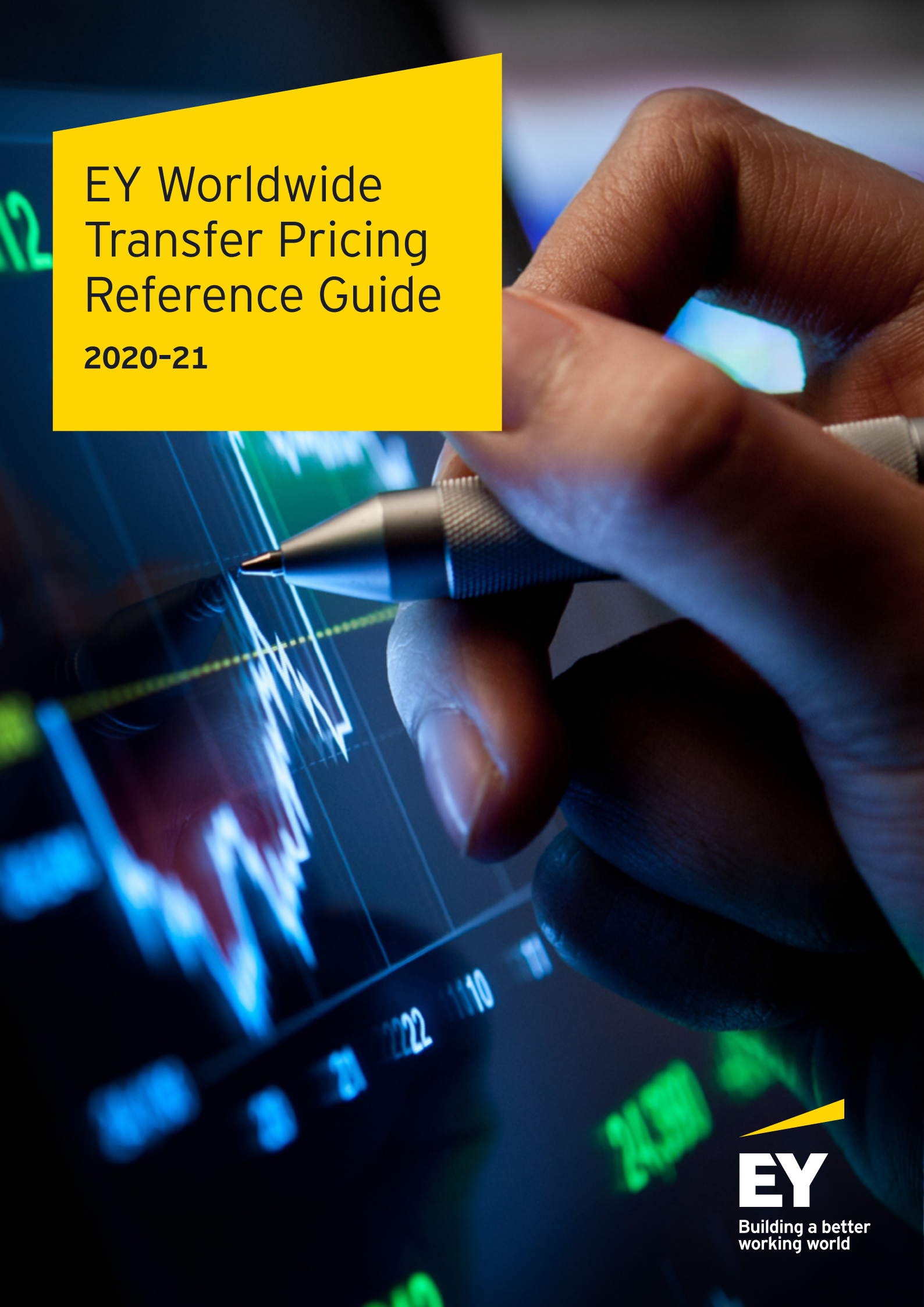
EY Worldwide Transfer Pricing Reference Guide

2020-21



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Preface

EY Worldwide Transfer Pricing Reference Guide 2020-2021

Transfer pricing rules and regulations around the world continue to grow in number and complexity. Practitioners need to have current knowledge of a complex web of jurisdiction tax laws, regulations, rulings, methods and requirements.

The EY Worldwide Transfer Pricing Reference Guide 2020-2021 is a publication designed to help international tax executives identify transfer pricing rules, practices and approaches. These must be understood for a company to carry out both transfer pricing compliance and planning activities in the base erosion and profit shifting (BEPS)[1] era.

The information included in the EY Worldwide Transfer Pricing Reference Guide 2020-2021 covers 131 jurisdictions. It is meant to provide an overview for the covered jurisdictions regarding their transfer pricing tax laws, regulations and rulings; Organisation for Economic Co-operation and Development (OECD) Guidelines treatment; documentation requirements; transfer pricing returns and related-party disclosures; transfer pricing documentation and disclosure timelines; BEPS Action 13 requirements; transfer pricing methods; benchmarking requirements; transfer pricing penalties and relief from penalties; statutes of limitations on transfer pricing assessments; likelihood of transfer pricing scrutiny and related audits by the tax authorities; and opportunities for advance pricing agreements (APAs).

The content for the EY Worldwide Transfer Pricing Reference Guide 2020–21 is updated as of October 2021.

This publication should not be regarded as offering a complete explanation of the matters referred to and is subject to changes in laws and other applicable rules, in addition to the overall business environment in each jurisdiction.

For a more detailed discussion of any of the jurisdiction-specific transfer pricing rules, or to obtain further assistance in addressing and resolving intercompany transfer pricing issues, please contact the local EY member firm office or the relevant jurisdiction contact listed herein. An interactive jurisdiction map to navigate directly to the jurisdiction chapters of this publication can be found at **ey.com.**

[1] Visit **https://www.ey.com/en_gl/tax/base-erosion-profit-shifting-beps** to follow the latest BEPS developments.

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Albania[1]

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Directorate of Taxes (*Drejtoria e Përgjithshme e Tatimeve* – GDT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Law no. 8438 on income taxes, as amended (Income Tax Law), dated 28 December 1998, has the following references:

- Effective from 4 June 2014, Articles 36-36/7 were introduced, providing a more comprehensive regulatory framework on international transfer pricing, aligned with the OECD Transfer Pricing Guidelines of 2010.
- Article 36/5 introduces transfer pricing documentation requirements for the first time.

Law no. 9920 on tax procedures in the Republic of Albania (Tax Procedures Law), dated 19 May 2008, has the following references:

- Article 115/1 addresses penalties related to transfer pricing.
- Double taxation treaties are enacted by Albania.

The Ministry of Finances and Economy issued Instruction no. 16, dated 18 June 2014, for the implementation of the transfer pricing legislation (Transfer Pricing Instruction). This provides further guidance on the application of the arm's-length principle and the preparation of transfer pricing documentation.

The Ministry of Finances and Economy issued Instruction no. 9, dated 27 February 2015, introducing specific rules and procedures on the implementation of APAs.

- **Section reference from local regulation**

Article 2, paragraph 4, items (a) and (b) of Law no. 8438 on income taxes provide for the definition of "related party" for transfer pricing purposes.

Paragraphs 3.2 and 3.3 of the Transfer Pricing Instruction elaborate more on the "related party" definition.

[1] **https://www.tatime.gov.al/eng/**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Albania is not a member of the OECD.

Albanian transfer pricing legislation refers to the OECD Transfer Pricing Guidelines of 2010.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No; however, Albania joined the Inclusive Framework on BEPS in August 2019.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  The local transfer pricing regulations are generally in line with the BEPS Action 13 format. However, in order to ensure that it is considered complete and to achieve penalty protection, it should also contain the local industry and market analyses; an overview of the local entity, including any local strategies; and the organizational structure of the local entity.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, it has. There are no explicit requirements to prepare the transfer pricing documentation contemporaneously. However, it is advisable to have it prepared by the corporate income tax (CIT) return date, i.e., 31 March of the following year.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, the local branches of foreign companies need to comply with the local transfer pricing rules.

- **Should transfer pricing documentation be prepared annually?**

Yes, transfer pricing documentation should be prepared annually. However, taxpayers with a turnover of less than ALL50 million that use external comparable data can use the same data for three consecutive fiscal years. This is applicable, provided that there have been no material changes in the conditions of the controlled transactions, the comparability of the external data and the relevant economic circumstances.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, an MNE with multiple entities in Albania is required to have stand-alone transfer pricing reports for each entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is a revenue threshold of ALL50 million.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

Pursuant to Paragraph 15.6 of the Transfer Pricing Instruction, the transfer pricing documentation should be submitted in English or in Albanian. If it is in English, it should be accompanied by a notarized translation into Albanian, which should be provided within 30 days of the tax authorities' request for translation.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is no preference between aggregation or individual testing, and both are allowed.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers are required to report all controlled transactions annually by filing an annual controlled transaction notice if the aggregate value of their controlled transactions, including loan balances, exceeds ALL50 million (approximately EUR410,000). The annual controlled transaction notice

should be submitted by 31 March of the following year. When determining the annual aggregate transaction value, taxpayers should take into account all intercompany transaction amounts (i.e., without offsetting credit and debit values).

- **Related-party disclosures along with corporate income tax return**

There are no other related-party disclosures or additional forms required by the legislation, except those included in the financial statements.

- **Related-party disclosures in financial statement/annual report**

Related-party disclosures are included in the financial statements of the taxpayer pursuant to IFRS requirements.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The CIT return should be submitted by 31 March of the following year.

- **Other transfer pricing disclosures and return**

The annual controlled transaction notice should be submitted by 31 March of the following year.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

There is no specific deadline for the preparation of the transfer pricing documentation. However, since the documentation must be submitted within 30 days upon tax authorities' request, it is recommended that it be prepared by the CIT return deadline, i.e., 31 March of the following year.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no specific deadline for the submission of transfer pricing documentation. The transfer pricing documentation must be submitted within 30 days upon receipt of the tax authorities' request, which can be initiated at any time after the filing due date of the income tax return (i.e., 31 March of the following year).

- **Time period or deadline for submission on tax authority request**

It should be submitted within 30 days from the time of the tax authorities' request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

With regard to international transactions, under the current transfer pricing rules, all transfer pricing methods advocated by the OECD Guidelines are acceptable – namely, CUP, resale price, cost plus, TNMM and profit split. When it can be proved that none of the approved methods can be reasonably applied, taxpayers are allowed to use other, more appropriate methods. Preference is given to the best method providing the most reliable results.

- **Domestic transactions**

This is not applicable.

b) Priority and preference of methods

Under the current transfer pricing rules, all transfer pricing

methods advocated by the OECD Guidelines are acceptable – namely, CUP, resale price, cost plus, TNMM and profit split. When it can be proved that none of the approved methods can be reasonably applied, taxpayers are allowed to use other, more appropriate methods. Preference is given to the best method providing the most reliable results.

8. Benchmarking requirements

- **Local vs. regional comparables**

Preference is given to local comparables. In the absence of local comparables, regional comparables can be used, but the differences between geographical markets and other factors affecting the financial indicator being analyzed must be taken into consideration in the comparable analysis. It is an EY jurisdiction practice to first attempt local comparables, and if not available, the search can be extended to regional comparables in the following order: Balkans, Eastern Europe and the EU.

- **Single-year vs. multiyear analysis**

Preference is given to uncontrolled comparables belonging to the same year as the controlled transaction. However, the taxpayer can rely on immediate previous-year comparables, provided the comparability criteria is met. It is an EY jurisdiction practice to use a multiyear analysis for testing arm's length.

- **Use of interquartile range**

The transfer pricing rules define the market range as a range that includes all the values of the financial indicators, such as price, markup or any other indicator used for the application of the most suitable transfer pricing method for a number of uncontrolled transactions. These transactions are such where each is almost equally comparable with the controlled transaction based on a comparability analysis. The transfer pricing rules do not specifically provide for the interquartile range. However, they stipulate that, in the case of adjustments by the tax authorities, the financial indicator is adjusted to the median. It is an EY jurisdiction practice to use the interquartile range (from Q1 to Q3) as the acceptable range.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The transfer pricing rules do not include any general provision in this respect. It is an EY jurisdiction practice to perform a fresh benchmarking search every three to five years. The financial update is performed annually.

The transfer pricing rules state that taxpayers with a turnover of less than ALL50 million that use external comparable data can use the same data for three consecutive fiscal years. This is applicable, provided that there have been no material changes in the conditions of the controlled transactions, the comparability of the external data and the relevant economic circumstances.

- **Simple, weighted or pooled results**

The transfer pricing rules do not provide any specific provision regarding the use of a simple or a weighted average. In the examples provided in the Transfer Pricing Instruction, the simple average is used. However, it is an EY jurisdiction practice to use both the weighted average and the simple average.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

If the documentation is considered as incomplete, the taxpayer does not benefit from the penalty relief, in case of transfer pricing adjustments performed during a transfer pricing audit.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The failure to file the annual controlled transaction notice (explained in the "Transfer pricing return and related-party disclosures" section above) is subject to a penalty of ALL10,000 for each month of delay.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, transfer pricing adjustments for which no documentation has been made available or such documentation is considered as incomplete trigger a penalty of 0.06% of the amount of the unpaid liability for each day of delay, capped at 21.9% (an equivalent of 365 days).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There are no explicit requirements to prepare the transfer pricing documentation contemporaneously.

- **Is interest charged on penalties or payable on a refund?**

There is no interest charged on penalties.

b) Penalty relief

Taxpayers that have submitted the transfer pricing documentation in a timely manner (i.e., within 30 days upon receipt of the tax authorities' request) and in compliance with the transfer pricing rules are relieved from penalties in the case of a transfer pricing adjustment. They will be liable to pay only the additional tax liability and default interest.

The taxpayer has the option of appealing the decision of the tax authorities. Initially, the appeal is addressed to the Regional Tax Directorate, further to the Tax Appeal Directorate and, if applicable, to the administrative court after all administrative appeal methods have been exhausted.

10. Statute of limitations on transfer pricing assessments

The statute of limitations on transfer pricing assessments is five years from the date the related CIT return is filed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a transfer pricing audit in Albania may be considered to be high. In light of the transfer pricing rules that became effective on 4 June 2014, and especially because of the introduced documentation requirements, transfer pricing issues are expected to continue to attract significant attention. Transfer pricing audits are expected to increase rapidly.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The tax administration is unlikely to challenge the methodology applied. In principle, in examining the arm's-length character of a transaction, the tax administration should use the same transfer pricing method applied by the taxpayer, to the extent that it is the most appropriate one for that transaction.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium; refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There are no differences among transactions, industries and situations.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The transfer pricing rules provide for three types of APAs: unilateral, bilateral and multilateral agreements. Requests for APAs will be taken into consideration provided the controlled transactions during the period of the agreement surpass in aggregate the amount of EUR30 million or if it is a case of complexity and of a high commercial and economic impact for Albania.

- **Tenure**

The maximum proposed period of the APA is five years unless the APA is bound to a governmental agreement ratified by law.

- **Rollback provisions**

Taxpayers may not request a rollback. However, if the APA is signed and finalized after the first fiscal year of the proposed APA, the year during which the APA was proposed will be considered covered under the agreement.

- **MAP opportunities**

MAPs are generally available under the double tax treaties that Albania has with its treaty partners.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Albanian tax law includes thin-capitalization rules with respect to the deduction of interest on loans, which apply if the debt-to-equity ratio exceeds 4:1. The ratio applies to all debts owed to related and unrelated parties as well as to loans obtained from financial institutions. However, the limitation does not apply to banks or to insurance and leasing companies. For related-party loans, the net interest expense balance (that is, the difference between the interest expenses and interest revenues, exceeding 30% of earnings before interest, taxes, depreciation, and amortization (EBITDA)) is not deductible. Such non deductible interest in the current period can be carried forward to future tax periods, provided that a change of 50% in the entity's ownership does not occur.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General of Taxes (*Direction Générale des Impôts* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Order dated 12 April 2012 amended by the order dated November 17th, 2020 pertaining to the documentation justifying the transfer prices applied on related companies.

In practice, the Algerian tax authorities started applying this obligation from 2017.

- Section reference from local regulation
  - Article 169 bis of the Algerian Tax Procedure Code
  - Article 20 ter of the Algerian Tax Procedure Code
  - Article 141 bis of the Algerian Direct Tax Code
  - Article 192-3 of the Algerian Direct Tax Code

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and reference

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Algeria is not a member of the OECD. However, the Algerian transfer pricing legislation makes reference to the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**
  - Coverage in terms of master file, local file and CbCR

    This is not applicable.
  - Effective or expected commencement date

    This is not applicable.
  - Material differences from OECD report template or format

    The Algerian transfer pricing legislation only refers to a document to be structured as follows:
    - A base document relating to general information relating to the group
    - A document specific to the company subject to the documentation obligation

    Furthermore, following provisions of the Finance Act for FY2019, Algeria introduced a complementary documentation obligation. Entities subject to the obligation of submitting a transfer pricing document may be requested by the tax authorities, notably in the frame of an audit, to provide a complementary document that aims to provide specific information, which could be tax rulings and advance pricing agreements (APAs) obtained by the group in other jurisdictions.
  - Sufficiency of BEPS Action 13 format report to achieve penalty protection

    This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, the minimum information requirements are set by the decree of 12 April 2012. They include information about (i) the group and (ii) the entity subject to the documentation

obligation (including the financial information of the documented fiscal year).

All entities (i) registered with the tax department responsible for large-sized companies (*Direction des Grandes Entreprises* – DGE), in addition to (ii) groups of companies as well as (iii) foreign companies and (iv) companies set up in Algeria being members of foreign groups registered at the level of other tax offices must submit their transfer pricing documentation along with their annual tax returns (before 30 April of each year).

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?** [1]

Yes.

- **Should transfer pricing documentation be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There are no materiality limits or thresholds.

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There are no materiality limits or thresholds.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions occurring between related companies must be covered by the transfer pricing documentation.

Relatedness is ascertained in case of legal or de facto dependency.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language. The Algerian Constitution mandates the use of Arabic or French in official exchanges and documents filed with the administration. French is, in practice, the language used for all tax filings.

- **Safe harbor availability, including financial transactions, if applicable**

There are no specific safe harbor rules set in Algerian transfer pricing regulations. However, a ruling request can be submitted by companies registered at the level of the DGE regarding the taxpayer's transfer pricing practices, but it cannot be considered as a request for an APA.

- **Is aggregation or individual testing of transactions preferred for an entity?**

Due to lack of comparable data, both approaches are accepted in practice (aggregation or individual testing).

- **Any other disclosure or compliance requirement**

All companies subject to the transfer pricing obligation must, if requested by the tax authorities in the frame of a tax audit, provide analytical accounting information to the tax inspectors. However, the tax authorities did not specify the type of information or the format that must be used to submit such information when requested.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no specific return to be filed in addition the transfer pricing documentation itself.

- **Related-party disclosures along with corporate income tax return**

In the framework of a tax audit, tax inspectors are entitled to audit the possible infringement of the arm's-length principle with related parties (intercompany transactions), such as the existence of a commercial or financial relationship that differs from those that would be made between independent enterprises. Moreover, as per new provisions of the 2018 Finance Act, the tax administration is now allowed to ask for the group consolidated accounts (locally or abroad).

[1] **https://taxsummaries.pwc.com/algeria/corporate/group-taxation**

Furthermore, according to provisions of the 2019 Finance Act, entities subject to the obligation of submitting transfer pricing documentation may be required, in the context of a tax audit, to provide complementary documentation if the primary file submitted is considered to be insufficient by the tax inspectors. Complementary documentation may notably include tax rulings and APAs obtained by the group in other jurisdictions.

- **Related-party disclosures in financial statement and annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

30 April of the next fiscal year (Y+1).

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation and local file preparation deadline

30 April of the subsequent year to current year under consideration.

c) Transfer pricing documentation and local file submission deadline

Is there a statutory deadline for submitting transfer pricing documentation or local file?

The statutory deadline for the submission of transfer pricing documentation is the same as that of the corporate income tax return, which is 30 April of the subsequent year to current year under consideration. This is now required for all firms performing transactions locally and internationally with related companies (see above section 4a companies which are subject to the documentation obligation).

- **Time period or deadline for submission on tax authority request**

In the case of a tax audit or requisition, the taxpayer must submit transfer pricing documentation within 30 days of the tax authority's request, if such documentation was not filed with the annual tax return.

d) Are there any new submission deadlines per COVID-19-specific measures? If "Yes," specify which deadlines are impacted

The Algerian Tax authorities recently postponed the tax return and TP documentation filling deadline from the 30 April 2022 to the 31 May 2022 for companies registered at the level of the DGE, and until the 30 June 2022 for taxpayers registered at the level of regional and local tax inspectorate (CDI).

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes, in case relatedness is ascertained (legal or de facto dependency).

b) Priority and preference of methods

The Algerian transfer pricing legislation does not provide an official transfer pricing method to be used for each transaction type, but the Algerian tax authorities issued guidelines in 2010 referring to the OECD methods. In theory, all OECD methods could be accepted, subject to justification in the economic analysis.

Algerian tax authorities are developing a project to develop

a database by gathering financial data for benchmarking purposes.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are preferred, although regional comparables could in some cases be accepted because of a lack of local data.

- **Single-year vs. multiyear analysis**

Not specified by either legislation of administrative doctrine.

- **Use of interquartile range**

Not specified by either legislation of administrative doctrine.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There are no specific guidelines or requirements under the current legislation on the need to conduct a fresh benchmarking search every year or for updating the financials of a prior study. However, the Algerian legislations trend to follow the OECD Guidelines recommendations to update the benchmark study every three years.

- **Simple, weighted or pooled results**

It is not specified by the current transfer pricing regulations.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

In case of incomplete documentation, the tax authorities can ask for a complementary documentation or information or decide to trigger an audit to assess any irregularities. The documentation can also be considered as non-receivable (not valid) for not respecting the format provided by the local legislation, in such case, the penalty for failure to submit could apply (see below).

In case of incomplete transfer pricing documentation, tax authorities may:

- Ask for complementary transfer pricing documentation and information
- Initiate a tax audit
- Apply the same penalty than for failure to submit (see below), if they consider the transfer pricing documentation insufficient to ensure transfer pricing protection

- **Consequences of failure to submit, late submission or incorrect disclosures**

For companies with a filing obligation, the Algerian transfer pricing legislation provides that the penalty for failure to submit the transfer pricing documentation is DZD2 million.

For taxpayers subject to a tax audit, the tax administration is entitled to send a formal notice asking for the transfer pricing documentation or the complementary transfer pricing documentation to be provided within 30 days. In case of failure, the DZD2 million penalty is applied.

- **If an adjustment is sustained, can penalties be assessed, if documentation is deemed incomplete?**

Yes, the reassessed tax base will provide for a corporate income tax adjustment amount in addition to a base penalty of 25%. In addition, the reassessed amount will also be subject to tax on deemed transferred profits.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

No. In practice, penalties being imposed for non-contemporaneous documentation have not been observed.

- **Is interest charged on penalties or payable on a refund?**

Interest (late-payment penalties) can be charged on principal and base penalties if the latter are not paid on schedule. These interests are capped at 25%, on the total reassessed amount (amounts deemed to be transferred indirectly).

b) Penalty relief

No specific penalty relief is applicable to transfer pricing, but general penalty relief could apply in the framework of a transaction procedure (*remise conditionnelle*) provided by the Algerian Tax Procedure Code, under certain conditions.

A relief can also be granted for late payment penalties under the graceful remittance (*remise gracieuse*) procedure, under certain conditions.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing adjustments is the same as for all Algerian corporate tax assessments (i.e., four years following the year for which the tax is due).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Yes, there has been an increase in tax audits targeting transfer pricing irregularities.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high, medium or low)**

The likelihood of a transfer pricing audit in Algeria may be considered to be low to medium.

- **Likelihood of transfer pricing methodology being challenged (high, medium or low)**

The likelihood of transfer pricing methodology being challenged may be considered to be low to medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)**

The likelihood of an adjustment if the transfer pricing methodology is challenged may be considered to be high, given the budgetary situation in Algeria, more pressure has been suggested by the legislator for tax audits (notably in terms of transfer pricing infringements).

- **Specific transactions, industries and situations, if any, more likely to undergo an audit**

The oil and gas, pharmaceutical, and information and communication technology industries are most likely to undergo an audit. Also, all companies making large payments to foreign related parties are more likely to undergo an audit.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The Algerian tax legislation does not provide for a specific APA procedure. However, a binding tax ruling procedure was introduced in the Algerian Tax Procedure Code for taxpayers registered at the level of the DGE.

Following the 2019 Finance Act provisions, APA obtained by the group in other jurisdictions can be requested by the tax authorities in the context of a tax audit.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings, or other transfer pricing-related certainty measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Article 2 of the 2019 Finance Act provides a new provision that limits the deduction of financial interest paid to shareholders within the frame of their business relationships with the Algerian company.

As a reminder, Article 141 of the Direct Tax Code and Similar Taxes (*Code des Impots Directs et Taxes Assimilées* – CIDTA) provides full deductibility of interests on loans paid to shareholders concerning trading operations.

However, the 2019 Finance Act introduced a new provision that limited deduction of interest as follows:

- **Interest paid to shareholders:**
  - The deductibility of amounts provided to the company, in addition to their share in the capital, regardless of the legal form, is limited to the average effective interest rate communicated by the Bank of Algeria.

- The deductibility condition is also subject to the fact that the capital is fully paid by the shareholder and that amount provided to the company do not exceed 50% of the capital.
- Interest paid to related parties:
  - The deductibility of interest paid to related companies in the context of intercompany loans is limited to the average effective interest rates communicated by the Bank of Algeria.

Please note that foreign financing is limited to non-interest-remunerated amounts provided through the shareholders' account, which may exclusively be used for capital expenditures and be paid back within three years. Otherwise, the amount will have to be capitalized.

The Algerian government is expected to waive this limitation through the Complementary Finance Act for 2020. An update is likely in the second half of 2022.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Tax Administration (*Administração Geral Tributária*[1] – AGT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Presidential Decree 147/13 of 1 October 2013 – specifically, Section II and Articles 10 to 13 (Statute of Large Taxpayers) – and Article 50 of Law 19/14 of 22 October 2014 (Industrial Tax Code), applicable starting 1 January 2014, changed by Law 26/20 of 20 July 2020.

It is also relevant to mention Circular No. 002/DCC/2020 from the Angola National Bank (Banco Nacional de Angola – BNA), by which the burden of proof of the market nature of services purchased abroad lies with the Angolan entity. The publication of this circular by the BNA on 18 August 2020 aimed to define the procedures for validation and execution of current invisible contracts, considering that the contracting of services abroad may represent a high risk of exchange fraud and facilitate the illicit movement of funds abroad. In summary, the authorization to transfer foreign currencies from Angola related with service contracts with related parties will require the presentation of, among other elements, support documentation to prove the arm's-length nature of the underlying invoices.

- **Section reference from local regulation**

According to Article 11 of Chapter IV of Presidential Decree 147/13 of 1 October 2013, two companies are considered related parties when:

a. The directors or managers of a company, as well as their spouses, ascendants and descendants, directly or indirectly have an ownership interest of 10% or more in the capital or the voting rights of the other entity.

b. Majority of the members of the board of directors or management are either common or distinct but related by marriage, non-marital partnership, or direct kinship.

c. One of the entities has contractual control over the other.

d. The companies have a relationship of control or cross-ownership or contractual subordination contract, peer group or equivalent situation following the terms of company law.

e. Commercial relations between the two entities represent more than 80% of the volume of operations.

f. One finances the other, to the extent of more than 80% of its credit needs.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Angola is not a member of the OECD. The OECD Guidelines are not adopted in the local transfer pricing regulations by Angola, although certain OECD language is included in the transfer pricing regulations enacted.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR
- This is not applicable.
- Effective or expected commencement date
- Even though Angola has officially joined the BEPS Inclusive Framework, it is not possible to foresee when any BEPS-related changes can be introduced into the local legislation.
- Material differences from OECD report template or format
- Angola has not adopted the master file and local file approach, and full local transfer pricing documentation is expected from each eligible taxpayer.

[1] **https://agt.minfin.gov.ao/**

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Angola has not adopted the master file and local file approach, and full local transfer pricing documentation is expected from each eligible taxpayer. Consequently, only transfer pricing documentation fully compliant with local regulations can be considered to protect against potential penalties.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the transfer pricing documentation must be prepared and submitted to the tax authorities by the end of the sixth month after the fiscal year's closing date. It also needs to be contemporaneous.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The documentation applies to all companies reporting annual revenue of more than AOA7 billion, including those listed on the large taxpayers' list: large government-owned companies, financial banking institutions, insurance and reinsurance companies, pension fund management companies and pension funds, payment system operators and providers, microcredit companies, oil and gas companies, diamond companies, telecommunications companies, and companies operating in a monopoly regime.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. All intragroup transactions, in which the company was involved, must be reported (domestic and cross-border).

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language (Portuguese).

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

No additional related-party detailed information is disclosed to the General Tax Administration, other than the submission of entity-specific transfer pricing documentation, when applicable.

- **Related-party disclosures in financial statement and annual report**

Yes

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

As stated above, an additional burden of proof was imposed on Angolan paying entities, concerning contracts with foreign entities of the same group, to prove that the prices charged in the arrangements for the provision of services contracted to non-resident-related entities conform to market prices. Taxpayers' obligations vary depending on whether they reported annual revenues of more than AOA7 billion.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 May for Group A and 30 April for Group B.[2]

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation must be prepared within six months after the fiscal year-end, until 30 June.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

Transfer pricing documentation must be prepared and submitted to the tax administration within six months of the fiscal year-end, until 30 June.

- **Time period or deadline for submission upon tax authority request**

The transfer pricing documentation must be submitted by the deadline stated above, so no additional notice is given to taxpayers.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

[2] Group A encompasses public entities, companies with a share capital equal or higher than AOA2 million, and companies with annual total revenues equal to or greater than AOA500 million. Also included in Group A are associations, foundations or cooperatives whose activities generate additional revenues other than the subsidies received. Affiliations of international companies whose headquarters are not located in Angola also belong to Group A. Group B comprises all the taxpayers not included in Group A.

b) Priority and preference of methods

Traditional transactional transfer pricing methods only, namely, the CUP, resale price and cost-plus methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is very limited, if any, comparable financial data available on public databases regarding Angolan companies.

- **Single-year vs. multiyear analysis for benchmarking**

There is no reference to preferences regarding single-year vs. multiyear analysis in the local legislation. The practical approach has been to test the taxpayer's single-year results against multiple-year interquartile ranges.

- **Use of interquartile range**

Yes, in recent tax audits, the tax authorities have used the interquartile range as a reference.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Yes, although not specified in the legislation, doing a fresh benchmarking study is followed as a market practice.

- **Simple, weighted or pooled results**

This is not specified in the legislation.

