to apply between parties?
Transfer pricing rules apply to transactions between the taxpayer and an “associated undertaking” that is where there is a degree of direct or indirect control between the parties and where the aggregation of their transaction values is above 100 million Sri Lankan rupees (LKR).

A person is considered to be an associate of the other in the following instances:
• direct or indirect shareholding with not less than 50 percent voting power
• any person directly or indirectly holds not less than 50 percent of the voting power in both undertakings
• loans and advances granted exceed 51 percent of the book value of total assets of the recipient
• guarantees not less than 25 percent of the borrowings of the other undertaking
• more than half of the directors, or one or more executive directors or members of the governing board of one undertaking are appointed by the other undertaking
• more than half of the directors are appointed by the same person or persons
• the manufacture, process, or business is wholly dependent on the input provided by the other undertaking
• Ninety percent or more of the raw materials required for manufacture or process is provided directly or by persons specified
• a mutual relationship which can be prescribed.

The Sri Lankan tax authorities tend to be of the view that the LKR100 million threshold would apply to the aggregation of transactions with all associated undertakings of the taxpayer.

What is the statute of limitations on assessment of transfer pricing adjustments?
The statute of limitations applicable to income tax applies. Accordingly:
• If return of income has been filed on time: two years.
• If return of income has not been filed on time: four years.
• Where return has not been filed or in the case of fraud, evasion, or willful default: no time limitation.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
There are no mandated disclosures in returns or document to be submitted. It is required that specified documentation be maintained for possible audit for five years to prove arm’s length pricing in the event of a revenue assertion.

What types of transfer pricing information must be disclosed?
Regulations are still to be enforced, but prescribed documentation includes:
• a description of the ownership structure of the assessee undertaking
• a profile of the multinational or group of which the assessee undertaking is a part
• a broad description of the business of the assessee and the industry in which the assessee operates, and of the business of the associated undertakings with whom the assessee has transacted
• the nature and terms (including prices) of international or group transactions entered into with each associated undertaking
• a description of the functions performed, risks assumed and assets employed or to be employed by the assessee and by the associated undertaking
a record of the economic and market analyses, forecasts, budgets or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the transactions entered into by the assessee

a record of uncontrolled transactions taken into account for analyzing their comparability with the transactions entered into, including a record of the nature, terms and conditions relating to any uncontrolled transaction with third parties which may be of relevance to the pricing of the transactions

a record of the analysis performed to evaluate comparability of uncontrolled transactions with the relevant transaction

a description of the methods considered for determining the arm’s length price in relation to each transaction or class of transaction; the method selected as the most appropriate method along with explanations as to why such method was selected, and how such method was applied in each case

a record of the actual work carried out in determining the arm’s length price, including details of the comparable data and financial information used in applying the most appropriate method, and adjustments, if any, which were made to account for differences between the transaction and the comparable uncontrolled transactions, or between the undertakings entering into such transactions

the assumptions, policies and price negotiations, if any, which have critically affected the determination of the arm’s length price

details of the adjustments, if any, made to transfer prices to align them with arm’s length prices determined under these rules and consequent adjustments made to the total income for tax purposes

Availability of supporting documentation in the public domain as prescribed includes:

• official publications, reports, studies and databases from the Government of the country of residence of the associated undertaking, or of any other country

• reports of market research studies carried out and technical publications brought out by institutions of national or international repute

• price publications including stock exchange and commodity market quotations

• published accounts and financial statements relating to the business affairs of the associated undertaking

• agreements and contracts entered into with associated undertaking or with unrelated enterprises in respect of transactions similar to that transaction

• letters and other correspondence documenting any terms negotiated between the assessee and the associated undertaking

• Documents normally issued in connection with various transactions under the accounting practices followed.

What are the consequences of failure to prepare or submit disclosures?
None prescribed. Risk of inability to sustain transfer pricing assertion.

Transfer pricing methods

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Transfer pricing study overview

Is there a priority among the acceptable methods?
No. The most appropriate of the prescribed methods should be selected taking into account the ‘best method factors’ (the factors have not been prescribed by law, but are based upon generally accepted transfer pricing practice).

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Mitigates risk of tax authority making adjustments using secret comparables.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
No, the law does not provide for a time frame.

What are the major elements required or recommended to be included in a transfer pricing study?

• Functional analysis, industry analysis, company overview, selection of method, description of comparables.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.
If there is no priority of methods, is there a ‘best method’ rule?
The best method should suit the facts and circumstances of each transaction and be based on the:
- nature and class of transaction
- the reliability, availability, and coverage of the data necessary for application of the method
- nature, extent, and reliability of assumptions
- degree of comparability between the transactions and between the undertakings
- the extent to which reliable and accurate adjustments can be made
- the type of associated undertaking entering into the transaction and functions performed by them.

**Special considerations**
Are secret comparables used by tax authorities?
Not applicable to date.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
None to date.

Do tax authorities have requirements or preferences regarding databases for comparables?
No.

What level of interaction do tax authorities have with customs authorities?
High.

Are management fees deductible?
Yes, subject to certain restrictions.

Are management fees subject to withholding?
Yes.

Other unique attributes?
No unique attributes in relation to transfer pricing regulations.

**Other recent developments**
Since the issuance of the Gazette and the guidelines, there has been no development with regard to transfer pricing.

**Tax treaty double tax resolution**
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Sometimes.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
Yes, under an APA.

**Advance pricing agreements**
What advance pricing agreements (APA) options are available, if any?
Unilateral and bilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
To date no APAs have been concluded.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

**Language**
In which language or languages can documentation be filed?
No formal rules. The generally accepted rule is that documentation can be filed in one of the national languages – Sinhala or Tamil – or in English.
Sweden

KPMG observation

The Swedish Tax Agency’s ever-increasing focus on transfer pricing has made Swedish multinational corporations hire in-house transfer pricing specialists to a much greater extent than previously.

Basic information

Tax authority name
Skatteverket (Swedish Tax Agency or STA).

Citation for transfer pricing rules
The arm’s length principle is found in 14:19 Inkomstskattelagen, Chapter 14, Section 19 of the Income Tax Act.


Effective date of transfer pricing rules
1928.

What is the relationship threshold for transfer pricing rules to apply between parties?
Are under common control (either shareholding, votes, or other form of control).

What is the statute of limitations on assessment of transfer pricing adjustments?
Six years from tax year-end.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
There is no requirement to disclose any transfer pricing information with the tax return, but there is a statutory requirement that transfer pricing documentation be prepared annually. Filing the transfer pricing documentation with the tax return makes it more difficult for the STA to levy penalties should an adjustment be made.

What types of transfer pricing information must be disclosed?
Not applicable.

What are the consequences of failure to prepare or submit disclosures?
Failure to provide disclosures/documentation upon request will likely shift the burden of proof from the STA to the taxpayer and will make it more difficult to avoid penalties.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, there is an absolute requirement for all companies to prepare transfer pricing documentation annually, but there are no specific documentation-related penalties. General tax penalties apply.

Simplified transfer pricing documentation may be used for certain transactions with low values.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
There is a legal requirement to prepare transfer pricing documentation annually. Having high quality transfer pricing documentation in place would normally mean penalty protection and would also reduce the risk of the STA making adjustments. It also makes it more difficult for the STA to shift the burden of proof to the taxpayer.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The STA can request that transfer pricing documentation be filed contemporaneously with the tax return (normally 2 May but no later than 15 June). Four different filing dates (depending on financial year-end) will apply from 2013.

What are the major elements required or recommended to be included in a transfer pricing study?

- business description
- company overview
- organizational structure
- functional analysis
- risk analysis
- industry analysis
- financial performance
- description of controlled transactions
- selection of method
- description of comparables
- economic analysis
- intra-group agreements
- APAs and MAPs.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a ‘best method’ rule?

No.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normal STA practice is to request that the documentation be submitted within 30 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Application of the arbitration convention may be requested for transactions within the EU.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. General tax penalties only: 40 percent of the additional tax due for the transfer pricing adjustment.

To what extent are transfer pricing penalties enforced?

Almost always.

What defenses are available with respect to penalties?

Penalties might be avoided if complete documentation is filed with the tax return as an integral part of the tax return.

What trends are being observed currently?

The number of transfer pricing audits continues to increase dramatically. Most of the audits result in adjustments.

The STA has a national focus group of experienced tax advisors/auditors based in Stockholm, Gothenburg and Malmö. They work solely on transfer pricing and act as in-house advisors to the auditors in transfer pricing audits and other transfer pricing related issues. With the STA appointing dedicated transfer pricing auditors and litigators, the result is an increased focus on transfer pricing.

The STA has questioned the financing structures used for acquisitions by several private equity companies. In particular the high interest rates used have been the subject for adjustments by the STA.

Special considerations

Are secret comparables used by tax authorities?

This has happened in a few instances. Will likely not be the case in the future.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, the STA prefers Swedish comparables, but pan-European comparables are readily accepted.

Do tax authorities have requirements or preferences regarding databases for comparables?

The STA uses Amadeus, but there is no requirement for companies to use Amadeus. The quality of the comparables is more important than the database as such.

What level of interaction do tax authorities have with customs authorities?

Low, but increasing.

Are management fees deductible?

Yes.
Are management fees subject to withholding?
No.

Other unique attributes?
Documentation in EU transfer pricing format is explicitly referred to as acceptable.

Other recent developments
An increasing number of companies show interest in APAs, despite lack of feedback on outcomes from the competent authority.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
Within three years of being made aware of the action taken that has resulted in the taxation violating the applicable tax treaty.

May a taxpayer go to the competent authority before paying tax?
Yes.

Advance pricing agreements
What APA options are available, if any?
APA legislation was introduced with effect from 1 January 2010. The rules apply for treaty countries only.

Only bilateral and multilateral APAs are accepted. It is not possible to obtain unilateral APAs.

Is there a filing fee for APAs?
The filing fee is 150,000 Swedish krona (SEK) per country involved.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
The competent authority has not yet published any statistics, but has committed to do so eventually.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Given that the APA program was introduced with effect from 1 January 2010, not many APAs have been concluded to date.

Language
In which language or languages can documentation be filed?
Swedish, Danish, Norwegian, and English.

KPMG in Sweden

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KPMG observation

Switzerland is a member of the OECD and has accepted the OECD Guidelines without reservation. On 4 March 1997, the Federal Tax Administration issued a circular letter instructing the cantonal tax administrations to adhere to the OECD Guidelines when assessing multinational companies.

Recent experience with tax audits seems to indicate that the tax authorities are increasingly considering transfer pricing issues, as some have requested OECD-compliant transfer pricing documentation. However, the level of awareness is different from canton to canton.

### Basic information

**Tax authority name**

Eidgenössische Steuerverwaltung (ESTV) [Federal Tax Administration] as well as the relevant cantonal tax authorities.

**Citation for transfer pricing rules**

Not applicable.

**Effective date of transfer pricing rules**

Not applicable.

**What is the relationship threshold for transfer pricing rules to apply between parties?**

Not applicable.

**What is the statute of limitations on assessment of transfer pricing adjustments?**

Ten years from tax year-end.

### Transfer pricing disclosure overview

**Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?**

No.

**What types of transfer pricing information must be disclosed?**

Not applicable.

**What are the consequences of failure to prepare or submit disclosures?**

Failure to prepare or submit requested information in an enquiry of the assessing tax authority could lead to a formal tax audit and subsequently to a shift of the burden of proof on an assessment of the taxable income of the taxpayer.

### Transfer pricing study overview

**Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?**

No specific documentation requirements. General tax documentation rules apply.

**Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.**

Shifting of the burden of proof from taxpayer to tax authority.

### Transfer pricing methods

**Which transfer pricing methods are acceptable?**

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, transactional net margin method, and comparable profits method.
Is there a priority among the acceptable methods?
The Swiss tax authorities are supposed to follow the OECD Guidelines, and hence the application of methods proposed therein. However, in practice if a company is going to apply profit-based methods, and in particular, a profit split and comparable profits method on a rather large scale, an advance tax ruling with the tax authorities concerned (cantonal tax authority) is recommended to agree on the rather wide range of possible applications.

If there is no priority of methods, is there a ‘best method’ rule?
As Switzerland is following the OECD Guidelines, there is no priority of methods, however, traditional methods are likely preferred. But application of other methods is always possible given evidence for commercial justification and the arm’s length nature of the arrangement.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Tax authorities expect to be provided with transfer pricing documentation within a reasonable time frame.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority? Legal proceedings.
If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
General tax penalties could be assessed. Furthermore, adjustments can be treated as a hidden profit distribution subject to 35 percent Swiss withholding tax (non-treaty) or the applicable treaty rate (portfolio rate, i.e. 15 percent) according to the relevant tax treaty.

To what extent are transfer pricing penalties enforced?
Not applicable.

What defenses are available with respect to penalties?
Although Switzerland does not have specific transfer pricing penalties, general tax penalties can be assessed in severe cases of non-arm’s length arrangements, ultimately assessed as abusive or even fraudulent. In such cases, taxpayers are recommended to provide full disclosure of all available information to counter the assessment and avoid penalization.

What trends are being observed currently?
Increased scrutiny is observed with any structures and corresponding intra-group transactions involving offshore locations and entities.

Special considerations
Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
No, the Amadeus database is largely accepted and applied.

What level of interaction do tax authorities have with customs authorities?
Low.