- **Other specific benchmarking criteria, if any**

The local independence threshold or criteria should be used in benchmarking studies. In case local comparables cannot be found, comparability adjustments could be performed to the set of regional comparables.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

See below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The General Tax Administration notifies large taxpayers who failed to file transfer pricing documentation to pay a tax fine under the General Tax Code (namely, No. 2 of Article 198). The fine amount can range from AOA10,000 to AOA50,000. Existing notifications indicate that the maximum amount of the range is being applied. The application of penalties in this regard will imply a reputational risk to the taxpayer, as it will be considered noncompliant.

Moreover, non-compliance with transfer pricing documentation requirements may result in such taxpayers being forbidden from performing capital operations, current invisible transactions (payments for services and intangibles), or trading operations that, according to the current exchange control regulations, require an intervention from the National Bank of Angola. In practice, it may block the day-to-day activity of any taxpayer if its legal name is communicated by the General Tax Administration to the National Bank of Angola, specifying non-compliance with tax obligations

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

If a transfer pricing adjustment is made, a penalty equivalent to 25% of the additional tax will be applied, plus late interest at the non-compounded rate of 1% per month (or 12% per year).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

If a transfer pricing adjustment is made, a penalty equivalent to 25% of the additional tax will be applied, plus late interest at the non-compounded rate of 1% per month (or 12% per year).

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing assessments is 5 years from the last day of the tax year-end or 10 years in cases of tax infringement.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

It may be considered to be medium. Large taxpayers have already been notified to pay penalties for non-compliance with the contemporaneous transfer pricing documentation preparation and submission to the Large Taxpayers' Office.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

High.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

High.

- **Specific transactions, industries, and situations, if any, more likely to be audited**

Large taxpayers.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in Angola.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Only if available in the specific context of a convention to avoid double taxation, namely with Portugal.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No data available.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Angola does not have thin-capitalization rules, but until recently interest expenses from shareholder loans were not accepted as tax deductible for the computation of the taxable income due on industrial tax.

However, as of 18 April 2019, shareholder loans interest expenses have become tax deductible (No. 1 of Article 16 of the Industrial Tax Code), provided that the portion exceeding the average annual interest rate established by the National Bank of Angola is added to the taxable income.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Internal Revenue Service (*Administración Federal de Ingresos Públicos* – AFIP).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer pricing regulations and rulings include:

- Income Tax Law (ITL) as amended by Law 27,430, published on 29 December 2017, and Decree 824/2019, published on 6 December 2019
- Administrative Order as amended by Decree 1170/2018, published on 27 December 2018, and Decree 862/2019, published on 9 December 2019
- AFIP (General Tax Directorate – *Dirección General Impositiva*) General Resolution No. 4717/2020, published on 14 May 2020 and amended by the General Resolution 5010/2021

- **Section reference from local regulation**

Section 14 of the Administrative Order as amended by Decree 1170/2018 and by Decree 862/2019.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Transfer pricing reporting obligations were suspended before COVID-19 due to a major tax reform program that included updating of transfer pricing documentation requirements. As of today, the AFIP has granted a three-month extension for fiscal years ended between December 2020 and December 2021. It is not expected that the AFIP will grant any further extensions.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Argentina is part of the UN, however it is not a member of the OECD.

It has started the process required to become one. The OECD Guidelines are not referenced in Argentina's ITL and regulations. However, the tax authority usually recognizes the OECD Guidelines in practice as long as they do not contradict the ITL and regulations. Several first-level court cases also recognize the use of the OECD Guidelines, insofar as they do not contradict the ITL and regulations.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, it covers the Local File, Master File and CbCR.

- Coverage in terms of master file, local file and CbCR

  The master file has been introduced within the Argentine transfer pricing regulations through the enactment of Decree 1170/2018. The regulations are outlined in Article 45 of General Resolution 4717/2020.

- Effective or expected commencement date

  The master file is effective for fiscal years beginning 1 January 2018.

- Material differences from OECD report template or format

  The Masterfile needs to be filed in Spanish by local taxpayers. The Masterfile contents required by regulations include additional information to that established by the OECD.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 30 June 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does it need to be submitted or prepared contemporaneously?**

Yes, it needs to be submitted depending on minimum thresholds.

For the local file, it must be submitted if intercompany transactions are above ARS30 million. For those cases where the company must submit the master file or the group must submit the CbCR, the minimum threshold for intercompany transactions is ARS3 million as a whole or ARS300k for individual transactions. This same threshold applies in the case of transactions with entities located in low-tax jurisdictions or noncooperative jurisdictions.

In the case of the master file, it must be submitted if the group presents an annual income greater than ARS4,000 million and the intercompany transactions are above ARS3 million as a whole or ARS300k individually.

The CbCR must be submitted following the OECD's BEPS action 13 guidelines.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes

b) Materiality limit or thresholds

- **Transfer pricing documentation (TP Return and Local File)**

Taxpayers will not be required to file the transfer pricing documentation if their transactions carried out with foreign related parties, invoiced as a whole in the fiscal year, do not exceed the total amount equivalent to ARS3 million or, individually, equivalent to ARS300k. This should be done without prejudice to the duty to preserve the documents, information and evidence supporting the aforementioned transactions. If the company is not required to submit the master file and the group is not required to comply with the CbCR, the minimum threshold for intercompany transactions is ARS30 million.

- **Master File**

The master file has been introduced within the Argentine transfer pricing regulations through the enactment of Decree 1170/2018. The regulations are outlined in Article 45 of General Resolution 4717/2020.

Submission of the master file is not mandatory when:

- The total consolidated annual income of the group does not exceed ARS4000 million in the preceding fiscal year.
- The amount of the transactions with foreign related parties in a fiscal year does not exceed ARS3 million in total or ARS300k for an individual transaction.
- Notwithstanding the above, MasterFile will be mandatory when the Group is required to file CBCr in their corresponding jurisdiction.

- **CbCR**

CbCR was introduced in Argentina in 2017. The group's income for the previous fiscal year must exceed EUR750 million. The CbCR has to be filed by the entities controlling Argentine MNEs. In addition, the local filing of the CbCR will only be required in Argentina when there is an underlying international agreement in effect, but when there is no competent authority agreement.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There are no requirements to report these transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language (Spanish).

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is a preference for individual testing.

- **Any other disclosure or compliance requirement**

For import and export transactions involving an international intermediary between the Argentine taxpayer and the foreign related parties, the local entity will have to prove that the remuneration obtained by the international intermediary is in accordance with the risks assumed, the functions performed, and the assets involved in the transactions. The local file must include the functional analysis of the international intermediary.

In addition, in case of imports or exports of commodities, specific transfer pricing rules apply, including additional transfer pricing returns.

Services received by Argentine taxpayers require a benefit test regarding the transaction paid by local company.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Starting in 2018, taxpayers are required to file the following transfer pricing-specific returns with the AFIP:

  - Annual Form 2668 (transactions with related parties or entities located in low- or no-tax jurisdictions or noncooperative jurisdictions and import and export transactions with third parties)
  - Annual Form 4501 (for the digital filing of the transfer pricing study and certified public accountant's certification)

- **Related-party disclosures along with corporate income tax return**

This is not applicable, provided there exists a separate return to report related parties.

- **Related-party disclosures in financial statement and annual report**

Taxpayers are required to file the following documentation with the AFIP:

  - An annual transfer pricing study (local file)
  - Audited financial statements for the fiscal year, if they have not already been filed
  - Certification of certain contents of the transfer pricing study by an independent certified public accountant
  - Transfer pricing-specific return (Form 2668 and Form 4501)

- **CbCR notification included in the statutory tax return**

This is not applicable, provided there exists a separate regime to regulate CBCR filing.

- **Other information or documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Fifth month after fiscal year-end. For fiscal years ending in December, the filing deadline is mid-May. There are specific due dates that depend on the taxpayer's fiscal ID and the fiscal year-end.

- **Other transfer pricing disclosures and return**

Sixth month after fiscal year-end. For fiscal years ending in December, the deadline falls in June of the following financial year. There are specific due dates that depend on the taxpayer's fiscal ID and the fiscal year-end. There is a temporary three-month extension for fiscal years ended between December 2020 and December 2021.

- **Master File**

Master file needs to be prepared and filed with the tax authority up to 12 months after the fiscal year-end. The master file should be in Spanish.

- **CbCR preparation and submission**

The deadline is 12 months after the fiscal year-end.

- **CbCR notification**

The deadline is the third month after the fiscal year-end and the second month after the CbCR filing.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation must be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement). There are specific due dates that depend on the taxpayer's fiscal ID and the fiscal year-end.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Yes, the statutory deadlines for Argentine transfer pricing filings are:

- Fiscal year-end plus five months: The income tax return is due the fifth month after the fiscal year-end. Within such filing, the local taxpayer must disclose transfer pricing adjustments (if any). In that filing, the company must disclose whether a transfer pricing adjustment is needed to have arm's-length prices in its transactions with related and unrelated parties located in countries or jurisdictions considered noncooperative for fiscal transparency purposes, and in low- or no-tax jurisdictions. Thus, the transfer pricing analysis should be performed by that time even though the documentation is not due until later (fiscal year-end plus six months).

- Fiscal year-end plus six months: The company must file the transfer pricing annual return (Form 2668), including detailed information of all cross-border intercompany transactions (or those performed by the local company with entities located in countries and jurisdictions considered noncooperative for fiscal transparency purposes or in low- or no-tax jurisdictions). Transfer pricing report (in AFIP's General Resolution 4717/20) needs to be filed through Form 4501. A certified public accountant (CPA) certification, signed by an independent accountant, of certain procedures and information contained in the transfer pricing report is also needed. The company also has to file statutory financial statements for the year signed by an independent accountant. If this is the first filing, the financial statements for the two immediately preceding tax periods (if applicable) should also be filed. All applicable pieces of documentation must be filed to complete a documentation package. Through the Argentine tax authority's General Resolution 5010/2020, companies were granted with a temporary three-month extension for fiscal years ended between December 2020 and December 2021.

- **Time period or deadline for submission on tax authority request**

The taxpayer has 10 working days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Transfer pricing reporting obligations were suspended before COVID-19 due to a major tax reform program that included updating of transfer pricing documentation requirements. As of today, the AFIP has granted a three-month extension for fiscal years ended between December 2020 and December 2021. It is not expected that the AFIP will grant any further extensions.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

International transactions must be informed and analyzed.

- **Domestic transactions**

No need to document ,but transactions are expected to be arm's length.

b) Priority and preference of methods

The ITL does not prioritize methods; however, there exists a strong preference in what concerns to internal comparables and Section 30 of the Administrative Order, as amended by Decree 1170/2018 and Decree 862/2019, articulates the best-method rule.

The tested party must be the local entity (i.e., the entity based in Argentina). The taxpayer selects the most appropriate method, but the AFIP may oppose the selection. Pursuant to the ITL, the accepted methods for transactions with related parties and entities, located in countries and jurisdictions considered noncooperative for fiscal transparency purposes or in low- or no-tax jurisdictions, are CUP, resale price, cost plus, profit split, TNMM and other methods.

The use of an interquartile range is mandatory. Unless there is evidence to the contrary, the market price must be used for tangible goods transactions with both related and independent

parties where there is an international price in a transparent market.

The CUP method shall be considered the most appropriate to value the transactions of goods with well-known prices in transparent markets, either by reference to uncontrolled comparable transactions or by reference to the indices, coefficients or quotation values.

For import and export transactions involving an international intermediary between the Argentine taxpayer and foreign related parties, the local entity will have to prove that the remuneration obtained by the international intermediary is in accordance with the risks assumed, the functions performed and the assets involved in the transactions. If the remuneration of the foreign intermediary is higher than that agreed upon between independent parties, the excess in the amount of such remuneration shall be considered a higher profit from an Argentine source, attributable to the local taxpayer.

The AFIP has the power to reclassify the transaction, including determining the nonexistence of remuneration attributable to the foreign intermediary and establishing the functions performed, assets used and risks assumed (with the respective remuneration and attribution to the party or parties), under the following conditions:

- If, from the evaluation of the transaction, the AFIP determines that there is a clear discrepancy between the actual transactions and the functional analysis or signed agreements with the foreign intermediary
- If the purpose of the transaction is explained solely for fiscal reasons or if its conditions differ from those to which independent companies have subscribed in accordance with commercial practices

Export and import transactions with independent parties not located in countries and jurisdictions considered noncooperative for fiscal transparency purposes or in low- or no-tax jurisdictions are subject to information requirements if the annual amount of the transaction exceeds ARS10 million or if the transactions are exports and imports of commodities. The requirements depend on different annual transaction amounts and, in some cases, may include calculations of profit margins.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific requirement. However, the comparable companies to be selected should be those that have publicly available information (Forms 10-K, 20-F, ARS or similar and audited financial statements in Spanish or English can be found). Even though there is no specific requirement established by law for using such databases or selecting comparable companies, the AFIP has requested information with such level of comfort in the data in the context of fiscal audits (e.g., counting with a description of the comparable business activities in Spanish, the financial information in a specific format, the explanation of comparability adjustments made in Spanish). It is also important to consider that the local legislation determines the obligation of exposing the name of the database used, the date of the comparable search, and the breakdown with the accepted or rejected comparable companies, along with the search process.

- **Single-year vs. multiyear analysis for benchmarking**

A single-year analysis is required for the local taxpayer (tested party). Multiple years can be considered for comparable companies, but it must be justified.

- **Use of interquartile range**

When, by application of any of the methods set forth in ITL Section 17, as revised in 1997 and as amended by Decree 824/2019, and the related Administrative Order as amended by Decree 1170/2018 and Decree 862/2019, two or more comparable transactions are determined, the median and interquartile range shall be determined for the prices, consideration amount or profit margins.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is recommended every year, but a reasonable update of financials is accepted.

- **Simple, weighted or pooled results**

There is none specified.

- **Other specific benchmarking criteria, if any**

Preference for internal comparables, when available.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

In case of late filing or incomplete transfer pricing documentation, the tax rating of the local taxpayer could be downgraded.

- **Consequences of failure to submit, late submission or incorrect disclosures**

For late filing of tax returns concerning other international transactions, the taxpayer will be fined ARS20,000. For penalties related to late filing or lack of filing, it does not matter whether the transactions were at arm's length.

For non-compliance with the formal duties of furnishing information requested by the AFIP, the taxpayer faces fines of up to ARS45,000. The same applies to failure to keep vouchers and evidence of prices in files on hand and the failure to file tax returns upon request. If tax returns are not filed after the third request, and the taxpayer has income amounting to more than ARS10 million, the fine is increased from ARS90,000 to ARS450,000.

For unpaid taxes related to international transactions, the taxpayer is fined 200% of the unpaid tax, which could be augmented to 300% upon recidivism. Penalties for fraud are two to six times the unpaid taxes.

Criminal tax law stipulates imprisonment for two to six years if the unpaid tax exceeds ARS1.5 million for each tax and fiscal year. If the unpaid tax exceeds ARS15 million, the prison term will increase, ranging from three years and six monthscvv to nine years.

Failing to comply with the obligations related to CbCR and CbCR notifications will be considered by the AFIP as a relevant indicator for starting an audit and verification of the risks associated with their transfer prices and the potential tax BEPS from the entities domiciled in Argentina to other member companies of the MNE group.

Moreover, the liable parties may be subject to any of the following measures:

- Being classified as a company subject to greater risk of undergoing an audit
- Suspension or removal from the special tax registries of the Argentinean tax jurisdiction
- Suspension of the process of obtaining an exemption or non-withholding certificates

The following penalties are applicable to the non-compliance with the obligations related to CbCR and CbCR notifications:

- i) The penalty will be between ARS80,000 and ARS200,000 when the local taxpayer is a member of an MNE group that reaches the minimum limit of total consolidated revenues for mandatory CbCR and fails to comply with the respective notifications and information about the MNE group and the ultimate parent entity, requested by the AFIP, within the deadlines established for this purpose. If the local entity fails to comply with the notification mentioned above, but its MNE group does not reach the limit established for mandatory CbC reporting, the penalty will be set between ARS15,000 and ARS70,000.

  ii) The penalty will be between ARS80,000 and ARS200,000 when the local taxpayer fails to inform, within the deadlines established for that purpose, the identifying data of the reporting entity (the entity designated for the submission of the CbCR) (first notification).

  iii) The penalty will be between ARS80,000 and ARS200,000 when the local taxpayer fails to inform, within the deadlines established for that purpose, the submission of the CbCR by the reporting entity in its tax jurisdiction (second notification).

- There will be an adjustable penalty (between ARS600,000 and ARS900,000) when the local taxpayer must file the CbCR to the AFIP and does not submit it. The penalty will also apply if the report submitted is partial, incomplete, or has serious errors or inconsistencies.
- There will be an adjustable penalty (between ARS180,000 and ARS300,000) upon the total or partial non-compliance with the requirements made by the AFIP on complementary information requested in addition to the CbCR.
- There will be a penalty of ARS200,000 when the local taxpayer does not comply with a formal requirement from AFIP to comply with duties mentioned in (a) and (b) (above).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

When the tax is not paid for not filing returns or reports or for filing inaccurate returns or reports, the taxpayer shall be penalized with a fine of 200% (which could be augmented to 300% upon recidivism) of the unpaid or un-withheld tax. This is if the nonpayment refers to transactions entered into between local companies and any type of entity domiciled abroad, as provided by Section 45.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the above section.

- **Is interest charged on penalties or payable on a refund?**

Interest accrues on unpaid tax balances.

b) Penalty relief

Concerning underpayment and fraud, if the non-recidivist taxpayer voluntarily amends the tax returns before receiving an intervention notice from the AFIP, then no penalty shall be applied. If the tax returns are amended during the term between receiving the intervention notice and before receiving a special notice (or pre-vista) from AFIP´s auditors, the penalty is reduced to one-quarter of the minimum fine. If the tax returns are amended after receiving the pre-vista but before receiving the notice of the resolution that formally starts the official assessment procedure (the so-called "vista"), the penalty is reduced to half of the minimum fine. If the non-recidivist taxpayer accepts the adjustments assessed by the AFIP and pays the amounts due within 15 days of receiving this notice, the penalty is reduced to three-quarters of the minimum fine. If the non-recidivist taxpayer accepts the adjustments assessed by the AFIP through the official assessment resolution, the penalty is reduce to the minimum fine.

10. Statute of limitations on transfer pricing assessments

The general statute of limitations for federal tax matters is 6 years for registered and registration-exempt taxpayers and 10 years for unregistered taxpayers. These periods begin on 1 January following the year in which the tax return is due.

The moratorium regime in place during the calendar year 2009 and the voluntary declaration of the foreign exchange holding regime in place during the calendar year 2013 added one additional year each to the statute of limitations period for certain fiscal years. The taxpayer must keep the transfer pricing documentation on hand and provide it upon the AFIP's request for up to five years after the period established by the statute of limitations.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a transfer pricing audit is estimated as high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the tax authority challenging the taxpayer's transfer pricing methodology may be considered to be high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

It depends on the circumstances, but usually may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to undergo an audit**

Pharmacy, automotive and export of commodities are targeted industries. Financial transactions and foreign intermediaries are more likely to undergo an audit.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Yes, there is unilateral and bilateral availability. However, the implementation regulations are yet to be issued for bilateral availability.

- **Tenure**

This is not applicable yet; further regulations are expected to make these changes operative.

- **Rollback provisions**

This is not applicable yet; further regulations are expected to make these changes operative.

- **MAP opportunities**

Yes.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules apply as a restriction on the deductibility of interest and foreign exchange losses arising from debts of a financial nature that are contracted by taxpayers with related entities (whether local or foreign).

According to the 2017 tax reform, the former 2:1 debt-to-equity thin-capitalization rule was replaced with the BEPS-based rule. The deduction on interest expense and foreign exchange losses with local and foreign related parties is now limited to 30% of the taxpayer's taxable income before interest, foreign exchange losses and depreciation. The taxpayer is entitled to carry forward the excess non deductible interest for five years and the unutilized deduction capacity for three years. Certain exceptions to the above limitation are also available.

In case of loans received by Argentine borrowers, debt capacity and business reasons for the transaction should be documented. In general, local transfer pricing rules follow the OECD family approach for intercompany financial transactions.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

State Revenue Committee (SRC).

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and the effective date of applicability

Tax Code of the Republic of Armenia, Chapter 73, effective from 1 January 2020.

- Section reference from local regulation

Tax Code of the Republic of Armenia, Chapter 73, Article 362.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Armenia is not a member of the OECD.

There is no reference to the OECD Guidelines in the Tax Code of the Republic of Armenia. As the TP rules enter into force from 1 January 2020, there is no practice yet on referring to or following the OECD Guidelines in this regard.

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

No .

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?

Yes.

- Does a local branch of a foreign company need to comply with the local transfer pricing rules?

Yes.

- Does transfer pricing documentation have to be prepared annually?

Yes, TP documentation has to be prepared annually under Armenian regulations and it should include the following:

- A detailed description of the taxpayer's business functions
- A detailed description of the taxpayer's organizational structure
- Description of controlled transactions
- Description of applied TP methods
- The list of parties to controlled transactions
- Description of sources of information on comparable uncontrolled transactions
- Calculation of arm's-length range

- Financial and any other relevant information on the tested party subject to analysis
- Detailed information on the adjustments made by the taxpayer independently

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The threshold for TP documentation is AMD200 million.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. Such transactions between related parties are considered controlled in cases in which:

- Either of the parties to the transaction is a mineral royalty payer
- Either of the parties to the transaction enjoys tax privileges
- Either of the parties to the transaction is an operator of a free economic zone

- **Local language documentation requirement**

The TP documentation can be submitted in Russian, English or Armenian, provided that, upon the request of the tax authorities, such documents made in English or Russian are translated into Armenian and submitted to the tax authority within 10 working days following the date of the receipt of the written request.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

There is none specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is none specified.

- **Related-party disclosures along with corporate income tax return**

The taxpayer shall complete the notification form on controlled transactions and file it with the tax authority on or before 20 April of the year following the tax year in which controlled transactions were concluded.

- **Related-party disclosures in financial statement and annual report**

Yes, this is applicable according to Accounting Standard 24 of Armenia. The definition of related parties in this standard overall corresponds to the provisions of related parties in TP rules of Armenia.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 20 April.

- **Other transfer pricing disclosures and return**

The deadline is 20 April.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has to submit the TP documentation within 30 days from the time the tax authority requests it.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

The comparable uncontrolled price (CUP), resale-price, cost-plus, TNMM and profit-split methods are accepted, and there is no priority or preference of methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

If there is a lack of information on uncontrolled transactions with an Armenian party's involvement, the use of foreign comparables shall be acceptable, where the impact of economic circumstances and other comparability factors on the financial indicator subject to examination by the appropriate TP method is analyzed and, where necessary, a comparability adjustment is made.

- **Single-year vs. multiyear analysis for benchmarking**

A multiyear analysis (three years) is preferred.

- **Use of interquartile range**

A government decree with detailed rules on calculating the arm's-length range was in the development stage at the time of this publication.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Under the current legislation, there are no specific guidelines and requirements on the need to conduct a fresh benchmarking search every year or for updating the financials of a prior study.

- **Simple, weighted or pooled results**

Guidance on the calculation of an arm's-length range was in the development stage at the time of this publication.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There is none specified.

- **Consequences of failure to submit, late submission or incorrect disclosures**

No penalty is defined yet for non-compliance.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

There is none specified.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is none specified.

- **Is interest charged on penalties and payable on a refund?**

There is none specified.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The statute of limitations on TP assessments is three years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The TP rules are effective from 1 January 2020. Hence, there is no practice available in terms of TP audits. Accordingly, likelihood of TP-related audits cannot be assessed.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to undergo an audit**

Refer to the section above.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There are no provisions for APA opportunities in Armenia.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest expenses on loans from entities other than banks and credit organizations are not deductible in excess of two times the tax base of the taxpayer's net assets. The threshold for banks and credit organizations is nine times the tax base of net assets.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Australian Taxation Office (ATO)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Division 13 of Part III of the Income Tax Assessment Act 1936 (ITAA 1936)
  - Subdivisions 815-A, B, C, D and E of the Income Tax Assessment Act 1997 (ITAA 1997)
  - Subdivisions 284-255 of Schedule 1 to the Tax Administration Act 1953 (TAA 1953)
  - Subdivisions 177G to 177R of the ITAA 1936
  - Relevant provisions of double tax treaties

Applicability of legislation

Division 13 was enacted in 1982 and applies to income years that commenced before 1 July 2013. Division 13 applies at the discretion of the Commissioner of Taxation (the Commissioner).

Subdivision 815-A was enacted in 2012 and applies to income years commencing between 1 July 2004 and 30 June 2013. It operates concurrently with Division 13 for transactions with related parties in countries that have a double taxation agreement with Australia. Subdivision 815-A applies at the Commissioner's discretion.

Subdivisions 815-B, C and D apply to taxpayers with income years commencing on or after 1 July 2013. The Commissioner can apply Subdivisions 815-B, C and D, and taxpayers must self-assess them.

Subdivision 815-E addresses the country by country Reporting obligations as further outlined in the following sections.

All Australian TP legislation only applies in one direction. Broadly speaking, it can only be used to increase profits, decrease losses and offsets, and increase withholding tax liabilities.

Overview of current legislative framework

Subdivisions 815-B, C and D were enacted in June 2013 and introduced important changes to the TP rules, including the following:

- A self-assessment regime effectively requires public officers [2] to determine whether the taxpayer has received a TP benefit to satisfy their duties in signing off on the tax return. In extreme cases, the public officers may be liable for penalties if they do not discharge this responsibility.
- The preparation of TP documentation is not compulsory. However, a failure to prepare documentation contemporaneously in accordance with the legislation prevents the taxpayer from establishing a reasonably arguable position (RAP). This prevents the taxpayer from accessing lower penalties if the taxpayer receives a TP adjustment that increases its tax liabilities in Australia. A failure to prepare contemporaneous documentation cannot be remedied later.
- Subdivisions 815-B through D provide the ATO with extensive powers in relation to examining the actual commercial and financial relations between a taxpayer and its international related parties, and substituting them with what the ATO considers a better reflection of arm's-length commercial and financial relations. These substituted transactions then form the basis for determining the arm's-length conditions. This provision must also be self-assessed by the taxpayer.
- Compliance with the arm's-length principle is assessed on the alignment of the taxpayer's actual conditions with arm's-length conditions. Conditions are defined broadly to encompass all pricing and non-pricing aspects relevant to the economic substance of the business and its international arrangements. This effectively gives rise to a "double test," where taxpayers have to assess the overall commerciality of their arrangements as well as the pricing of individual transactions.

Subdivision 815-C provides specific rules for permanent establishments to make certain that the amount brought to tax in Australia by entities operating permanent establishments is not less than it would be if the permanent establishment was a distinct and separate entity operating independently. The rules and requirements contained in Subdivision 815-C apply in broadly the same manner as those contained in Subdivision 815-B.

[1] **https://www.ato.gov.au/Business/International-tax-for-business/Transfer-pricing/**

[2] Company officer is responsible for the signing of the company tax return, and making sure that the responses in the return are true and accurate, and there are no false or misleading statements.

Please note that the Australian source rules do not align with the OECD authorized approach and require an allocation of actual revenue and expenses. Where this leaves too much profit in Australia, this is not remedied through Subdivision 815-C due to the one-sided application of the TP provisions.

Subdivision 815-D applies to partnerships and trusts using an approach analogous to that found in Subdivisions 815-B and 815-C.

Subdivision 815-E addresses the country by country Reporting obligations as further outlined in the following sections.

Diverted profits tax

In addition to the specific TP legislation, Australia also has a diverted profit tax that broadly speaking looks at transactions that are taxed overseas at a low rate (generally less than 24% effective tax) and where obtaining a tax benefit is a principal purpose of the arrangement. Diverted profits tax is levied at 40%, i.e. higher than the normal tax rate, and is not subject to relief from double taxation under Australian tax treaties. The diverted profit tax applies to significant global entities (SGEs). Broadly speaking, SGEs are Australian taxpayers that form part of an MNE that has a global turnover exceeding AUD1 billion.

Country by country reporting

Australia has very specific CbCR requirements that deviate from the global norm in several aspects. Please refer to the separate section on CbCR requirements below.

- **Section reference from local regulation**

The ATO has issued a significant amount of TP guidance. Below are the key transfer pricing rulings (TR), practice statements law administration (PS LA) and practical compliance guidelines (PCG):

- TR 92/11: loan arrangements and credit balances
- TR 94/14: basic concepts underlying the operation of Australia's TP rules
- TR 97/20: pricing methodologies
- TR 98/11: documentation
- TR 98/16: penalties
- TR 1999/1: charging for services
- TR 2000/16: relief from double taxation and the MAP
- TR 2001/11: operation of Australia's permanent establishment attribution rules
- TR 2003/1: thin capitalization, applying the arm's-length debt test
- TR 2004/1: cost contribution arrangements
- TR 2007/1: effect of determinations under Division 13, including consequential adjustments
- TR 2010/7: interaction of Australia's thin-capitalization rules and the TP provisions
- TR 2011/1: application of the TP provisions to business restructurings by multinational enterprises
- TR 2014/6: income tax: TP – the application of Section 815-130 of the ITAA 1997
- TR 2014/8: income tax – TP documentation and Subdivision 284-E
- Draft TR 2019/D2: income tax: thin capitalization – the arm's-length debt test
- PCG 2017/1: ATO compliance approach to TP issues related to centralized operating models involving non-core procurement, marketing, sales and distribution functions
- PCG 2017/2: Simplified Transfer Pricing Record Keeping options
- PCG 2017/4: ATO compliance approach to taxation issues associated with cross-border related-party financing arrangements, related derivatives and interest-free funding
- PCG 2019/1: ATO compliance approach to inbound distribution entities
- PCG 2020/7: ATO compliance approach to the arm's-length debt test
- Taxpayer Alert 2020/1: Non-arm's-length arrangements and schemes connected with the development, enhancement, maintenance, protection and exploitation (together DEMPE) of intangible assets
- PS LA 2014/2: administration of TP penalties for income years commencing on or after 29 June 2013
- PS LA 2014/3: simplifying TP record-keeping
- PS LA 2015/4: APAs

- Reportable Tax Position Schedule Guidance
- International Dealings Schedule Guidance
- Country-by-country Reporting Guidance

Case law

There have been a number of TP cases before the courts in Australia, of which the following four are the most influential:

- Roche Products Pty Ltd (Roche) v. Commissioner of Taxation [2008] AATA 261
- Commissioner of Taxation v. SNF (Australia) Pty Ltd [2011] FCAFC 74
- Chevron Australia Holdings Pty Ltd v. Commissioner of Taxation [2017] FCAFC 62
- Glencore Investment Pty Ltd v. Commissioner of Taxation of the Commonwealth of Australia [2019] FCA 1432
- Singapore Telecom Australia Investments Pty Ltd v Commissioner of Taxation [2021] FCA 1597

Broadly speaking, the Roche and SNF cases apply to Division 13, and highlighted the fact that Division 13 limited the ATO to the consideration of whether the pricing of a related-party transaction was at arm's length. It did not provide the scope to consider whether the profits or other commercial context of the arrangement were also at arm's length. In response, new TP provisions were created; Subdivision 815-A was released in 2012, and Subdivisions 815-B, C and D were released in 2013.