Are management fees deductible?
Yes.
Are management fees subject to withholding?
No.

Other unique attributes?
None.

Other recent developments
A new tax regime has been introduced for the taxation of income from intellectual property (IP) at the cantonal level by a first canton, i.e. the canton of Nidwalden. This “IP Box” taxation is applied to all kinds of IP and income derived from it, regardless of whether foreign or domestically sourced.
A new practice has been announced by the Federal Tax Administration concerning corresponding adjustments for Swiss principal arrangements. Depending on the facts and circumstances, the full corresponding adjustment can be denied.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive.
If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
After an adjustment notice is provided to the taxpayer.
May a taxpayer go to competent authority before paying tax?
Permitted.
Advance pricing agreements

What APA options are available, if any?
Unilateral, bilateral, multilateral, and advance rulings.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The Swiss Competent Authority is frequently involved in bilateral APA negotiations and applies the APA program often and very successfully.

Language

In which language or languages can documentation be filed?
One of the official languages (depending on the canton): German, French, Italian, Reto-Romanisch.

English is frequently accepted.
KPMG observation

Beginning with the 2005 tax year, companies have been required to prepare transfer pricing reports or substitute reports to document their compliance with arm's length principles.

The tax authorities are currently stepping up the pace of transfer pricing audits as a way to actively seek additional tax revenue. As a result, special transfer pricing audit teams have been formed by the tax authorities to conduct more comprehensive and in-depth transfer pricing audits than in the past. KPMG in Taiwan has observed that the number of cases selected has increased along with the intensity of the tax authorities’ review.

Basic information

Tax authority name
Ministry of Finance (MOF).

Citation for transfer pricing rules
Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s length Transfer Pricing.

Effective date of transfer pricing rules

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of 20 percent or more based on:

- voting power or share capital
- under common control
- control and management
- head office and its branch offices
- joint-venture.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from the tax return filing date if the return is filed in a timely fashion. In situations where a taxpayer fails to file the annual tax return within the statutory deadline or is involved in tax fraud or tax avoidance, the statute of limitations will be extended to seven years. The statutory deadline for filing the annual corporate tax return is the last day of the fifth month after the end of each fiscal year.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes. The taxpayer must disclose related party transactions on forms filed with income tax returns.

What types of transfer pricing information must be disclosed?
The types of information to be disclosed include, but are not limited to:

- legal structure
- detailed information on related parties
- controlled transaction types and respective amounts
- whether the taxpayer has signed APAs with tax authorities in Taiwan or foreign jurisdictions and the relevant information
- whether a transfer pricing study has been prepared.

What are the consequences of failure to prepare or submit disclosures?

As related party transactions are disclosed on forms filed with income tax returns, there is no direct penalty for failure to submit disclosures. However, when the tax authorities recognize in the case of fraudulent or erroneous accounting records that taxpayers failed to submit disclosures, the tax authorities may make adjustments and assess the taxable income of related taxpayers in accordance with applicable acts or regulations.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for certain transactions. In general, taxpayers must, at the time of filing annual income tax returns, maintain an extensive list of documentation and a transfer pricing study to support the controlled transactions. However, the MOF established a threshold, known as the safe harbor rule, to alleviate taxpayers’ burden and compliance cost. If controlled transactions meet the requirements regulated under the safe harbor rule, taxpayers may provide
“other supporting documentation” as a substitute for a full transfer pricing report.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The benefit of preparing a transfer pricing study is that the tax authorities will assess the arm’s length result of the controlled transactions pursuant to the relevant regulations and assess the taxable income based on the transfer pricing study.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The transfer pricing study must be prepared contemporaneously with the tax return and must be submitted within one month of receipt of a notice of investigation sent by the tax authorities.

What are the major elements required or recommended to be included in a transfer pricing study?

At a minimum, the transfer pricing study should include the following items:

• Industry and economic condition analysis.

• Function and risk analysis of each entity engaged in the controlled transactions.

• Application of arm’s length principles set forth in Article 7 of the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s length Transfer Pricing.

• Identity of and information on comparable companies selected.

• Comparability analysis for application of best method rule.

• A best method analysis, including a description of the transfer pricing methods selected, the reasons for selection, and description of other methods considered and the reason(s) they were not selected.

• The transfer pricing methods adopted by other entities engaged in the controlled transactions and relevant information.

• The arm’s length results of applying the best method, including relevant data of comparables, adjustments made to eliminate differences with comparables, assumptions made, arm’s length range derived, conclusion on arm’s length nature, adjustments made according to the arm’s length range.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Comparable uncontrolled price method, comparable uncontrolled transaction method, resale price method, cost plus method, profit split method, and comparable profits method.

Advance approval must be obtained from the MOF for applying unspecified methods.

Is there a priority among the acceptable methods?

No hierarchical priority among the acceptable methods.

If there is no priority of methods, is there a ‘best method’ rule?

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Upon request, taxpayers are required to produce the documentation within one month from the date of receipt of notification. In special circumstances, taxpayers are also given the option of a one-time extension of an additional month.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes, the taxpayer has the option to resolve disputes through the administration remedy procedure.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes. If the transfer pricing audit results in income adjustments and assessments, a penalty of up to 200 percent of the underpaid tax amount (where the taxpayer has filed their tax returns on time) will be imposed under any one of the following situations:

• Where the reported controlled transaction prices are 200 percent or more, or 50 percent or less of the arm’s length prices as assessed by the tax authority.

• Where the income adjustment assessed by the tax authority reaches 10 percent of the taxpayer’s assessed annual income and 3 percent of the assessed annual net sales.

• Where the taxpayer fails to provide a transfer pricing study and cannot provide other documentation to prove that its transfer price is at arm’s length.
• Other situations where the tax authority finds evidence of underreporting income and the amount underreported is considered significant.

To what extent are transfer pricing penalties enforced?
The Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm’s length Transfer Pricing were implemented in 2005. Even though there have been some transfer pricing audits, there have not been many incidents of penalties imposed on transfer pricing adjustments. This is mainly because the audits are still ongoing or the assessment amounts were lower than the penalty threshold.

What defenses are available with respect to penalties?
There is no defense to any of the penalties, other than to defend against the underlying adjustment.

What trends are being observed currently?
The tax authorities are currently stepping up the pace of transfer pricing audits as a way to actively seek additional tax revenue. As a result, special transfer pricing audit teams have been formed by the tax authorities to conduct more comprehensive and in-depth transfer pricing audits than in the past. The number of cases selected has increased along with the intensity of the tax authorities’ review.

The tax authorities are currently evaluating transactions individually. The different benchmarking sets shall apply to each transaction on a transaction-by-transaction basis. They may not accept separate transactions being evaluated together using the same benchmarking set to determine the arm’s length transaction result, unless the separate transactions are linked or continuous.

Special considerations

Are secret comparables used by tax authorities?
Based on our observation of the current practice, secret comparables are not used by tax authorities.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes. If the tested party is a Taiwan company, the tax authorities prefer to apply local comparables. However, foreign comparables are acceptable if the local comparables are insufficient.

Do tax authorities have requirements or preferences regarding databases for comparables?
There are no specific requirements regarding which database should be applied, although the tax authorities prefer to use Osiris, S&P and TEJ databases.

What level of interaction do tax authorities have with customs authorities?
Currently, low.

Are management fees deductible?
Generally speaking, expenses will be deductible for Taiwan income tax purposes only if they are necessary and relevant to a business’s operation. If the management fee paid to the offshore service provider is deemed to be necessary and relevant to the Taiwan entities’ operations, then it would be deductible by Taiwan entities for Taiwan income tax reporting purposes. However, Taiwan’s Supreme Administrative Court announced a verdict which disallowed a deduction for an entity’s allocated general and administrative expenses, because it was a subsidiary, rather than a branch. Please note that the verdict is only legally binding for the individual case and not for all general cases. In practice, taxpayers bear a heavy burden of proof to justify to the tax authorities that management fees are necessary and relevant to a business’s operation.

Are management fees subject to withholding?
From the offshore entity’s perspective, the management fee it receives will most likely be deemed as Taiwan-sourced income. Thus, it will generally be subject to 20 percent withholding tax at source unless mitigating measures under domestic law or tax treaty are available.

Other unique attributes?
According to the relevant transfer pricing rules, if a transfer pricing adjustment results in a decrease of the tax liability in Taiwan, no adjustment is allowed.

Other recent developments
The MOF has issued thin capitalization rules. Under the new rules, the debt-to-equity ratio is set at 3:1, when any interest expenses exceeding the stipulated threshold would be disallowed. In addition, the new regulations provide that if the tax authorities make an adjustment of income for interest expense, and at the same time make an adjustment of an interest expense based on application of the arm’s length rule, the amount of the adjustment would be also calculated as an interest expense in the aforementioned stipulated threshold.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal.
If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to competent authority?
No formal rules.

May a taxpayer go to competent authority before paying tax?
No formal rules.

**Advance pricing agreements**

What APA options are available, if any?
Unilateral, bilateral, and multilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Although the number of APA applications are increasing, there are some practical issues for tax authorities conducting bilateral and multilateral APAs, such as only a few of the double tax treaties being signed. The first bilateral APA was completed in 2011.

**Language**

In which language or languages can documentation be filed?
In general, all the required documentation is to be provided in Chinese. However, to alleviate the taxpayers’ compliance cost, English language documentation may be acceptable if approved by the tax authorities.
Most companies operating in Tanzania are subsidiaries of multinational enterprises that have engaged in foreign direct investment in Tanzania. The tax authority is generally of the view that these multinationals are focused on repatriating as much profit out of Tanzania as possible, while suffering the least possible tax costs. For this reason, the tax authority is aggressively challenging transactions between Tanzanian operations and their non-resident related parties. However, tax law relating to transfer pricing and related party transactions remains considerably underdeveloped and the expectations of the tax authorities with regard to related party transactions are different from one case to the other. This creates quite a degree of unpredictability with regard to potential tax costs relating to an investment in Tanzania.

**Basic information**

**Tax authority name**
Tanzania Revenue Authority (TRA).

**Citation for transfer pricing rules**
Section 33 of the Income Tax Act requires that any arrangement between related parties must be conducted at arm’s length.

**Effective date of transfer pricing rules**
2004.

**What is the relationship threshold for transfer pricing rules to apply between parties?**
- A company which controls or may benefit from 50 percent or more of the rights to income or capital or voting power of other entity whether directly or indirectly.
- Partners in the same partnership, unless the Commissioner is satisfied that it is not reasonable to expect that either person will act in accordance with the intentions of the other.
- An individual and a relative of the individual, unless the Commissioner is satisfied that it is not reasonable to expect that either individual will act in accordance with the intentions of the other.

**What is the statute of limitations on assessment of transfer pricing adjustments?**
Three years from the date of filing the tax return. However, in cases where the tax authorities suspect fraud or intent to evade payment of tax, the three year limitation can be ignored.

**Transfer pricing disclosure overview**

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Disclosures are required to be prepared and a summary thereof is required to be submitted/noted in the tax return. The detailed information and supporting documents are only presented to the revenue authority when the authority requests such information, for example under a tax audit.

**What types of transfer pricing information must be disclosed?**
Description and amounts of related party transactions need to be submitted with tax returns.

A transfer pricing study should be prepared but is not required to be submitted to the tax authorities unless requested.

**What are the consequences of failure to prepare or submit disclosures?**
The taxpayer could be deemed either to have failed to maintain proper documents for a year of income, or to have misled the tax authorities in a material manner by omitting to disclose certain matters. The first offence is punishable by a monthly penalty of 2.5 percent of any outstanding income tax at the time of filing the return, or 100,000 Tanzanian shillings (TZS), whichever is higher, a penalty that runs until the proper documents are presented.

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Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No, there is no requirement for the preparation of a transfer pricing study.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Mitigate the risk of tax authority making adjustments using comparables that might not be appropriate/relevant to the situation at hand. Therefore, other benefits obtained would be penalty protection and shifting of the burden of proof to the tax authorities. The authorities also generally expect companies engaging in related party transactions to have prepared transfer pricing studies.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

None. It is, however, expected that the study is in place before the related party transactions are conducted or entered into.

What are the major elements required or recommended to be included in a transfer pricing study?

Functional analysis, risk analysis, assets analysis, industry analysis, company overview, selection of method, description of comparables, and analysis of comparables indicating how a reasonable transfer price can be arrived at from the analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No. In Tanzanian law there is no requirement for a transfer pricing study to be prepared by a tax advisor/practitioner. However, the Tax law requires that tax advisors/practitioners who assist taxpayers in preparing tax returns are certified public accountants in public practice (CPA-PP), registered with the National Board of Accountants and Auditors, and also approved tax consultants (registered with the Tanzania Revenue Authority).

Transfer pricing methods

Which transfer pricing methods are acceptable?

No guidance has been given by the TRA. In the absence of such guidance, it has become the norm to apply arm’s length principles as set out by the OECD Guidelines.

Is there a priority among the acceptable methods?

Not applicable.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

See Transfer pricing documentation overview section.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes. The tax authority first attempts to resolve the dispute, and if this fails, dispute resolution is progressed to the Tax Revenue Appeals Board. If the taxpayer remains aggrieved by the decision of the Appeals Board, an appeal can be lodged with the Tax Revenue Appeals Tribunal, and eventually with the Court of Appeal.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Yes, interest can be assessed where the sustained adjustment creates a situation where tax is deemed to have been paid later than its due date. Interest rates are amended annually, based on the Bank of Tanzania discount rate at the beginning of the year. In 2011, the applicable rate was 12.58 percent per annum, compounded on a monthly basis.

To what extent are transfer pricing penalties enforced?

Without fail, penalties (in this case interest for late payment) are computed and assessed where a taxpayer is deemed to have failed to pay tax by the date on which it was due.

What defenses are available with respect to penalties?

Documentation and reasonable cause. The tax authority has legislative power to reduce or remove penalties where the taxpayer submits justifiable reasons for the reduction or removal to be considered. One such reason could be the lack of clear legislative guidance on how to prepare documentation with respect to related party transactions.

What trends are being observed currently?

Generally, all transactions between local companies and their related parties who are Tanzanian non-resident are...
coming under immense scrutiny. The tax authority is asking for evidence that services were rendered (where the transactions relate to payment by the Tanzanian company for services provided by related persons), together with documentation proving that the prices were at arm’s length. Where the authorities remain dissatisfied, the consequence is for the service fees/related party payments to be disallowed as expenses for the Tanzanian company – thus increasing taxable profits.

**Special considerations**

**Are secret comparables used by tax authorities?**

The tax authority may use comparables that will not be disclosed to the taxpayer due to the confidentiality of the information collected by the authority from other taxpayers.

**Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?**

No. Reasonability of comparables is what is important – irrespective of whether these are local or foreign.

**Do tax authorities have requirements or preferences regarding databases for comparables?**

No.

**What level of interaction do tax authorities have with customs authorities?**

Significant. The customs authorities are actually a facet/department of the larger tax authority.

**Are management fees deductible?**

To the extent that management fees are justifiable (relating to services actually rendered and priced at arm’s length), the management fees are deductible.

**Are management fees subject to withholding?**

A withholding tax rate of 15 percent applies on payments to non-residents where the services for which the fees are paid were rendered in Tanzania.

**Other unique attributes?**

None.

**Other recent developments**

None.

**Tax treaty-double tax resolution**

**What is the extent of the double tax treaty network?**

Minimal.

**If extensive, is the competent authority effective in obtaining double tax relief?**

Not applicable.

**When may a taxpayer submit an adjustment to the competent authority?**

Where the taxpayer essentially feels that the adjustment is creating double taxation (taxation of the same income in Tanzania and in another jurisdiction), and the two countries share a double tax relief treaty that provides for competent authority intervention.

**May a taxpayer go to the competent authority before paying tax?**

Yes, provided that negotiations with the tax authority have failed – and the tax authority has either made a final decision to proceed with the adjustment or has raised an assessment for tax that the taxpayer disagrees with.

**Advance pricing agreements**

**What APA options are available, if any?**

No APAs. However, a company may apply in writing to the Commissioner for a private ruling. The company is required to make a full and true disclosure of all aspects of the arrangement relevant to the ruling application. Subject to this, the Commissioner may, by notice in writing served on the company, issue a private ruling setting out his position regarding the application of the Act to the company with regard to the arrangement proposed.

**Is there a filing fee for APAs?**

Not applicable.

**Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?**

No.

**Please provide some information on how successful the APA program is and whether there are any known difficulties.**

The APA program is provided for in the Income Tax regulations, but the tax authority has been hesitant to conclude any APAs with taxpayers, and we suppose that the reason for this would be the lack of skilled expertise in the tax authority in so far as transfer pricing is concerned.

**Language**

In which language or languages can documentation be filed?

English.
Thailand

KPMG observation

Through a review of taxpayers’ documentation over the past years, the tax authorities have now gained more experience in transfer pricing issues. Although there have been no major developments in regulation since the first transfer pricing guidelines were issued in May 2002, the position of the tax authorities has been established based on their experience in transfer pricing audits. However, their position can be influenced depending upon the relevant facts of each taxpayer’s situation. To deal with the audit effectively, appropriate transfer pricing documentation should be prepared beforehand.

Basic information
Tax authority name
Krom Sumpakorn (Revenue Department).

Citation for transfer pricing rules
General laws:
• sections 65 bis (4), (7)
• section 65 ter (13), (14), and (15).
Specific rules:
• Departmental Instruction Paw 113/2545. The Guidance on the APA Process (APA Guidance) was issued in April 2010.

Effective date of transfer pricing rules
Specific rules issued in May 2002 as guidelines for Revenue Department officers. No legal effect.

What is the relationship threshold for transfer pricing rules to apply between parties?
Direct or indirect relationship with regard to management, control or capital.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from due date; filing date. Transfer pricing assessments follow the statute of limitations on income tax return audits, which is five years from due date of tax return, or from filing date if failure to file by due date.

Transfer pricing disclosure overview
Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
No specific requirement for transfer pricing disclosure. However, there are questions in the annual corporate income tax return (yes or no answers) which the taxpayer is required to confirm in relation to the market price.

What types of transfer pricing information must be disclosed?
The questions in the tax return that require the taxpayer’s confirmation are:
• Has the business sold products, services or property, lent money, or leased out property, without value received or with received value below market price in amounts considered substantial?
• Has the business bought assets, or incurred expenses in acquiring such assets, at a value above normal price in an amount considered substantial?

What are the consequences of failure to prepare or submit disclosures?
Not applicable (the questions in the annual corporate income tax return, as mentioned above, have to be answered as it is part of the tax return).

Transfer pricing study overview
Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?
The taxpayer’s documentation is generally requested in the event of a transfer pricing audit. The documentation should shift the burden of proof to the tax authority and mitigate the risk of the use of secret comparables.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
The transfer pricing guidelines suggest that the documentation should be prepared at the time the transactions are...
entered into, but there is no statutory filing requirement. Generally the documentation will be submitted upon request of the tax authorities. If the documentation is not available, the tax authorities, in practice, will probably grant an extension of time for submission.

What are the major elements required or recommended to be included in a transfer pricing study?
Functional analysis, industry analysis, company overview, selection of method, and description of comparables (local comparables are required).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split, transactional net margin method, and comparable profits method.

Is there a priority among the acceptable methods?
None.

If there is no priority of methods, is there a ‘best method’ rule?
No.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Normal timeline in the tax authorities’ requested letter is between seven and 15 days but in practice a request for an extension is possible.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
If a conclusion cannot be reached at the documentation review and a notice of assessment is issued, the dispute may be settled by filing a tax appeal within 30 days after receiving the notice of assessment. If the taxpayer fails to obtain a successful resolution at this level, the taxpayer may appeal to the tax court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. General income tax penalties i.e. surcharge of 1.5 percent per month of additional tax payable up to the amount of tax will be imposed. Penalties of up to 100 percent of additional tax payable will be added if the adjustment is made as a result of a tax audit summons.

To what extent are transfer pricing penalties enforced?
Always (if the adjustment results in additional tax).

What defenses are available with respect to penalties?
None if there is tax payable. It is necessary to negotiate with the tax authorities at the documentation review to reduce the assessed tax amount so that the penalties can be reduced accordingly.

What trends are being observed currently?
Tangible property transactions are still the main target but the tax authorities are more and more focused on intra-group services transactions as well. If there are intra-group fees for services or for intangible property, there may be a question about tax deductions. The taxpayers are often required to demonstrate that the services have been received and are relevant to the Thai operations, and that the consideration is not excessive.

**Special considerations**

Are secret comparables used by tax authorities?
This is possible.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes.

Do tax authorities have requirements or preferences regarding databases for comparables?
No requirement but KPMG in Thailand uses the same database that is used by the tax authorities (Business Online) because it is a well-known local database.

What level of interaction do tax authorities have with customs authorities?
None.

Are management fees deductible?
Yes. Generally, management fees are deductible if the taxpayer can substantiate the expenses incurred for business and the fees are not excessive.

Are management fees subject to withholding?
Yes. May be exempt under tax treaty.

Other unique attributes?
None.

**Other recent developments**

The tax authorities have sent questionnaires to taxpayers to request related party transaction information, which may result in a request for their transfer pricing documentation. In this regard, if a questionnaire is received, the taxpayer should be aware that documentation may be requested. In addition, the transfer pricing audit may be initiated by the general tax audit team.
(separate from the transfer pricing tax team), who will then refer the case to the transfer pricing tax team.

**Tax treaty/double tax resolution**

What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
No formal rules.

**Advance pricing agreements**

What APA options are available, if any?
Bilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Since the APA guidance has been issued, there have been more requests for APAs but not many concluded, because the tax authority does not have sufficient resources.

**Language**

In which language or languages can documentation be filed?
Documentation: Thai. English is acceptable but a translation into Thai may be requested.

APA application: Thai and English.

KPMG in Thailand

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As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.
KPMG observation

Turkey follows global trends, and the Turkish government is implementing new compliance rules and tax audits in accordance with the transfer pricing provisions. Since the beginning of 2007, transfer pricing has emerged as one of the main focuses of inquiries by tax authorities. The corporate taxpayers registered to the Large Corporations tax office were asked to submit their annual transfer pricing reports from 2007 to fiscal year 2010, during 2011. The transfer pricing reports collected from these companies have been reviewed by the tax authorities. The main reason for these reviews may be to gain an understanding regarding the application of transfer pricing by taxpayers, since the focus on transfer pricing is relatively new. During and after this review, some companies were provided with feedback regarding the reports presented by them.

If the taxpayers have internal comparables, the tax authorities are generally trying to use these prices as a comparable in tax audits even if the factors are not totally comparable. Therefore, using internal comparables is highly recommended and also it is suggested to include the selection or rejection of internal comparables, if any, with the factors of comparability.

In August 2009, guidance relating to MAPs in the Treaties for the Avoidance of Double Taxation was issued by the Revenue Administration. According to the guidance, taxpayers must follow the procedures to present their case to the competent authority where the actions of one or both of the contracting states that result or will result in taxation are not in accordance with provisions of the convention. Moreover, guidelines regarding the Disguised Profit Distribution through Transfer Pricing were published by the Turkish Revenue Administration in November 2010. The explanations consider the following terms: related party concept; arm’s length principle; methods used in the determination of the arm’s length price, APA, documentation requirements, related tax penalties, treasury loss, transfer pricing adjustments, and intra-group services.

Basic information

Tax authority name
Revenue Administration, Ministry of Finance.

Citation for transfer pricing rules

A rule that was added to Article 13 states that the “disguised profit distribution via transfer pricing” provision would be applicable if there is a “treasury loss” with respect to the domestic intra-group transactions of a corporate taxpayer. The term “treasury loss” is defined as an under-declaration or late declaration of all types of taxes resulting from transfer prices that do not comply with the arm’s length principle. This rule was effective as from 6 June 2008 and applied to 2008 and later tax returns.

Effective date of transfer pricing rules
1 January 2007.

What is the relationship threshold for transfer pricing rules to apply between parties?
Based on shareholding (an individual or a legal entity related to a shareholder) that provides a direct or indirect control over related parties including a transaction effected with a resident of a low-tax jurisdiction i.e. a resident located in a tax haven country.
What is the statute of limitations on assessment of transfer pricing adjustments?

Five years from the tax year-end.

**Transfer pricing disclosure overview**

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

All corporate taxpayers are required to complete and attach a transfer pricing form to their annual corporate income tax returns. This transfer pricing form should include information on all intra-group transactions conducted within a year and the related transfer pricing methodology(s) applied.

The corporate taxpayers which have cross-border related party transactions and companies registered with the Large Corporations tax office are required to prepare annual transfer pricing reports, including economic analysis, and to submit them to the tax authorities upon request.

The companies which completed APA negotiations have to prepare annual APA reports and submit them to the tax authorities upon request.

**What types of transfer pricing information must be disclosed?**

The annual transfer pricing form attached to the corporate tax returns of the taxpayers must include disclosures related to the brief description and amounts of related party transactions, and applied transfer pricing methods.

**What are the consequences of failure to prepare or submit disclosures?**

The tax penalty for failure to prepare or submit the disclosures is a procedural irregularity penalty, which is immaterial. However this failure may cause further tax audit and tax assessment by the tax authorities.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Penalty mitigation, and the burden of proof passes to the tax authority.

**To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?**

The transfer pricing study must be completed by the date on which the corporate tax return is submitted (25 April for companies which have calendar year accounting periods), and must be provided to the tax authorities upon request and within 15 days.

**What are the major elements required or recommended to be included in a transfer pricing study?**

The annual transfer pricing report should have the format stated in the general communiqué and include at least the information below:

- general information regarding the company, the industry, organization, etc.
- information regarding the related parties
- information on the details of the transactions between the related parties (function, risk and asset analysis, the overview of intra-group transactions etc.)
- information on transfer pricing analyses (the transfer pricing methods used, the reasons for not applying comparable uncontrolled price (due to hierarchy of methods), the reasons for the selection of transfer pricing methods, selection of comparables, economic analysis)
- conclusion.

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, preparation of an annual transfer pricing report is required to comply with statutory requirements. The Large Corporations tax office taxpayers are required to prepare an annual transfer pricing report for domestic and cross-border related party transactions. Other corporate taxpayers have to prepare an annual transfer pricing report for their international related party transactions only.

There is no threshold for having to prepare transfer pricing studies. Related party transactions between two resident taxpayers that do not lead to treasury loss are not evaluated under transfer pricing rules.