The Chevron case looked at both Division 13 and Subdivision 815-A, and addressed the appropriate pricing for intercompany loan arrangements. Of particular relevance is that it rejected the "orphan concept" in determining the arm's-length consideration for loans. As a result, loans cannot be priced as if the borrowing entity is an "orphan" but rather should be seen as part of the global group's family of companies.

The Glencore case addressed the appropriate pricing for the sales of copper concentrate produced by the Australian Glencore entity to its Swiss parent. Importantly, the case examined the extent of the ATO's ability to ignore the actual agreement entered into by the taxpayer on the basis that the terms of this agreement are not considered to be arm's length in nature and rely on an alternative hypothetical agreement that is differently structured to the actual agreement entered into for the purposes of addressing statutory questions in Division 13 and Subdivision 815-A. In finding for the taxpayer, the court examined market evidence that supported the terms of the actual agreement entered into and expressed the view that any reconstruction should be limited to exceptional circumstances referring to commentary in the OECD Guidelines. Given the introduction of the reconstruction provision in Subdivision 815-B and changes to the OECD Guidelines since 2010, this judgment may have limited application in the more recent years.

The SingTel case builds on earlier cases and focuses on what arm's length parties would have done. It essentially rejects the "stand-alone" approach for financing transactions and postulates that independent parties would have obtained a guarantee from their parent. The Court also ruled that notwithstanding this, no guarantee was payable as there was no actual guarantee provided and no guarantee fee charged.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No. However, the ATO has issued guidance on COVID-19 economic impacts on transfer pricing arrangements. Key aspects include a "but for COVID" analysis where COVID has negatively impacted results and skepticism in relation to the arm's-length nature of changes in intercompany arrangements.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Australia is a member of the OECD and largely follows the OECD Guidelines in practice.

In response to key TP cases that questioned the relevance of the OECD Guidelines in interpreting Division 13 and the ATO's reliance on such interpretation, revised TP provisions were released. These provisions refer directly to the 2010 OECD Guidelines (or the 1999 Guidelines for earlier years) as relevant guidance for the determination of the arm's-length conditions. For years starting on or after 1 July 2017, the relevant guidance also incorporates the changes as per the final report on BEPS Actions 8-10.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

In name, Australia has adopted the OECD's three-tiered documentation approach set out in BEPS Action 13. The requirements are met through lodgement of two files: the Local File/Master File (LCMSF) (as defined below) and the CbC report. As detailed below, the Australian interpretation of the local file deviates significantly from what is seen in most other countries.

- **Coverage in terms of Master File, Local File and CbCR**

  The LCMSF

  As part of the Australian implementation of Action 13, SGEs that are also country-by-country Reporting Entities (CbCREs) have CbC reporting requirements. Whether an SGE is also a CbCRE is subject to complex and nuanced rules, especially for Private Equity owned SGEs, and it is recommended advice is sought to assess whether an SGE is also a CbCRE.

  CbCREs need to provide the LCMSF file. LCMSF stands for each of the components provided through the file, being:

  - Local File
  - CbC report notification
  - Master File
  - Short-form local file
  - Financials

  The LCMSF must be lodged electronically in Extensible Markup Language (XML) format and specific software tools are required to prepare the XML file.

- **CbC report**

  In addition to the LCMSF, Australian taxpayers must lodge the CbC report in Australia through use of a separate XML schema. Where the CbC report is lodged in a jurisdiction that automatically exchanges it with the ATO, this lodgement can be replaced with a notification. The CbC report lodgement notification is provided through lodgement of the LCMSF, due 12 months after the end of the financial year.

  A local lodgement is required if the CbC report is not lodged in a jurisdiction that automatically exchanges it with the ATO. This lodgement will need to be made through a separate XML and a conversion process is required to align the CbC report with the Australian requirements.

- **Effective or expected commencement date**

  The effective commencement date is 1 January 2016.

- **Material differences from OECD report template or format**

  While Australia subscribes to the general concepts of Action 13 including a three-tiered documentation structure, there are some notable differences in Australia's implementation of the local file. In summary:

  - The CbC report is consistent with the OECD format.
  - The master file is consistent with the OECD format.
  - The Australian interpretation of the local file deviates significantly from the interpretation in the rest of the world. In Australia, the local file is not a TP documentation report, but a collection of transactional data and other information structured in three parts:
    - The short form local file
    - Part A of the local file
    - Part B of the local file

  The data provided through the local file includes reporting entity information, transactional data, the level of compliant Australian TP documentation, foreign exchange result-related information, legal agreements, information on the TP method applied in Australia and overseas, overseas APAs and ruling, etc. The local file can only be lodged electronically in the prescribed format through the LCMSF XML file.

  The Australian CbC Reporting requirements are set out in Subdivision 815-E ITAA 1997.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

  Australia has specific documentation requirements set out in Subdivision 284-E TAA 1953. Transfer pricing documentation that does not meet these requirements is not able to provide a reasonably arguable position and the related penalty mitigation.

  In straightforward cases, e.g., a vanilla distributor or service provider, TP documentation prepared consistent with the BEPS Action 13 format for local files may only require procedural adaptations to meet the legislative TP documentation requirements. In more complex cases, e.g., those involving restructures, intangibles, intra-group financing or commercially unrealistic results, substantive additional technical analysis will typically be required to address the Australian TP legislation.

Such analysis will need to consider the commercial context of such arrangements to ensure that the TP reconstruction provisions should not apply before considering the arm's-length nature of the pricing of such transactions.

It is worth noting that in addition to TP documentation requirements, there is the separate lodgement obligation for the LCMSF mentioned above that cannot be satisfied through a BEPS Action 13 format report.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is as of 27 January 2016, with the dates on which exchange relations became active listed on the OECD website. In addition, Australia has signed a bilateral agreement with the US.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

The preparation of TP documentation is not compulsory. However, taxpayers that do not prepare documentation that meets the specific requirements set out in Subdivision 284-E are precluded from establishing an RAP in the event of a TP adjustment. This means that higher penalties apply if the taxpayer receives a TP adjustment that increases its tax liabilities in Australia.

To satisfy Subdivision 284-E, it is required that the documentation:

- Be prepared contemporaneously, i.e., it must be kept by or accessible to the local entity before the time by which the taxpayer lodges its income tax return
- Be prepared in English, or readily accessible and convertible into English
- Explains the particular way in which the relevant TP provisions apply (or do not apply) to the taxpayer's international related-party dealings
- Explains why the application of the TP provisions to the taxpayer's international related-party dealings in that way best achieves consistency with the relevant guidance materials including the OECD Guidelines
- Allows actual conditions, arm's-length conditions, comparable circumstances and the result of the application of the subdivision to be readily ascertained

In addition to these legal requirements to be able to have an RAP, the ATO expects that taxpayers answer the following questions in their documentation to demonstrate an RAP:

- What are the actual conditions that are relevant to the matter?
- What are the comparable circumstances relevant to identifying the arm's-length conditions?
- What are the particulars of the methods used to identify the arm's-length conditions?
- What are the arm's-length conditions, and is the TP treatment appropriate?
- Have any material changes and updates been identified and documented?

Further, additional disclosures are specifically listed in Subdivision 284-E TAA. In addition, if the documentation is prepared for a fee, an Australian Tax Agent must prepare or control the preparation of the transfer pricing documentation to avoid a breach of the Tax Agent Services Act.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Subdivision 815-C deals with TP in relation to permanent establishments (PE). Subdivision 815-C links with and largely follows Subdivision 815-B, however, there are some important differences. It is noted that Australia does not subscribe to the separate legal entity approach. As a result of the interaction between the transfer rules and the source rules, TP for permanent establishments can be a highly complex matter.

Generally, a PE is subject to the same income tax and transfer pricing requirements as a normally incorporated entity. Therefore, branches or PEs would have similar filing requirements. An exception is the CbC report for which Australian PEs of a non-Australian corporation can access a fast-track exemption.

- **Does transfer pricing documentation have to be prepared annually?**

In order to be able to have an RAP, documentation must be prepared annually. However, if no significant changes have occurred, an addendum to the documentation may be sufficient as long as the addendum meets the requirements of Subdivision 284-E.

Care has to also be given to the benchmarking analysis used. In particular, it is unlikely that regional Asian sets would meet the requirements or be accepted by the ATO because of the significant differences between Australia and other regional economies.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

There is no specific guidance or requirement in relation to combining TP reports and whether a combination of reports is appropriate will depend on the facts and circumstances.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit for the preparation of TP documentation.

- **Master File**

CbCR requirements apply to CbCREs, largely Australian taxpayers that form part of an MNE with an annual global income of AUD1 billion or more. While the definition of global group generally follows accounting consolidation rules, there are several exceptions that require careful consideration.

- **Local File**

Same as provided for master file. Further, if the local entity have less than AUD 2 million in total international related party transactions, and no transactions that are on the exclusions list, it may be able to submit only the Short Form Local File.

- **CbCR**

Same as provided for master file

- **Economic analysis**

There is no materiality limit for the preparation of an economic analysis.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The TP documentation needs to be maintained in English (local language) or readily convertible into English.

- **Safe harbor availability, including financial transactions, if applicable**

There are no formal safe harbors in the Australian TP legislation. However, through PCGs, the ATO provides guidance on its compliance approach, areas of focus and the kind of arrangements that would typically not warrant compliance activity.

Subject to the taxpayer meeting all conditions for the relevant option, PCG 2017/2 provides simplified record-keeping options applicable to the following transactions:

- Taxpayers whereby the annual turnover of the Australian Economic Group is less than AUD 50 million
- Distributors with a turnover of less than AUD50 million and profit before tax that exceeds 3% of sales
- Low value-adding intra-group services with a markup of no less than 5% for services provided and no more than 5% for services received
- Technical services with a markup of no less than 10% for services provided and no more than 10% for services received
- Outbound loans with related parties where the loan is denominated in AUD, the amount lent does not exceed AUD50 million and the interest rate is at least 1.79% for the 2021 income tax year and 1.83% for the 2022 income tax year
- Inbound loans with related parties where the loan is denominated in AUD, the amount lent does not exceed AUD50 million and interest does not exceed 1.79% for the 2021 income tax year and 1.83% for the 2022 income tax year
- Taxpayers that have international related-party dealings of less than 2.5% of the total turnover of the Australian Economic Group

Where a taxpayer applies the simplified TP record-keeping requirements and discloses this in their international dealings schedule (IDS) or local file, the ATO will typically not allocate compliance resources to that arrangement.

Please note: In addition to the thresholds mentioned above, further eligibility requirements must be met to allow

application of these rules. In addition, taxpayers must self-assess the appropriateness of the TP and must document this self-assessment as well as how they meet the criteria for the specific transaction.

PCG 2019/1 provides the ATO's compliance approach in relation to inbound distributors and sets out the margins that would typically not warrant ATO compliance resources. Again, these margins are not safe-harbours and are not designed to indicate the true arm's-length position (which need to be separately analyzed). Low-risk EBIT margins differ depending on the industry and per this PCG starting at:

- Information and communications technology (ICT) category I: 4.1%
- ICT category II: 5.4%
- Life sciences category I: 5.1%
- Life sciences category II: 8.9%
- Life sciences category III: 10.0%
- Motor vehicles: 4.3%
- General distributors: 5.3%

- **Is aggregation or individual testing of transactions preferred for an entity**

Aggregation of transactions is allowed under appropriate circumstances.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

We refer to the above for the CbCR requirements and below for RTP requirements, and the following section for the IDS. No other TP-specific returns apply.

- **Related-party disclosures along with corporate income tax return**

The ATO requires an IDS to be filed with the tax return. It requires taxpayers to disclose:

- Details of restructuring events involving international related parties (question 17, which must be completed regardless of the quantum of the transactions)
- Dealings with branch operations (question 18, which must be completed regardless of the quantum of the transactions)

In addition, if the aggregate amount of transactions or dealings with international related parties, both revenue and capital in nature, is greater than AUD2 million, the following information must be disclosed:

- Top three transactions (individually) and other transactions (combined) for the top three specified "low-tax" jurisdictions (question 3)
- The top three transactions and other transactions for the top three non-specified jurisdictions (question 4) (historically, the list of specified jurisdictions predominantly focused on tax havens, but the list has since expanded to include Hong Kong, Ireland, Luxembourg, Singapore, Switzerland and the Netherlands)
- For all international related-party transactions (questions 5 through 13):
  - Type of transaction, e.g., royalties, intercompany loans, technical services and administrative services
  - The quantum per type of transaction
  - The percentage of transactions of each type covered by contemporaneous documentation that has been prepared in accordance with the ATO guidance mentioned above (TP documentation does not need to be lodged with the tax return)
  - TP methodologies selected and applied for each international related-party transaction type
  - Information on transactions for no payment or nonmonetary payment, share-based employee remuneration and CCAs (Questions 14 through 16)

In addition to the TP disclosures, the IDS captures information on interests in foreign companies or foreign trusts, permanent establishments and thin capitalization. Separate thresholds apply for these disclosures.

As an administrative concession, the ATO has waived the requirement to lodge parts of the IDS where taxpayers complete and lodge the local file part of LCMSF in XML format at the same time as the tax return.

- **Related-party disclosures in financial statement/annual report**

Related-party disclosures may be required in the financial statement and annual report.

- **CbCR notification included in the statutory tax return**

No; however, taxpayers disclose whether they are subject to CbC Reporting requirements in the tax return.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

In most cases, the income tax return is due for lodgement six months and 15 days after the end of the income tax year, however it varies depending upon the entity. Payment of any final tax liability is normally due on the first day of the sixth month following the end of the income tax year. Taxpayers may request a due date extension through the ATO portal.

- **Other transfer pricing disclosures and return**

If international related-party dealings exceed AUD2 million (including average loan balances), an IDS must be lodged as part of the corporate tax return.

Reportable Tax Position Schedule for companies with a turnover in excess of AUD25 million that form part of an Australian economic group with a turnover in excess of AUD250 million must be disclosed. Transfer pricing reportable tax positions include 'normal' material reportable tax positions as well as specific disclosures in relation to ATO guidance on a variety of topics including financing, distribution arrangements, Development, Enhancement, Maintenance, Protection and Exploitation (DEMPE) functions, Intangible property, Marketing and non-core-procurement hubs, etc.

- **Master file**

If required, this must be filed 12 months after the end of the financial year of the taxpayer unless the taxpayer has received a replacement reporting period (RRP), in which case the deadline is 12 months after the end of the RRP (typically the global parent entity's year-end immediately preceding the taxpayer's year-end).

An exemption may be available where Australia is the only jurisdiction in which the master file needs to be prepared.

- **CbCR preparation and submission**

If required, the CbC report is due 12 months after the end of the financial year of the taxpayer unless the taxpayer has received an RRP, in which case the deadline is 12 months after the end of the RRP. Refer to the "CbCR notification" section for situations where the CbC report has been lodged with another revenue authority with whom the ATO has a formal information exchange.

- **CbCR notification**

If the CbC report is lodged with another revenue authority with whom the ATO has a formal information exchange, the Australian taxpayer is able to provide a notification through the LCMSF form, and the ATO then obtains a copy of the CbC report directly from the other revenue authority.

b) Transfer pricing documentation/local file preparation deadline

- **Transfer pricing documentation**

To achieve penalty protection, documentation must be on hand by the date of lodging the corporate tax return. This cannot be remedied at a later point in time. The documentation does not need to be provided to the ATO.

- **Local file**

If required, an Australian local file must be filed 12 months after the end of the financial year of the taxpayer. If the taxpayer prepares and lodges at least Part A of the Australian local file by the due date of the corporate tax return, questions 2 to 17 of the abovementioned IDS do not need to be completed (this is an "administrative concession" provided by the ATO).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

There is no filing deadline for the submission of TP documentation; however, TP documentation must be provided upon request by the ATO.

- **Time period or deadline for submission upon tax authority request**

The taxpayer generally has to submit the TP documentation within 28 days upon request by the ATO. Although an extension of this deadline is possible from the ATO, based on recent experience, the ATO is unlikely to grant such

an extension unless there are clear, compelling reasons supporting the request.

The ATO will routinely check the date stamp on the files to confirm whether they were contemporaneous.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes
- Domestic transactions: typically not applicable

b) Priority and preference of methods

The legislation requires taxpayers to adopt the "most appropriate" TP method and refers to the OECD Guidelines in this regard. Methods include traditional transaction methods (e.g., CUP, resale price and cost plus) and traditional profits-based methods (e.g., profit split and TNMM). Any other method that results in an arm's-length outcome is also acceptable. However, other methods should only be used where one of the other traditional transaction or profits-based methods cannot be reliably applied.

8. Benchmarking requirements

- **Local vs. regional comparables**

Although there is no legal or formal requirement for local jurisdiction comparables, the ATO has a strong preference for local comparables and uses local databases that contain information on more companies than the typical regional and global databases. The ATO will generally accept foreign comparables only if it can be demonstrated that reliable local comparables are not available. Regional Asian comparables are typically not accepted due to market differences.

- **Single-year vs. multiyear analysis for benchmarking**

Although multiple-year (five years) testing is generally acceptable, based on recent experience, the ATO has been challenging profit profiles where there are a number of very low-profit or loss years that are combined with higher-profit years to achieve an overall average result within the range.

- **Use of interquartile range**

There are no formal guidelines on the determination of the appropriate point in the range. interquartile ranges, calculated using spreadsheet quartile formulas, are generally acceptable, but there may still be challenges in terms of the most appropriate point within the interquartile range (i.e., it is not necessarily accepted that if the tested party results fall within the interquartile range, it may automatically be concluded that such results are consistent with the arm's-length principle).

For taxpayers that are required to file an RTP schedule, results that sit outside the interquartile range must be disclosed as an RTP if they meet the materiality threshold and are not already disclosed as a Category C RTP.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement to conduct a fresh comparable benchmarking search annually. Generally, such benchmarking may be rolled forward with a refresh of the financial information of the comparables for an additional one or two years where there have not been significant changes in the industry or the functional profile of the tested party.

- **Simple, weighted or pooled results**

Generally, weighted rather than simple averages are used in determining averages over a period.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Incomplete documentation will typically mean that the documentation does not provide a reasonably arguable position (RAP) for penalty mitigation purposes.

- **Consequences of failure to submit, late submission or incorrect disclosures**

If not provided upon request, taxpayers cannot rely on documentation to provide a RAP. Whether incorrect disclosures have an impact will depend on the disclosure itself. Minor errors are unlikely to have an impact, whereas significant misleading disclosures could lead to increased penalties.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**
  - Penalties apply to underpaid tax (shortfall penalties), failure to submit or late submission (failure to lodge penalties), or incorrect disclosures (false and misleading disclosure penalties).
  - Penalties depend on the entity as well as various other factors such as the level of culpability.
  - Penalties for SGEs, i.e., any entity that is part of a group with a global turnover of AUD1 billion or more, are particularly high. Failure to lodge penalties for these entities start at AUD111,000for filings that are one date late and gradually increase to AUD555,000 for lodgements that are 90 days late or more.
  - The Australian Local File lodgement is mandatory for country-by-country Reporting Entities and failure to lodge is subject to the same failure to lodge penalties. Similarly, failure to address MF requirements could lead to penalties up to AUD 555,000 per year.
  - Where ATO staff conclude that an entity entered into the scheme with the sole or dominant purpose of that entity or another getting a transfer pricing benefit, the penalties will be either 50% or 25% of the transfer pricing shortfall amount, depending on whether the entity has appropriate documentation. Higher penalties apply where there are further culpability factors such as intentional disregard for the law. These penalties are doubled for SGEs.
  - Where the ATO staff concludes that an entity did not enter into the scheme with the sole or dominant purpose of getting a transfer pricing benefit, the penalties will be either 25% or 10% of the transfer pricing shortfall amount, depending on whether the entity has appropriate documentation. These penalties are doubled for SGEs.
  - A Public Officer that knowingly signs an income tax return with incorrect or misleading disclosures (including those related to Transfer Pricing) may face criminal charges.

b) Penalty relief

- Where the taxpayer has contemporaneous documentation (i.e., prepared prior to, or at the time of, filing the company's annual tax return and IDS) to support an RAP, the penalty may be reduced.
- In addition, penalties may be reduced in certain circumstances by 20% for voluntary disclosure after notification of an audit, or by 80% for voluntary disclosure before notification of an audit.
- A taxpayer with an APA will typically not incur tax shortfall penalties. Exceptions to this include non-arm's-length dealings that are not covered by the APA, or non-compliance with the terms and conditions of the APA.
- The Commissioner has discretion to remit penalties. PS LA 2008/18, sets out guidance on the remission of penalties. The practice statement provides some very restrictive examples in which penalties are to be remitted. In relation to penalties with respect to failure to have an RAP, given the specific nature of Subdivision 284-E, it would seem unlikely that the Commissioner would remit penalties in the future unless the prescribed documentation exists. Similarly, we are seeing more reluctance to fully remit failure-to-lodge penalties for SGEs.

10. Statute of limitations on transfer pricing assessments

Under Subdivisions 815-B, C and D, amendments can be made within seven years following the date on which a notice of assessment is issued to the taxpayer.

Historically, there has been no statute of limitations with respect to TP adjustments. The tax legislation applicable for financial years starting before 1 July 2013 specifically empowers the Commissioner to make amendments to tax assessments in any year for TP adjustments under Division 13. As such, years starting before 1 July 2013 remain open to challenge indefinitely.

Adjustments can be made under Subdivision 815-A for any financial years starting between 1 July 2004 and 30 June 2013 (inclusive). Similar to Division 13, there is no limitation on when adjustments can be made.

Some of Australia's double tax agreements, including those with New Zealand and Japan, specify time limits for adjustments.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

All top 1,100 companies in Australia are subject to review over a four-year period, with the top 100 companies being subject to annual reviews. A similar review process has recently been started for large privately owned Australian companies.

We note that the ATO has also recently selected companies in the pharmaceutical and technology industries for audits as well as taxpayers with significant intra-group financing.

Outside these groups, the likelihood of an annual tax audit in Australia is typically medium. However, if taxpayers exhibit risk factors, the likelihood of a review or audit increases significantly.

Where the taxpayer enters into a material level of international related-party transactions, TP is almost always reviewed if any general tax review or audit is started.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It is generally the application of the TP method that is challenged, e.g., the comparables selected and selection of point in the range.

However, there have been recent cases where the method has been challenged, e.g., the use of the cost-plus method to remunerate a marketing service function has been rejected in favour of a sales-based measure to determine the remuneration for this function.

There have also been recent experiences in which the ATO has sought to apply the profit-split method to determine the remuneration of a local marketing, sales and distribution entity where it has been concluded that such entity provides a unique and valuable contribution to the overall supply chain.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The chance of some adjustment may be considered to be medium to high, given the ATO risk selection guidelines for an audit, i.e., the ATO will prioritize resources for those cases where the ATO believes there is a relatively high probability of an adjustment.

- **Specific transactions, industries and situations, if any, more likely to be audited**

In determining whether an Australian taxpayer's TP arrangement should be reviewed or audited, the ATO generally considers the size and nature of the related-party dealings, the quality of any TP documentation and whether the taxpayer's results appear to be commercially realistic. The ATO has developed a sophisticated risk engine that considers these factors, along with other financial and industry data, to determine which taxpayers to review. Related-party transactions undertaken in connection with the following may receive particular attention by the ATO:

- Centralized business models with activity in low-tax jurisdictions, including principals, marketing hubs and procurement companies in low-tax jurisdictions
- Low levels of profitability, or losses
- Financing arrangements, including interest-free loans (for outbound taxpayers), high interest-bearing loans (for inbound taxpayers) and guarantee fees
- Business restructuring (particularly where profitability is reduced, or intangible property is transferred)
- Transactions with low-tax jurisdictions
- Payments made in connection with intangible property, including royalties or other licensing arrangements
- Management service fees that significantly impact overall profitability or are paid to a low-tax jurisdiction

More recently, the ATO has been focusing on BEPS scenarios involving one or more of the above risk indicators and commencing risk reviews on such companies.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Australia. APA regulations in Australia support unilateral, bilateral and multilateral APAs. The ATO's APA program is outlined in ATO

PS LA 2015/4. A review of the APA program by the ATO is currently underway.

- **Tenure**

An APA in which the ATO is involved typically has a three- to five-year term.

- **Rollback provisions**

Historically, rollbacks were available subject to the ATO's agreement and the taxpayer's facts.

While rollbacks are still included in the PS LA the ATO may also apply other mechanisms such as a "letter of comfort" or a "settlement deed" depending on the situation.

- **MAP opportunities**

Australia has an active and usually effective MAP program.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No specific changes, however, the ATO is hesitant to conclude APAs in situations where the facts are not settled/stable including where there has been significant disruption as the result of COVID-19.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under the thin-capitalization rules, the deduction in relation to debt used to fund the Australian operations of both foreign entities investing into Australia and Australian entities investing overseas is limited. The rules disallow a deduction for a portion of specified expenses an entity incurs in relation to its debt finance when the entity's debt-to-equity ratio exceeds the safe harbor and none of the alternative tests are satisfied.

A debt deduction is an expense an entity incurs in connection with a debt interest, such as an interest payment or a loan fee that the entity would otherwise be entitled to claim a deduction for.

Examples of debt interests include loans, promissory notes, etc. Generally, interest-free debt does not count as part of an entity's debt for thin-capitalization purposes.

The thin-capitalization rules affect both Australian and foreign entities that have multinational investments. This means they apply to:

- **Australian entities with specified overseas investments — these entities are called outward investing entities**
- **Foreign entities with certain investments in Australia, regardless of whether they hold the investments directly or through Australian entities — these entities are called inward investing entities**

There are two threshold tests that ensure entities with relatively small debt deductions or small overseas investments are not subject to the thin-capitalization rules. There is also a third test for certain entities established to manage certain risks and separate thresholds for certain entities in the financial services industry.

Where an entity fails the safe harbor test, it may be to apply the global gearing test or the arm's-length debt test to support its debt deductions. Both tests are relatively complex but can result in a significantly reduced disallowance.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Ministry of Finance

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Transfer Pricing Documentation Law (TPDL) and the related regulation for implementation of the law – applicable for fiscal years (FYs) starting on or after 1 January 2016
  - Austrian Transfer Pricing Guidelines 2021 (ATPG 2021) (BMF-AV Nr. 140/2021, 7 October 2021)
  - Section 6 (6), Income Tax Act
  - Sections 8 and 12 (1) 10, Corporate Income Tax Act
  - Income Tax Guidelines 6.13.3, 2511-2513
  - Corporate Income Tax Guidelines 14.8.2, 1147
  - Sections 115, 119, 124, 125, 131 and 138, Federal Tax Code (FTC)
  - Section 118, FTC regarding unilateral APAs
  - Section 49b, Criminal Tax Law (CTL)
  - Several opinions (public rulings called Express Answering Service (EAS)), published by the Ministry of Finance regarding selected TP issues
- **Section reference from local regulation**

Section 6 (6) of the Income Tax Act and Income Tax Guidelines 2515

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

[1]https://www.bmf.gv.at/en/the-ministry/internal-organisation.html

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Austria is a member of the OECD and recognizes the OECD Guidelines which provide support for domestic use, but do not constitute binding law in Austria.

According to the Austrian Transfer Pricing Guidelines, the tax authorities also observe the OECD Report on the Attribution of Profits to Permanent Establishments (AOA), although the AOA is currently not fully applicable, as none of Austria's current double tax treaties include the new Article 7. The Austrian tax authorities are fully aware of, and recognize, the OECD BEPS developments (e.g., BEPS Action 13 was considered as the basis for the implementation of the TPDL).

There is no public information available on the extent of reliance of the Austrian tax authorities on the UN Practical Manual on Transfer Pricing for Developing Countries.

A delegate from the Austrian Ministry of Finance takes part in the EUJTPF. However, there is no public information available on the extent of reliance of the Austrian tax authorities on the deliveries of the EUJTPF.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for TP documentation in the local regulations?**

Yes

- **Coverage in terms of master file, local file and CbCR**

Master file, local file and CbCR are covered.

- **Effective or expected commencement date**

The Austrian TPDL is applicable for FYs beginning on or after 1 January 2016.

- **Material differences from OECD report template or format**

There is none specified. However, more detailed documentation in connection with hard-to-value intangibles and services is likely to be requested, based on the case law of the higher administrative court in Austria (stated also in the ATPG 2021).

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A BEPS Action 13 format report is typically sufficient to achieve penalty protection.

However, the TPDL does not define specific penalties regarding the master and local files. See the "TP penalties and relief" section below.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Contemporaneous preparation is highly recommended.

For FYs starting on or after 1 January 2016, the TPDL is applicable. If TP documentation needs to be prepared according to the TPDL, both the master file and the local file must be submitted upon the request of the competent tax office within 30 days. The Austrian tax authorities can request submission of the master file and local file after the constituent entity files its tax return (i.e., the earliest deadline for the submission of the master file and the local file is 30 days after filing the tax return of the respective year).

For years not covered by the TPDL Austrian tax law, the Austrian Transfer Pricing Guidelines do not contain any submission deadlines. TP documentation is usually submitted to the Austrian tax authorities upon request during a tax audit. Usually the competent tax inspector will determine a submission deadline, which can vary from case to case (e.g., from only one week to several weeks). Upon the tax inspector's consent, an extension of the deadline is possible.

Following the OECD Guidelines as well as the ATPG 2021 TP documentation should be prepared at the time of the transaction, or no later than the time of completing and filing the tax return for the fiscal year in which the transaction takes place. The ATPG 2021 additionally state that the TP documentation requirements have to be met in a timely manner. If represented by an Austrian tax advisor, the annual corporate income tax (CIT) return has to be filed by the end of March of the second calendar year, following the balance sheet date at the latest – and if the Austrian tax authorities do not ask for an earlier filing. So usually, as already mentioned, the TP documentation needs to be submitted upon request of the tax authorities during a tax audit.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

The definition of a constituent entity stipulated in the TPDL also includes permanent establishments. The TPDL stipulates that a master file and local file must be prepared by the constituent entities resident in Austria, if their turnover in the previous two FYs exceeded EUR50 million in each year.

Constituent entities resident in Austria that do not exceed the stipulated turnover threshold have to file a master file on request, if a group entity resident in another state is required to prepare a master file according to the respective domestic law of its resident state.

Existing documentation obligations in addition to the TPDL remain unaffected. This means that constituent entities with a turnover below EUR50 million are required to prepare a TP documentation in accordance with the "prior standard," which is based on the general provisions on bookkeeping, record-keeping and disclosure requirement of the FTC for tax purposes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

TP documentation is requested by the Austrian tax authorities from specific constituent entities, i.e., entity-wise. Therefore, although it is not forbidden to combine TP documentation for several Austrian entities in one report, in general, we recommend preparing stand-alone reports for each entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The Austrian TP regulations (TPDL as well as Transfer Pricing Guidelines) do not provide materiality thresholds. In general, all cross-border intercompany transactions need to be documented. However, materiality thresholds are often applied in practice, which follow the OECD approach outlined in OECD Guidelines 2017. If applied, such materiality thresholds may

be questioned by the Austrian tax authorities.

- **Master file**

The TPDL covers the master file.

A master file must be prepared by constituent entities resident in Austria, if their turnover in each of the previous two fiscal years exceeded EUR50 million. The obligation to prepare the master file ceases in a given year if the turnover of the constituent entities is below EUR50 million for two previous consecutive years.

Constituent entities resident in Austria that do not exceed the stipulated turnover threshold have to file a master file if a group entity resident in another state is required to prepare a master file according to the respective domestic law of its resident state.

Furthermore, the TPDL clarifies that documentation obligations existing in addition to the TPDL (e.g., accounting and filing obligations according to the FTC) are not affected by the TPDL. Consequently, TP documentation also needs to be prepared by constituent entities not exceeding the turnover threshold. In this regard, the ATPG 2021 stipulate a minimum content, which is required for TP documentations of entities not exceeding the turnover threshold. The required content of the transfer pricing documentation has to be evaluated on a case-by-case basis and depends on the volume of the cross-border transactions, the complexity of the facts and circumstances surrounding the transactions in question as well as the industry.

- **Local file**

The TPDL covers the local file.

A local file must be prepared by constituent entities resident in Austria, if their turnover in each of the previous two FYs exceeded EUR50 million. The obligation to prepare the local file ceases in a given year, if the turnover of the constituent entities is below EUR50 million for two previous consecutive years.

Furthermore, the TPDL clarifies that documentation obligations existing in addition to the TPDL (e.g., accounting and filing obligations according to the FTC) are not affected by the TPDL. Consequently, TP documentation also needs to be prepared by constituent entities not exceeding the turnover threshold. In this regard, the ATPG 2021 stipulate a minimum content, which is required for TP documentations of entities not exceeding the turnover threshold. The required content of the transfer pricing documentation has to be evaluated on a case-by-case basis and depends on the volume of the cross-border transactions, the complexity of the facts and circumstances surrounding the transactions in question as well as the industry.

- **CbCR**

The TPDL covers CbCR. A CbCR has to be prepared if the total turnover generated by the multinational group stated in the consolidated annual financial statements of the previous FYs amounts to at least EUR750 million. The term "turnover" should be understood as the sum of the revenues generated from activities on the market.

The tables to be used for the CbCR must be in line with the tables provided in the TPDL, which correspond to the tables provided in the OECD Guidelines.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic intra-group transactions have to be documented if transactions directly or indirectly affect the determination and cross-border analysis of appropriate intra-group transfer prices applied within the group.

- **Local language documentation requirement**

The TPDL stipulates that the entire documentation must be prepared in a language officially permitted for tax proceedings (typically German) or English. A German translation of documentation prepared in English (or for certain parts thereof) may be requested by the Austrian tax authorities. The regulation of the implementation of the TPDL states that Appendix 3 of the CbCR has to be prepared in English.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

The Austrian tax authorities expect to be provided with a local file in which each transaction type is analyzed separately. Please note that an aggregated approach is not usual.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

No TP-specific returns have to be filed along with the annual tax returns.

- **Related-party disclosures along with corporate income tax return**

No specific continuous disclosure is required in the annual tax return. In the case of a tax audit, the auditors usually ask for a description of related-party transactions, as well as disclosure of all contracts in place with the related parties and TP documentation available. In an increasing number of cases, an extensive TP questionnaire is discussed.

- **Related-party disclosures in financial statement/annual report**

Besides reporting obligations according to the IFRS (which are not incorporated into Austrian law), Section 238 of the Austrian Commercial Code (applicable to medium and large corporations) states that transactions of the company with related companies and persons, as well as information on their value and the type of relationship, must be provided. Further information on the transactions that are necessary for the assessment of the company's financial position must also be provided. It should be noted that this reporting obligation exists (only) for transactions that do not comply with the arm's-length principle and that are material.

- **CbCR notification included in the statutory tax return**

No, the CbCR notification is not included.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The CIT return has to be filed by 31 March of the second calendar year following the balance sheet date at the latest, if represented by an Austrian tax advisor. If not represented by an Austrian tax advisor, CIT returns must be filed by 30 June of the calendar year following the balance sheet date at the latest, if filed electronically (CIT returns for permanent establishments need to be filed by 30 April at the latest).

- **Other transfer pricing disclosures and returns**

No TP-specific returns have to be filed along with the annual tax returns.

- **Master file**

A master file has to be submitted upon the request of the competent tax office within 30 days. The Austrian tax authorities can request submission of the master file after the constituent entity files its tax return (i.e., the earliest deadline for the submission of the master file is 30 days after filing the tax return of the respective year).

- **CbCR preparation and submission**

The filing due date for the CbCR depends on the fiscal year-end of the reporting entity (usually the group's fiscal year-end). If the Austrian constituent entity is the reporting entity, the CbCR has to be filed electronically (via FinanzOnline) with the competent tax office within 12 months after the end of the respective FY.

- **CbCR notification**

The TPDL stipulates that a constituent entity that is resident in Austria needs to inform the competent tax office about the identity and residence of the reporting entity by the last day of the FY for which a CbCR is filed. For FY beginning after 31 December 2021 no notification needs to be filed in case no changes occur compared to the previous year.

b) Transfer pricing documentation and local file preparation deadline

In line with the TPDL, the required documentation (the master file and the local file, as well as the CbCR) has to be prepared for FYs starting from 1 January 2016. In cases where a constituent entity was officially designated by notice as the surrogate parent entity for the submission of the CbCR, the submitted information can refer to FYs starting from 1 January 2017.

Master files and local files prepared in line with the TPDL have to be submitted upon the request of the competent tax office within 30 days after the constituent entity files its tax return (i.e., the earliest deadline for the submission of the master file and the local file is 30 days after filing the tax return of the respective year). Following the OECD Guidelines as well as the ATPG 2021, TP documentation should be prepared at the time of the transaction, or no later than the time of completing and filing the tax return for the fiscal year in which transaction

takes place. Consequently, it is highly recommended to have the master file and the local file prepared when the tax return is filed at the latest.

c) Transfer pricing documentation and local file submission deadline

The CbCR has to be filed electronically with the competent tax office within 12 months after the end of the respective FY. Both the master file and the local file have to be submitted upon the request of the competent tax office within 30 days after the constituent entity files its tax return (i.e., the earliest deadline for the submission of the master file and the local file is 30 days after filing the tax return of the respective year).

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

There is no statutory deadline in terms of a specific date as to when TP documentation must be submitted. However, under the TPDL, there is a statutory deadline in terms of a fixed time period in which TP documentation must be submitted upon the tax authorities' request (see below).

- **Time period or deadline for submission upon tax authority request**

Before the implementation of the TPDL, TP documentation (master file and local file) was usually requested by the competent tax auditor during a tax audit. The submission deadline could vary greatly from case to case (e.g., from only one week to several weeks). Upon the tax auditor's consent, an extension of the deadline was possible. On the basis of the TPDL, the deadline for the submission of the TP documentation (master file and local file) is 30 days upon the request of the competent tax office after the constituent entity files its tax return.

d) Are there any new submission deadlines per COVID-19-specific measures? If yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: yes

b) Priority and preference of methods

Based on the OECD Guidelines and the Austrian Transfer Pricing Guidelines, the Austrian Ministry of Finance accepts the CUP, resale-minus, cost-plus, TNMM and profit-split methods.

The Ministry of Finance follows the replacement of the hierarchy of TP methods, according to the 2010 update of Chapters I to III of the OECD Guidelines. Particularly, the TNMM and the profit-split method are no longer considered methods of last resort. According to the Austrian Transfer Pricing Guidelines, the method that provides the highest degree of certainty for the determination of an arm's-length transfer price has to be selected.

8. Benchmarking requirements

- **Local vs. regional comparables**

The TPDL does not include regulations regarding benchmark studies. Generally, local comparables are preferred. However, for Austrian purposes, usually regional pan-European Amadeus benchmark studies (EU 15 or EU 27 along with Iceland, Norway, Switzerland and UK) are accepted. When preparing a benchmark study, the five comparability factors must be considered in identifying or determining the set of comparables.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis is used for the financials of comparables. However, for the tested party, usually each separate year should be within the interquartile range identified by a benchmark study and specific reasoning should be provided in case of deviations.

- **Use of interquartile range**

Yes, interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

Following the OECD Guidelines as well as the ATPG 2021, as long as the operating conditions remain unchanged, the searches in databases for comparables supporting part of the local file shall be updated at least every three years.

- **Simple, weighted or pooled results**

There is a clear preference for the weighted average for arm's-length analysis. In practice, three-year weighted average arm's-length ranges are commonly applied.

- **Other specific benchmarking criteria, if any**
  - Independence: rejection of companies owned by at least one shareholder (25% threshold) and companies owning at least one subsidiary (25% threshold)
  - Type of accounts: unconsolidated
  - Loss-making companies: rejection of companies with a weighted average loss

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

No, but please note that there is an increased risk of adjustments by the Austrian tax authorities. Further, the risk of investigations based on the Criminal Tax Law (CTL) is increased.

- **Consequences of failure to submit, late submission or incorrect disclosures**

At the time of this publication, there was only one specific regulation dealing with TP penalties in Austria.

Section 49b of the CTL stipulates that anyone who does not file the CbCR in time, does not file it at all, or incorrectly files the required items in the tables in Appendices 1 to 3 of the TPDL, by intent, commits a tax offense. The CTL stipulates penalties of up to EUR50,000 for intent and up to EUR25,000 for gross negligence. While penalties are to be imposed, legal prosecution (by courts) for such tax offenses is excluded by the CTL.

However, the TPDL does not define specific penalties with regard to the master file and local file. Therefore, the general regulations of Section 111 FTC (penalties) apply. According to Section 111 FTC, a fine of up to EUR5,000 per offense can be levied by the tax authorities after they provide the taxpayer with a warning or notification that includes the amount of the fine and an appropriate deadline for taking the required action. In addition, Section 51 (1) lit., a CTL (tax offenses) could be applicable, which stipulates a monetary penalty of up to EUR5,000 for an intentional violation of the tax law disclosure obligations. Additionally, a lack of documentation significantly increases the risk that the tax authorities will regard a transaction as noncompliant with the arm's- length criterion and, thus, the risk of a TP adjustment is also increased. Further, the risk of investigations based on the CTL, especially in connection with incorrect disclosure, is increased.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

No specific penalties are stipulated. Withholding tax may be levied depending on the circumstances and facts.

Penalties according to the CTL can be assessed in case of intent or gross negligence (usually a percentage of the unpaid taxes).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

No. However, the risk of investigations based on the CTL is increased.

- **Is interest charged on penalties or payable on a refund?**

If the taxable income is increased because the arm's-length criterion has not been met, non deductible late-payment interest, in the amount of 2 percentage points above the base rate (published by the European Central Bank), is levied on the CIT payments for any additional prior year for up to 48 months.

b) Penalty relief

There are no penalty relief provisions available.

Late-payment interest will become due on any CIT payments for an additional prior year, regardless of whether the documentation is sufficient.

If adjustments are proposed or made by the tax authority in the course of a tax audit, the taxpayer can either file an appeal or request for an MAP, or both.

10. Statute of limitations on transfer pricing assessments

The statute of limitations on a TP adjustment is usually 6 years after the end of the calendar year in which the relevant FY ends. If the CTL is to be applied, the statute of limitations is 10 years, not 6 years. In case a tax audit starts within the six-year period, the statute of limitations is extended. The term may be extended for up to 10 years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny or related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit (i.e., every FY being examined) is very high and TP is highly likely to be reviewed as part of that audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of a TP methodology being challenged may be considered to be medium to high, depending on the specific circumstances of the case.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high, as the tax auditors often take a firm stand and request for arm's-length evidence.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Intercompany service transactions, intercompany royalty payments, intercompany financing arrangements, transactions with low-tax jurisdictions, as well as business restructurings and change of TP policy leading to a reduction of profits have a higher likelihood to undergo audit. The likelihood depends more on transaction types than on the industry an MNE is belonging to.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

On the basis of Section 118 of the FTC, it is possible to apply for a unilateral, binding, appealable advance ruling issued by the competent tax office on the tax treatment of a particular (but yet-to-occur) issue related to reorganizations, groups of companies, international tax law (including TP), sales tax law or the existence of abuse. The administrative fee to be paid to the tax authorities for filing an APA request is up to EUR20,000.

Under specific circumstances, it is possible to ask the Austrian tax authorities to participate in negotiations of a bilateral or multilateral APA on the basis of Article 25 (3) of the respective double tax treaty.

- **Tenure**

Usually, APAs based on Section 118 of the FTC are granted for a period of three years.

- **Rollback provisions**

A rollback is only available for bilateral and multilateral APAs in line with Chapter IV of the OECD Transfer Pricing Guidelines and the BEPS Action 14 Minimum Standard.

- **MAP opportunities**

Austria had a total of 286 active MAP applications as of 31 December 2020. The following tables show the average time needed to close MAP cases.

- Average time needed to close MAP cases (in months)

Cases started before 1 January 2016	Average time
TP cases	71.00
Other cases	79.43

Note: The average time taken to close MAP cases that started before 1 January 2016 was computed by applying the following rules: (i) start date: the date on which the competent authority that received the MAP request decided that the objection raised in the request was justified and initiated the bilateral phase of the MAP, and in cases where Austria's competent authority did not receive the MAP request, the date of the official notification of the initiation of the bilateral phase of the MAP by the other competent authority; and (ii) end date: the date on which an MAP agreement was reached. The date of notification of the taxpayer was not taken into account. If the treaty partner required acceptance of the MAP result by the taxpayer, then the "end" date was counted as the date when the taxpayer responded, either accepting or rejecting the agreement.

Cases started as from 1 January 2016	Average time
TP cases	22.28
Other cases	17.47

Note: The average times to close MAP cases that started as from 1 January 2016 were computed according to the MAP statistics reporting framework available at http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-reporting-framework.pdf.

14. Have there been any impacts or changes to Advance Pricing Agreements (APAs), rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under Austrian tax law, there are no debt-to-equity rules referring to a fixed percentage or a certain minimum equity. Shareholders are basically free to decide whether to finance their company with equity or loans. Please consider that the tax authorities may reclassify loans granted by shareholders, loans granted by group companies and loans granted by third parties (guaranteed by group companies) as equity, if the funds are transferred under legal or economic circumstances that typify equity contributions, such as the following:

- **The equity of the company is insufficient to satisfy the solvency requirements of the company and the loan replaces equity from an economic point of view.**
- **The company's debt-to-equity ratio is significantly below the industry average.**
- **The company is unable to obtain any loans from third parties, such as banks.**
- **The loan conveys rights similar to shareholder rights, such as profit participations.**

If a loan is reclassified (for example, during a tax audit), interest is not deductible for tax purposes and the withholding tax on hidden profit distributions may become due.

On the basis of the administrative practice of the Austrian tax authorities and High Court jurisdiction, an equity ratio of about 20%–25% is generally recommended. Austrian tax authorities usually check the equity ratio based on the year-end annual financial statements (by dividing total equity through balance sheet total).

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

The State Tax Service under the Ministry of Economy of the Republic of Azerbaijan

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The transfer pricing regulations are contained in:

- The Tax Code of the Republic of Azerbaijan, following amendments by Law of the Republic of Azerbaijan No. 1356-VQD, dated 30 November 2018, "Amendments to the Tax Code of the Republic of Azerbaijan," effective from 1 January 2019 (the Tax Code)
- Decision of the Ministry of Taxes of the Republic of Azerbaijan No. 1717050000006200, dated 27 January 2017, "Determination and Application of Transfer Pricing," effective from 8 February 2017 (the transfer pricing rules)

Major transfer pricing regulations are contained in Article 14-1 (introduced by Law No. 454-VQD), 16.1.4 and 18 of the Tax Code.

Jurisdictions with a preferential tax regime are defined in the Presidential Decree of the Republic of Azerbaijan No. 1505 dated 11 July 2017 "Approval of the List of Countries and Territories with Preferential Taxation" and last updated on 11 June 2019.

- **Section reference from local regulation**

The regulations define controlled transactions as:

- Transactions between a resident of Azerbaijan and a non resident, both qualifying as related parties under Article 18;
- Transactions between a permanent establishment of a non resident in Azerbaijan and such non resident itself, as well as its representative or branch offices or other divisions located in other countries
- Effective for 2019 reporting period, transactions between a permanent establishment of a non resident in Azerbaijan and any person associated (under Article 18) with such non resident located in other jurisdiction
- Transactions between a resident of Azerbaijan and any person incorporated (registered) in jurisdictions with preferential tax regime (offshore jurisdictions)

Effective from 2022 reporting period:

Transactions between residents of Azerbaijan and any of their permanent establishments, branches or other subsidiaries located in another jurisdiction (territory).

Transactions between a resident of Azerbaijan or a permanent establishment of a non resident in Azerbaijan and a non resident, if:

- **The transaction involves sales commodities traded on international commodity exchanges;**
- **Total turnover of a resident of Azerbaijan or a permanent establishment of a non resident in Azerbaijan exceeds 30 million AZN and the share of a transaction with any non resident exceeds 30% of total revenue or expenses, respectively.**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Azerbaijan is not a member of the OECD.

The local transfer pricing regulations entered into force from 2017 and include fundamental principles stipulated by the OECD Guidelines. BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No

- **Coverage in terms of master file, local file and CbCR**

CbCR-applicable legal entities resident in Azerbaijan fulfilling certain conditions are required to submit CbCRs beginning

[1] **https://www.taxes.gov.az/az**

from the 2020 reporting period in 12 months since the end of reporting period. CbCR notification is also required relating to the period effective from 1 January 2020 before 30 June 2021.

- **Effective or expected commencement date**

1 January 2020 for CbCR.

- **Material differences from OECD report template or format**

- **Local OECD report template prescribes reporting of financial information on entity-by-entity level, which is different from country-by-country level format adopted by OECD Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The penalty for incorrect presentation of information in the CbCR is 2000 AZN.

b) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No

c) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, 12 March 2021.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does the documentation need to be submitted or prepared contemporaneously?**

There are no specific guidelines or rules for transfer pricing documentation. However, the transfer pricing rules provide the right to the tax office to review pricing in controlled transactions. Accordingly, taxpayers have the right to justify pricing. transfer pricing documentation should be provided to the tax office during a tax audit.

There is also a requirement to submit a notification on controlled transactions (the notification).

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, transactions of a local branch of a foreign company are subject to transfer pricing control.

- **Should transfer pricing documentation be prepared annually?**

There is a requirement to review controlled transactions for compliance with the arm's-length principle in each respective period when transaction occurs.

The notification should be submitted annually.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The notification should be submitted in respect of controlled transactions with a turnover exceeding the threshold of AZN 500,000 (approximately USD 295,945) after transfer pricing adjustments, if any.

There is no materiality limit or threshold for transfer pricing documentation.

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

CbCR has been introduced in the Azerbaijani tax legislation with the first reporting year being 2020. Reporting entities shall include entities that are residents of Azerbaijan and are constituent entities of MNE groups with consolidated annual income exceeding EUR 750 million. The CbC report for 2020 must be submitted by 31 December 2021

- **Economic analysis**

There is no materiality limit or threshold for economic analysis.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are not subject to the transfer pricing regulations.

- **Local language documentation requirement**

Local tax authorities require documents in foreign language to be translated into Azerbaijani.

The notification must be prepared in Azerbaijani.

- **Safe harbor availability, including financial transactions, if applicable**

No safe harbors.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure or compliance requirement**

No other requirements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The notification requires disclosure of details on controlled transactions, such as the nature and description of a controlled transaction, volume and turnover of such transactions (after application of transfer price) as well as information on a counterparty and a basis of recognition as a related party.

- **Related-party disclosures along with corporate income tax return**

Related-party disclosure should be provided in the notification.

- **Related-party disclosures in financial statement and annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

There is no other filing requirement.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 March of the year following the reporting year, with possibility for extension up to three months.

- **Other transfer pricing disclosures and return**

The deadline for submission of the notification is the same as for profit tax return.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

Twelve months since the end of reporting period (reporting period is a calendar year). The CbC report for 2020 must be submitted by 31 December 2021, unless required otherwise by the tax authorities in Azerbaijan.

- **CbCR notification**

The constituent entity has to submit CbC notification by 30 June 2021 for FY2020.

b) Transfer pricing documentation and local file preparation deadline

No specific deadline.

c) Transfer pricing documentation and local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

No

- **Time period or deadline for submission on tax authority request**

Documents requested for purpose of a desk audit procedure should be submitted within five business days from the request.[2]

Documents requested as part of a field audit procedure should be submitted within 15 days from the request.[3]

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified

[2]Section 37.2 of the Tax Code of Azerbaijan.

[3]Section 42.1 of the Tax Code of Azerbaijan.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: no

b) Priority and preference of methods

The transfer pricing regulations prescribe five methods: [4]

- Comparable uncontrolled price (CUP) method
- Resale price
- Cost-plus
- Transactional profit method
- Profit split

The CUP method is the most preferred method. [5] If the CUP method cannot be applied, the resale price method and the cost-plus method are preferred.

8. Benchmarking requirements

- **Local vs. regional comparables**

The transfer pricing regulations do not specify preference between local and regional comparables. Moreover, there is no local database available. However, the regulations envisage comparability factors. Therefore, determination of a region highly depends on the facts and circumstances of a tested transaction.[6]

- **Single-year vs. multiyear analysis**

Single-year analysis is required. [7]

- **Use of interquartile range**

The transfer pricing regulations envisage a full range of comparable as an acceptable market range. [8]

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A single-year search is required for every year in which a controlled transaction occurs.

- **Simple vs. weighted average**

A simple average is applied where several comparable transactions are identified.[9]

- **Other specific benchmarking criteria, if any**

The transfer pricing rules prescribe independence and other benchmarking criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

A penalty of AZN 2,000 (approx. USD1,100) applies for failure to submit the notification.

A penalty of AZN 2,000 (approx. USD1,100) applies for presenting inaccurate information in the notification.

A penalty of AZN 2,000 (approx. USD 1,100) applies for failure to submit the CbCR.

A penalty of AZN 2,000 (approx. USD 1,100) applies for presenting inaccurate information in the CbCR.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

A fine of 50% of the understated tax amount applies.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

A fine of 50% of the understated tax amount applies.

- **Is interest charged on penalties or payable on a refund?**

A late payment interest of 0.1% of underpaid tax applies if additional accrual is made as a result of desk audit or by a taxpayer.

b) Penalty relief

No specific penalty relief.

[4] Section 5 of the transfer pricing rules.
[5] Section 5.2 of the transfer pricing rules.
[6] Section 4.3 of the transfer pricing rules.
[7] Section 4.3 of the transfer pricing rules.
[8] Section 2.0.9 of the transfer pricing rules.
[9] Section 6.3 of the transfer pricing rules.

10. Statute of limitations on transfer pricing assessments

Three years from the moment of violation of the Tax Code.[10] This period can extend to five years in special circumstances, such as criminal investigation or obtaining information from foreign competent authorities.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high, medium or low)**

High: A transfer pricing-related audit is conducted as a part of profit tax audits.

- **Likelihood of transfer pricing methodology being challenged (high, medium or low)**

High: Considering the hierarchy of the transfer pricing methods and certain specifics of local regulations and practice.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)**

High: The tax office has the right to revise the methodology applied by the taxpayer. The result of the revision is likely to be an adjustment.

- **Specific transactions, industries and situations, if any, more likely to be audited**

All related-party transactions are closely reviewed by the tax authorities during the onsite tax audits.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The transfer pricing rules support unilateral APAs.[11] However, the mechanism is not yet elaborated.

- **Tenure**

There is none specified.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

[10] Article 56.1 of the Tax Code.

[11] Section 9 of the transfer pricing rules.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Bureau for Revenue (NBR)

b) Relevant transfer pricing section reference

Name of transfer pricing regulations or rulings and the effective date of applicability

There are no transfer pricing regulations and rulings in Bahrain at the time of this publication other than the CbCR regulations. However, Bahrain has entered into double taxation treaties (DTTs) with approximately 44 countries that have an article that resembles Article 9 of the OECD Model Treaty (on associated enterprises).

- **Section reference from local regulation**

This is not applicable for transfer pricing regulations – refer to the section above.

However, for CbCR regulations, the Ministerial Decision No. 28 of 2021 (issued on 4 February 2021) is referred to.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

NA

3. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Bahrain is not an OECD member jurisdiction and there are no local transfer pricing regulations other than the CbCR regulations, which were issued in line with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes. Bahrain is a member of the BEPS Inclusive Framework (BEPS IF) and has issued CbCR regulations.

- Coverage in terms of master file, local file and CbCR

  Bahrain became a signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports in December 2019, which provides a mechanism for the automatic exchange of CbC reports among members. Bahrain ratified the MCAA on the exchange of CbC reports in January 2021. Bahrain also issued the CbCR regulations on 4 February 2021.

- Effective or expected commencement date

  The filing of CbCR report and notification is applicable from fiscal year starting 1 January 2021. First filing of CbC notification is on 31 December 2021 and first filing of CbCR will be on 31 December 2022.

- Material differences from OECD report template or format

  The local CbCR requirements are consistent with OECD CbCR guidance.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is none specified.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed in December 2019.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

No

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

This is not applicable.

- **Does transfer pricing documentation have to be prepared annually?**

This is not applicable.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

[Bahraini dinar (BHD)] 342,000,000

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

This is not applicable.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

NA.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax returns**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable. However, the CbCR notification has to be filed through the standard AEOI portal in Bahrain.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The due date for filing the income tax return is the 15th day of the third month of the taxable year (advanced payment method). Bahrain income tax is levied only on entities engaged in oil and gas exploration and production.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

The due date of filing CbCR is 12 months from the end of fiscal year end.

- **CbCR notification**

The first due date of filing CbCR notification is 31 December 2021.

b) Transfer pricing documentation/local file preparation deadline

This is not applicable

c) Transfer pricing documentation/local file submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or local file?

This is not applicable.

- Time period or deadline for submission on tax authority request

This is not applicable.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No specific information available

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

- Local vs. regional comparables

This is not applicable.

- Single-year vs. multiyear analysis for benchmarking

This is not applicable.

- Use of interquartile range

This is not applicable.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

This is not applicable.

- Simple, weighted average or pooled results

This is not applicable.

- Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences for incomplete documentation

Not applicable.

- Consequences of failure to submit, late submission or incorrect disclosures

This is not applicable.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?

This is not applicable.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

No specific information available for penalty. Refer to the above section.

- Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

This is not applicable.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not covered in COVID Tracker

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- Likelihood of transfer pricing-related audits (high/medium/low)

This is not applicable.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

This is not applicable.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

This is not applicable.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs are not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

The NBR has issued guidance on the use of MAP in resolving DTT-related disputes. There is no experience yet of the use of MAP in relation to transfer pricing issues.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No information available in COVID Tracker

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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Bangladesh[1]

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Board of Revenue (NBR)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Sections 107A to 107J of the Income Tax Ordinance, 1984 (the Ordinance), and Rules 70 to 75A of the Income Tax Rules, 1984, refers to TP.

- **Section reference from local regulation**

Sections 107A to 107J of the Ordinance refers to TP.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Bangladesh is not a member of the OECD.

Bangladeshi legislation is broadly based on the OECD Guidelines. Five of the six methods prescribed in the Bangladeshi legislation to compute arm's-length prices conform with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No

- Coverage in terms of master file, local file, and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, TP documentation is required to be maintained by the taxpayer while filing the TP return. The documentation only needs to be submitted with the tax authorities upon request.

As per Bangladesh TP law, the data of comparable has to be of the relevant financial year, so there is a contemporaneous requirement.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the minimum requirement to achieve this is determined through transaction values and benchmarking analysis.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

[1] http://nbr.gov.bd/

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has related-party transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is an applicable materiality limit in Bangladesh for the purpose of preparing TP documentation based on aggregate transaction values of Bangladesh taka (BDT) 30 million.

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

The economic analysis is prescribed by transfer pricing regulation and to be incorporated in the documentation with the help of the most appropriate method among the six methods prescribed in the Income Tax Ordinance, 1984.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The TP documentation need not be submitted in the local language.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

No additional requirements or disclosures apart from the statement of international transactions (SIT), TP documentation and TP certificate

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Under Section 107EE of the Ordinance, every person who has entered into an international transaction shall furnish, along with the return of income, an SIT in the form and manner as may be prescribed.

Under Section 107F, the Deputy Commissioner of Taxes may, by written notice, ask for an accountant's report certifying that the documents and information maintained by a taxpayer are in line with Bangladesh's TP regulations, provided the taxpayer is entering into an international transaction in which the aggregate value of the international transactions entered into by the taxpayer exceeds BDT30 million.

- **Related-party disclosures along with corporate income tax return**

The income tax return form requires the taxpayer to declare on the face of the return itself whether it has entered into international transaction and, if yes, whether they have submitted the details of such transactions (SIT captures the details of international transaction and is mandatorily required to be filed along with return of income).

- **Related-party disclosures in financial statement/annual report**

From a Bangladesh TP perspective, no specific disclosure is required in the financial statement and annual report.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

None

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Every company (resident or non resident) is required to file a return of income by the 15th day of the seventh month following the end of the income year or 15 September, following the end of the income year where the said 15th day falls before 15 September.

- **Other transfer pricing disclosures and return**

It should be filed along with the corporate tax return.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local file preparation deadline

The TP documentation needs to be maintained by the time of submission of SIT and to be filed upon request.

c) Transfer pricing documentation/Local file submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

No

- **Time period or deadline for submission upon tax authority request**

This is not known as assessments are yet to begin. Typically, 7 to 10 days may be expected.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes, it's applicable for international transactions. Furthermore, Bangladesh TP regulations also include the concept of deemed international transactions wherein the third-party transactions (both resident and non residents) are covered.

- **Domestic transactions**

It is not applicable for domestic transactions.

b) Priority and preference of methods

Bangladeshi legislation prescribes the following methods: CUP, resale price, cost plus, profit split, TNMM and any other method.

When it can be demonstrated that none of the first five methods can be reasonably applied to determine the arm's-length price for an international transaction, Section 107C allows the use of any other method that can yield a result consistent with the arm's-length price.

To determine a comparable uncontrolled transaction, Rule 71(3) provides that only the data pertaining to the relevant financial year should be used. However, the rule permits the use of data before the relevant financial year, if it can be substantiated that such data bears facts that could influence the analysis of comparability.

8. Benchmarking requirements

- **Local vs. regional comparables**

Since no local benchmarks are available, regional benchmarking is undertaken. This is a jurisdiction-specific practice due to the unavailability of a Bangladesh-specific database.

- **Single-year vs. multiyear analysis for benchmarking**

Bangladesh TP legislation has not provided any preference for single-year or multiyear testing. Since Bangladesh TP regulations are broadly based on the OECD Guidelines, it is generally suggested that multiple-year data be used.