From 1 January 2008, all corporate taxpayers have to include transactions with their related parties based in free-trade zones (including branches) in their transfer pricing report. Furthermore, all corporate taxpayers located in free-trade zones have to prepare a yearly transfer pricing report for domestic related party transactions from 1 January 2008.

The procedural irregularity penalties (immaterial amounts) will be applied to those who do not submit the information and documents they are obliged to submit to the tax authority pursuant to the communiqué. However, in the absence of documentation, the tax authorities may challenge the transfer prices and assess a much greater amount of tax.
Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Traditional transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split and transactional net margin method.
Other (unspecified) methods can be used if there is no possibility of achieving an arm's length price by using one of the above methods.

Is there a priority among the acceptable methods?
Yes. Comparable uncontrolled price method is the preferred method. Traditional transaction methods have priority over profit-based methods and unspecified methods.

If there is no priority of methods, is there a 'best method' rule?
Not applicable.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer's transfer pricing documentation, how long does the taxpayer have to submit its documentation?
The submission deadline is within 15 days after the request of the tax authority. However, taxpayer may apply for a time extension and can extend the period up to 30 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority? The taxpayer may choose to apply to courts in its jurisdiction.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Yes. The tax penalty equals 100 percent of the additional taxes accrued.

To what extent are transfer pricing penalties enforced?
Where there is a penalty assessment after a tax audit for transfer pricing issues, these penalties are almost always enforced.

What defenses are available with respect to penalties?
Taxpayers can apply for settlement after a tax penalty is imposed. Generally 80 percent or 90 percent of the penalties are eliminated by virtue of settlement.

What trends are being observed currently?
In July 2011, the tax auditors who were organized as different titles and institutions were merged and reorganized in the Ministry of Finance under a single Board, the Tax Audit Board, by legislative decree number 646.

In fulfillment of the tasks given to the Board, to provide specialization and division of labor, the four group presidencies, subject to the approval of the Minister of the Finance, can be installed directly in appropriate locations. One of these groups is organized to have transfer pricing as a special department. This formation shows that transfer pricing is regarded as a special field in tax audits and is organized accordingly.

The tax audits are focusing on some specific industries and service transactions. There are various tax audits related to management fee charges and royalty payments.

Special considerations
Are secret comparables used by tax authorities?
There is no official written explanation and no example of implementation regarding secret comparables. But in practice, when the previous regulations were in effect, tax auditors were using secret comparables during tax audits.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
There is no requirement for using local databases. However, if a broader set is used, performing necessary adjustments including country specific adjustments is recommended. There are a limited number of local comparables in the Amadeus database, therefore both local comparables and broader sets can be used.

Do tax authorities have requirements or preferences regarding databases for comparables?
No.

What level of interaction do tax authorities have with customs authorities?
The two authorities are generally working separately.
Are management fees deductible?
Yes. Management fee charges should satisfy the following criteria in order to achieve a full deductibility from the corporate tax base:

- the fees should be paid for the services actually performed
- the fees are supported with proper documentation
- the taxpayer does need the services
- the transfer pricing rules are satisfied and the fee amount is in line with the arm’s length principle.

Are management fees subject to withholding?
Management fees paid to foreign related and unrelated non-residents may be subject to withholding tax depending on the nature and place of the service given. Double tax treaty provisions may eliminate withholding tax under certain conditions.

Other unique attributes?
None.

Other recent developments
The Turkish Revenue Administration on 15 July 2011 announced that the first unilateral APA has been concluded and signed between the tax administration and a taxpayer.

The main purpose of Turkey’s APA program is to address potential tax-related disputes and controversies in relation to Turkey’s transfer pricing rules, as applied by taxpayers with respect to transactions with related parties. By concluding an APA with the Revenue Administration, taxpayers can address certain tax risks associated with related party transactions.

With this first APA, tax professionals in Turkey anticipate seeing more unilateral APA applications being filed, and expect that this first unilateral APA will pave the way for future bilateral and multilateral APAs.

Tax treaty.double tax resolution
What is the extent of the double tax treaty network?
Extensive. (Turkey has signed 74 income tax treaties to date, and these generally include mutual agreement procedures (MAPs) in Article 25 of the subject treaties).

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to the competent authority?
A taxpayer must make a MAP application within a time period that is listed in the double tax treaty. However, if the income tax treaty does not provide a time period for filing a MAP application, then the period for making a MAP application will be determined by the tax laws of the country, which is one year for Turkey.

May a taxpayer go to the competent authority before paying tax?
The taxes assessed on behalf of the corporation should become definite and should be paid in order to be able to go to the competent authority.

Advance pricing agreements
What APA options are available, if any?
Unilateral, bilateral, and multilateral APAs are available.

Is there a filing fee for APAs?
Yes. Effective 1 January 2011, the application fee for an APA is 33,171.60 Turkish lira (TRY) (approximately USD18.055 or EUR13.090 as of 14 October 2011). The fee for an APA application renewal is TRY26,537.20 (approximately USD14.444 or EUR10.471 as of 14 October 2011). The application and renewal fees are typically re-assessed at the beginning of each calendar year.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
The tax authority publishes the completion of APA negotiations; however the information related to the APA process is not publicly disclosed due to confidentiality of taxpayers.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The Turkish Revenue Administration and a taxpayer signed an agreement on 15 July 2011, after about a year of negotiation. With this first APA, tax professionals in Turkey anticipate seeing more unilateral APA applications being filed, and expect that this first unilateral APA will pave the way for future bilateral and multilateral APAs.

Language
In which language or languages can documentation be filed?
The transfer pricing report must be in Turkish. The related documents must be translated into Turkish when they are requested, if they are in a foreign language.

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As email addresses and phone numbers change frequently, please email us at transferpricing@kpmg.com if you are unable to contact us via the information noted above.
KPMG observation

The transfer pricing regulations in Uganda only came into effect on 1 July 2011. At the moment, the Income Tax Act and the Transfer Pricing regulations contained therein are available as binding legislation (they are not just guidelines, they are laws). The OECD Guidelines are to be referred to unless they differ from the Act, in which case, the Act takes precedence.

The tax authority has stated that it will issue practice notes before the end of the financial year. As a result, most of the issues raised in this survey cannot be properly addressed until more information is published by the tax authority.

Basic information

Tax authority name
Uganda Revenue Authority (URA).

Citation for transfer pricing rules

Effective date of transfer pricing rules
1 July 2011.

What is the relationship threshold for transfer pricing rules to apply between parties?
Transfer pricing rules apply to controlled transactions, which are defined as transactions between “associates.” “Associate” is defined under Section 3 of the Income Tax Act as follows:

3. (1) For the purposes of this Act, where any person, not being an employee, acts in accordance with the directions, requests, suggestions, or wishes of another person whether or not they are in a business relationship and whether those directions, requests, suggestions, or wishes are communicated to the first-mentioned person, both persons are treated as associates of each other.

Control of 50 percent or more of voting rights, income rights or capital rights is sufficient but not necessary to establish affiliates as “associates.”

What is the statute of limitations on assessment of transfer pricing adjustments?
This has not yet been specified. The Act gives the URA commissioner the authority to make adjustments but does not indicate a time limit for such adjustments. It appears that upon submission of the transfer pricing policy to the URA, the company can negotiate with the URA until an agreement is reached, after which no more adjustments can be made by either party for that financial year.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

The Regulations say documentation “shall be in place.” The URA is yet to specify whether that means “prepared” or “submitted.”

What types of transfer pricing information must be disclosed?
- the group organization structure of the entity
- the details of the transaction under consideration

What are the consequences of failure to prepare or submit disclosures?

Regulation 8 of the Ugandan transfer pricing regulations reads:

(1) A person shall record in writing sufficient information and analysis to verify that the controlled transactions are consistent with the arm’s length principle.
(2) The documentation referred to in sub regulation (1) shall be in place prior to the due date for filing the income tax return for that year.
(3) The commissioner may, by notice, specify the items of documentation that a person is required to keep for the purposes of this regulation.
(4) A person who fails to comply with this regulation is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding 25 currency points or both.
This suggests that failure to have the required documentation in place is a criminal offence. However the normal rules of criminal law would apply, that is to say, the prosecution would have to prove all the elements of a crime.

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, for all transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Withholding tax exemption. (One can only be exempted if one complies with all income tax requirements including transfer pricing).

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Before the company files their final annual tax returns for the given financial year.

What are the major elements required or recommended to be included in a transfer pricing study?

- detailed company overview (company set up, global/international set up including all shareholders, and local set up)
- detailed industry analysis (current and future macroeconomic environment, competitors and market share, demand drivers, power of customers, industry factors and risks, marketing, local market)
- functional analysis of the particular transaction including the agreement, transaction flow, assets employed and risks assumed
- transfer pricing method used and the basis for its selection.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

- comparable uncontrolled price method
- cost plus method
- transactional net margin method
- transactional profit split method
- any other method that can be agreed upon with the URA.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a ‘best method’ rule?

Not applicable.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

This has not been specified. The Regulations state that the policy should be submitted “upon request.”

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Not yet specified, but it is expected that the tax tribunal would have jurisdiction for such cases.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

This has not been specified, but it is expected that penalties would be the same as if one had not submitted a policy in the first place i.e. a financial penalty of 500,000 Ugandan shillings (UGX), and/or six months imprisonment for the directors if convicted.

There would also be penalties in respect of the tax not paid that should have been paid, based on the different Acts – for income tax the penalty is 2 percent per month, and for VAT is 2 percent per month (both compounded).

To what extent are transfer pricing penalties enforced?

This is the first year that the regulations are in place so the extent of enforcement will only be known in the next financial year when certain companies have failed to comply.

What defenses are available with respect to penalties?

Not yet specified.

What trends are being observed currently?

This is the first financial year so no trends have been established as yet.

**Special considerations**

Are secret comparables used by tax authorities?

Unknown.
Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
None have been specified.

Do tax authorities have requirements or preferences regarding databases for comparables?
None have been specified.

What level of interaction do tax authorities have with customs authorities?
The customs body is a subset of the tax authority so there is a high level of interaction.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
Yes.

Other unique attributes?
The regulations apply even to related parties within the country.

Other recent developments
Not applicable.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Minimal (there are double taxation agreements with only seven countries).

If extensive, is the competent authority effective in obtaining double tax relief?
Not applicable.

When may a taxpayer submit an adjustment to the competent authority?
Not specified but it is anticipated that a taxpayer will have to notify the tax authority when there has been a significant change in the company’s dealings with related parties, for example if new transactions or obligations come about, or some transactions cease to take place.

May a taxpayer go to the competent authority before paying tax?
This has not been specified.

Advance pricing agreements
What APA options are available, if any?
APAs are available. No options have been specified but a request and draft agreement must be made to the tax authority, which may then accept it, modify it or reject it.

Is there a filing fee for APAs?
Not yet specified.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Unknown.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Unknown.

Language
In which language or languages can documentation be filed?
English.
The Ukrainian transfer pricing rules remain rather general, which leaves room for their arbitrary interpretation by the tax authorities. The scope of these rules is broad enough to apply to transactions between related parties as well as to transactions involving non-resident persons, tax-exempt persons or persons that pay taxes at reduced rates. Ukraine is not a member of the OECD and, therefore, the OECD Guidelines for multinational enterprises and tax administrations are not currently binding on Ukraine.

The Ukrainian Parliament adopted a new Tax Code (TC) on 23 December 2010, which introduced a number of changes to transfer pricing rules. The new transfer pricing rules on the arm's length principle, transfer pricing methods, advance pricing agreements, etc. (Article 39 of the TC) are expected to come into force on 1 January 2013. Up to this date the previously effective transfer pricing rules provided in the Ukrainian Corporate Profits Tax Law (CPT Law) apply, although certain provisions, such as a safe harbor rule, applicable in respect of CPT, have already taken effect from 1 April 2011.

**Basic information**

**Tax authority name**
State Tax Service of Ukraine.

**Citation for transfer pricing rules**
Paragraph 1.20 of the CPT Law (usual (arm’s length) prices, transfer pricing methods, etc.).

TC (CPT section): paragraph 92 (disposal of assets under a tax pledge), paragraph 135.5.4. (recognition of taxable income from free-of-charge acquisition of goods, works and services), 140.1.6. (insurance costs), 144.1.(subpara.8) (depreciation of fixed assets in concession), 146.7–146.10 (depreciable value of fixed assets), 153.2. (related parties transactions), 153.9. (REPO and derivative transactions), 153.10 (barter transactions), 157.15. (income of nonprofit organizations).

TC (PIT section): 164.2.17. (fringe benefits), 164.5. (recognition of in-kind income).

TC (VAT section): 184.7., 189.11. (deemed sale), 188.1., 190.2. (taxable base), 193. (VAT credit), 210.2. (marginal profits on the sale of arts and antiques).

**Effective date of transfer pricing rules**
Currently effective – 1 July 1997, 1 January 2011, 1 April 2011. Expected changes – 1 January 2013.

**What is the relationship threshold for transfer pricing rules to apply between parties?**
Ownership of at least 20 percent of shares, based on voting power, share capital, and are under common control.

CPT transfer pricing adjustments also apply to non-related parties which are not registered as CPT payers (e.g. individuals, private entrepreneurs, non-residents, not-for-profit organizations, small businesses under a so called unified tax regime, etc.) or pay CPT at a lower rate.

VAT transfer pricing adjustments apply to any transactions with related and non-related parties.