- **Use of interquartile range**

As per Bangladesh TP laws, in case six or more than six data sets are being used, arm's-length price shall be considered as range of 30th percentile to 70th percentile.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is preferable to be conducted every year. The regulations do not explicitly provide guidance in relation to the use of contemporaneous data but Rule 71(3) provides that only the data pertaining to the relevant financial year should be used. However, the rule permits the use of data before the relevant financial year, if it can be substantiated that such data bears facts that could influence the analysis of comparability.

- **Simple, weighted or pooled results**

There is a preference for the weighted average.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Penal provisions are mentioned below

- **Consequences of failure to submit, late submission or incorrect disclosures**

The details of the penalty provisions are provided below:

  - For failure to keep, maintain or furnish any information or documents as required by Section 107E of the Ordinance, the taxpayer faces a penalty not exceeding 1% of the value of the international transaction.
  - For failure to comply with the notice or requisition under Section 107C of the Ordinance by the Deputy Commissioner of Taxes, the taxpayer faces a penalty not exceeding 1% of the value of the international transaction.
  - For failure to file an SIT, there is a penalty of 2% of the value of the international transaction under Section 107EE of the Ordinance.
  - For not furnishing an accountant's certificate, the taxpayer is fined an amount not exceeding BDT300,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

This is not applicable.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

No penalty relief regulation has been provided as of the time of this publication.

An aggrieved taxpayer has the option to appeal an adjustment in the following order:

- **First appellate authority: Commissioner of Taxes (Appeals)**
- **Final fact-finding authority: Taxes Appellate Tribunal**
- **High Court Division of the Supreme Court**
- **Final authority: Appellate Division of the Supreme Court**

10. Statute of limitations on transfer pricing assessments

When a TP assessment has been initiated, no order of assessment shall be made after three years have passed from the end of the assessment year in which the income was first assessable.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

This is not applicable; the first round of audits in Bangladesh is expected to commence soon.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Refer to the section above.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Bangladesh does not have a formal APA program.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

No, there are no relevant regulations or rulings. The TP regulations are currently at a very nascent stage and TP assessment is yet to commence. Therefore, the approach of the tax authorities, or any rulings, on the thin capitalization or debt capacity is not yet known.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax and Duties Ministry of the Republic of Belarus (TDM)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Prior to 1 January 2019, the TP rules in Belarus were regulated by Article 30-1 of the *Tax Code of the Republic of Belarus* (the Tax Code).

Starting 1 January 2019, Article 30-1 was abolished, and the new TP rules were introduced with the Law of the Republic of Belarus *"On amendments and additions to some laws of the Republic of Belarus"* No. 159-3 of 30 December 2018. With these amendments, the TP rules in Belarus are regulated by Chapter 11 of the Tax Code, titled "Principles for determining the price for goods (works, services), property rights for taxation purposes."

- **Section reference from local regulation**

Chapter 11 of the Tax Code, together with Article 20, which defines related parties and associated enterprises in Belarus is the reference for local regulation.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Belarus is not a member of the OECD although the jurisdiction's law is generally in line with them. However, Belarusian TP rules do not refer to the OECD Guidelines, UN tax manual or EUJTPF because of which the practical application of the rules may, therefore, be different from the OECD and other relevant guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Belarus has not adopted BEPS Action 13 for TP documentation. However, the issue is under consideration by the Belarusian tax authorities.

- Coverage in terms of master file, local file and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  A BEPS Action 13 format report is not sufficient to achieve penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, but there are no direct requirements in local TP rules to prepare TP documentation contemporaneously, though it should be ready and provided upon the request of tax authorities.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, compliance is required if the local branch of a foreign company is a taxpayer in Belarus.

- **Does transfer pricing documentation be prepared annually?**

[1] **http://www.pravo.by/document/?guid=3871&p0=Hk0200166**

Yes, starting 1 January 2019, TP documentation has to be prepared annually. Previously, the Belarusian legislation did not envisage a direct requirement on the frequency of updating TP documentation. Moreover, technically, a TP documentation could be requested by the tax authorities on a quarterly basis.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, one TP report for multiple entities is not accepted.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Type of transaction	Thresholds, the total value of all purchase or sale transactions with one party per year (BYN)			
	2018		2019-21	
	Large taxpayers	All other categories of taxpayers	Large taxpayers	All other categories of taxpayers
Foreign transactions				
With related parties	1,000,000[2]	100,000	2,000,000	400,000[3]
With independent parties		Not a subject for TP control	Not a subject for TP control	
With residents of offshore zones	100,000		400,000	
With strategic goods[4]	1,000,000		2,000,000	
Domestic transactions				
With related parties entitled not to pay profits tax or exempted from the said tax	100,000		2,000,000	400,000
Transactions with immovable property and housing bonds				
With related parties	No threshold		No threshold	
With parties applying special tax regimes				
With other parties, including independent parties [5]			Not a subject for TP control	

[2]In 2018, all foreign transactions of large taxpayers were subject to control if their total annual value exceeded BYN1 million.

[3]In 2018, all foreign transactions of large taxpayers were subject to control if their total annual value exceeded BYN1 million.

[4]The list of strategic goods is approved by the Directive of the Council of Ministers No. 470 of 16 June 2016. The list includes crude oil and petroleum products, associated gas and other hydrocarbon gas, raw timber, potassium chloride and iron and non-alloy steel bars.

[5]Before 2019, all transactions with immovable property and housing bonds were controlled (the dependence of parties or tax regime applied by them was not taken into account).

In addition, from 1 January 2019, banking operations are subject to TP control along with all other transactions (there was a special exemption for such transactions in 2018).

From 1 January 2022 transactions on sales/purchase of securities and financial derivatives, transactions with credits (loans) are subject for TP control in Belarus. For transactions with credits (loans) the price of transaction for the purposes of TP control and threshold calculation is recognized as the total amount of the credit (loan).

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

Thresholds are the same as for TP documentation.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for the following domestic transactions:

- Transactions with immovable property and housing bonds carried out between related parties or with unrelated parties applying special tax regimes (without any threshold)
- Transactions with related parties (including the involvement of independent intermediaries with no substantial functions) that are exempt from taxation due to the application of special tax regimes (the threshold for such transactions is BYN400,000 for all taxpayers (except for large taxpayers) and up to BYN2 million for large taxpayers)

- **Local language documentation requirement**

The TP documentation needs to be submitted in the local language. According to Article 22 of the Tax Code, documents submitted to the tax authorities prepared in a foreign language should be accompanied by a translation into Belarusian or Russian. The validity of the translation or the authenticity of the signature of the translator must be certified either by a notary or by another official authorized to perform such notarial acts.

- **Safe harbor availability, including financial transactions, if applicable**

In 2018, a 20% variance from the arm's-length range was acceptable. If the variance went beyond 20%, tax liabilities were to be adjusted to the lowest- or highest-range value.

Starting 1 January 2019, the acceptable 20% deviation from the arm's-length range has been abolished.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred. However, transactions could be grouped for the purposes of determining arm's-length prices, calculating profitability and reporting to the tax authorities, provided that in relation to such transactions the functions performed by the party (parties), accepted risks, used assets and profit level indicator applied for testing the transactions are the same.

- **Any other disclosure or compliance requirement**

There are two formats of TP documentation in Belarus:

- Full-scope TP documentation: to be prepared in respect of foreign trade transactions of large taxpayers and foreign trade transactions involving strategic goods
- Limited-scope TP documentation or so-called economic justification: to be prepared in respect of all other types of controlled transactions

The TP documentation or economic justification must be prepared in special formats prescribed by Resolution No. 2 of the Belarusian Tax Ministry as of 3 January 2019.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no specific TP returns in Belarus. Belarusian TP rules require the submission of information, disclosing controlled transactions of a taxpayer on an ongoing basis (at least monthly), regardless of whether the volume of transactions exceeds the established thresholds. Refer to section (e) below for more details.

- **Related-party disclosures along with corporate income tax return**

Details of foreign founders of a Belarusian entity should be provided to the tax authorities in the annual corporate income tax return. The deadline is 20 March of the year following the tax period.

- **Related-party disclosures in financial statement/annual report**

Notes to annual financial statement should include, inter alia, the information on related parties, types of transactions performed with related parties during the reporting period, their amounts, opening and closing balances related to such transactions, etc.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

Effective from 1 July 2016, taxpayers are required to inform the tax authorities about their controlled transactions undertaken during a respective tax period – a calendar year. The reporting has to be done on a transaction-by-transaction basis by means of electronic value-added tax (VAT) invoices (*schet-factura*) that need to be filed through a web portal of the TDM.

Details of controlled transactions should be reported to the tax authorities on a monthly basis. The general deadline is the 10th day of the month following the reporting month, although it can be different in some cases.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is on a quarterly basis (i.e., 20 April, 20 July, 20 October and, for the fourth quarter, 20 March of the year following the tax period).

- **Other transfer pricing disclosures and return**

The deadline is on the 10th day of the month following the reporting month, for the reporting on controlled transactions (notifications by means of electronic VAT invoices).

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/local file preparation deadline

TP documentation should be finalized by the time of submission upon the request of tax authorities.

c) Transfer pricing documentation/local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

No, TP documentation should not be provided along with the corporate income tax return but technically may be requested by the tax authorities on an annual basis .

- **Time period or deadline for submission on tax authority request**

Effective from 1 January 2019, companies are required to file the TP documentation within 10 working days from the request for a desk tax audit. For a field tax audit, the deadline is not established and should be specified in the request of the tax authority but must be at least two working days.

Moreover, the tax authorities are entitled to request TP documentation in the course of tax audits, but it should not be earlier than 1 June of the year, following the calendar year during which the transaction was conducted. This deadline is only applicable to foreign-trade transactions of large taxpayers and taxpayers involved in foreign-trade transactions with strategic goods.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

The Belarusian TP rules call for five methods to be applied in a strict hierarchical order:

1. CUP

2. Resale price

3. Cost-plus

4. TNMM

5. Profit split

The CUP method prevails, whereas the profit split is of last resort. In terms of the choice between the cost-plus and TNMM, there is a best-method rule, i.e., the taxpayer should apply a method that enables the company to make the most reliable conclusion regarding the arm's-length level of prices.

Starting 1 January 2022, there is a best-method rule in respect of the choice between cost-plus, TNMM and profit-split methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

The legislation requires searching for local comparable data, although there is a lack of local databases available in the market. In addition, starting 1 January 2019, the Tax Code allows using foreign comparable data if the local data is not available. Starting 1 January 2021, it is specified that if the local data is not available for testing, Belarusian entity financial data of comparable companies from EAEU member countries[6] is used as a top priority. If the data of comparable companies from EAEU member countries is not available, then financial data of other foreign companies could be used.

At the same time, the law allows tax authorities to use secret comparables (customs information, peer analysis, etc.).

- **Single-year vs. multiyear analysis for benchmarking**

Starting from 1 January 2021, the Tax Code stipulates that, in calculating an arm's-length range, one should use the financial information for the year during which the controlled transaction was performed (analyzed year) or the data for three calendar years preceding the analyzed year, or the year in which the prices of the controlled transaction were established.

- **Use of interquartile range**

The interquartile range is to be used from 1 January 2021. Before that the full range was used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search every year is preferable;

[6]Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia

however, there are no official clarifications from the Belarusian tax authorities in this respect.

- **Simple, weighted or pooled results**

Starting 1 January 2019, the Tax Code stipulates calculation of a weighted-average range. Previously, no preference was specified.

- **Other specific benchmarking criteria, if any**

Starting 1 January 2019, the benchmarking criteria for comparable companies were amended.

Local search criteria for comparables	2018	2019–21
Independence	The level of participation is 20%.	The level of participation is 20%. In addition, the independence threshold may be increased up to 50% if less than four comparable companies are identified based on the combination of all search criteria.
Losses	Comparable companies should not report losses **in each year** of the analyzed period.	Comparable companies should not report losses **in more than one year** during the analyzed period.
Net assets	The net assets of potentially comparable companies should be **positive in each year of the analyzed period.**	The net assets of potentially comparable companies **should not have a negative value as of 31 December of the last year in the analyzed period.**

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

None.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Belarusian law does not set out any special penalties for the violation of TP rules.

Penalties will be imposed if a taxpayer's income is adjusted as a result of a tax audit and if the taxpayer did not provide the TP documentation, supporting the prices in a controlled transaction.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes. The penalty for non-submission of required documents (including electronic VAT invoices with information about controlled transactions) is up to 30 basic amounts (up to BYN960).

The penalty of 40% on the additional tax payable is also applied. In addition, late payment of tax is subject to a daily late payment interest of 1/360th of the refinancing rate set by the National Bank of the Republic of Belarus.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes. There is no TP penalty protection in the local law. If an adjustment is sustained, penalty will apply irrespective of whether there was contemporaneous documentation.

- **Is interest charged on penalties or payable on a refund?**

Interest is not charged on penalties.

Interest is payable by the tax authorities on an overdue tax refund, starting the date following the expiration date for making a decision on a tax refund, and by the date when such decision is made. The interest rate shall be applied at 1/360th of the rate of the National Bank of the Republic of Belarus, which was effective on the day of making a decision on a tax refund (9.25% per year as of 1 January 2022).

b) Penalty relief

In general, penalty exemption is available if a taxpayer adjusted its tax return and paid the outstanding tax liability before a tax audit (i.e., for self-initiated adjustments). The penalty does not apply if prices are established in accordance with an APA.

For 2019 to 2022, the late payment interest on tax adjustment is not applied if the outstanding tax liability is settled by a taxpayer within five days from the date of submission of the adjusted tax return. This relief is applicable for both self-initiated TP adjustments and for adjustments made by tax authorities during tax audits. Interest relief is not applicable if the income tax base is adjusted during a tax audit conducted on behalf of the criminal prosecution bodies. For other periods, late payment of tax is subject to a daily late payment interest of 1/360th of the National bank's refinancing rate (which is 9.25% per year as of 1 January 2022).

10. Statute of limitations on Transfer pricing assessments

The tax authority can perform a tax audit (including for TP matters) for the five-year period.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of Transfer pricing scrutiny and related audit by the local authority

- **Likelihood of Transfer pricing-related audits (high, medium or low)**

There are no specific TP-related audits; TP matters are audited by the tax authorities during general tax audits (in-house and on-site audits). The average frequency of on-site tax audits is five calendar years and the likelihood of TP matters to be covered by such audits is generally high. The frequency of in-house tax audits is not limited and the likelihood of TP-related in-house audits is also high.

- **Likelihood of transfer pricing methodology being challenged (high, medium or low)**

Based on the recent results of TP audits performed by Belarussian tax authorities, the probability that TP methodology will be challenged may be considered to be medium to high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)**

Based on the recent results of TP audits performed by Belarussian tax authorities, the probability of tax adjustment if the TP methodology is challenged may be considered to be medium to high.

- **Specific transactions, industries and situations, if any, more likely to undergo an audit**

The TDM has published the list of taxpayers that are top priority for TP audits:

- Loss-making companies, i.e., companies that report losses for two or more years in a row
- Affiliates of multinational companies, i.e., companies that have foreign related parties
- Companies that report insignificant profit together with significant revenue for two or more years in a row, assuming that such distortion is not a result of specific industry trends
- Companies for which profitability for the relevant tax period is lower than industry average profitability, as published by the National Statistical Committee of the Republic of Belarus
- Companies that sell real estate to related parties
- Companies engaged in cross-border transactions with a foreign party, if the jurisdiction of the foreign party envisages a lower tax level than in Belarus, or if the foreign party applies beneficial tax regimes

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Starting 1 January 2019, the APA program is available for large taxpayers and such taxpayers which conducted controlled transactions in the amount exceeding BYN2 million per year. The Tax Code does not envisage a possibility to conclude bilateral or multilateral APAs.

- **Tenure**

APAs can be concluded up to the three calendar-year term and may be extended for two more calendar years.

- **Rollback provisions**

The effective period of the APAs may only cover the first day of the calendar year in which a taxpayer applied to the TDM to conclude such APAs. The Tax Code does not provide any other rollback provisions.

- **MAP opportunities**

MAP opportunities are available for jurisdictions that the Republic of Belarus has effective double tax treaty with.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules came into force in 2013. The rules limit the deductibility of certain costs and expenses where the taxpayer has controlled debt to a foreign or Belarusian founder or participant.

The thin-capitalization rules apply if the taxpayer's debt-to-equity ratio (for all controlled debt) at the end of the tax period is at 3:1.

The thin-capitalization rules apply to the following types of controlled debts:

- Debt on loans, excluding commercial loans
- Amounts payable for engineering, marketing, consulting, management and intermediary services, information services, and personnel recruitment and supply services, and consideration for the transfer of industrial property rights
- Fines, penalty interest and other sanctions, including damages for contractual breaches

1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Belgian General Administration of Taxes, part of the Federal Public Service Finance

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The arm's-length principle detailed in Article 185, Section 2, of the Belgian Income Tax Code (ITC), entered into force on 19 July 2004. Articles 26, 49, 53, 54, 55, 79, 207, 307, Section 1, s. 3; and 344 of the Belgian ITC also relate to TP.

Transfer pricing documentation (TPD) rules are embedded in the Belgian ITC (Articles 321/1–321/7 and 445, Section 3) through a law passed on 1 July 2016 and the Royal Decree of 2 December 2016. Additional information regarding the application of sanctions and fines, in case of non-compliance with the Belgian TPD requirements, is set in a Belgian administrative guidelines published in February 2019.

The most recent transfer pricing administrative guidelines were published on 25 February 2020 with reference 2020/C/35. These provide the interpretation of the Belgian tax administration on the 2017 OECD Guidelines. Various other circular letters were issued in the past on transfer pricing, dispute resolution, etc.

- **Section reference from local regulation**

See above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD TP Guidelines, UN tax manual or EUJTPF

Belgium is a member jurisdiction of the OECD.

The Belgian transfer pricing legislation and guidance is generally in line with the OECD Guidelines. While Belgium considers its transfer pricing laws and regulations to be consistent with the OECD Guidelines through historical practice, coupled with case law and transfer pricing circulars specifying the position of the Belgian tax administration, the Belgian interpretation differs on certain points from these guidelines. Belgium has implemented additional compliance requirements (transfer pricing forms) in addition to the arm's-length principle.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for TPD in the local regulations?**

Yes

- Coverage in terms of master file, local file and CbCR

  It covers the master file, local file and CbCR.

- Effective or expected commencement date

  The master file transfer pricing form (275.MF) and general local file transfer pricing form (Parts A and C of 275.LF) are applicable for financial years beginning on or after 1 January 2016. A detailed local file transfer pricing form (Part B of 275.LF) is applicable for financial years beginning on or after 1 January 2017.

- Material differences from OECD report template or format

  There are no material differences between the OECD report template or format and Belgium's regulations. However, specific forms are to be completed and filed through a dedicated platform in a specific electronic format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes, provided that compliance with the transfer pricing forms is met.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the MCAA on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, it needs to be prepared contemporaneously. Developing jurisprudence indicates that the proactive preparation of transfer pricing documentation demonstrates best efforts of the taxpayer and offers additional support in case of litigation.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, transactions between the head office or other branches of a foreign company and a Belgian branch must be carried out at arm's length.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, stand-alone TP reports need to be prepared for each entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

For companies not exceeding the thresholds in the following section, but having intercompany transactions, transfer pricing documentation requirements also exist. Specifically, in the case of a transfer pricing audit, all Belgian companies and permanent establishments need to provide transfer pricing documentation demonstrating that their intercompany transactions take place at arm's length, within 30 days of the request of the Belgian tax authorities.

- **Master file and local file**

Belgian tax resident companies or permanent establishments that exceed at least one of the following criteria in their (statutory) financial accounts of the prior financial year have to submit a master file transfer pricing form (275.MF) and a local file transfer pricing form:

- Operating and financial income equal to or exceeding EUR50 million (excluding nonrecurring items)

  Or

- Balance sheet total (i.e., total assets) equal to or exceeding EUR1 billion

  Or

- The average annual number of full-time employees of 100 (in total)

- **CbCR**

CbCR applies to multinational groups with a consolidated group revenue equal to or exceeding EUR750 million. Belgian entities, which are the ultimate parent companies or the surrogate parent companies of such multinational groups, should annually file the CbCR form (275.CBC) with the Belgian tax authorities within 12 months after the end of the group's financial year. The Belgian entity may also be required to file this form in a number of cases, for instance, if there is no agreement for the exchange of information in tax matters between Belgium and the reporting entity's jurisdiction.

Each Belgian entity of a qualifying multinational group should annually file a CbCR notification form (275.CBC NOT) with the Belgian tax authorities, providing details on the group entity that will comply with the CbCR. The notification should be filed with the Belgian tax authorities no later than the end of the financial year of the group. For reporting periods ending on 31 December 2019 or later, the filing of Form 275 CBC NOT will only be required in case of changes (law of 2 May 2019).

- **Economic analysis**

There is no materiality limit. However, in the absence of an economic analysis, the transfer pricing documentation will likely be considered incomplete.

c) Specific requirements

- **Treatment of domestic transactions**

Transfer pricing documentation has to be prepared even if the Belgian company or the permanent establishment has only domestic transactions. In the latter case, the documentation documents the intercompany transactions taking place between Belgian entities and the Belgian branches of foreign entities. In addition, if the company is part of a multinational group and falls within the thresholds for preparation of master file transfer pricing forms and local file transfer pricing forms, it must submit them even if it is only engaged in local intercompany transactions (general Part A and Part C only, in case of the local file form).

- **Local language documentation requirement**

Answers to formal questions of the tax authorities must be given in one of the Belgian official languages (i.e., French,

Dutch or German). The transfer pricing documentation and transfer pricing forms can be submitted in one of the Belgian official languages or in English.

- **Safe harbor availability, including financial transactions, if applicable**

Belgium has no safe harbor rules.

- **Any other disclosure or compliance requirement**

See below.

- **Is aggregation or individual testing of transactions preferred for an entity**

A transaction-by-transaction approach is preferred, unless transactions are so closely linked or continuous that they cannot be evaluated adequately on a separate basis.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are specific transfer pricing returns in Belgium, including the CbCR (275.CBC) and master file forms (275.MF), both of which have to be filed, at the latest by 12 months after the last day of the group's financial year-end to which they relate. The local file transfer pricing forms (275.LF) have to be filed at the same time as the deadline of the corporate tax return for the financial year to which they relate.

In addition, companies that are part of a multinational group of companies subject to CbCR also have to notify the Belgian tax authority of the name of the entity and the jurisdiction of its tax residence that will submit the CbC notification (275.CBC. NOT) every year, before the end of the group's financial year in case of changes (see supra).

- **Related-party disclosures along with corporate income tax return**

The reporting requirement introduced through Article 307, Section 1, s. 3 of the Belgian ITC, relates to payments of more than EUR100,000 per taxable period made by resident or non resident entities (Belgian permanent establishments) to persons established in tax havens on or after 1 January 2010. Tax havens are defined with reference to a "blacklist" determined through a Royal Decree (it currently contains around 30 jurisdictions that either do not levy corporate income tax or have a nominal corporate income tax rate that is lower than 10%). A mandatory form (No. 275 F) for reporting direct or indirect payments to persons established in tax havens is to be attached to the tax return. Failure to report payments results in the non-deductibility of such payments. In addition, these tax deductions are acceptable only when proof is presented by the Belgian taxpayer that these payments relate to actual and bona fide transactions at arm's length with persons other than artificial constructions.

- **Related-party disclosures in financial statement and annual report**

The Belgian accounting rules introduced through the Royal Decree of 10 August 2009 require that companies provide certain additional information that relates to TP in the notes or annex section of their statutory annual accounts, as follows:

- Companies must provide information regarding the nature and business purpose of their relevant, off-balance sheet arrangements; whether underlying risks and benefits are considered material; and when the disclosure is necessary to correctly assess the financial position of the company. This requirement is applicable in cases of intra-group guarantees, pledges, factoring liabilities, transactions with special-purpose entities (whether transparent or not) and offshore entities.
- Companies must disclose their material transactions with affiliated parties that are considered not to be at arm's length. Depending on the type of company, a different scope of information is to be provided, ranging from merely listing such transactions to mentioning the amounts involved, alongside all other information necessary for a correct view of the company's financial position.
- While this rule is not included in the Belgian Tax Code, it creates a requirement for the relevant entities to review and document the arm's-length nature of their intercompany transactions. Non-compliance may result in director liability. Evidently, any such disclosures are anlent source of information for a tax inspector to initiate a (targeted) transfer pricing audit.

- **Other information or documents to be filed**

See above.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Generally, the deadline is seven months after the financial year-end. For a company with a calendar financial year, the deadline is, in principle, 31 July. Tax authorities do, however, grant collective extensions on an annual basis, but plan to reduce these in the future.

- **Other transfer pricing disclosures and return**

Local file transfer pricing forms (275.LF) should be filed at the same time as the filing deadline of the, corporate tax return.

- **Master file**

Master file transfer pricing form (275.MF) needs to be submitted within 12 months after the last day of the group's financial year to which it relates.

- **CbC report preparation and submission**

It should be filed within 12 months after the last day of the group's financial year-end to which it relates. For a group with a calendar financial year, the deadline would be 31 December of the next year.

- **CbCR notification**

The filing deadline is by the end of the financial year of the group. The new section in Article 321/3 ITC (§3) states that the filing of Form 275 CBC NOT is required only if the information provided deviates from what was filed for the previous reporting period.

b) Transfer pricing documentation/local file preparation deadline

For the master file transfer pricing form (275.MF) and local file transfer pricing form (275.LF), please see the above section.

In addition, when completing the local file form, which is due at the same time as the deadline for the corporate income tax return, the taxpayer should notify the tax authorities if transfer pricing documentation is available. The transfer pricing local file report must be available upon the request of the Belgian tax authorities (e.g., in case of a transfer pricing audit).

c) Transfer pricing documentation/local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

There is no obligation to submit the local file transfer pricing report. However, as mentioned above, the local file transfer pricing report should be available upon the request of the Belgian tax authorities (e.g., in case of a transfer pricing audit). In addition, if the Belgian company or permanent establishment of an MNE group falls within the thresholds to prepare and submit the local file transfer pricing forms – as the latter asks to confirm the existence of the aforesaid local file transfer pricing documentation reports – the existence of such reports also needs to be mentioned as the filing of the tax return.

- **Time period or deadline for submission on tax authority request**

The taxpayer must submit the transfer pricing documentation report within 30 days upon request.

d) Are there any new submission deadlines per COVID-19-specific measures? If yes, specify which deadlines are impacted

For the fiscal year ended 31 December 2020, the due date for filing of tax return has been extended to 28 October 2021. As such, the preparation due date for the local file has been extended to 28 October 2021 for the same fiscal year. For companies with a calendar fiscal year ending 31 December 2021, the deadline is set at 17 October 2022 for filing via Bizztax.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

In principle, taxpayers are free to choose any OECD transfer pricing method as long as it results in arm's-length pricing for the transaction. The selection of the most appropriate method is based on an analysis of the specific transaction, as well as an analysis of the comparability.

b) Priority and preference of methods

There is no real hierarchy of methods. In case more methods can be applied in an equally reliable manner, then the traditional transaction methods are preferred over the transactional profit methods. The CUP method is preferred if the CUP method and another method can be applied in an equally reliable manner.

8. Benchmarking requirements

c) Local vs. regional comparables

In case sufficient comparability references cannot be found in the jurisdiction of the tested party, this can be expanded with

markets which are closest comparable to the market of the tested party. The Belgian administration accepts pan-European studies.

d) Single-year vs. multiyear analysis

Single-year testing is required.

e) Use of interquartile range

The interquartile range is preferred by the Belgian tax administration. In case of very high and equal comparability with the third-party reference points, each point in the full range can be a reference for a comparable price.

f) Fresh benchmarking search every year vs. rollforwards and update of the financials

The Belgian tax authorities recommend to perform a full update of the original comparability study every three years. A yearly update of the results of the original comparability study is expected..

g) Simple vs. weighted average

No formal guidance exists in this regard.

h) Other specific benchmarking criteria, if any

The Belgian tax authorities issued in the transfer pricing circular of 2020 more detailed administrative guidelines containing suggested criteria for the benchmarking search.

9. Transfer pricing penalties and relief

a) Penalty exposure

b) Consequences for incomplete documentation

Same as below.

c) Consequences of failure to submit, late submission or incorrect disclosures

In accordance with the new transfer pricing legislation, failure to submit the CbC report, CbCR notification, master file forms (275.MF) or local file transfer pricing forms (275.LF) will result in an administrative penalty ranging from EUR1,250 to EUR25,000. This penalty will apply as of the second infringement. Furthermore, non-compliance with the transfer pricing documentation obligations increases the likelihood of a transfer pricing audit.

In addition, the absence of the mandatory transfer pricing documentation required to be filed with the tax return (local file transfer pricing forms) results in an incomplete or inaccurate tax return, which may lead to the reversal of the burden of proof.

d) If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?

The general tax penalty framework applies to transfer pricing adjustments. These penalties vary from 10%–200% (in exceptional cases). The rate depends on the degree of intent to avoid tax or the degree of the company's gross negligence.

Furthermore, for late payments, interest is due on additional tax assessments (including assessments resulting from a transfer pricing adjustment).

e) If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

Same as above.

f) Is interest charged on penalties or payable on a refund?

There is none specified.

g) Penalty relief

With respect to the application of the general tax penalty framework, although the burden of proof of non-arm's-length pricing lies principally with the tax authority, the taxpayer needs to provide all information necessary to allow the tax authority to verify the company's tax position.

Therefore, since additional tax assessments largely depend on the degree of intent to avoid taxes or on the company's gross negligence, penalties may be reduced or eliminated if the taxpayer can demonstrate its intent to establish transfer prices in accordance with the arm's-length principle, which would generally be the case through the availability of detailed local documentation reports.

MAPs or the EU Arbitration Convention is available to resolve tax disputes with the Belgian tax authorities. Alternatives include initiating administrative appeal procedures or proceedings in court.

10. Statute of limitations on transfer pricing assessments

The general rules regarding the statute of limitations apply to transfer pricing assessments. Therefore, the tax authority is entitled to make additional assessments for a period of three years, starting from the closing of the accounting year.

However, in the case of fraud being considered, the tax authority has the right to adjust the income during a seven-year period, provided the taxpayer received prior notice of serious indications of fraud. In the case of tax losses, the statutes of limitations do not run until these tax losses are effectively used to offset taxable income. Some other exceptional statutes of limitations also exist for specific situations.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Pending tax audits are continuing. Pre-audit and other meetings may be held by video/conference calls given the latest measures implemented in Belgium against the COVID-19 pandemic.

12. Likelihood of transfer pricing scrutiny or related audit by the local authority

h) Likelihood of transfer pricing-related audits (high, medium or low)

In Belgium, the likelihood of a tax audit may be regarded as medium to high due to a significant number of transfer pricing audit questionnaires sent by the Belgian tax authorities to Belgian companies and permanent establishments), and the significant staffing and reinforcement of the Belgian transfer pricing Audit Cell. The Belgian tax authorities also use systematic data-mining techniques to identify and target Belgian companies, and permanent establishments for transfer pricing audits; they also use information available in the filed transfer pricing forms.

i) Likelihood of transfer pricing methodology being challenged (high, medium or low)

Depending on the robustness of the transfer pricing methodology and support available, as well as on the type of the intercompany transactions under review, the likelihood that the transfer pricing methodology will be challenged may be regarded as medium to high. This is due to the significant sophistication of the Belgian tax authorities in transfer pricing. In case of uncertain position or doubts, there is a room for interpretation.

j) Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)

Depending on the robustness of the transfer pricing methodology and support available, the likelihood of an adjustment may be regarded as medium to high.

k) Specific transactions, industries and situations, if any, more likely to be audited

In practice, a transfer pricing audit is often triggered by situations, such as:

l) Structural losses

m) Sudden decrease in profitability

n) Business reorganizations

o) Migration of businesses

p) The use of tax havens or low-tax-rate countries

q) Back-to-back operations

r) Circular structures

s) Invoices for services sent at the end of the year, i.e., management services

t) Changes in the number of employees

u) Business restructurings

v) Intangibles-related and financial transactions

w) Financial transactions

x) Failure to file transfer pricing forms in Belgium

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

y) Availability (unilateral, bilateral and multilateral)

There is an APA program available in Belgium for unilateral, bilateral and multilateral APAs.

z) Tenure

The APAs are generally granted for a five-year term, which is the legal maximum. Unilateral APAs are generally granted for a three-year term.

aa) Rollback provisions

Rollbacks are allowed subject to the approval and agreement with the Belgian Competent Authority. Rollbacks will only be permitted if the applicable time limits (such as the tax assessment terms) allow this. For Belgium, this means that rollbacks can be applied provided that the relevant facts and

circumstances of the previous years are identical, and the tax assessment terms for those years have not expired yet. The foreign tax authority must also approve of the rollback.

Rollbacks are not available for unilateral APAs.

bb) MAP opportunities

MAPs are generally available under the double tax treaties that Belgium has with its treaty partners, as well as under the EU Arbitration Convention.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

cc) Old thin capitalization rule (until tax year 2019 with grandfathering)

The Belgian tax law provides for a general thin-capitalization rule (5:1 debt-equity ratio) according to which interest payments or attributions in excess of a 5:1 debt-equity ratio are not tax deductible.

This thin-capitalization rule exist until and including tax year 2019. As of the tax year 2020 (financial years ending 31 December 2019 or later), the EBITDA-based rule will apply.

This thin-capitalization rule will, however, remain applicable in two cases: (i) grandfathered loans (i.e., loans granted before 17 June 2016, in case no "fundamental" modifications have been made); and (ii) interest paid to a beneficiary located in a tax haven.

dd) New EBITDA-based rule (as of tax year 2020)

The EBITDA-based rule is in line with the EU Anti-Tax Avoidance Directive I requirements. Exceeding borrowing costs will only be tax deductible up to the highest of the following two thresholds: (i) 30% of the taxpayer's fiscal EBITDA, or (ii) EUR3 million. The borrowing costs exceeding these thresholds that are not deducted in the current taxable period can be carried forward indefinitely. Taxpayers who are part of the same group also have the possibility to transfer unused EBITDA capacity to other group companies, provided certain conditions are met.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate-General of Taxes (*Direction Générale des Impôts* (DGI))

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Article 34 of the General Tax Code (GTC): TP form or declaration obligation (Finance Law 2020)
  - Article 37 GTC: foreign related-party transactions definition (Finance Law 2020)
  - Article 1085 ter-2 bis GTC: transfer pricing documentation (TPD) obligation (Finance Law 2020)
  - Article Art. 1085 ter-2 ter: CbCR obligation (Finance Law 2020)
- **Section reference from local regulation**
  - GTC: Article 45, 470, 471, 496, 503, 542 and 544 of General Tax Code (Fiscal Law 2022)
  - Article 45 of General Tax Code provides general information about TP rules
  - Article 470 of General Tax Code provides new rules related to the TP return
  - Article 471 of General Tax Code provides rules related to CbCR
  - Article 496 of General Tax Code provides penalties about TP return and CbCR
  - Article 503 of General Tax Code provides penalties about TP documentation
  - Article 542 of General Tax Code provides information about intragroup transactions to the tax authorities as part of a tax audit
  - Article 543 of General Tax Code provides conditions related to the TP documentation obligations

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Benin is not a member of the OECD. However, as a member of the inclusive framework, Benin agrees to implement a minimum BEPS standard.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master file, Local file and CbCR

  Master file local file and CbCR are covered.
- Effective or expected commencement date

  1 January 2020.
- Material differences from OECD report template or format

  No material differences are there.
- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the MCAA on the exchange of CbCR

Yes.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, Benin has TPD rules. Please refer to above mentioned Sections from local regulations.

The TPD will have to be prepared and made available to the tax authorities at the beginning of a tax audit of the accounting records.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes

- **Does transfer pricing documentation have to be prepared annually?**

The TPD has to be prepared and made available to the tax authorities at the beginning of a tax audit of the accounting records.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

A separate TP report is required per legal entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The documentary obligation applies to anyone who meets the following conditions:

annual turnover excluding taxes or gross assets greater than or equal to XOF1 billion at the following conditions:

a. If the entity holds at the end of the financial year, directly or indirectly, more than half of the capital or voting rights of a company established or incorporated in the Republic of Benin or outside the Republic of Benin, fulfilling the condition mentioned in point "a"

b. More than half of the capital or voting rights is held, at the end of the financial year, directly or indirectly, by a company fulfilling the condition mentioned in point "a"

- **Master File**

There is no materiality limit or threshold.

- **Local file**

Please refer to Section b, "materiality limit or thresholds" or "TPD."

- **CbCR**

A company established in the Republic of Benin is required to file a CbC report when:

a. It holds, directly or indirectly, a sufficient interest in one or more entities in a manner that it is required to prepare consolidated financial statements in accordance with the accounting principles in force or would be required to do so if its shareholdings were listed on the stock exchange in the Republic of Benin

b. It has an annual consolidated turnover before tax of at least XOF492 billion for the financial year preceding the year concerned by the declaration,

c. No other enterprise holds directly or indirectly an interest described in paragraph (a) in the above-mentioned enterprise

d. It is owned directly or indirectly by an enterprise established in a state which does not require the deposit of such a declaration and which would be required to deposit such a declaration if it were established in the Republic of Benin

e. It is owned directly or indirectly by a legal entity established in a state not included in the list provided for in this article, but with which the Republic of Benin has concluded an agreement on exchange of information on tax matters

f. It has been designated for this purpose by the group of affiliated undertakings to which it belongs and has informed the tax authorities thereof

- **Economic analysis**

There is no materiality limit or threshold.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The TPD and TP return must be submitted in French.

- **Safe harbor availability, including financial transactions, if applicable**

There is no specific requirement.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is no specific requirement.

- **Any other disclosure/compliance requirement**

There is no specific requirement.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The TP return needs to be submitted in French as part of the taxpayer's annual tax return. Online submission tool is provided (electronic format is mandatory).

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

There is no CbCR notification requirement.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline for filing the annual financial statements is 30 April following each FY.

- **Other transfer pricing disclosures and return**

The deadline for filing the TP form is 30 April following each FY.

- **Master File**

It should be available at the time of a tax audit of accounting records.

- **CbCR preparation and submission**

The CbCR should be prepared and submitted within the 12 months following each FY.

- **CbCR notification**

There is no CbCR notification.

b) Transfer pricing documentation/local file preparation deadline

It should be available by the time of a tax audit of the accounting records.

c) transfer pricing documentation/local file submission deadline

It should be available by the time of a tax audit of the accounting records.

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

It should be submitted by the time of a tax audit.

- **Time period or deadline for submission upon tax authority request**

If the documentation is not available or ready at the time of the tax audit of the accounting records, a 30-day formal notice will be sent to the audited company.

d) Are there any new submission deadlines per COV-ID-19-specific measures? If Yes, specify which deadlines are impacted

No

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**

- **Domestic transactions: not applicable**

b) Priority and preference of methods

These OECD methods are generally accepted: CUP, resale price, cost-plus, profit-split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific requirement. However, local or west African comparables would be preferred.

- **Single-year vs. multiyear analysis for benchmarking**

There is no specific requirement.

- **Use of interquartile range**

There is no specific requirement.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement.

- **Simple, weighted or pooled results**

There is no specific requirement.

- **Other specific benchmarking criteria, if any**

There is no specific requirement.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not provided.

- **Consequences of failure to submit, late submission or incorrect disclosures**

TP return/CBCR: Fine is applicable at XOF10 million.

TPD: For each audited FY, a fine of 0.5% is applicable based on the amounts of the unjustified transactions after the formal notice from the tax authorities. The fine could not be less than XOF10 million per FY.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Same as above.

Penalties are assessed at rates ranging from 20%, 40% or 80% of the tax due, depending on whether the taxpayer's return was accidentally, mistakenly or fraudulently in error.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is no specific requirement.

- **Is interest charged on penalties or payable on a refund?**

Penalties are assessed at rates ranging from 20%, 40% or 80% of tax due, depending on whether the taxpayer's return was accidentally, mistakenly or fraudulently in error.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The limitation period is set to three years (common tax regime).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There are no specific transactions mentioned.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no specific requirement.

- **Tenure**

There is no specific requirement.

- **Rollback provisions**

There is no specific requirement.

- **MAP opportunities**

There is no specific requirement.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Benin has the following thin-capitalization rules regarding loans by shareholders and related parties to local entities:

- The sums made available by all shareholders should not exceed the amount of the share capital. The interest paid to the shareholders should not exceed 30% of the profit before corporate income tax and before deduction of such interest, and depreciation and provisions.
- The interest rate should not exceed the rate of the central bank advances, increased by three percentage points.
- The loan should be repaid within five years following the granting of the loan. In addition, the local entity should not go into liquidation during this five-year period.
- The share capital of the local entity should be entirely paid up.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Internal Taxes Service (Servicio de Impuestos Nacionales)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Act No. 843 since 20 May 1986 (amended to Act Nº 549 since 21 July 2014)
  - Supreme Decree No. 2227 since 30 December 2014
  - Supreme Decree No. 2993 since 23 November 2016
  - Normative Resolution No. 10-0008-15 of 30 April 2015
  - Normative Resolution No. 101700000001 of 13 January 2017
  - Normative Resolution No. 101800000006 of 9 March 2018
  - Normative Resolution No. 101900000002 of 15 February 2019
- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/no)

The tax authority did not announce any changes for COVID-19 situation in transfer pricing regulation.

3. OECD Guidelines treatment and BEPS implementation

c) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Bolivia is not a member of the OECD.

OECD rules are not expressly accepted, but the current transfer pricing regime is based on the OECD Guidelines.

d) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

This is not applicable.

- Coverage in terms of master file, local file and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

e) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Not applicable.

f) Signatory to the MCAA on the exchange of CbCR

Not applicable.

4. Transfer pricing documentation requirements

g) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, transfer pricing documentation rules have been in force since 2015. There are parameters to comply with on some obligations; all the related parties must be valuated at arm's length, but the taxpayer must comply with the following requirements 120 days after the company's year-end:

[1] **https://www.impuestos.gob.bo/pag/Normativa_Tributaria**

Related-parties amount operations	Information to submit to tax authority
Higher than BOB15 million (USD2.16 million)	Transfer pricing study Tax return 601
Between BOB7.5 million (USD1.08 million) to Bs15 millions (USD2,15 million)	Tax return 601
Lower than BOB7.5 million (USD1.08 million)	Keep the information in order to demonstrate the related parties' operations are at arm's length.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, in accordance with the rules set out in point 1 (b).

- **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation has to be prepared annually under Bolivia's local jurisdiction regulations.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, it is necessary to have a study for each company that has related-party operations.

h) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There is no materiality limit.

i) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for treatment of domestic transactions.

- **Local language documentation requirement**

There is a requirement for the transfer pricing documentation to be submitted in the local language. All information to the tax authority must be presented in Spanish.

- **Safe harbor availability, including financial transactions, if applicable**

There is no specific requirement for safe harbor availability.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not applicable.

- **Any other disclosure or compliance requirement**
  - ransfer pricing documentation must be presented in physical and digital format.
  - The related-party amounts (e.g., price or value) must be expressed in local currency (boliviano (BOB)).
  - Transfer pricing documentation must include the company legal representative's signature.
  - It must comply with a minimum content established RND No. 10-0008-15.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Transfer pricing Informative Return Form 601.

- **Related-party disclosures along with corporate income tax return**

Prior to corporate income tax return submission, an analysis about related-party transactions must be carried out. However, related-party disclosures are not included along with the corporate tax return.

- **Related-party disclosures in financial statement/annual report**

Yes

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

No

6. Transfer pricing documentation and disclosure timelines

j) Filing deadline

- **Corporate income tax return**

The timeline is 120 days after the closing of the FY, and the closing depends on the nature of the business, including:

- Commercial, service, financial and insurance companies: 31 December
- Industrial companies: 31 March
- Agribusiness companies: 30 June
- Mining companies: 30 September

- **Other transfer pricing disclosures and return**

The timeline is 120 days after the closing of the FY, and the closing depends on the nature of the business, including:

- Commercial, service, financial and insurance companies: 31 December
- Industrial companies: 31 March
- Agribusiness companies: 30 June
- Mining companies: 30 September

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

k) Transfer pricing documentation/local file preparation deadline

The transfer pricing documentation should be finalized before the deadlines indicated above.

l) Transfer pricing documentation/local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

The transfer pricing documentation needs to be submitted each year. It is necessary to send Form 601 when the transactions are higher than BOB7.50 million (USD1.08 million). A transfer pricing study and the Form 601 must be presented when the transactions are higher than BOB15 million (USD2.16 million). But in all cases, the company should have supporting documentation to demonstrate that transactions are conducted at arm's-length basis.

The transfer pricing documentation should be filed according to the due dates indicated above.

- **Time period or deadline for submission on tax authority request**

In case of a request from the Bolivian Internal Revenue Service (IRS), the taxpayer must submit the transfer pricing documentation generally in 5 working days, depending on the request.

m) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

n) Applicability (for both international and domestic transactions)

- **International transactions: yes**
- **Domestic transactions: no**

o) Priority and preference of methods

The best method must be used (i.e., CUP, resale price, cost-plus, profit-split or TNMM). For commodities, the price in transparent markets must be used.

8. Benchmarking requirements

- **Local vs. regional comparables**

Both are accepted by the Bolivian IRS.

- **Single-year vs. multiyear analysis for benchmarking**

There is no rule specified. But, in practice, multiyear testing is preferred in testing the arm's-length analysis.

- **Use of interquartile range**

This is not applicable. The formula used is called the difference value range (*rango de diferencias de valor*.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Fresh benchmarking needs to be submitted every year. Bolivian rules do not define anything about an update of financial statements. But in practical terms, all companies are performing new research or, at minimum, they are updating the financial statements. In any case, a complete report is needed each year.

- **Simple, weighted or pooled results**

The simple average is preferred while testing the arm's-length analysis, but Bolivian rules do not specify anything.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

p) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable

- **Consequences of failure to submit, late submission or incorrect disclosures**

Unidades de Fomento a la Vivienda (UFV)5,000 (USD1,707) for not filing transfer pricing information or tax returns (Form 601), and UFV2,500 (USD853) for uncompleted filing and late submission

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete ?**

This is not applicable.

- **Is interest charged on penalties or payable on a refund?**

There is no interest charged.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not applicable.

q) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

In June 2016, Act No. 812 set the statute of limitations at eight years and this term is extended to 10 years when there are transactions performed with low- or null-taxation countries and regions.

Furthermore, transfer pricing audits can be performed within a period of two years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not covered in COVID Tracker.

12. Likelihood of transfer pricing scrutiny and related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

There is no experience regarding this as the transfer pricing regime is being enforced from FY15. However, transfer pricing audits were initiated in FY17 for a few companies in Bolivia. No results are available from those audits yet.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not defined in the current law.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority[1]

Tax Authority of the Federation of Bosnia and Herzegovina (FBiH) in the FBiH; Tax Administration of Republic of Srpska in the Republic of Srpska.

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and the effective date of applicability

FBiH

Articles 44–46 of the Corporate Income Tax (CIT) Law define the arm's-length principle, the acceptable methods, and the obligation to prepare and file TP documentation, which are available on the official website of the Tax Authority of the FBiH. Articles 58–59 of the CIT Law refer to penalties, among others, for non-possession of TP documentation and are available on the official website of the Tax Authority of the FBiH.

The Rulebook on TP provides further details about the methods for the determination of arm's-length prices in intra-group transactions, and prescribes obligatory content and the filing deadline of the TP documentation, related-party or associated enterprise criteria, safe harbor transactions, etc. The Rulebook on TP is available on the official website of the Tax Authority of the FBiH.

Republic of Srpska

Articles 31–35 of the CIT Law prescribe the related-party definition, arm's-length principle, acceptable methods and the obligation to prepare and file TP documentation. Articles 58–60 of the CIT Law refer to penalties, among others, for nonpossession of TP documentation and are available on the official website of the Tax Administration of Republic of Srpska.

The Rulebook on TP and the methods for the determination of arm's-length prices in intra-group transactions provides further details about these and prescribes obligatory content of the TP documentation.

- Section reference from local regulation

FBiH

Article 6 of the Rulebook on TP defines related parties and associated enterprises.

Republic of Srpska

Article 31 of the CIT Law and Article 4 of the Rulebook on TP define related parties and associated enterprises.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Bosnia and Herzegovina and all its tax jurisdictions (i.e., FBiH and Republic of Srpska) are not members of the OECD.

TP legislation in the FBiH and the Republic of Srpska are generally based on the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

The FBiH and the Republic of Srpska implemented BEPS Action 13 to a certain extent through local TP legislation; the Republic of Srpska prescribed only the CbC report in local legislation.

- Coverage in terms of master file, local file and CbCR

  FBiH

  TP legislation in the FBiH covers master file, local file and CbCR.

  Republic of Srpska

  Only CbCR is covered.

- Effective or expected commencement date

  FBiH

  The effective date for the preparation of a local file (i.e., TP report) is 27 August 2016, whereas the effective date

[1]Tax Authority of the FBiH website: **www.pufbih.ba**; Tax Administration of Republic of Srpska website: **www.poreskaupravars.org**

for the master file is 1 January 2018.

Republic of Srpska

There is none specified.

- Material differences from OECD report template or format

FBiH

The TP report in the FBiH requires particular information prescribed for the master file.

Republic of Srpska

This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

FBiH

The BEPS Action 13 format for the local file would not suffice, whereas particular information prescribed for the master file in the OECD report template or format would be required.

Republic of Srpska

The BEPS Action 13 format for the local file would not suffice, whereas for the master file, this is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Bosnia and Herzegovina is a part of the OECD/G20 Inclusive Framework on BEPS.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, the Rulebook on TP provides rules for the preparation of TP documentation.[2]

TP documentation needs to be prepared by a certain due date, but it is to be submitted upon the request of the tax authorities.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, branches are required to be compliant with local rules.

- **Does transfer pricing documentation have to be prepared annually?**

TP documentation has to be prepared annually under local jurisdiction regulations in the FBiH and the Republic of Srpska.

Every section of the TP report should be updated with the latest available information.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master file**

In the FBiH, the threshold for preparation of master file is BAM1.5 billion and is set on the group level.

- **Local file**

This is not applicable.

- **CbCR**

Groups with consolidated revenue above approximately EUR750 million for Republic of Srpska and BAM1.5 billion for the FBiH.

- **Economic analysis**

There is no materiality threshold.

b) Specific requirements

- **Treatment of domestic transactions**

[2]Please note that the mentioned Rulebooks are separate bylaws in the FBiH and the Republic of Srpska.

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The TP report should be submitted in the local language (i.e., Bosnian, Croatian or Serbian).

FBiH

If required, a master file could be submitted in English, but the local tax authority does not waive the right to request the translation.

Republic of Srpska

There are no specific requirements.

- **Safe harbor availability including financial transactions, if applicable**

FBiH

TP legislation in the FBiH prescribes safe harbor of 5% on the total cost of the service for the receipt of specific administrative and support services, which are not provided to third parties (by service provider).

Republic of Srpska

TP legislation in the Republic of Srpska does not prescribe safe harbor for controlled transactions.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not applicable.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

FBiH

Taxpayers are obligated to submit the TP-900 form by 31 March for the previous fiscal year (FY) if they fulfill the prescribed requirements for a TP adjustment waiver.

In addition, taxpayers should prepare the form with summary of controlled transactions (TP 902 form) in case that its related-party transactions exceed BAM500,000. This document should be provided to the tax authorities alongside the CIT return. There is a specific form prescribed in this respect and it should be signed by an authorized person in the company.

Republic of Srpska

Taxpayers are obliged to submit an annual report of controlled transactions if the total amount of their controlled transactions is above BAM700,000.

- **Related-party disclosures along with corporate income tax return**

Taxpayers are obligated to disclose in their annual CIT return on the revenues and expenses resulting from transactions with related parties, as well as disclose tax-based adjustments on the basis of the TP analysis.

- **Related-party disclosures in financial statement/annual report**

Information relating to transactions with related parties should be disclosed within notes in the financial statements.

- **CbCR notification included in the statutory tax return**

No.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

It's 30 days from the deadline for submission of financial reports (e.g., for 2018, the deadline for the CIT return would be 30 March 2019) in the FBiH. And it's 90 days after the fiscal year-end (in case the fiscal year-end corresponds to the calendar year-end, the submission deadline is 31 March of the current FY for the previous FY) in the Republic of Srpska.

- **Other transfer pricing disclosures and return**

It's 31 March for the previous FY for the CBC-901 (for FBiH resident entities whose revenue exceeds BAM1,5 billion, TP-900 and TP-902 forms in the FBiH, and 31 March for the previous FY for the annual report of controlled transactions in the Republic of Srpska.

- **Master file**

This is not applicable.

- CbCR preparation and submission

The report needs to be prepared and submitted by no later than 31 March of a current year for a previous year in the FBiH. Whereas, in the Republic of Srpska, a CbC report should be prepared by 31 March of a current FY for the previous FY, and submitted upon request by tax authorities (alongside TP documentation).

- CbCR notification

FBiH: 31 March of a current year for a previous year.

Republic of Srpska: not applicable.

b) Transfer pricing documentation/local file preparation deadline

FBiH

The deadline for preparation of the TP report is 30 March of a current FY for the previous FY.

Republic of Srpska

The deadline for preparation of the TP report is 31 March of a current FY for the previous FY.

c) Transfer pricing documentation/local file submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or local file?

TP legislation in the FBiH and the Republic of Srpska, does not prescribe a statutory deadline for the submission of TP documentation, but sets out that TP documentation must be prepared by the CIT return submission deadline.

- Time period or deadline for submission on tax authority request

FBiH: 45 days upon tax authority request.

Republic of Srpska: 30 days upon tax authority request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions — yes
- Domestic transactions — yes

FBiH

Traditional transaction methods have priority for application in TP in the FBiH, with CUP defined as the most preferable method. Taxpayers are allowed to select other specified methods that could be considered reasonable, assuming that previously mentioned methods could not be applied.

Selection of the most appropriate method is based on the following criteria:

- Nature of controlled transactions, conducted via functional analysis
- Level of comparability between controlled and uncontrolled transactions
- Completeness and accuracy of data on controlled and uncontrolled transactions
- Reliability of assumptions
- The level of influence of unreliable data and assumptions on conducted adjustments

Republic of Srpska

The taxpayer is required to select the most appropriate method for determining that the transaction price is at arm's length.

Selection of the most appropriate method is based on the following criteria:

- Pros and cons of the chosen method
- Nature of transactions and functional analysis of the parties involved in intercompany transactions
- Availability and reliability of data for the analysis
- Level of comparability between controlled and uncontrolled transactions

The taxpayer is also allowed to use any other unspecified method that is reasonable to apply in a given circumstance,

assuming that the specified methods cannot be applied.

b) Priority and preference of methods

FBiH

Traditional transaction methods have priority for application in TP in the FBiH, with CUP defined as the most preferable method.

Republic of Srpska

TP legislation in the Republic of Srpska does not prescribe priorities in the application of methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

Foreign comparables are accepted for the purpose of a benchmark analysis, if no local comparables could be identified in the FBiH, and the Republic of Srpska.

- **Single-year vs. multiyear analysis for benchmarking**

There is a preference for multiple-year analysis in the FBiH; use of multiyear analysis is recommended in the Republic of Srpska.

- **Use of interquartile range**

Use of the interquartile range is mandatory in the FBiH, whereas its use in the Republic of Srpska is recommended.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year.

TP documentation has to be prepared annually, and there is no need to conduct a fresh benchmarking search every year, i.e., a rollforward (update of financials of comparable companies) of the previous year's benchmarking analysis could be acceptable, too. Furthermore, the financials of a taxpayer should be updated every year in accordance with the financial statements for that year.

- **Simple, weighted or pooled results**

Application of the weighted average is mandatory in the FBiH, whereas its application is recommended in the Republic of Srpska.

- **Other specific benchmarking criteria, if any**

Independence of a company is evaluated by related-party rules stating that an entity is considered a related party if it has 25% of shares or votes of the taxpayer. Also, a related party is considered to be a person closely related to the taxpayer.

Specifically, TP legislation in the FBiH prescribes that companies that incurred a loss should be excluded from a benchmarking analysis.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

FBiH

The taxpayer is exposed to the risk of penalty in the amount of BAM3,000 to BAM100,000 (approx. EUR1,500 to EUR50,000) as well as the responsible individual in the taxpayer (e.g., director, CEO or general manager) is exposed to the risk of penalty in the amount of BAM2,500 to BAM30,000 (approx. EUR1,250 to EUR15,000) in case of not possessing the required TP documentation in accordance with the CIT Law (Article 58, paragraph 2 point j).

RS

The taxpayer is exposed to the risk of penalty in the amount of BAM 20,000 to BAM 60,000 (approx. EUR 10,000 to EUR 30,000) as well as the responsible individual in the taxpayer (e.g., director, CEO or general manager) is exposed to the risk of penalty in the amount of BAM5,000 to BAM15,000 (approx. EUR2,500 to EUR7,500) in case of not possessing TP documentation that contains sufficient information to determine arm's-length nature of transactions in accordance with the CIT Law (Article 58, paragraph 1 point 2).

- **Consequences of failure to submit, late submission or incorrect disclosures**

FBiH

The taxpayer is obligated to possess a TP report at the time of submission of the CIT return. Penalties in the amount of BAM3,000 to BAM100,000 (approx. EUR1,500 to EUR50,000) could be imposed if the taxpayer doesn't possess the TP report on the due date of the CIT return. Additionally, penalties in the amount of BAM2,500 to BAM10,000 (approx. EUR1,250 to EUR5,000) could be imposed on a responsible person in the company for the previously mentioned.

Republic of Srpska

The range of penalties for eventual non-compliance (i.e., not having a prepared TP report on the day of submission of the annual CIT return or missing the deadline for submitting TP documentation after receiving a request from the relevant tax authorities) is between approximately EUR10,000 and EUR30,000 for the legal entity. And it's between approximately EUR2,500 and EUR7,500 for the responsible individual in the legal entity.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In addition to above-mentioned penalties, the possible adjustment of taxable income on a TP basis may result in increased CIT liability and penalty interest payments for late tax payments.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Penalties would only be assessed in case the TP documentation for the relevant tax period is not prepared. It is possible that the competent authorities dispute the information presented in the TP documentation due to the non-contemporaneous nature of said TP documentation. In that case, the taxpayer could be liable for additional CIT liability payment and related penalty interest.

- **Is interest charged on penalties or payable on a refund?**

FBiH

Legislation in the FBiH prescribes that the interest is charged at a daily rate of 0.04%.

Republic of Srpska

Legislation in the Republic of Srpska prescribes that the interest is charged at a daily rate of 0.03%.

Please note that no interest is generally not payable on refund of tax liabilities.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The general statute-of-limitations period of five years for taxes in the FBiH, and the Republic of Srpska, can be applied to TP assessments.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing -related audits (high/medium/low)**

The likelihood may be considered to be medium, although audits by tax authorities are not conducted regularly, and audited periods are not considered irrevocably closed. Typically, audits take place only once every three to five years and they cover all taxes. TP is likely to be within the scope of most tax audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It's medium at the moment and the tax authorities have a limited level of sophistication in TP methodology, given the lack of practice, but they have raised this question in certain previous situations.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium – refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Advance rulings and APAs are not available in the FBiH or the Republic of Srpska.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is applicable through double tax treaties. There is no elaborate practice in FBiH or the Republic of Srpska regarding MAP.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

A thin-capitalization rule applies in the FBiH, under which interest expense relating to debt in excess of a 4:1 debt-to-equity ratio is non deductible.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Botswana Unified Revenue Service (BURS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Income Tax (Transfer Pricing) Regulations, 2019.

- **Section reference from local regulation**

Section 36A of the Income Tax (Amendment) Act, 2018, comes into effect on 1 July 2019.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Botswana is not a member of OECD. However, the OECD Guidelines are a relevant source of interpretation for the regulations.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  The coverage provided is only in terms of the local file and master file. There is no requirement for CbCR.

- Effective or expected commencement date

  Effective from 1 July 2019.

- Material differences from OECD report template or format

  No material difference.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Botswana joined the OECD Base Erosion and Profit Shifting Inclusive Framework in June 2017.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

There is no guideline provided yet.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

No additional guidelines outside the regulations and the significance of the OECD Guidelines in interpreting these regulations have been provided.

The local file should be prepared contemporaneously as it is to be filed together with the tax return on the prescribed return-filing date. The equivalent of the master file is only submitted to the tax authority upon request. Such request will be premised on the fact that the value of the controlled transactions will have exceeded BWP5 million.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Documentation is required where the value of the intercompany transactions exceeds BWP5 million, provided there is no artificial splitting of transactions.

- **Master File**

The detailed group information (master file) will be required from only those taxpayers whose transactions with connected persons exceed BWP5 million.

- **Local File**

Documentation is required where the value of the intercompany transactions exceeds BWP5 million, provided there is no artificial splitting of transactions.

- **CbCR**

There is no requirement to prepare a CbCR.

- **Economic analysis**

There is no materiality threshold for preparing an economic analysis.

c) Specific requirements

- **Treatment of domestic transactions**

For domestic transactions, the regulations have been limited only to transactions relating to an International Financial Services Center (IFSC) company.

- **Local language documentation requirement**

All transfer pricing documentation sent to the tax administration is to be drafted in Setswana or English.

- **Safe harbor availability, including financial transactions, if applicable**

There are no safe harbor rules.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no transfer pricing-specific return. The local file should be filed as an attachment to the corporate income tax return.

- **Related-party disclosures along with corporate income tax return**

Filed as attachments to the corporate income tax return.

- **Related-party disclosures in financial statement and annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

There is no requirement for CbCR.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Four months after the end of taxpayer's financial year.

- **Other transfer pricing disclosures and return**

None.

- **Master File**

The master file will be filed on notification from the tax authority, and the due date will be stated in the notice.