**What is the statute of limitations on assessment of transfer pricing adjustments?**
The general statute of limitations for tax issues (including transfer pricing issues) is three years following the deadline for submission of the tax return or the actual date of submission of the tax return (if the tax return was not submitted in time). However, no limitation period applies in cases of a proven fraud (criminal proceedings against a taxpayer’s management) or a taxpayer’s failure to file a tax return.
Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

No transfer pricing information has to be prepared or submitted with a tax return. However, certain documents are required to be submitted to a bank for processing a payment abroad.

What types of transfer pricing information must be disclosed?

For certain transactions (i.e. payments of service fees, license fees, royalties and lease fees to non-resident service providers/licensors/lessors) it is mandatory to receive and provide to the bank a so-called price evaluation statement from the State Center for Monitoring External Commodities Markets, in cases where the relevant payments exceed EUR100,000 (or its equivalent in any other currency). Such price evaluation statements generally confirm that the contractual fees are in line with fair market prices. If the Center determines, however, that the contract price exceeds fair market level, then the remittance of funds will be permitted only upon specific approval of the National Bank of Ukraine after the provision of additional documents.

What are the consequences of failure to prepare or submit disclosures?

Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Preparing a transfer pricing study is not mandatory but can be helpful to substantiate to the customs and tax authorities that the contract price is in line with fair market prices. By law, the burden of proof is on the tax authorities but a taxpayer must be able to substantiate the fair market level of contract prices upon request of the tax authorities.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

There are no specific timing requirements. In practice, transfer pricing documents should be available at any time upon the request of the tax or customs authorities, and this can take place during the tax/customs audit or customs clearance of imported goods.

What are the major elements required or recommended to be included in a transfer pricing study?

Comparative study of prices established by the taxpayer and its competitors in respect to identical or similar goods/services (internal and external comparables).

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

For tax purposes, the comparable uncontrolled price is the preferred transfer pricing method.

If there are no comparable uncontrolled sales, the fair market price can be determined either:

- in accordance with the Ukrainian National Accounting Standards (which recognize, inter alia, the resale minus and cost plus methods)
- as a contract price if information about the relevant goods/services is unavailable or too limited to determine the fair market price.

The transfer pricing methods to be introduced by the TC as from 2013 include the traditional transaction methods (comparable uncontrolled price, resale minus and cost plus), transactional profit methods (profit split method and transactional net margin method) and an independent valuation method.

For customs purposes, the transfer pricing methods which can be used to determine the customs value of imported goods are as follows (and are to be applied in a consecutive order on a tiebreaker basis):

- contract price of imported goods
- contract price for identical goods
- contract price for similar goods
- resale minus method
- cost plus method
- reserve method.

Is there a priority among the acceptable methods?

Generally, the first priority is given by the tax authorities to the comparable uncontrolled price.
The customs authorities apply the transfer pricing methods listed above in the consecutive order shown but give preference to contract price for identical/similar goods, or the reserve methods, as they typically result in a higher customs value and, accordingly, higher import taxes.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
Generally, the taxpayers have up to 30 days to prepare a response to the tax authorities’ request and submit the required documents.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
Any additional tax assessments (including tax assessments based on a transfer pricing adjustment) can be contested by a taxpayer to a higher tax authority or through the court.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
If a transfer pricing adjustment results in additional tax liabilities, the taxpayer can be subject to penalties of up to 50 percent of the tax underpayment (in certain cases, up to 75 percent).

To what extent are transfer pricing penalties enforced?
Transfer pricing rules and penalties are rarely enforced by the tax authorities unless a transaction results in a loss for a taxpayer. In such cases the tax authorities are more inclined to disallow deductible expenses and/or input VAT in their total, arguing that the loss-making transaction cannot be business-related, rather than assess additional income or output VAT, adjust deductible expenses or input VAT based on the transfer pricing methods.

What defenses are available with respect to penalties?
A taxpayer must have documents supporting its transfer pricing policy. Such documents must be in Ukrainian and preferably include the market or statistical information provided by the Ukrainian state authorities.

What trends are being observed currently?
As indicated above, currently the tax authorities more aggressively challenge loss-making transactions based on general tax deduction rules. This may change with the introduction of the new transfer pricing rules in 2013.

Special considerations

Are secret comparables used by tax authorities?
Yes. The tax and customs authorities may use their non-public databases to find internal and external comparables.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes. Ideally, the comparables should be local or derived from the geographically closest market.

Do tax authorities have requirements or preferences regarding databases for comparables?
The tax authorities give preference to state statistical information and databases.

As from 1 January 2013, the following official sources of information will be acceptable for establishing the arm’s length price:
• statistical data of the state authorities and agencies
• commodity exchange prices and stock exchange quotation
• benchmark prices of specialized commercial publications, including electronic and other databases
• reports and data provided by economic departments of Ukrainian diplomatic missions abroad
• other sources recognized as official, in a set order.

What level of interaction do tax authorities have with customs authorities?
High.

Are management fees deductible?
Management fees payable to a non-resident service provider should generally be tax deductible in full, unless they qualify as consulting, marketing, advertising or engineering services.
Tax deduction of consulting, marketing and advertising service fees payable to a non-resident service provider (cumulatively) is limited to 4 percent of sales revenue (excluding VAT and excise tax) accrued in the preceding year. The tax deduction of such service fees if paid to a non-resident located in blacklisted offshore jurisdictions is not allowed. If management services are qualified as engineering services, the relevant fees can be deducted up to an amount not exceeding 5 percent of the customs value of the imported equipment, as long as a service provider is not a resident of a blacklisted offshore jurisdiction and is a beneficial recipient (owner) of such income.

The price evaluation statement is required to remit management fees to a non-resident service provider if they exceed, in total, EUR100,000. Such price evaluation statements incidentally, can confirm for tax purposes that the management fees are in line with fair market prices.

Are management fees subject to withholding?
No. Generally, management fees are not subject to withholding tax. However, when management services (partly) qualify as engineering services, they are subject to 15 percent withholding tax, unless protected under a relevant double tax treaty.

Other recent developments
As from 1 January 2013, the following major changes to the Ukrainian transfer pricing rules are expected to come into force:

- The acceptable transfer pricing methods will be extended to include:
  - comparable uncontrolled prices
  - resale minus
  - cost plus
  - profit split
  - transactional net margin
  - independent valuation methods.

- The sources of information acceptable for establishing the arm’s length price will include:
  - statistical information of the state authorities and agencies
  - auction and stock exchange quotation
  - benchmark prices in printed and electronic media
  - reports and data provided by economic departments of Ukrainian diplomatic missions abroad
  - other sources duly recognized as official.

- Advance pricing agreements with the tax authorities will be available for large taxpayers.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive (around 67 effective double tax treaties).

If extensive, is the competent authority effective in obtaining double tax relief?
Frequently. Historically, double tax relief has been available to a taxpayer if there was a valid tax residence certificate of its counterparty confirming that the latter is tax resident in a jurisdiction which has an effective double tax treaty with Ukraine.

As from 2011, the TC introduced a beneficial ownership concept as an additional mandatory prerequisite for the application of a double tax treaty relief. It is still unclear how this concept will be implemented in practice and which documents will be required to confirm the beneficial owner status. However, the tax authorities have already started challenging certain structures (e.g. trademark sublicensing contracts) which they believe have been introduced to benefit from the double tax treaty protection.

When may a taxpayer submit an adjustment to the competent authority?
Not applicable.

May a taxpayer go to the competent authority before paying tax?
Provided a valid tax residence certificate of a non-resident counterparty is available, a taxpayer should not withhold withholding tax from the payment to be made. Otherwise, withholding tax should be withheld and can be claimed back once the tax residence certificate is available. The tax authorities are typically unwilling to refund overpaid withholding tax in cash and prefer offsetting such overpaid tax against current tax liabilities.
Advance pricing agreements

What APA options are available, if any?
APAs as they are understood in the international tax practice do not currently exist in Ukraine. However, they are expected to be introduced as from 2013 for large taxpayers.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language

In which language or languages can documentation be filed?
Official filings and supporting documents must be in Ukrainian (or translated into Ukrainian).
KPMG observation

Her Majesty’s Revenue and Customs (HMRC) is focusing on effective compliance. The new Senior Accounting Officer regime means that companies need to be comfortable that they have effective processes in place to manage their transfer pricing risk. HMRC has put in place a process to discuss transfer pricing issues before a tax return is submitted and continues to offer certainty by way of APAs. HMRC applies a risk-based approach to transfer pricing enquiries, targeting high-risk transactions and structures, and aims to complete enquiries within 18 months or (in the case of more complex enquiries) 36 months. HMRC’s litigation and settlement strategy has formally adopted mediation as a means of resolving disputes. Finally, HMRC has a strong MAP practice to resolve double taxation when it arises.

Basic information

Tax authority name
Her Majesty’s Revenue and Customs (HMRC).

Citation for transfer pricing rules
For years ending before 1 April 2010, Schedule 28AA ICTA 1988.
For years ending on or after 1 April 2010, the relevant legislation has been rewritten as Part 4 of the Taxation (International and Other Provisions) Act 2010. The changes in location and wording of the legislation are not intended to change taxpayers’ responsibilities in any way. The changes are merely an attempt to present the legislation in a more logical and accessible format.

Effective date of transfer pricing rules
1 July 1999.

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership between 40 percent and 50 percent; based on voting power, share capital, or management control. With respect to financing transactions, where the lender has acted together with shareholders to provide funding, the shareholders’ stake can be attributed to the lender, meaning a financing transaction may be caught by the legislation where there is no or a very small direct relationship between the lender and borrower.

What is the statute of limitations on assessment of transfer pricing adjustments?
Four years from tax year end (except in cases involving fraud or carelessness).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
No.

What types of transfer pricing information must be disclosed?
Not applicable.

What are the consequences of failure to prepare or submit disclosures?
Not applicable.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
A transfer pricing study will meet the statutory requirements to prepare and retain documentation to support the entries on a taxpayer’s tax return. It will also eliminate or substantially reduce exposure to penalties, and shift the burden of proof to the tax authority.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?
For the purposes of supporting the tax return, documentation should be contemporaneous with submission of the return.
What are the major elements required or recommended to be included in a transfer pricing study?
There are no specific requirements set down in the legislation, but HMRC would expect to see business description/overview, organizational structure, functional analysis, risk analysis, industry analysis, financial performance, intra-group agreements, description of controlled transactions, method selection, rejection of alternative methods, identification of comparables, and economic analysis.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?
No.

Transfer pricing methods
Which transfer pricing methods are acceptable?
Transaction methods: comparable uncontrolled price, resale price, and cost plus.
Profit-based methods: profit split and transactional net margin method.

Is there a priority among the acceptable methods?
The United Kingdom (UK) follows the OECD Guidelines and the guidance contained within on the determination of the most appropriate method. The July 2010 OECD Guidelines are incorporated into UK legislation for accounting periods beginning on or after 1 April 2011.

If there is no priority of methods, is there a ‘best method’ rule?
Not applicable.

Transfer pricing audit and penalties
When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?
There are no specific deadlines. HMRC will decide on a case-by-case basis but will typically allow 45–90 days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?
The taxpayer has the right to appeal against a transfer pricing adjustment. Such an appeal will be heard by the Tribunals Service.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?
Under the general penalty regime for incorrect returns, a transfer pricing adjustment may lead to a penalty based on a percentage of actual tax loss. Penalties are up to 30 percent for a failure to take reasonable care; up to 70 percent for a deliberate understatement or overclaim; and up to 100 percent for a deliberate understatement aggravated by concealment. HMRC may apply a lower percentage penalty where there is disclosure, the extent of mitigation depending on whether disclosure is prompted or unprompted. A 10 percent penalty is applied to overstated losses.

To what extent are transfer pricing penalties enforced?
We are seeing HMRC enforce penalties more strictly in recent years.

What defenses are available with respect to penalties?
In its guidance, HMRC has indicated that the existence of appropriate transfer pricing documentation may help to mitigate any tax-geared penalty due as a result of a transfer pricing adjustment. Penalties may also be mitigated through cooperation with HMRC.

What trends are being observed currently?
HMRC has indicated that it is willing to work with taxpayers on transfer pricing issues in real-time and provide general opinion on the transfer pricing methodology, but not the price. The only way that a taxpayer can get legal certainty about the transfer pricing treatment of transactions is under the formal APA process.

Special considerations
Are secret comparables used by tax authorities?
No. Secret comparables may be used by HMRC to select companies for audit, but they are not used for setting an arm’s length rate.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
Yes. HMRC would prefer to see UK comparables for a UK-based activity but in practice European comparables are accepted where there are limited UK companies available.
Do tax authorities have requirements or preferences regarding databases for comparables?
No. Typically when European activities are being benchmarked, Fame would be used for UK searches and Amadeus for European searches. HMRC has access to the Fame and OneSource databases.

What level of interaction do tax authorities have with customs authorities?
HMRC was formed in 2005 by the merger of the Inland Revenue and HM Customs and Excise. KPMG in the UK has observed that Customs officials sometimes request transfer pricing documentation as part of their review.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
No.

Other unique attributes?
None.

Other recent developments
In December 2011 HMRC released extensive statistics for the first time about transfer pricing enquiries, Advanced Pricing Agreements (APAs), and Mutual Agreement Procedure (MAP). Over the past four years the tax yield arising from transfer pricing enquiries has derived mainly from the Large Business Service, but the yield from Local Compliance is growing significantly, suggesting a greater focus on smaller multinational groups and inbounds alongside the traditional focus on the largest multinational companies.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Extensive.