- **CbCR preparation and submission**

There is no CbCR, hence no notification requirement.

- **CbCR notification**

There is no CbCR, hence no notification requirement.

b) Transfer pricing documentation/Local File preparation deadline

The local file should be prepared before filing the tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

The local file should be filed together with the tax return on the prescribed return filing date, i.e., four months after the end of the fiscal year.

- **Time period or deadline for submission on tax authority request**

It will be specified in the tax authority notice.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

For the purposes of determining the arm's-length price, only five methods have been approved. These and their corresponding financial indicators are shown below:

- Traditional methods:
  - Comparable uncontrolled profit (CUP) method: price
  - Cost-plus method (CPM): markup on costs
  - Resale-price method (RPM): resale margin
- Transactional methods:
  - Transactional net margin method (TNMM): net profit margin
  - Transactional profit split method (PSM): operating profit and loss split

- **Domestic transactions**

For the purposes of determining the arm's-length price, only five methods have been approved. These and their corresponding financial indicators are shown below:

- Traditional methods:
  - Comparable uncontrolled profit (CUP) method: price
  - Cost-plus method (CPM): markup on costs
  - Resale-price method (RPM): resale margin
- Transactional methods:
  - Transactional net margin method (TNMM): net profit margin
  - Transactional profit split method (PSM): operating profit and loss split

b) Priority and preference of methods

The regulations provide that, where possible, the CUP is to be the default transfer pricing method. Where both the traditional and the transactional methods can be equally applied, the traditional methods are to be used. Furthermore, the taxpayer has been allowed to use any other method outside the approved methods provided the Commissioner General (CG) is satisfied that the transfer pricing method used is consistent with the regulations and none of the five approved methods can be reasonably applied.

8. Benchmarking requirements

- **Local vs. regional comparables**

The tax authority will consider comparables from the same geographic market as the controlled transaction. Where such information is not available, the tax authority may accept information from any other geographic market.

- **Single-year vs. multiyear analysis**

It is not mandatory. However, where used, the law requires that the taxpayer justifies the use of the multiyear data.

- **Use of interquartile range**

The regulations provide for the use of the full range and not interquartile.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The law provides for analysis for each tax year.

- **Simple, weighted or pooled results**

There is no provision for the use of averages.

- **Other specific benchmarking criteria, if any**

None.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

A penalty not exceeding BWP500,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

A penalty equal to the greater of 200% of the amount of tax that would have been payable had the transaction been conducted at arm's length or a fine of BWP10,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

A penalty equal to the greater of 200% of the amount of tax that would have been payable had the transaction been conducted at arm's length or a fine of BWP10,000.

- **Is interest charged on penalties or payable on a refund?**

There is no guideline provided yet.

b) Penalty relief

Up to 50% penalty relief for failing to furnish BURS with transfer pricing documentation is applicable.

10. Statute of limitations on transfer pricing assessments

There is no guideline provided yet. However, the general statute of limitation is eight years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny or related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be low based on the current general anti-avoidance audits.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be low based on the current general anti-avoidance audits.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Based on prior BURS audit activity, related-party transactions are more likely to be auditeds. Mining, capital projects and financial services are the industries most likely to undergo audits.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Taxpayers may apply to the CG to enter into an APA, and the terms and conditions of entering into an APA have not been prescribed.

- **Tenure**

There is no guideline provided yet.

- **Rollback provisions**

There is no guideline provided yet.

- **MAP opportunities**

It is available in terms of the relevant double tax treaty.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules can be found in the Income Tax Act, but only in relation to mining companies and IFSC companies.

Net interest expense for all entities is limited to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA). Any excess net interest expense will be carried forward for 10 years for mining entities and three years for all other taxpayers.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Federal Revenue Department (*Receita Federal do Brasil* – RFB)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Law 9.430/1996 was amended by Law 12.715/2012.

Law 12.766/2012 introduced further changes to the Brazilian TP rules for financial transactions with related parties.

Normative Instruction (IN RFB 1.312/12) gives detailed regulations about the local TP rules – amended by Normative Instruction RFB 1.870/19.

Normative Ruling 1,037/10, which lists the countries and jurisdictions deemed to be low-tax jurisdictions or favored tax regimes for purposes of the transfer pricing rules. This list, which has been amended several times over the past few years, was lastly modified by Normative Ruling 1,896/19, issued on 27 June 2019.

Normative Rulings 602/05, 1,124/11, 1,547/15 and 1,623/16; Declaratory Act 37/2002; and Ordinances 222/08, 436/05, 425/06, 329/07, 310/08, 04/11 and 563/11.

- **Section reference from local regulation**

The terms "related party" and "associate enterprise" are defined in Article 2 of IN RFB 1.312/12.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Brazil is not a member of the OECD.

Brazil's TP rules deviate significantly from international standards, including the OECD Guidelines, as there are no profit-based methods, and the concept of a functional and risk analysis is not included in the local TP rules.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Brazil has implemented BEPS Action 13 only regarding the CbCR requirements ruled by Normative Instruction 1.681/16.

- Coverage in terms of Master File, Local File and CbCR

  CbCR is covered, but it does not cover the master file or local file.

- Effective or expected commencement date

  For the CbCR, the first covered year was the fiscal year 2016 to be filed as part of the local tax return on 31 July 2017.

- Material differences from OECD report template or format

  The local CbCR requirements are similar to those of BEPS Action 13 format for CbCR purposes.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  As previously mentioned, in Brazil, the CbCR requirements are similar to those of BEPS Action 13 format. There are no local requirements for master file and local file.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Brazil is part of G20.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, Brazil signed on 21 October 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

[1] **https://receita.economia.gov.br/**

The Brazilian TP rules are described in a specific regulation (Law 9.430/1996 and IN RFB 1.312/12 and correlated updates). The TP calculations (local TP study) should be performed every year, and the results must be filed in specific forms of the annual corporate income tax return.

It is not required to prepare the TP reports to be filed to tax authorities as in countries that follow the OECD Guidelines.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, the local branch is required to comply with the Brazilian TP rules as any other entity that has any intercompany transaction with related parties or entities located in low-tax jurisdictions.

- **Does transfer pricing documentation have to be prepared annually?**

TP calculation (local TP study) is the local requirement, and it must be prepared annually according to local jurisdiction regulations. In Brazil, the TP analysis must be prepared for all transactions.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

If the MNE has different entities in Brazil, each local entity should perform its own TP study.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The threshold is the lower of BRL2.26 billion or EUR750 million (or equivalent in Brazilian reais according to the euro FX conversion rate of 31 January 2015) in the previous year of the fiscal year under analysis.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

The Brazilian TP rules are not applicable for domestic transactions.

- **Local language documentation requirement**

Local TP study must be prepared in Portuguese with monetary figures in Brazilian reais.

- **Safe harbor availability, including financial transactions, if applicable**

Safe harbor limits are applicable only for export transactions. Exports are exempt from the application of transactional TP rules if they meet one of the following three safe harbor conditions:

  - Export net revenue does not exceed 5% of total net revenue in a calendar year.
  - Profitability in export transactions to related companies, on a three-year average, is at least 10%, and the intercompany export transactions do not exceed 20% of total net export transactions.
  - The average price of exports, per item, is at least 90% of the average domestic sales price.

- **Is aggregation or individual testing of transactions preferred for an entity**

This is not applicable.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers are expected to have the calculations and documentation necessary to support the information filed in specific TP forms as part of the annual tax return.

- **Related-party disclosures along with corporate income tax return**

The electronic income tax return (ECF) contains five specific forms that require taxpayers to disclose detailed information regarding their main intercompany transactions and the details

of the local TP calculations (Brazilian TP study).

Taxpayers need to disclose the total transaction values of the most-traded products, services or rights; the names and locations of the related trading partners; the methodology used to test each transaction; the calculated benchmark price; the average annual transfer price; and the amount of any resulting adjustment.

- **Related-party disclosures in financial statement and annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

Yes.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Last business day of July. For FY2020, the due date was postponed to the last business day of September 2021 in view of COVID-19. No announcements yet about any potential postponement in 2022.

- **Other transfer pricing disclosures and return**

Last business day of July. For FY2020, the due date was postponed to the last business day of September 2021 in view of COVID-19. No announcements yet about any potential postponement in 2022.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

Last business day of July. For FY2020, the due date was postponed to the last business day of September 2021 in view of COVID-19. No announcements yet about any potential postponement in 2022

- **CbCR notification**

Last business day of July. For FY2020, the due date was postponed to the last business day of September 2021 in view of COVID-19. No announcements yet about any potential postponement in 2022.

b) Transfer pricing documentation/Local File preparation deadline

Ideally, the TP analysis (local TP study) must be finalized before the income tax and social contribution payments are due (by the end of January of the immediately following year to the calculation period). Add-backs must be considered timely in the taxable basis and paid within the regular deadline. Fines and interests are charged in case of late payment. Details of the TP calculations should be informed in the TP forms as part of the local tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

Yes, the deadline is the last business day of July of the following year, as part of local corporate tax return.

- **Time period or deadline for submission upon tax authority request**

Taxpayers have to deliver the TP documents within 30 days upon request from the tax authorities. The taxpayer can ask for additional time depending on the volume of information requested by the Brazilian IRS.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

In view of COVID-19, the filing of the CbC notification, CbCR and TP report, which coincides with the filing of the corporate income tax return, has been postponed to the last business day of September 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

No.

b) Priority and preference of methods

There is no best or most appropriate method rule in Brazil. The local taxpayers select the TP method that results in the lowest amount of adjustment. An exception is made when it comes to goods considered as commodities. For such cases, the mandatory commodities methods (based on public quotations) must be used to test those intercompany transactions.

8. Benchmarking requirements

- **Local vs. regional comparables**

The local TP rules do not require the preparation of economic analysis using a set of comparables for the determination of arm's-length range. Therefore, the discussion on local vs. regional comparables for the application of TNMM or CPM methods is not applicable for local TP study. In Brazil, these TP methods cannot be applied to test intercompany transactions.

- **Single-year vs. multiyear analysis for benchmarking**

TP documentation in Brazil should be prepared on the basis of annual data. As an exception, the Brazilian CUP (PIC) method allows the taxpayer to consider comparable transactions of the immediately preceding calendar year for cases in which the taxpayer does not identify the minimum amount (threshold) of third-party transactions in the same calendar year that the intercompany transactions were carried out.

- **Use of interquartile range**

This is not applicable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

As Brazilian rules deviate significantly from the international TP framework, the study is required to occur every calendar year and should be based on information available for the calendar year under analysis.

- **Simple, weighted or pooled results**

There is a preference for weighted average for determining benchmark prices.

- **Other specific benchmarking criteria, if any**

For commodities, the taxpayer must use public prices as comparable (market exchange or publications).

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The regulation imposes potentially heavy penalties for non-compliance with the CbCR rules. Transactions and financial operations that are not fully reported in the CbCR give rise to a penalty of up to 3% of the underlying value of the transactions. Further, BRL500 to BRL1,500 of penalty, per month, will be imposed for failing to file or for not answering the tax authority's request and clarification.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The regulation imposes potentially heavy penalties for non-compliance with the CbCR rules. Transactions and financial operations that are not fully reported in the CbCR give rise to a penalty of up to 3% of the underlying value of the transactions. Further, BRL500 to BRL1,500 of penalty, per month, will be imposed for failing to file or for not answering the tax authority's request and clarification.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

As there are no special penalties for TP, general tax penalties are applicable. The amount of the penalty may be up to 20% of the omitted tax (or 0.33% per day) if the taxpayer pays the related taxes late, but before an audit. Meanwhile, if the tax authority assesses the taxpayer as part of a TP audit, the applicable penalties may range from 75% to 225% of the omitted taxes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

As there are no special penalties for TP, general tax penalties are applicable. The amount of the penalty may be up to 20% of the omitted tax (or 0.33% per day) if the taxpayer pays the related taxes late, but before an audit. Meanwhile, if the tax authority assesses the taxpayer as part of a TP audit, the applicable penalties may range from 75% to 225% of the omitted taxes.

- **Is interest charged on penalties or payable on a refund?**

Payables and refunds are updated by the official Brazilian interest rate (*sistema especial de liquidacao e custodia* – SELIC), when applicable.

b) Penalty relief

Currently, no penalty relief is available. The taxpayer may appeal to the administrative court. If there is no resolution at this level, the dispute goes to other courts. Where a taxpayer voluntarily makes a tax payment, penalties may be waived, even in case of late payment, to the extent no audit has been started by the tax authorities.

10. Statute of limitations on transfer pricing assessments

A general statute of limitations applies, which is five years from the first day of the following fiscal year. In the case of filing amended tax returns, the statute starts with the filing of the latest amended return.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of TP being reviewed as part of an audit is characterized as medium, because the tax authorities have access to a wide range of accounting and fiscal information in electronic databases that makes it easier for them to monitor any discrepancy of tax information.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium to high. Since the companies have to submit the income tax return in electronic format, the tax authorities have increased the number of fiscal assessments.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. Considering that the Brazilian methodology is different from the OECD's, it is very common to have TP adjustments in Brazil, which must be added in the corporate income tax base.

- **Specific transactions, industries and situations, if any, more likely to be audited**

For certain industries – such as automotive, pharmaceutical, chemical, and oil and gas – and intragroup services into Brazil (services and cost allocations), the likelihood of a TP audit may be considered to be high. The risk of a TP audit may be considered to be high if the tax authorities identify inconsistencies in the information filed electronically (e.g., customs declaration, financial statements and other filing requirements, such as SISCOMEX (*Sistema Integrado de Comércio Exterior*)).

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The RFB has issued Normative Instruction 1,846/18, which regulates the MAP in Brazil in accordance with the minimum standards of BEPS Action 14.

Following are the phases of the procedure:

- Unilateral MAP: The RFB receives and analyzes the request presented by the taxpayer related to the MAP. If RFB accepts the proposal and ends the double taxation, the MAP process is concluded. If RFB disagrees with the proposal, the bilateral MAP is activated.
- Bilateral MAP: RFB will proceed with discussions with the other tax authority, with a view to investigate and end the alleged double taxation.

APA is not available in the Brazilian legislation.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

The process is available under a tax treaty entered into by Brazil and another jurisdiction, so that the treaty partners can resolve cases involving their taxpayers where there have been disputes concerning cross-border transactions in their countries.

Who can apply for a MAP?

Any Brazilian taxpayer that considers that a case of double taxation occurred or is imminent, derived from TP adjustments, royalty limitations or WHT, can apply.

What taxes are covered?

The following Brazilian corporate income taxes are covered:

- Income tax (*Imposto de Renda da Pessoa Jurídica* – IRPJ)
- Social contribution on net revenue (*Contribuição Social sobre o Lucro Líquido* – CSLL)

Any other income tax or taxes of the same nature in the other jurisdiction are also covered.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under the thin-capitalization rules, interest paid to related parties that are not located in a tax-haven jurisdiction and that do not benefit from a preferential tax regime may be deducted on an accrual basis for corporate income tax purposes, only if:

- The expenses are necessary for the company's activities.
- Both of the following thresholds are met:
  - The related-party debt-to-equity ratio does not exceed 2:1, calculated based on the proportion of related-party debt-to-direct-equity investment made by related parties.
  - The overall debt-to-equity ratio does not exceed 2:1, calculated based on the proportion of total debt-to-total-direct-equity investment made by related parties.

Interest paid to an entity or individual located in a tax haven or that benefits from a preferential tax regime (regardless of whether the parties are related) may be deducted only if the expenses:

- Are necessary for the company's activities.
- (Both of the following thresholds are met:
  - The amount of the Brazilian entity's indebtedness to the tax haven or preferential tax regime resident does not exceed 30% of the net equity of the Brazilian entity.
  - The Brazilian entity's total indebtedness to all entities located in a tax-haven jurisdiction or benefiting from a preferential tax regime does not exceed 30% of the net equity of the Brazilian entity.

Excess interest is treated as a non deductible expense for IRPJ and CSLL purposes. The TP rules affecting cross-border loans remain in effect, as do the general requirements for deductibility.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Revenue Agency (NRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Following are the TP regulations or rulings in the jurisdiction:

- Corporate Income Tax Act (CITA), promulgated in *State Gazette* (SG) Issue 105, 22 December 2006, most recent amendments promulgated in SG Issue 8, 28 January 2022.
- Tax and Social Insurance Procedure Code (TSIPC), promulgated in SG Issue 105, 29 December 2005, most recent amendments promulgated in SG Issue 105, 11 December 2020.
- Ordinance N 9, 14 August 2006, about methods for determining market prices (Ordinance N 9), promulgated in SG Issue 70, 29 August 2006.
- Double taxation treaties enacted by Bulgaria.

- **Section reference from local regulation**

According to Article 15 of the CITA, when related parties enter into transactions whose commercial and financial terms differ from those of unrelated-party transactions, resulting in a different taxable base than what would have been achieved in unrelated-party transactions, the tax authorities will adjust the taxable base accordingly.

Specifically, under Article 16 of the CITA, when one or more transactions, including those between unrelated parties, have been concluded under terms in which the fulfillment leads to lower or no taxation, the taxable base will be determined without taking notice of these transactions, certain terms or their legal forms. Instead, the taxable amount that will be considered would be obtained in a market-customary way of the relevant type at market prices and is intended to achieve the same economic result without leading to lower or no tax.

For the definition of "related parties," the CITA refers to the provisions of the TSIPC.

The methods applied in determining the arm's-length prices have been introduced by the TSIPC and Ordinance N 9.

The NRA released its *Manual on Transfer Pricing Audits* (the Manual) in 2008. By introducing a chapter on TP documentation requirements in the Manual in 2010, the NRA approved the documents that TP auditors would require during their investigations.

The Manual is not technically part of the law; however, it is generally followed by both taxpayers and the tax administration. In this respect, it is in the taxpayers' interest to comply with the Manual because it defines what the NRA usually requires during a TP audit. Compliance with the Manual is expected to significantly narrow the scope of disputes over TP matters during tax audits.

In mid-2018, new legislation was developed, making TP documentation mandatory for related-party transactions that take place after 1 January 2020. The new rules were introduced in the TSIPC, promulgated in SG Issue 64, 13 August 2019 and Issue 96, 6 December 2019. The mandatory TP rules will apply to local taxpayers, which are subject to a corporate tax levy, are involved in cross-border dealings with related parties and meet certain criteria that are similar to the criteria for a large enterprise set in the Accountancy Act.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Bulgaria is not a member of the OECD. In January 2022, however, the OECD Council decided to open accession discussions with Bulgaria to OECD membership.

Although there is no specific reference in the Bulgarian TP legislation and the relevant soft law, the NRA generally follows OECD Guidelines. However, there are certain differences because the 2010 and 2017 editions of the OECD Guidelines have not been incorporated in local TP legislation and in the Manual. For example, domestic regulations still provide for the hierarchy of methods that was abolished in the OECD Guidelines. Furthermore, Bulgarian TP rules do not explicitly deal with business restructuring.

[1] **http://www.minfin.bg/en/page/174**

The Manual is expected to be aligned with the most recent edition of the OECD Guidelines in the near future.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Bulgaria has adopted BEPS Action 13 for TP documentation in the local regulations in terms of CbCR, as well as for overall TP documentation starting January 2020.

- Coverage in terms of Master File, Local File and CbCR

  Yes, master file and local file are covered as per new regulations effective from January 2020.

- Effective or expected commencement date

  The newly adopted law is applicable for the fiscal years beginning on or after 1 January 2020.

- Material differences from OECD report template or format

  No, there are no material differences. However, there are some local specifics that need to be considered.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  The penalties in case no TP documentation is prepared and presented when requested under the current legislation are insignificant. Generally, master files and local files prepared in the BEPS Action 13 format report should be sufficient to show the arm's-length nature of the related-party transactions reviewed.

  However, from January 2020 onward, failure to present the local file may trigger penalties ranging up to 0.5% of the volume of the related-party transactions that should have been documented. Failure to submit the master file may trigger penalties ranging from BGN5,000 (or approximately EUR2,500) to BGN10,000 (or approximately (EUR5,000).

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 17 November 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Mandatory TP rules effective as of 1 January 2020.

Yes, there are mandatory TP documentation requirements that are generally in line with OECD's BEPS Action 13.

The 2019 amendments to the TSIPC introduced obligatory TP documentation preparation requirements. Under the new Bulgarian TP legislation, beginning 1 January 2020, large taxpayers will be obliged to prepare TP documentation on a yearly basis. The taxpayers will be required to have the TP documentation with the prescribed content within the deadline set if at least two of the following three thresholds mentioned below have been met:

- Their annual net sales for the preceding year did not exceed BGN76 million (or approximately EUR38 million).
- Their assets' net book value did not exceed BGN38 million (or approximately EUR19 million) as of 31 December of the prior year.
- Their average employees' count over the reporting period did not exceed 250 people.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, the provisions governing the preparation of the TP documentation also apply to the transactions of the Bulgarian branches of foreign entities.

- **Does transfer pricing documentation have to be prepared annually?**

Under the newly introduced legislation, while the master file and the local file need to be updated each year, the applicable benchmarks might be updated every three years (if there have not been any significant changes in the business environment and rollforward is performed). Additionally, financial data and the respective transaction data, which serve as a basis for comparison of the transactions under review, need to be updated annually.

- **For an MNE with multiple entities in the jurisdiction, is it**

required to have stand-alone transfer pricing reports for each entity?

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Mandatory TP rules effective as of 1 January 2020.

Under the newly introduced legislation, the preparation of TP documentation with specific content within a fixed time limit is mandatory for local taxpayers, which are subject to a corporate tax levy and could generally be classified as large enterprises. To avoid falling within the scope of the new obligation, a local taxpayer should not meet more than one of the following three thresholds:

- Assets with a balance sheet value not exceeding BGN38 million (or approximately EUR19 million) as of 31 December of the previous year
- Net sale revenues of less than BGN76 million (or approximately EUR38 million) as of 31 December of the previous year
- Average number of employees over the reporting period being below 250 people

The local file should analyze and document related-party dealings whose value over the reporting period exceeds the following thresholds:

- BGN400,000 (or approximately EUR205,000) applicable to controlled transactions in goods
- BGN200,000 (or approximately EUR102,000) applicable to controlled transactions in services
- BGN200,000 applicable to transactions related to intangibles
- BGN1 million (or approximately EUR500,000) applicable to the value of the loan principal
- BGN50,000 (or approximately EUR25,000) applicable to interest rate accrued

- **Master File**

Mandatory TP rules effective as of 1 January 2020.

Under the newly adopted Bulgarian TP legislation, the large taxpayers (as defined in the TSIPC) that have dealings with related parties from abroad will be obligated to prepare TP documentation consisting of local file and master file. The master file should be available by 30 June of the year after. However, no requirement for the submission of the TP documentation is proposed, i.e., the previous requirement would remain and should be submitted upon request by the NRA.

For the most part, Bulgarian TP documentation requirements are compliant with OECD Guidelines and follow the BEPS Action 13 framework. However, some local specifics must be considered, in order to avoid further questioning from the tax authorities or even imposing penalties.

Failure to submit the master file may trigger penalties ranging from BGN5,000 (or approximately EUR2,500) to BGN10,000 (or approximately EUR5,000).

- **Local File**

Under the newly adopted Bulgarian TP legislation, large taxpayers (as defined in the TSIPC) that have dealings with related parties from abroad will be obligated to prepare TP documentation consisting of local file and master file. The local TP file should be prepared by 30 June of the following year.

For the most part, Bulgarian TP documentation requirements are compliant with OECD Guidelines and follow the BEPS Action 13 framework. However, some local specifics must be considered, in order to avoid further questioning from the tax authorities or even imposing penalties.

Failure to submit the local file upon request may trigger penalties up to 0.5% of the volume of the related-party transactions that should have been documented.

- **CbCR**

This is applicable to Bulgarian constituent entities with consolidated revenue exceeding BGN1,467 million (EUR750 million).

- **Economic analysis**

Under the newly adopted rules, economic analysis comprising description of the selected TP method and the reasoning behind that choice, selection of the tested party, description of the methodology for selection of comparable uncontrolled transactions or companies, analysis of the financial data about the comparables and the financial data of the tested party, etc., is a mandatory element of the TP documentation.

c) Specific requirements

- **Treatment of domestic transactions**

Bulgarian legislation and the relevant soft law do not distinguish between domestic and cross-border related-party transactions. The same general rules for evidencing their arm's-length nature apply to them. However, if the entity has related-party dealings only within the territory of the jurisdiction, it has no obligation to prepare the mandatory TP documentation.

- **Local language documentation requirement**

Based on TSIPC provisions, any documents presented to the tax authorities should be prepared in Bulgarian language or translated by a sworn translator. In this respect, the TP documentation needs to be submitted in the local language. The group's master file may be prepared in another language. However, the taxpayer should be able to provide a translated version of the document (or the parts requested by the tax authorities) performed by a sworn translator. In case the translated documentation is not provided by the deadline, the tax authorities may translate the document at the expense of the taxpayer.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not applicable. Individual testing of transactions is preferred. However, aggregation is also allowed if individual testing cannot be performed.

- **Any other disclosure or compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

In Bulgaria, there is no TP-specific return.

- **Related-party disclosures along with corporate income tax return**

Taxpayers are required to submit, as part of their annual corporate income tax package, summarized information about transactions with domestic and non-resident related parties as well as with offshore companies. This includes a statement of the total annual income and expenses arising from controlled dealings as well as balances (i.e., payables and receivables) outstanding at the end of the year.

Furthermore, taxpayers are required by the National Accounting Standards (and the International Financial Reporting Standards) to disclose, in their financial statements, relationships between related parties, regardless of whether there have been transactions between them, as well as the related-party transactions.

- **Related-party disclosures in financial statement and annual report**

Further to the provisions of the National Accounting Standards (and the International Financial Reporting Standards), taxpayers are required to disclose, in their financial statements, relationships between related parties, regardless of whether there have been transactions between them, as well as the related-party transactions.

- **CbCR notification included in the statutory tax return**

There is none specified.

- **Other information or documents to be filed**

The entities part of an MNE group that have an obligation to prepare a CbCR should file a notification to the tax authorities stating which entity in the group submits the CbCR returns.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 30 June of the following year. Therefore, the CIT return for the financial year 2021 should be filed by 30 June 2022.

- **Other transfer pricing disclosures and return**

The filing deadline is 30 June of the following year. Therefore, the CIT return and the relevant disclosures related to TP for the financial year 2021 should be filed by 30 June 2022.

- **Master File**

The due date for the master file is within 12 months after this period.

- **CbCR preparation and submission**

The CbCR should be submitted within 12 months of the end of the fiscal year for the MNE. Thus, CbCR of a multinational

group of entities with a fiscal year that ended on 31 December 2019 should be submitted by 31 December 2020.

- **CbCR notification**

The filing deadline is the end of the respective fiscal year, i.e., a notification for the fiscal year ended on 31 December 2019 should be submitted by 31 December 2019.

b) Transfer pricing documentation/Local File preparation deadline

Current guidelines

There is no statutory deadline or recommendation for the preparation of TP documentation. As a good practice, to avoid TP adjustments, it is recommended that the file be completed by the time the corporate income tax return for the respective year should be submitted.

Adopted amendments

Under the adopted TP legislation, the local TP file should be prepared by 30 June of the following year, while the master file should be available by 30 June of the year after.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

There is no statutory deadline for the submission of TP documentation. It is not required to be provided along with the tax return. It only needs to be presented upon request by the tax authorities.

- **Time period or deadline for submission on tax authority request**

TP documentation should usually be submitted within 7 to 14 days upon request. However, the taxpayer can request an extension of up to three months.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

Current guidelines

Under Bulgarian TP legislation, one of the following methods should be applied to determine the market price:

- CUP
- Resale price
- Cost plus
- Profit split
- TNMM

The hierarchy of methods' criterion should be used for the application of TP methods.

The TSIPC introduced the methods applicable for determining the arm's-length price, while Ordinance N 9 regulates the order of consideration, and applying the traditional TP methods is preferred. Moreover, the CUP method is considered the most direct and reliable measure of an arm's-length price for controlled transactions. The TNMM and profit-split methods are used only in cases in which applying the traditional methods produces an unsatisfactory result.

Adopted amendments

Under the adopted amendments, the hierarchy of methods is accepted.

8. Benchmarking requirements

- **Local vs. regional comparables**

In terms of the procedural search approach to conduct comparable searches, the Manual states that comparable data could be obtained both from internal and external transactions and the source database should be publicly available. In addition, according to the Manual, exemplary sources of comparable transactions data could be the National Statistical Institute, local industry associations, Amadeus, Orbis and others.

It is the NRA TP auditors' recent practice to challenge

benchmarking analysis for the lack of Bulgarian data and analysis of the local market players. In such cases, the revenue authority performs its own benchmark analysis and test of the profitability of the local entities on the basis of local business intelligence databases. In this respect, it is highly recommended that the benchmark analysis contained in the TP documentation of the taxpayer reviews Bulgarian comparables and considers them with priority.

- **Single-year vs. multiyear analysis for benchmarking**

There is no specific guidance in legislation or the Manual; however, as a jurisdiction practice, multiple-year testing is used (usually three years).

- **Use of interquartile range**

Local TP legislation requires the use of interquartile ranges in case the TNMM method is applied.

- **Fresh benchmarking searches every year vs. rollforwards and update of the financials**

Current guidelines

A fresh benchmarking search is to be conducted every year. According to the Manual, the TP documentation should be prepared for the fiscal period when the analyzed intercompany transactions were concluded. Any TP documentation prepared for the preceding fiscal years may be used for the following years, provided no changes in the organization and functions of the company or changes of any other factors that may affect the pricing of the controlled transactions are present. The actualization of the TP documentation should be made in relation to these changes for the respective year.

Adopted amendments

Under the adopted amendments, TP documentation should be updated annually. However, benchmarks may be updated once every three years in case no changes in the organization and functions of the company or changes of any other factors that may affect the pricing of the controlled transactions are present. Additionally, financial data and the respective transaction data, which serve as a basis for comparison of the transactions under review, need to be updated annually.

- **Simple, weighted or pooled results**

There is none specified.

- **Other specific benchmarking criteria, if any**

No specific benchmarking criteria are contained in the local legislation and the relevant soft law.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable. For presenting incorrect or incomplete data in the transfer pricing documentation, the obligated entity can be imposed with a fine between BGN1,500 and BGN5,000.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Current guidelines

If the taxpayer fails to provide documentation when requested by the tax authorities, a fine for not cooperating could be imposed. However, this fine is insignificant (i.e., in the range of BGN250 to BGN500, or approximately EUR128 to EUR256). Therefore, the main consequence for the entity would be the adjustment of its taxable profit if the tax auditors conclude that the price applied in controlled transactions is not at arm's length.

Furthermore, a taxable person involved in a "hidden profit distribution" would be subject to an administrative sanction amounting to 20% of the expense and classified as a hidden profit distribution (unless voluntarily disclosed to the tax authorities). Both the expense classified as hidden profit distribution and the sanction would be non deductible for corporate income tax purposes. In addition, the expense would be considered a deemed dividend and, thus, subject to a 5% withholding tax.