If extensive, is the competent authority effective in obtaining double tax relief?
Almost always.

When may a taxpayer submit an adjustment to the competent authority?
Typically, after an adjustment is proposed to the taxpayer. However, an application can be made and HMRC is prepared to enter into discussions with the Treaty partner before an adjustment is finalized.

May a taxpayer go to competent authority before paying tax?
Permitted.

Advance pricing agreements
What APA options are available, if any?
Unilateral and bilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes. From time-to-time HMRC publishes data on APAs, MAP claims, and transfer pricing enquiries.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA program is well-established and very successful in the UK.

Language
In which language or languages can documentation be filed?
English.
United States

KPMG observation

The US has one of the oldest and most mature transfer pricing regimes. Over the past couple of years, the IRS has reorganized its international division to focus resources on transfer pricing. In 2011, this effort resulted in a plan to shift the APA program to an office under the new Transfer Pricing Director. In addition, the MAP shifted to the same office in February, creating the new Advance Pricing and Mutual Agreement (APMA) Program.

The Transfer Pricing Director is also responsible for setting transfer pricing policy in IRS audits and for working with Chief Counsel to develop transfer pricing litigation strategy. A new Chief Economist has also been hired to assist the Transfer Pricing Director in setting IRS-wide transfer pricing policy. The intent is to use IRS resources most efficiently by targeting appropriate issues and taxpayers, and to allow taxpayers to achieve the same principled results regardless of venue. The combined office is anticipated to allow the IRS to better align resources to complete APAs and expedite the resolution of transfer pricing disputes.

Basic information

Tax authority name
Internal Revenue Service (IRS).

Citation for transfer pricing rules
Substantive rules: Internal Revenue Code (IRC) Section 482; Treas. Reg. Section 1.482–1 through Section 1.482–6, Section 1.482–7, Section 1.482–8, and Section 1.482–9. Penalty rules: IRC Section 6662(e) and Treas. Reg. Section 1.6662–6.

Effective date of transfer pricing rules

What is the relationship threshold for transfer pricing rules to apply between parties?
Under common control. Control is based on a facts and circumstances test, not specific ownership thresholds.

What is the statute of limitations on assessment of transfer pricing adjustments?
Generally, the IRS has three years from the tax return filing date to make adjustments. However, if gross income in excess of 25 percent of the gross income stated in the return is omitted, the statute is extended to six years. The statute is unlimited if a false or fraudulent return is filed, if a willful attempt to evade taxes is made or if no return is filed.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes.

What types of transfer pricing information must be disclosed?
Forms 5471 (generally, US companies with foreign subsidiaries), 5472 (generally, US companies with foreign parents), and Schedule UTP (part of Form 1120) must be attached to the US tax return. In addition, participants in an intangible development cost sharing arrangement (CSA) must file a CSA statement upon formation of the arrangement and annually with their tax returns if they wish to ensure the arrangement will be governed by Treas. Reg. Section 1.482–7. Forms 5471 and 5472, in general, require disclosure of related party transactions including loans, tangible goods, services, and intangibles. Schedule UTP requires certain taxpayers to report federal income tax positions (including positions relating to transfer pricing) for which an audited financial statement reserve is recorded or is not recorded due to an expectation to litigate.

What are the consequences of failure to prepare or submit disclosures?
A penalty of USD10,000 is imposed for each Form 5471 or Form 5472 that is filed after the due date of the income tax return (including extensions) or does not include the complete and accurate information described in Section 6038(a). Currently, there are no penalties directly
associated with Schedule UTP; the IRS is studying the issue. There are a number of possible arguments that the IRS could make relating to requirements to file complete returns, reasonableness and good faith, among other principles. The likelihood of IRS success with any such argument is difficult to assess. If a CSA statement is not filed, the taxpayer cannot rely on Treas. Reg. Section 1.487–7 to allow sharing of intangible development expenses at cost rather than value, to allow the netting of royalty and cost sharing payments or any other of its provisions.

**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study? No.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study?

Submitting a reasonable transfer pricing study to the tax authority is the sole way to avoid penalties should a transfer pricing adjustment exceed certain penalty thresholds.

To satisfy the requirement and / or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Yes, the study must be prepared contemporaneously with the filing of the tax return for the year and must be submitted within 30 days of a request by the tax authority.

What are the major elements required or recommended to be included in a transfer pricing study?

There are ten principal documents:

1) overview of the business
2) organization structure chart
3) documentation required by regulation, e.g. cost share participant names, market share strategy
4) description of transfer pricing methodology and reason for selection (best method analysis)
5) discussion of alternative methods not selected
6) description of controlled transactions
7) description and analysis of comparables
8) economic analysis
9) description of post year-end data, if applicable
10) index.

**Transfer pricing methods**

Which transfer pricing methods are acceptable?

Tangible property transactions: CUP, resale price, cost plus, profit splits (comparable and residual), comparable profits method (CPM, equivalent to OECD transactional net margin method), and other unspecified methods.

Intangible property transactions: comparable uncontrolled transaction (CUT), profit splits, CPM, other unspecified methods, and in certain circumstances, methods for platform contribution transactions (PCTs) under a cost sharing arrangement (CSA).

Services transactions: services cost (safe harbor), comparable uncontrolled services price (CUSP), gross services margin, cost of services plus, profit splits, CPM, and other unspecified methods.

Loans or advances: arm’s length, situs of the borrower, and method based on applicable federal rate (safe harbor).

Cost sharing transactions (balancing payments): reasonably anticipated benefit share.

PCTs (cost sharing buy-ins): CUT, CUSP, income method, acquisition price, market capitalization, residual profit split, and other unspecified methods.

Is there a priority among the acceptable methods?

No.

If there is no priority of methods, is there a ‘best method’ rule?

Yes.

**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

By regulation, the taxpayer has 30 days to submit documentation to avoid penalties.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

Yes, there are several administrative appeal routes including: regular appeals process, fast track appeals, early referral to appeals, and simultaneous appeals and competent authority.
If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

There are two types of penalties that can be assessed as an additional 20 percent or 40 percent of the tax underpayment. The Transactional Penalty applies at a 20 percent rate where the misstated transfer price for any property or services is 200 percent or more, or 50 percent or less, of the correct price. The Transactional Penalty applies at a 40 percent rate if the misstated transfer price is 400 percent or more, or 25 percent or less, of the correct price. The Net Adjustment Penalty applies at a 20 percent rate if the total net transfer pricing adjustment for the year is more than USD5 million or 10 percent of gross receipts. The Net Adjustment Penalty applies at a 40 percent rate if the adjustment is more than USD20 million or 20 percent of gross receipts.

To what extent are transfer pricing penalties enforced?

The Net Adjustment Penalty is nearly always enforced unless a valid defense applies. In practice, the IRS rarely, if ever, has asserted the Transactional Penalty.

What defenses are available with respect to penalties?

Submitting a reasonable transfer pricing study to the tax authority is the sole way to avoid the Net Adjustment Penalty. The Transactional Penalty can be avoided by demonstrating reasonable cause and good faith, which can be established through a transfer pricing study or in other ways.

What trends are being observed currently?

The IRS has designated transfer pricing a key item in its international tax enforcement/compliance agenda, and appointed a new Transfer Pricing Director in the past year to coordinate this effort.

Special considerations

Are secret comparables used by tax authorities?

No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Because the US Securities and Exchange Commission (SEC) has detailed reporting requirements for public corporations that have long been used by providers to create company databases and by practitioners to prepare transfer pricing reports, the IRS would expect US comparables to be used to benchmark a US tested party, in the absence of a compelling reason to use a different set. For foreign tested parties, the IRS has been receptive to using any set (e.g. US comparables, global comparables, regional comparables or specific country comparables) that can be supported based on the facts and the reliability of available data.

Do tax authorities have requirements or preferences regarding databases for comparables?

Although there are no requirements to use a specific database, the IRS APA office and field generally use Compustat to identify comparable companies worldwide.

What level of interaction do tax authorities have with customs authorities?

High.

Are management fees deductible?

Yes.

Are management fees subject to withholding?

No.

Other unique attributes?

None.

Other recent developments

All of the most significant recent developments are discussed above, including the introduction of Schedule UTP to report uncertain tax positions effective 15 December 2009, the creation of the new Director of Transfer Pricing Operations position in the IRS during 2011, and the merger of the IRS APA and MAP programs to create the new APMA program beginning in March 2012.

Tax treaty/double tax resolution

What is the extent of the double tax treaty network?

Extensive. There are more than 60 bilateral tax treaties.

If extensive, is the competent authority effective in obtaining double tax relief?

The IRS publishes annual statistics indicating that overall double tax relief is almost always provided. However, these statistics are not published on a country by country basis.

When may a taxpayer submit an adjustment to the competent authority?

For a US adjustment, after the proposed adjustment is communicated to the taxpayer in writing. For a non-US adjustment, the taxpayer is requested to provide notice to the US competent authority as soon as the taxpayer believes such filing is warranted, based on the actions of the country proposing the adjustment. This notice is then
followed with a request for double tax relief once there is an actual non-US adjustment.

May a taxpayer go to the competent authority before paying tax?
Yes.

**Advance pricing agreements**

What APA options are available, if any?
Unilateral; bilateral; multilateral. Both named and anonymous prefiling conferences are also available.

Is there a filing fee for APAs?
Yes. USD50,000 for large taxpayers (USD35,000 for renewals), and USD22,500 for small taxpayers (gross worldwide income less than USD200 million) or small transactions not greater than USD50 million annually and intangible transactions not greater than USD10 million.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Yes. USD50,000 for large taxpayers (USD35,000 for renewals), and USD22,500 for small taxpayers (gross worldwide income less than USD200 million) or small transactions not greater than USD50 million annually and intangible transactions not greater than USD10 million.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA program has developed a sizable backlog due to increases in the number of submissions without increases in staffing. Toward late 2011, the expected time between receipt of a submission and the commencement of work by the APA program was approximately one year. The creation of the APMA program and hiring of new staff is expected to nearly double the total number of staff (including both current APA and MAP staff) in 2012 and therefore should result in substantial decreases in the amount of time required to begin and to complete APAs by 2013.

**Language**

In which language or languages can documentation be filed?
English.
Uruguay

KPMG observation

After transfer pricing rules were introduced in Uruguay in 2007 in the context of a global tax reform, and the enactment of other rules during 2009, the tax authorities have expressed their concerns with respect to transfer pricing issues and hence have been paying increasing attention to transfer pricing during tax audits. They have also been working on the implementation of an APA regime.

Transactions under the scope of transfer pricing regulations include those with certain low tax jurisdictions listed by the Decree as well as with free trade zones (even those located in Uruguay). Additionally, the Decree includes a specific methodology to measure the taxable income derived from import or export transactions involving “commodities”.

No types of transactions have yet been identified as subject to special scrutiny by the DGI. In 2011 transfer pricing audits have commenced and special attention will probably be placed on companies with low margins and transactions structured through international traders, especially if these transactions involve commodities with internationally known market prices.

Basic information

Tax authority name
Dirección General Impositiva (DGI).

Citation for transfer pricing rules
Income Taxes Act Articles 38–46 and supplementary regulations.

Effective date of transfer pricing rules
1 July 2007.

What is the relationship threshold for transfer pricing rules to apply between parties?
Based on voting power; share capital; other. The law does not discriminate between different thresholds; rather they apply equally to all levels of ownership (a DGI Resolution establishes 10 percent of capital). Furthermore, and beyond the company capital interest, under the Local Income Tax Law, there are several other relationships for which transfer pricing rules apply, such as functional or other kinds, whether contractual or otherwise, that influence the decision power to direct or define the activities of the operations. Also transactions with unrelated companies located in low tax jurisdictions are subject to increased transfer pricing scrutiny.

What is the statute of limitations on assessment of transfer pricing adjustments?
Five years from 1 January of the year after the filing date (can be extended to 10 years in certain cases, including fraud).

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes. Taxpayers must submit an annual declaration (Transfer Pricing Return) and a transfer pricing documentation report when any of the following conditions are met:

- The value of the transactions is higher than 50 million unidades indexadas (UI) (approximately USD5 million) in the corresponding fiscal period.
- If notified by the DGI.

Although not all taxpayers are required to file the Transfer Pricing Return, they must prepare and maintain the documentation that supports the correct pricing determination.

What types of transfer pricing information must be disclosed?
A Transfer Pricing Return indicating the different related party transactions, the transaction amount, and other general information.

What are the consequences of failure to prepare or submit disclosures?
For taxpayers that must submit information, failure to timely file the required returns and documentation is subject to a maximum fine of 4,000 Uruguayan pesos (UYU) (approximately USD200).
Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

Yes, as indicated above there is a statutory requirement for certain taxpayers to file a transfer pricing study and failure to do so will result in the application of a penalty.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

Penalty elimination; penalty reduction; shifts the burden of proof. All taxpayers covered by the transfer pricing regime, even those that do not have to file transfer pricing studies, must be able to justify in the course of an eventual tax audit, that the transfer prices which they apply are in line with applicable legal provisions on the subject.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

A DGI Resolution establishes that the Transfer Pricing Documentation Study and the Transfer Pricing Return – obligatory for certain taxpayers – must be filed in the ninth month following the close of the tax year, based on the due-date table established for each group of taxpayers.

However, all taxpayers have to consider the possible transfer pricing adjustment prior to the filing of the corporate income tax return, which is due four months after the fiscal year-end.

What are the major elements required or recommended to be included in a transfer pricing study?

Business description/overview; functional analysis; risk analysis; description of controlled transactions; method selection; rejection of alternate methods; identification of comparables; economic analysis; identification of the foreign counterparty with whom the transactions had been conducted. Determination of the median and the interquartile range. Transcription of the statement of income of the comparable companies corresponding to the fiscal years necessary for the comparability analysis, with an indication of the sources of such information. Description of the corporate activity and the characteristics of the business carried out by the comparable companies. Rejection matrix with criteria followed to discard companies as comparables. Conclusions obtained.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price; resale price; cost plus. Profit-based methods: profit split; transactional net margin method.

Is there a priority among the acceptable methods?

Not applicable.

If there is no priority of methods, is there a ‘best method’ rule?

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Responses to tax authority requests are normally expected to be submitted within 15 days of the request.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

In order to appeal the adjustment proposed by the tax authorities, the taxpayer must first appeal administratively against the Tax Office itself and the Ministry of Economy. After that stage the taxpayer will be able to appeal to a specialized Court (Tribunal de lo Contencioso Administrativo).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

The transfer pricing tax adjustment is subject to the general penalties regime (fines and surcharges/interest). In the case of fraud, the penalties will range from one to fifteen times the unpaid tax amount and the statute of limitations period is five years (which can be extended to 10 years in certain cases, including tax fraud).
To what extent are transfer pricing penalties enforced?
Although the application of the transfer pricing regime is fairly recent, if irregular situations are detected, penalties will be applied.

What defenses are available with respect to penalties?
In principle, documentation.

What trends are being observed currently?
The tax authorities have expressed their concerns with respect to transfer pricing issues and hence have been paying increasing attention to transfer pricing during tax audits. Since the 2011 audits special attention is being placed on companies with low margins and transactions structured through international traders, especially if these transactions involve commodities with internationally known market prices.

The tax authorities have also been working on the implementation of an APA regime.

Special considerations
Are secret comparables used by tax authorities?
The possibility of using transfer pricing information from one taxpayer in another taxpayer’s audit is available for the Tax Office, but it is not clear whether this facility is actually being used.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
In principle no, but the regime is recent in Uruguay and administrative practices may change.

Do tax authorities have requirements or preferences regarding databases for comparables?
Although the Tax Office uses an international database, as far as we know in relation to taxpayers it does not have special requirements or preferences on the subject.

What level of interaction do tax authorities have with customs authorities?
Medium.

Are management fees deductible?
Yes. For fees to be considered deductible, the Uruguayan entity must show that the management fees were paid in order to obtain, maintain and preserve profits assessed by Uruguayan tax. In addition, there should be sufficient proof that such expenses relate to the Uruguayan entity’s operations. Additionally, the deductible amount will depend on the percentage of income tax applicable to non-residents in Uruguay and the income tax paid abroad by the non-residents.

Are management fees subject to withholding?
Withholding tax applies on payments to non-residents for Uruguayan-source income. Services provided in Uruguay would be considered Uruguayan-sourced. However, the fees and other remuneration arising from technical services from abroad are also considered to be Uruguayan-sourced.

Other unique attributes?
An additional method included in the Local Income Tax Law establishes that in the case of imports and exports of commodities to related parties and in general, any assets having a known quotation in transparent markets, involving an international broker who will not be the effective receiver of the goods, the best method for the purpose of determining the export’s and import’s Uruguayan-sourced income will be the goods’ quotation in the transparent market on the date of a registered contract or the bill of lading date for non-registered contracts. This methodology could be left out providing that the international broker complies with certain requirements.

Other recent developments
There is a tendency by the DGI towards increasing audit proceedings and the first APAs are being processed.
Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
At the moment Uruguay has five tax treaties in force and effect with Germany, Hungary, Spain, Mexico and Switzerland, with approximately ten additional ones in the process of approval.

If extensive, is the competent authority effective in obtaining double tax relief?
For the moment there has been little experience on this subject.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules have been established currently.

May a taxpayer go to the competent authority before paying tax?
No formal rules have been established currently.

Advance pricing agreements
What APA options are available, if any?
Regulatory decree allows the Tax Office to sign APAs with taxpayers, without distinguishing between unilateral or bilateral.

Is there a filing fee for APAs?
No.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
One APA has been executed, and others are in progress.

Language
In which language or languages can documentation be filed?
Spanish.
Venezuela

KPMG observation

The Venezuelan Tax Administration has introduced new procedures and rules. One of them is the thin capitalization rule that limits the deduction of interest payments to related parties with debt/equity ratios equal to or less than one-to-one. New procedures are in force to calculate the interquartile range and transfer pricing adjustments to be included in the tax return, with the purpose of intensifying the tax audit.

Basic information

Tax authority name
Servicio Nacional Integrado de Administración Aduanera y Tributaria (SENIAT).

Citation for transfer pricing rules
Venezuelan Income Tax Law.

Effective date of transfer pricing rules
1 January 2000.

What is the relationship threshold for transfer pricing rules to apply between parties?
A related party shall be any company participating directly or indirectly in the direction, control or capital of another company, or when the same companies participate directly or indirectly in the direction, control or capital of both companies.

The rules apply to the operations performed through intermediaries that do not qualify as related to persons, residing in the Bolivarian Republic of Venezuela, whereby the latter operates with another party abroad qualifying as a related party.

What is the statute of limitations on assessment of transfer pricing adjustments?
The Venezuelan Tax Code establishes a four-year statute of limitations. If no tax return is filed the statute of limitations would be six years. The term for lapsing will be calculated from 1 January of the calendar year following that in which the taxable event occurred.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
An informative transfer pricing return (FORM PT99, discussed below) must be submitted six months after year-end.

What types of transfer pricing information must be disclosed?
General information to be included in the transfer pricing return (FORM PT99) includes:

- transaction definition (code indicated in the form)
- transaction date
- currency of the transaction
- exchange rate
- transaction amount
- country code of the related party (code indicated in the form)
- name of the related party
- transfer pricing method used
- gain or losses obtained in the transaction performed

- profit and loss statements segmented by related and non-related parties.

What are the consequences of failure to prepare or submit disclosures?
Taxpayers are subject to penalties where they have failed to prepare the transfer pricing analysis or submit the transfer pricing return. In addition, this situation could trigger a tax audit.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, the Venezuelan Tax Law requires the preparation of a transfer pricing study for all transactions performed with related parties on an annual basis. In case of failure, the taxpayer would be penalized. The penalty applicable would be USD8,500 approximately. Interest and other kinds of penalties could apply.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
In addition to penalty protection, preparing and maintaining a transfer pricing study mitigates the risk of a tax authority audit and unilateral adjustment made by the tax administration.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

The Tax Law does not establish a specific date for the completion of the transfer pricing study; however the requirement in practice is to have the entire documentation prepared contemporaneously with the filing of the transfer pricing return (six months after year-end).

What are the major elements required or recommended to be included in a transfer pricing study?

Taxpayers that perform operations with related parties are obliged, for tax purposes, to calculate their income, costs and deductions, considering in such operations the prices and amounts of the consideration that would have applied by or between independent parties in comparable operations. The determination of the cost or deductibility of the goods, services or rights imported, and the taxability of the income derived from exports, in operations conducted between related parties, shall be made by applying the methodology set forth in the Tax Law.

The major elements therefore required in a transfer pricing study to apply the Tax Law methodology include:

- functional analysis
- description of transaction performed with related parties
- company overview
- selection of method
- risk
- description of search of comparables
- industry overview.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

CUP method, resale price method, cost plus method, profit split method and transactional net margin method.

Is there a priority among the acceptable methods?

The taxpayer must consider the CUP method as the first option in determining the price or amount of the consideration that would have been used with or between independent parties in transactions comparable to the operations of transfer of goods, services or rights conducted between related parties.

If there is no priority of methods, is there a ‘best method’ rule?

The Tax Administration shall evaluate whether the method applied by the taxpayer is the most appropriate in accordance with the characteristics of the transaction and the economic activity developed.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

Normally when the SENIAT requests transfer pricing documentation, taxpayers must submit the information requested within only three working days.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

The taxpayer has two options available to solve a dispute: a tax administrative appeal (Tax Administration) or tax litigation appeal (Court).

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

If an adjustment is sustained the taxpayer is subject to fine from 25 to 200 percent of the unpaid tax plus interest.

To what extent are transfer pricing penalties enforced?

Often.

What defenses are available with respect to penalties?

During an audit review there is the possibility to negotiate with the Tax Administration. In this situation the
quality of the documentation and analysis supporting the transactions and comparables rejected is important.

Another way is the tax administrative appeal or tax litigation appeal, where other factors are taken into consideration.

What trends are being observed currently?
The Tax Administration has placed special emphasis on transactions such as royalties, technical assistance, management fees and interest rates applicable to loans.

Special considerations
Are secret comparables used by tax authorities?
No.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
The Tax Administration uses a commercial database for comparables, although its use is not a requirement. Taxpayers can use the database of their preference.

What level of interaction do tax authorities have with customs authorities?
High.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
Yes.

Other unique attributes?
The Tax Law has introduced a thin capitalization rule. This rule will limit the deduction of interest payments to related parties. The maximum debt/equity ratio will be one-to-one.

Other recent developments
Recently, the Tax Administration issued a decree introducing procedures to calculate the interquartile range. It also established that any transfer pricing adjustment must be calculated to the median/50th percentile.

Tax treaty.double tax resolution
What is the extent of the double tax treaty network?
Minimal.

If extensive, is the competent authority effective in obtaining double tax relief?
No experience.

When may a taxpayer submit an adjustment to the competent authority?
No formal rules.

May a taxpayer go to the competent authority before paying tax?
No formal rules.

Advance pricing agreements
What APA options are available, if any?
Unilateral.

Is there a filing fee for APAs?
Yes. However The Tax Law does not establish a specific amount.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
The APA program has not been successful in Venezuela due to two main reasons: the APA option established in the Law is a unilateral one, and the procedures to access this program are not clear enough.

Language
In which language or languages can documentation be filed?
The Tax Law establishes that all documentation related to transfer pricing must be filed in Spanish. The documentation and information relating to the calculation of transfer pricing must also be kept by the taxpayer during the term established by the law, duly translated into Spanish.

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Vietnam

KPMG observation

Since the introduction of the new transfer pricing regulations in April 2010 (Circular 66/2010/TT-BTC dated 22 April 2010), a plethora of activities has been initiated by Vietnamese tax authorities at all levels, including requests for retroactive disclosures of related party transactions, submission of transfer pricing documentation, and ongoing tax audits targeted at tax-loss reporting companies and proposal for the application of APAs as an alternative mechanism to manage transfer pricing matters in draft amendments to the Tax Administration Law.

Basic information

Tax authority name
Ministry of Finance, General Department of Taxation.

Citation for transfer pricing rules

Effective date of transfer pricing rules
27 January 2006 (Circular 117).

What is the relationship threshold for transfer pricing rules to apply between parties?
Ownership of 20 percent or more: control and management; family relationship; and others.

What is the statute of limitations on assessment of transfer pricing adjustments?
Technically unlimited under the Tax Administration Law.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?
Yes, Form GCN-01/QLT is to be completed and filed with the annual corporate income tax return.

What types of transfer pricing information must be disclosed?
Related party transactions (detailed by transacting related parties), value of related party transactions, transfer pricing method for each of the categories of related party transactions disclosed, transacting related parties, and criterion defining the related party relationship.

What are the consequences of failure to prepare or submit disclosures?
Failure to disclose in Form GCN-01/QLT implies an exposure to the reassessment of transfer prices or profits for tax purposes, which can be accompanied by penalties and interest charges. Administrative penalties for failure to submit a tax return may also be applied.

Transfer pricing study overview

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?
Yes, for all transactions.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.
Penalty protection, shifting of burden of proof to the tax authority, requirement in practice/expectation of authorities, mitigate the risk of the tax authority making adjustments and using secret comparables.
To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

Must be prepared contemporaneously (created at the time of transactions and updated regularly), and submitted within 30 working days upon the date of receipt of the tax authority’s written request.

What are the major elements required or recommended to be included in a transfer pricing study?

Company overview, business strategy, functional analysis, description of transfer pricing policy and transaction process, industry analysis, selection and application of the most appropriate transfer pricing method.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

Transfer pricing methods

Which transfer pricing methods are acceptable?

Transaction methods: comparable uncontrolled price, resale price, and cost plus.

Profit-based methods: profit split, and comparable profits method.

Is there a priority among the acceptable methods?

None. However, the local regulations acknowledge the preference of using internal comparable transactions.

If there is no priority of methods, is there a ‘best method’ rule?

Yes.

Transfer pricing audit and penalties

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The taxpayer has 30 working days from the date of receipt of the tax authority’s written request (with a one-time extension allowed for up to 30 days where good reasons can be provided).

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of competent authority?

In country, appeals to the tax authority and the administrative tribunal are possible.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

Underpayment penalties (being 10 percent of the shortfall amount, associated with late payment interest charges of 0.05 percent per day) or evasion penalties (from one to three times the tax liability amount) apply, depending on the nature of the offences and circumstances.

To what extent are transfer pricing penalties enforced?

Administrative penalties apply in case of transfer pricing adjustments.

What defenses are available with respect to penalties?

Documentation.

What trends are being observed currently?

Following directives from the National Assembly (the Vietnamese legislative body) requesting a focus on tax revenue collection, transfer pricing has become one of the key tax issues under scrutiny by local tax authorities in recent years. The focus is motivated by the growing criticism from the Vietnamese tax and regulatory agencies of foreign-invested companies’ alleged overly-aggressive transfer pricing practices. Ongoing tax audits are generally aimed at consecutive tax loss reporting companies, especially in manufacturing and distribution.

Special considerations

Are secret comparables used by tax authorities?

Yes. Under certain circumstances, the tax authority is empowered to make a presumptive assessment of tax based on its internal data.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?

Yes, local companies are preferred as comparables. However, the transfer pricing regulations also provide that information and data extracted from certified and verifiable sources may be used.

Do tax authorities have requirements or preferences regarding databases for comparables?

No.
What level of interaction do tax authorities have with customs authorities?
Low but improving.

Are management fees deductible?
Tax deductibility of management fees is restrictive.

Are management fees subject to withholding?
Yes.

Other unique attributes?
Royalties are subject to specific rules, besides the transfer pricing rules.

Other recent developments
The Ministry of Finance (MOF) has been assigned to formulate a transfer pricing strategic program aiming at efficient management of transfer pricing practices.

The General Department of Taxation (GDT), under the MOF, has, for the first time, established a specialized transfer pricing team under an official decision. The team will be responsible for evaluating effectiveness of the current tax administration in respect of transfer pricing, proposing amendments to the current transfer pricing regulations and developing transfer pricing inspection procedures.

It is expected that a number of amendments will be made to the Law on Tax Administration and transfer pricing regulations in the implementation of the tax reform strategy for 2011-2020, which was approved by the Prime Minister’s Decision 732/QD-TTg dated 17 May 2011. The tax reform strategy plans to introduce, amongst others, regulations on a number of complex transactions, such as business restructuring, asset valuation, thin capitalization, and APAs.

Specifically, the GDT has officially proposed the application of APA in the draft amendment to the Tax Administration Law. The GDT is said to be firstly carrying out the APA program on a pilot basis with a number of corporate taxpayers.

Advance pricing agreements
What APA options are available, if any?
Advance rulings and probably unilateral or bilateral agreements based on double tax treaties. See above for plan to introduce APA under the issued 2011-2020 tax reform strategy and draft amendments to the Tax Administration Law.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
Not applicable.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
Vietnamese.
Zambia

KPMG observation

The Zambian transfer pricing provisions are enshrined in the Income Tax Act (ITA), chapter 323 of the laws of Zambia. There are no detailed rules on transfer pricing in Zambia. However, the Zambian tax regime recognizes the OECD Guidelines where there is no specific guideline under the ITA.

Transfer pricing provisions were introduced into the Act in 1999 in the form of Secs. 97A, 97B, 97C and 97D. These together permit the Commissioner General to compute income from transactions between associates to reflect arm’s length conditions and to assess the taxpayer involved to pay tax accordingly.

The transfer pricing rules were tightened in 2001 with the introduction of special provisions governing the issue of a security by a company to an associated company not belonging to the same Zambian grouping, where the determination of the arm’s length considerations is to be made with reference to certain criteria, including:

- the appropriate level or extent of the issuing company’s overall indebtedness
- whether the issuing company and a particular person would have become parties to a transaction involving the issue of the security or the making of a loan, or a loan of a particular amount, to the associate company; and
- the rate of interest and other terms that may apply to such a transaction.

Basic information

Tax authority name
The Zambia Revenue Authority (ZRA) is mandated to enforce the provisions of the ITA, Value Added Tax Chapter 331, Customs and Excise Act Chapter 322 and the Property Transfer Tax Act Chapter 340 of the laws of Zambia.

Citation for transfer pricing rules
There are no detailed rules on transfer pricing. However, the ITA sections 97A, 97B, 97C and 97D makes provisions relating to transfer pricing.

Effective date of transfer pricing rules
The transfer pricing legislation was initially enacted in 1999 and came into force on 1 April 1999.

Transfer pricing disclosure overview

Are disclosures related to transfer pricing required to be prepared or submitted to the revenue authority on an annual basis (e.g. with the tax return)?

Parts 5, 6 and 7 of the ITA require disclosure to be made of shareholding and shareholder emoluments, advances to shareholders and associated companies, and interests in other businesses. Apart from the disclosures as per tax return, there is no additional requirement to make any transfer pricing disclosures together with the tax return except for what is provided for under international accounting standards IAS.

What is the relationship threshold for transfer pricing rules to apply between parties?
Two persons are associated if one of them participates, directly or indirectly, in the management, control or capital of the other, or if another person participates, directly or indirectly, in the management, control or capital of both of them.

What is the statute of limitations on assessment of transfer pricing adjustments?
The ZRA is not limited by law as to how many revised assessments it can issue. The only limitation is that the revised assessments, in non-fraud cases, must be issued within six years after the tax return due date.
and IFRS. The tax authorities require tax returns to be accompanied by financial statements.

**What types of transfer pricing information must be disclosed?**

Except for what is provided under the IAS and IFRS, there is no requirement to disclose any transfer pricing information.

**What are the consequences of failure to prepare or submit disclosures?**

ZRA officials periodically carry out audits and review whether transactions between related parties are at arm’s length. If not, adjustments are made and penalties and interest levied accordingly.

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**Transfer pricing study overview**

Is preparation of a transfer pricing study required – i.e. can the taxpayer be penalized for mere failure to prepare a study?

There is no requirement to undertake a transfer pricing study, but the tax authorities would place reliance on such a study where it is available.

Other than complying with a requirement per the previous question, describe the benefits, if any, of preparing and maintaining a transfer pricing study.

The tax authorities increasingly require a basis for determining the transfer price between related parties and as such, a transfer pricing study is imperative in securing deductibility of expenses. It would also avoid protracted disputes with the tax authorities on the transfer price.

To satisfy the requirement and/or obtain the benefits, are there any requirements on when the transfer pricing study must be prepared and submitted?

There is no prescribed period when the transfer pricing study must be prepared but it is advisable to have in place such a study, prior to submitting tax returns which have related party transactions.

What are the major elements required or recommended to be included in a transfer pricing study?

There are no requirements for a transfer pricing study under the current ITA legislation.

Does the tax authority require an advisor/tax practitioner to have specific designation in order to prepare or submit a transfer pricing study?

No.

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**Transfer pricing methods**

Which transfer pricing methods are acceptable?

The sale price (i.e. arm’s length price) in any transaction involving the sale of minerals by a company carrying out mining operations, directly or indirectly, to related or associated parties is the “reference price”.

The reference price is defined as:

- the monthly average London Metal Exchange (LME) cash price;
- the monthly average Metal Bulletin (MB) cash price to the extent that the base metals or precious metal prices are not quoted on the LME;
- the monthly average cash price of any other metal exchange market as approved by the Commissioner General to the extent that the base metal price or precious metal price is not quoted on the LME or MB; or
- the average monthly LME cash price, average monthly MB cash price or any other monthly average metal market exchange cash price approved by the Commissioner General, less any discounts on account of poor or low quality or grade.

Is there a priority among the acceptable methods?

Not applicable.

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**Transfer pricing audit and penalties**

When the tax authority requests a taxpayer’s transfer pricing documentation, how long does the taxpayer have to submit its documentation?

The normal period for the Commissioner General to require a company to submit information is 30 days, and this can be extended at the Commissioner General’s discretion.

If an adjustment is proposed by the tax authority, are dispute resolution options available to the taxpayer outside of the competent authority?

The taxpayer can appeal to the Commissioner General and if still dissatisfied, appeal to the Revenue Appeal Tribunal. Further recourse can be sought at the High Court of Zambia and finally, the Supreme Court of Zambia, in that order.

If an adjustment is sustained, can penalties be assessed? If so, what rates are applied and under what conditions?

The penalties prescribed under the ITA depend on whether the omission is negligent, willful, or as a result of a fraud. The penalties are determined as follows:

- in case of negligence, 17.5 percent of the amount
- in the case of willful default, 35 percent of the amount
- in the case of fraud, 52.5 percent of the amount

of any income omitted or understated, or any expenses overstated, in consequence of such failure, incorrect return, information or submission.

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To what extent are transfer pricing penalties enforced?
Penalties are enforced in full by the Commissioner General and where a court process is preferred, the sanctions imposed by the court would subsist.

What defenses are available with respect to penalties?
The Commissioner General has the discretion to waive the penalties or partially reduce the penalties depending on the mitigating circumstances. Where documentation is supplied to the satisfaction of the Commissioner General, the penalties can be waived in full.

What trends are being observed currently?
There has been an increased desire by the tax authorities to clamp down on transfer pricing. Experts from Norway have been assisting the tax authorities on audits of mining entities. Furthermore, the new Government in Zambia, ushered in after the elections held in September 2011, has a strong drive on getting more taxes from corporate institutions and less from employed individuals.

Special considerations
Are secret comparables used by tax authorities?
None that we are aware of.

Is there a preference, or requirement, by the tax authorities for local comparables in a benchmarking set?
No.

Do tax authorities have requirements or preferences regarding databases for comparables?
There are no such requirements.

What level of interaction do tax authorities have with customs authorities?
The Zambian tax authorities have an integrated tax administration system which captures information from the customs system called Asycuda+++ and uses this information as intelligence data in income tax and VAT audits.

Are management fees deductible?
Yes.

Are management fees subject to withholding?
Management and consultancy fees paid to non-resident companies are subject to final withholding tax at 15 percent. If the payments are made by a person developing a multi-facility economic zone or an industrial park under the Zambia Development Act, no tax is to be withheld for a period of five years from the date the first is due.

Other unique attributes?
With the exception of companies carrying out mining operations, thin capitalization is dealt with under general transfer pricing rules. For mining companies, the maximum accepted debt-to-equity ratio is 3:1. Re-characterization of interest as dividends is possible.

Other recent developments
The ZRA has created a Transfer Pricing Practice, and they cooperate with other tax jurisdictions. Recently, the ZRA signed a Memorandum of Understanding with the Norwegian Tax Administration aimed at strengthening the specialized large taxpayer revenue administration.

Tax treaty/double tax resolution
What is the extent of the double tax treaty network?
Medium.

If extensive, is the competent authority effective in obtaining double tax relief?
Not applicable.

When may a taxpayer submit an adjustment to the competent authority?
There is no such requirement under the ITA.

May a taxpayer go to the competent authority before paying tax?
Where a client requires double taxation relief, the same can be obtained from the tax authorities prior to paying the tax.

Advance pricing agreements
What APA options are available, if any?
No APAs or advance ruling system. However, a company may consult the tax authority on the interpretation or practical application of any provision of the Act. It is also good practice to avail the tax authorities of signed management agreements stipulating the basis on which costs will be charged between related parties.

Is there a filing fee for APAs?
Not applicable.

Does the tax authority publish APA data either in the form of an annual report or through the disclosure of data in public forums?
No.

Please provide some information on how successful the APA program is and whether there are any known difficulties.
Not applicable.

Language
In which language or languages can documentation be filed?
English.

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### Glossary of Terms

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>APA</td>
<td>Advance Pricing Agreement</td>
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<td>APMA</td>
<td>Advance Pricing and Mutual Agreement</td>
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<td>ATR</td>
<td>Advance Tax Ruling</td>
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<td>BvD</td>
<td>Bureau van Dijk</td>
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<td>CFCs</td>
<td>Controlled foreign companies</td>
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<td>CPM</td>
<td>Comparable Profits Method</td>
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<td>CSA</td>
<td>Cost Sharing Arrangement</td>
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<td>CUP</td>
<td>Comparable Uncontrolled Price</td>
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<tr>
<td>CUSP</td>
<td>Comparable Uncontrolled Services Price</td>
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<tr>
<td>CUT</td>
<td>Comparable Uncontrolled Transaction</td>
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<tr>
<td>DTA</td>
<td>Double tax agreement</td>
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<tr>
<td>EEA</td>
<td>European Economic Area</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUR</td>
<td>Euro</td>
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<tr>
<td>GBP</td>
<td>Great Britain Pound</td>
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<td>HMRC</td>
<td>Her Majesty’s Revenue and Customs</td>
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<td>IAS</td>
<td>International Accounting Standards</td>
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<td>IFRS</td>
<td>International Financial Reporting Standards</td>
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<td>IP</td>
<td>Intellectual property</td>
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<td>IRC</td>
<td>Internal Revenue Code</td>
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<td>IRS</td>
<td>Internal Revenue Service</td>
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<td>MAP</td>
<td>Mutual Agreement Procedure</td>
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<td>MB</td>
<td>Metal Bulletin</td>
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<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<td>PCT</td>
<td>Platform Contribution Transactions</td>
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<tr>
<td>SEC</td>
<td>Securities and Exchange Commission</td>
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<td>SME</td>
<td>Small and Medium Enterprises</td>
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<tr>
<td>TNMM</td>
<td>Transactional net margin method</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>US</td>
<td>United States</td>
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<td>USD</td>
<td>US dollars</td>
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<tr>
<td>VAT</td>
<td>Value Added Tax</td>
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Find out more

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