Business expenses may be classified as a hidden profit distribution if an entity has:

- **Accrued, paid or distributed to the benefit of the entity's shareholders or their related parties' amounts that are not business-related or are in excess of market-price levels**
- **Accrued interest costs on debt financing if at least three of the following criteria are met:**
  - The loan principal exceeds the equity of the borrower as of 31 December of the preceding year.
  - The repayment of the principal or the interest on the loan is not limited by a fixed time period.
  - The loan repayment or interest payment depends on whether the borrower ended on a profit position.
  - The repayment of the loan depends on the satisfaction of other creditors' claims or on payment of dividends.

Adopted amendments

In addition to the penalties discussed above, under the adopted amendments, failure to submit the local file may trigger penalties up to 0.5% of the volume of the related-party transactions that should have been documented. Failure to submit the master file may trigger penalties ranging from BGN5,000 (approximately EUR2,500) to BGN10,000 (approximately EUR5,000).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the section above.

- **Is interest charged on penalties or payable on a refund?**

On refund, default interest (i.e., 10% plus the base interest of the Bulgarian National Bank) could be claimed on the amounts unduly paid by a taxpayer.

b) Penalty relief

Voluntary disclosure of hidden profit distribution relieves taxpayers of the administrative penalty, which is 20% of the hidden profit. This allows taxpayers to self-adjust any overpriced group transactions with no threat of penalties.

If, in the course of a tax audit, the tax auditors challenge the TP methodology and propose an adjustment, the local taxpayer may file an objection along with any relevant evidence. Then, based on all documents collected in the course of the audit, the tax auditors will come up with a final assessment, which, if not in the taxpayer's favor, could be appealed before the Appeals Directorate of the NRA, which may confirm or cancel the assessment or assign a new audit. In case the assessment is confirmed by the Appeals Directorate, the taxpayer may initiate a court appeal. Bulgaria is also a party to the EU Arbitration Convention.

10. Statute of limitations on transfer pricing assessments

In Bulgaria, documentation may be required for any open tax year as well as for tax obligations not covered by the statute-of-limitations period. As a general rule, the statute-of-limitations period for corporate income tax is five years from the year following the year of expiration of the statutory term granted for filing corporate income tax returns. The Bulgarian statutory term for both filing the annual corporate income tax return and remittance of the amount due is 30 June of the following year. For example, the financial year 2013 is open for tax audits until the end of the financial year 2019 because the corporate income tax return for the financial year 2013 should have been filed by 30 June 2014.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny or related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, the likelihood of an annual tax audit is characterized as low. The likelihood that TP documentation will be reviewed as part of that audit is characterized as high because of the high probability that the tax authorities would request to analyze all related-party transactions. Normally, a taxpayer is audited for its corporate tax compliance at least once every five periods.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the TP methodology will be challenged is characterized as medium. The revenue authorities may scrutinize cases where the local entity has sizable operations yet is earning limited margins or generating losses. Routine service arrangements are normally not challenged as long as the actual rendering of the service is evidenced.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high when the taxpayer is not able to provide reasonable justification of its intercompany pricing arrangement.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Currently, the NRA is not challenging the TP methodologies of particular industries as riskier than others. Based on our observations, local affiliates of multinationals that report recurring losses or low profitability in high-margin sectors may be scoped in for tax audits focused on TP. Large employers that participate in group stock incentive plans have recently

been subject to audits on their pricing policies.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No binding ruling or APA opportunities are currently applicable.

Taxpayers are allowed to file a request for a written opinion from the NRA or the Ministry of Finance on the interpretation and application of the tax law with regard to a specific tax issue. However, the value of the position of the tax authorities on a particular tax aspect is very limited because the tax authorities refuse to provide any opinion about transactions that have not yet been structured and documented.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Yes.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

All financing (interest) expenses may be subject to the Bulgarian thin-capitalization rules (if certain conditions are met). However, these rules do not apply:

- If the interest is not tax deductible on other grounds (e.g., non-compliance with the arm's-length principle)
- In case of penalty interest and interest for late payment
- If the interest expenses are capitalized in the value of an asset
- In case the interest expense is related to financial lease or a bank loan, unless guaranteed or provided by related party

As of January 2020, if a loan is guaranteed by a Bulgarian entity and its related party at the same time, then the thin-capitalization rules will not apply to the part of the interest on the loan equal to the ratio between the market value of the guarantee provided by the Bulgarian taxpayer and the amount of the financing.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General for Taxation (*Direction Générale des Impôts* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Articles 66, 99, 588-8°, 616-1°, 618-2 of the General Tax Code, since 2018.

Articles 98, 99 and 757 of General Tax Code (Fiscal Law 2022): Article 98 of General Tax Code (Finance Bill 2022) requires companies to file a transfer pricing return. This provision of the law is applicable since 1 January 2022.

The content of the transfer pricing return is expected to be specified by the Ministry of Finances.

Article 99 of General Tax Code provides new conditions related to the transfer pricing documentation obligations.

Article 757 of General Tax Code (Finance Bill 2022) provides penalties about transfer pricing return and updated penalties about transfer pricing documentation.

Decree n°2018-211 MINEFID/SG/DGI setting out the conditions for implementing the transfer pricing documentation requirement.

- **Section reference from local regulation**

General Tax Code: Articles 66, 99, 588-8°, 616-1°, 618-2.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Burkina Faso is not a member of the OECD. However, as a member of the Inclusive Framework on BEPS, it has agreed to implement a minimum BEPS standard.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  BEPS Action 13 provisions are not applicable.

- Effective or expected commencement date

  FY2018.

- Material differences from OECD report template or format

  A BEPS Action 13 format report is typically sufficient to achieve penalty protection.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, it has to be prepared contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, if the companies operate in Burkina Faso, they have to comply.

- **Should transfer pricing documentation be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, in Burkina Faso, tax is assessed on each associated company result, not on a consolidated revenue. Groups are not treated as taxpayers or fiscal entities; each company must file a separate tax return.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The documentation obligation applies to companies operating in Burkina Faso:

- This obligation applies to companies operating in Burkina Faso:
  a. Which have annual sales excluding taxes or gross assets equal to or greater than XOF1 billion (CFA francs)
  b. Which, at the end of the fiscal year, directly or indirectly hold a majority of the share capital or voting rights of a company operating in Burkina Faso
  c. Who, at the end of the fiscal year, directly or indirectly, hold a majority of the share capital or voting rights of an enterprise operating in or outside Burkina Faso that meets the condition mentioned in paragraph (a) of this section
  d. A majority of share capital or voting rights are held, at the close of the fiscal year, directly or indirectly, by a company operating in Burkina Faso or outside Burkina Faso that meets the condition indicated in above paragraph (a)

- **Master File**

This is not applicable.

- **Local File**

There is no specific materiality limit for transactions. The conditions mentioned above must be met (transfer pricing documentation).

- **CbCR**

This is not applicable.

- **Economic analysis**

There is no materiality limit or threshold.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions must be documented. It is expected of domestic transactions to follow arm's-length principles.

- **Local language documentation requirement**

It should be in French; English documentation is not accepted.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Any other disclosure or compliance requirement**

If, during an audit, the tax authorities have gathered elements leading to the presumption that the enterprise has made a profit transfer and has not fulfilled its documentary obligation, they may require from the enterprise operating in Burkina Faso any information or document on the relations it has with non resident enterprises and on the method of determining the prices of the transactions.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing is preferred.

5. Transfer pricing return and related-party disclosures

Companies with annual sales excluding taxes or gross assets equal to or greater than XOF1 billion are required to file a transfer pricing return no later than May 31 for the previous fiscal year ended December 31.

Filing of transfer pricing return is mandatory since Finance Bill 2022.

The content of the transfer pricing return is expected to be specified by the Ministry of Economy, Finance and Development (*Ministère de l'Économie, des Finances et du Développement*).

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

There is no CbCR notification requirement.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline for filing the annual financial statements is 30 April, following each fiscal year.

- **Other transfer pricing disclosures and return**

Transfer pricing return must be submitted by 31 May.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

It should be available at the time of a tax audit.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no submission deadline.

- **Time period or deadline for submission on tax authority request**

At the beginning of the tax audit and within 30 days upon official request by the auditors addressed to the audited companies.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

These OECD methods are generally accepted: CUP, resale price, cost plus, profit split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific requirement. However, local or West African comparables would be preferred.

- **Single-year vs. multiyear analysis**

There is no specific requirement.

- **Use of interquartile range**

There is no specific requirement.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement.

- **Simple, weighted or pooled results**

There is no specific requirement.

- **Other specific benchmarking criteria, if any**

There is no specific requirement.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Same as below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Transfer pricing return

Failure to submit or incomplete return will involve a fine of XOF10 million.

Transfer pricing documentation

Failure to respond or an incomplete response to the official request of the tax authorities will involve for each fiscal year audited a fine equal to 0.5% of the amount of the transactions concerned by the documents that have not been made available to the tax authorities. The amount of this fine may not be less than XOF10 million per fiscal year.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Same as above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

This is not applicable.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The limitation period is set to three years (common tax regime), added to two years in case of transfer pricing tax audit or whether the information exchange procedure has been implemented.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Medium.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

A possibility to agree with the local tax authorities is provided by law (Article 588-8). However, no further guidance is available.

- **Tenure**

The APA may cover the year in which the request was done as well as the four subsequent years.

- **Rollback provisions**

There is no guidance provided.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty to which Burkina Faso is signatory.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to Covid-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The intercompany interests are only deductible if the capital has been fully released. In any case, the maximum deductible amount cannot exceed the legal interest rate increased by two percentage points and cannot be greater than 15% of the profit before corporate income tax, and before deduction of such interest, and depreciation and provisions.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Department of Taxation (GDT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Prakas 986 – "Rules and procedures for income and expense allocation between related parties."

- **Section reference from local regulation**

Article 56 of the Law on Taxation and Section 7.3 in the Prakas on tax on profit define a related party for transfer pricing purposes.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Cambodia is not a member of the OECD; however, it follows the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The documentation requirements in Prakas 986 broadly conform to the guidance in the OECD BEPS Action 13 report on CbCR.

- Coverage in terms of Master File, Local File and CbCR

  Only local file is applicable.

- Effective or expected commencement date

  The effective date for local file is 10 October 2017.

- Material differences from OECD report template or format

  None.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, there are transfer pricing documentation rules. A transfer pricing report has to be prepared annually.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local transfer pricing rules if it has related-party transactions.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the transfer pricing documentation needs to be prepared annually, and a transfer pricing memo should also include contemporaneous benchmarking.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone transfer pricing reports if it has related-party transactions.

b) Materiality limit and thresholds

[1] https://www.tax.gov.kh/en/

- **Transfer pricing documentation**

There is none specified.

- **Master File**

There is none specified.

- **Local File**

No threshold applicable.

- **CbCR**

There is none specified.

- **Economic analysis**

Contemporaneous benchmarking is required to support the arm's-length nature of the intercompany pricing.

c) Specific requirements

- **Treatment of domestic transactions**

There is none specified.

- **Local language documentation requirement**

There is none specified, as transfer pricing documentation prepared in the English language may be submitted to the GDT.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure or compliance requirement**

Annex 1, which is the related-party disclosure form attached to the CIT return.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Annex 1, which is the related-party disclosure form attached to the CIT return.

- **Related-party disclosures along with corporate income tax return**

Yes, there is a requirement.

- **Related-party disclosures in financial statement and annual report**

Yes.

- **CbCR notification included in the statutory tax return**

None.

- **Other information or documents to be filed**

None.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Within 90 days after the end of the fiscal year-end.

- **Other transfer pricing disclosures and return**

The documentation should be filed 90 days after the end of the fiscal year-end.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

There is none specified.

b) Transfer pricing documentation/Local File preparation deadline

There is no specified deadline for the preparation of transfer pricing documentation.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

This is not applicable.

- **Time period or deadline for submission on tax authority request**

The documentation should be filed within seven working days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

No.

b) Priority and preference of methods

All five recognized OECD methodologies are accepted in Cambodia, and there is no priority or preference of methods.

8. Benchmarking requirements

- Local vs. regional comparables

Finding local comparables is extremely difficult because of a lack of publicly available databases while there are only a few companies listed on the local stock exchange. Accordingly, regional comparables are accepted.

- Single-year vs. multiyear analysis

Single year is accepted.

- Use of interquartile range

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

Rollforward study is acceptable.

- Simple, weighted or pooled results

Simple average is acceptable.

- Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences for incomplete documentation

There is none specified.

- Consequences of failure to submit, late submission or incorrect disclosures

This will result in the withdrawal of the taxpayer's certificate of tax compliance.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?

Yes, from 10% to 40% of the underdeclared amount depending on the quantum of the underdeclared amount relative to the tax amount actually declared.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

Yes, from 10% to 40% of the underdeclared amount depending on the quantum of the underdeclared amount relative to the tax amount actually declared.

- Is interest charged on penalties or payable on a refund?

Yes, at 2% per month.

b) Penalty relief

Relief from penalties may be negotiated between the taxpayer and the tax authority. While an administrative appeals tribunal was recently set up, to date, no taxpayers have approached the tribunal to settle a tax dispute.

10. Statute of limitations on transfer pricing assessments

This is 3 years, which may be extended to 10 years if fraud or obstruction of the implementation of the law is involved.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium, as Cambodia only introduced its transfer pricing regulations in October 2017, and its transfer pricing audit capabilities are still being developed. Furthermore, while a dedicated transfer pricing audit team has been established within the tax authority, its current resources do not allow it to conduct many transfer pricing audits simultaneously.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium (same reason as above)

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium (same reason as above)

- **Specific transactions, industries or situations, if any, more likely to be audited**

Historically, the garment industry has been targeted by the revenue authority for transfer pricing audits. The logistic, shipping and freight-forwarding industries are also being targeted for transfer pricing audits by the authorities. At an individual transaction level, payment of management fees, royalties and payments for other intangibles are all currently being closely scrutinized by the tax authority.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is none specified.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

No.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

No dedicated thin-capitalization rules exist; however, interest deductions are capped at 50% of earnings before interest and taxes (EBIT) for the year in question plus any interest income earned in that year.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Directorate of Taxation.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The transfer pricing documentation rules were introduced in the Cameroonian legislation by the 2014 Finance Law. However, these rules have undergone modifications with the 2018 and 2020 Finance Laws.

- **Section reference from local regulation**

Section 19 and Section M19a specifies the documentation requirements.

Section 18 *ter governs the filing of the transfer pricing annual return.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

NO

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Cameroon is not a member of the OECD.

The OECD Guidelines on transfer pricing may, however, be relied on to determine the arm's-length nature of intragroup transactions, and supporting documentation should be prepared.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

This is not applicable.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the transfer pricing documentation must be prepared for all intercompany transactions (goods, services, rights and interest on loan, etc.) without exception.

In accordance with the provisions of the 2020 Finance Law, the obligation to annually file a transfer pricing documentation has been replaced by the obligation to file an annual transfer pricing declaration.

Nevertheless, the transfer pricing documentation on its own must be presented at the start of a tax audit for companies realizing a turnover equal to or exceeding XAF1 billion.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes; however, to present a transfer pricing documentation, the local branch should realize a turnover greater than or

[1] **www.minfi.gov.cm**
*ter – reference to the law

equal to XAF1 billion and be under the dependence or control of another entity within the meaning of Section M19b of the 2020 Finance Law.

To prepare a transfer pricing annual return, the local branch should belong to the Directorate of Large Businesses (Direction des Grandes Entreprises – DGE).

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation should cover the taxpayer's annual intercompany transactions.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare a stand-alone transfer pricing report if it has related-party transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Regarding the annual transfer pricing return, as per Article 18 ter of the 2020 Finance Law, companies belonging to the Directorate of Large Businesses, and which are under the dependence or which control other companies, are required to file an annual transfer pricing return using the template provided by the tax authorities. The filing must be performed electronically.

Regarding the transfer pricing documentation, Section M19 of the 2020 Finance Law mentions that it is applicable for companies realizing a turnover equal or more than XAF1 billion and which are under the dependence or which control other entities. The transfer pricing documentation is no longer filed with the tax administration. Instead, it should be presented to tax inspectors at the beginning of a tax audit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There exists an obligation to document domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be prepared in the local languages (French or English), as per the General Administrative Law.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

This is not applicable.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

A specific template for the annual transfer pricing return has been shared by the tax authorities.

- **Related-party disclosures along with corporate income tax return**

Details of the intragroup transactions are inserted in the transfer pricing return, which is filed annually within the same deadline as corporate income tax return. These details contain information about the related parties.

- **Related-party disclosures in financial statement and annual report**

Taxpayers must mention the financial transactions with entities with which they may or may not have ties in the annual tax return.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

Transfer pricing documentation must contain information on

the group regarding the statement of interests held in the local company and a general description of the activity carried out. This includes changes in the capital that have occurred during the financial year, general description of the group's transfer pricing policy, general description of the functions performed, and the risks assumed by the associated companies. It should also present a list of the main intangible assets held, particularly patents, brands, trade names and know-how.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Corporate income tax is declared in the annual tax return to be filed before March 15.

- **Other transfer pricing disclosures and return**

The annual transfer pricing declaration should be filed before March 15.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation must be prepared and presented at the start of an audit.

c) Transfer pricing documentation/local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no deadline for the submission of the transfer pricing documentation. The documentation must be produced on the first day of a tax audit.

It is therefore advisable to prepare this documentation in advance, as the time between the receipt of an audit notice and the start of the verification may be very short.

- **Time period or deadline for submission on tax authority request**

If transfer pricing documentation is not handed over or only partially handed over to the officials of the tax administration on the date of commencement of the accounting audit, the tax administration shall send to the concerned company a formal warning to produce or complete it within 15 (fifteen) days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No specific information is available.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

There is no specific method provided by the legislation. However, the method chosen by the company should respect the arm's-length principle.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

- **Local vs. regional comparables**

African comparables are preferable.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis – four years.

- **Use of interquartile range**

Yes.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is not necessary to be conducted every year; update of the financials is permissible.

- **Simple, weighted or pooled results**

There is none specified.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The presentation of an incomplete transfer pricing documentation after a formal notice is punishable by a fine of 5%, per financial year, of the amount of each transaction concerned by the absent complementary information. The minimum amount of this fine is set at XAF50 million.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to produce the transfer pricing documentation after a formal notice is punishable by a fine of 5% of the amount of each transaction that should have been documented and per financial year. The minimum amount of this fine is set at XAF50 million.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties in case of an adjustment are of 30%, 100% and 150% in the cases of good faith, bad faith and fraud, respectively. Late payment interest of 1.5% with a maximum of 50% is equally applicable.

Penalties for an incomplete or for an absence of documentation does not hinder the application of the sanctions in case of a tax adjustment.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the above response.

- **Is interest charged on penalties or payable on a refund?**

Interests are not charged on penalties. Late payment interests are applied on the principal amount of the tax.

b) Penalty relief

A taxpayer can request total or partial remittance of the penalties.

If an adjustment is proposed by the tax authority, dispute resolution options are available – a claim before the General Director of Taxation and then the Minister of Finance and, finally, a petition before the court. Also, the taxpayer could proceed via compromise to obtain moderation of all or part of the taxes.

10. Statute of limitations on transfer pricing assessments

There is no statute of limitations specific to transfer pricing matters. Nonetheless, pursuant to Section M34 of the Cameroonian Manual of Tax Procedures, the statute of limitations applicable to taxes is four (4) years. This limitation period should be applicable to transfer pricing assessments as well.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit, in general, may be considered to be high. The likelihood that transfer pricing will be reviewed as part of that general tax audit is also high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the transfer pricing methodology will be challenged may be considered to be high because of recent trends in tax audits by the tax inspectors.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

See the above response.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance pricing agreement and mutual agreement procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The relevant tax law in Cameroon is silent on APAs. However, based on Section M33 of the Manual of Tax Procedures, before a contract is concluded or a transaction is performed,

a taxpayer can request a tax ruling (rescrit fiscal) from the tax authorities to get their position on the potential tax implications. This article does not exclude transfer pricing from matters that could be presented within the framework of a ruling.

However, we note a tendency by the tax administration that refuses to respond to rulings when they carry on transfer pricing, stating that such request are APAs, which are not governed by the Cameroonian legislation.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The specific rules relating to thin capitalization or the debt capacity concern the deductibility of interest paid to partners directly or indirectly holding at least 25% of the capital or voting rights.

Indeed, according to the provisions of Article 7B of the 2021 General Tax Code, to be deductible, the interest paid to these partners must fulfill the following cumulative conditions:

- The sums paid by all the partners do not exceed one-and-a-half times the amount of equity.
- The interest paid must not exceed 25% of the tax result before tax and before deduction of said interest and depreciation taken into account for the determination of this result.
- The interest rates should not exceed the Bank of Central African States (*Banque des États de l'Afrique Centrale* – BEAC) plus two points.
- A written and duly registered loan agreement should exist.
- The subscribed share capital should be fully paid up.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Canada Revenue Agency (CRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Section 247 of the Income Tax Act, Canada (ITA) received Royal Assent on 18 June 1998 and is generally applicable to tax years that began after 1997. For transactions after 28 March 2012, Sections 247(12) to 247(15) were added in 2012 to streamline and rationalize the withholding tax implications of transfer pricing adjustments. Section 247(2.1) was added in 2021, applicable to taxation years that begin after 18 March 2019, to implement an ordering rule to give priority to Section 247 over other provisions of the ITA.

The CRA provides its administrative interpretations and guidance with respect to Section 247 and its application through the release of Information Circulars (ICs), Transfer Pricing Memoranda (TPMs), and pronouncements at public conferences, symposia and conventions.

The CRA's current key pronouncements on transfer pricing are:

- IC94-4R, *International Transfer Pricing: Advance Pricing Arrangements (APAs),* 16 March 2001
- IC94-4R (special release), *Advance Pricing Arrangements for Small Businesses,* 18 March 2005
- IC71-17R6, *Guidance on Competent Authority Assistance Under Canada's Tax Conventions,* 1 June 2021
- Fourteen different TPMs

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Submission deadlines for providing documentation are unchanged (three months), but administratively, on 31 March 2020, the CRA announced that requests issued before 1 April 2020 and having submission deadlines of 18 March 2020 or later will be considered canceled and will be reissued at a later date. This is in order to provide taxpayers with the full three months allowed.

On 25 May 2020, the CRA announced an extension of time to file corporate tax returns to 1 September 2020 for returns due in June, July or August 2020. Documentation is required to be prepared by the date that the corporate tax return is due.

In a September 2020 conference Q&A response, the CRA indicated that for transfer pricing purposes it would generally expect that Canadian government COVID-19 assistance would be fully retained by the Canadian recipient.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Canada is a member of the OECD.

While no mention is made of the OECD Guidelines in Section 247 of the ITA, the legislative provision is intended to reflect the arm's-length principle as set out in the OECD Guidelines. The CRA has also endeavored to harmonize its administrative guidance and approach to transfer pricing with the OECD Guidelines. When dealing with transfer pricing issues domestically, the relevant Canadian statutory provisions are relied upon. The CRA's administrative guidance is considered instructive, but not binding. The OECD Guidelines and other OECD reports are not formally recognized as authoritative. However, courts and other dispute resolution channels (e.g., competent authorities) will usually consider the OECD's international principles and standards in reaching a decision.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Canada has not adopted or implemented BEPS Action 13 for transfer pricing documentation in its local regulations. Rather, the jurisdiction relies on the transfer pricing documentation framework outlined in Section 247(4)(a)(i) to (vi) of the ITA.

- Coverage in terms of Master File, Local File and CbCR

[1] https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/information-been-moved/transfer-pricing.html

This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 11 May 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, documentation needs to be prepared contemporaneously but is only required to be submitted upon a request by CRA to do so.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, it should comply with local transfer pricing rules to the extent that the local branch has transactions with non-arm's-length persons, and those transactions are relevant to the operation of the business in Canada.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, under local jurisdiction regulations, transfer pricing documentation should completely and accurately describe material changes in the year (if the documentation was previously prepared).

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity is required to separately document its transfer pricing. Documentation reports prepared on an MNE-group basis may be acceptable as long as the transactions by each entity are discretely and adequately documented.

b) Materiality limit and thresholds

- **Transfer pricing documentation**

This is not applicable; however, reporting of transactions on Form T106 is required only if the total reportable transactions exceed CAD1 million.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The limit is EUR750 million.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation is acceptable in English or French; however, there is no specific mandate by tax law.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

Testing of each discrete transaction is preferable to aggregation.

- **Any other disclosure or compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Refer to the T106 details in the section above.

- **Related-party disclosures along with corporate income tax returns**

Taxpayers are required to file a T106 information return annually, reporting the transactions undertaken with non-arm's-length non residents during the taxation year. This requirement applies where the value of transactions with non-arm's-length non residents in the aggregate exceeds CAD1 million in the taxation year. The T106 is a separate information return, but it is usually filed together with the corporate tax return (although there are separate penalties if the T106 information return is filed late). Data from the T106 is entered into a CRA database and is used to screen taxpayers for international tax audits.

- **Related-party disclosures in financial statement and annual report**

No.

- **CbCR notification included in the statutory tax return**

No.

- **Other information or documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Corporate income tax return should be filed within six months after year-end for corporations and within five months after year-end for partnerships.

- **Other transfer pricing disclosures and return**

T106 information returns should be filed within six months after year-end for corporations and within five months after year-end for partnerships.

- **Master File**

There is no requirement to file a master file.

- **CbCR preparation and submission**

The report should be submitted no later than 12 months after the last day of the fiscal year to which the CbCR relates.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation should be completed by the time of filing the tax return, which is six months after year-end for corporations and five months after year-end for partnerships.

c) Transfer pricing documentation/Local File submission deadline

This is not applicable unless the transfer pricing documentation is requested by the CRA, at which time, the taxpayer will have three months to provide the documentation to the CRA.

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

Taxpayers must provide documentation to the CRA within three months of service, made personally or by registered or certified mail, of a written request under Subsection 247(4).

d) Are there any new submission deadlines per COVID-19-specific measures? If yes, specify which deadlines are impacted

Submission deadlines for providing documentation are unchanged (three months), but administratively, on 31 March 2020, the CRA announced that requests issued before 1 April 2020 and having submission deadlines of 18 March 2020 or later will be considered canceled and will be reissued at a later date. This is in order to provide taxpayers with the full three months allowed.

On 25 May 2020, the CRA announced an extension of time to file corporate tax returns to 1 September 2020 for returns due in June, July or August 2020. Documentation is required to be prepared by the date that the corporate tax return is due.

No further extensions were provided in 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

For international transactions, the CRA accepts the transfer pricing methods recommended in the OECD Guidelines when such methods are applied correctly and result in an arm's-length price or allocation. Commonly accepted transfer pricing methods include CUP, resale price, cost plus, profit split (residual and contribution) and TNMM.

Domestic transactions may conceptually be subject to transfer pricing approaches, but they are not addressed by the transfer pricing rules in Section 247 of the ITA. Other provisions that apply domestically to transactions between non-arm's-length persons for inadequate consideration, and to whether an expense is reasonable, may invite reference to transfer pricing approaches.

b) Priority and preference of methods

Traditionally, the CRA considered that, even though Section 247 does not stipulate so, the above-noted transfer pricing methods form a natural hierarchy, with the CUP method providing the most reliable indication of an arm's-length transfer price or allocation. Traditionally, the CRA did not require or impose a best-method rule.

The CRA believes that the most appropriate method to be used in any situation will be that which provides the highest degree of comparability between transactions, following an analysis of the hierarchy of methods.

In 2012, following the 2010 revisions to the OECD Guidelines, which it endorsed, the CRA published TPM-14. While not wholly abandoning the concept of a natural hierarchy of methods, it indicated that accepting the preferred method in a particular circumstance would depend on the degree of comparability available under each of the methods and the availability and reliability of the data.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local benchmarks are preferred following the jurisdiction of the tested party. For Canada, Canadian benchmarks are preferred, but generally, North American companies are acceptable as comparables.

- **Single-year vs. multiyear analysis for benchmarking**

Single-year testing is generally required, but multiple-year data may be considered in setting pricing under APAs.

- **Use of interquartile range**

The full range of comparable results is relevant for testing transfer prices; quartile results are not critical but may be presented for information purposes along with the median.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

It is not necessary for a fresh benchmarking search to be conducted every year; rollforward and update of the financials of a prior study are acceptable if the facts and circumstances have not materially changed for the transaction from those applicable to the year of the study.

- **Simple, weighted or pooled results**

The taxpayer's results are tested on a single-year basis. Nonetheless, comparable company data is often presented for multiple years using a weighted average.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

This is not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Subsection 247(3) of the ITA imposes a penalty of 10% of the net upward transfer pricing adjustments. These penalties are applicable if such adjustments exceed the lesser of 10% of the taxpayer's gross revenue for the year or CAD5 million and if the taxpayer has not made reasonable efforts to determine and use arm's-length transfer prices.

As set out in TPM-13, all proposed reassessments involving potential transfer pricing penalties must be referred to the Transfer Pricing Review Committee (TPRC) for review and recommendation for final action. After considering the facts and circumstances and the taxpayer's representations, the TPRC will conclude whether a transfer pricing penalty is justified.

A taxpayer will be deemed not to have made reasonable efforts to determine and use arm's-length transfer prices or allocations unless the taxpayer has prepared or obtained records or documents that provide a description that is complete and accurate, in all material respects, for the items listed in Subsection 247(4) of the ITA (see the "Transfer pricing documentation requirements" section above), and such documentation exists as of the tax filing due date. For corporations, such documentation must exist six months after the year-end. For partnerships, the due date is five months after year-end. Further, a taxpayer will be deemed not to have made reasonable efforts to determine and use arm's-length transfer prices or allocations if the taxpayer does not provide the records or documents to the CRA within three months of the issuance of a written request to do so.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, transfer pricing-related penalties are assessed without reference to the taxpayer's income or loss for the relevant reporting year and are not tax deductible.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**

Yes, interest on penalties is payable from the date of assessment of the penalty, at 5% currently in 2022; if the assessed penalty is subsequently rescinded, the interest would be reversed.

b) Penalty relief

If a taxpayer is considered to have made reasonable efforts to determine and use arm's-length transfer prices or allocations with respect to adjusted, non-arm's-length transactions, no penalty is assessed. No transfer pricing penalties under Subsection 247(3) of the ITA should arise with respect to transactions covered by an APA, as long as the APA remains in effect and the taxpayer complies with its terms and conditions.

When the CRA has reassessed a transfer pricing penalty, and the Canadian competent authority and relevant foreign counterpart negotiate a change to the amount of the transfer pricing adjustment, the CRA will adjust the amount of the Canadian transfer pricing penalty accordingly. If the result of the change is that the adjustment no longer exceeds the penalty threshold, the penalty is rescinded.

An assessed transfer pricing penalty may also be vacated by the CRA Appeals Branch upon review.

10. Statute of limitations on transfer pricing assessments

Under Subsection 152(4) of the ITA, the Minister of National Revenue ordinarily cannot reassess a taxpayer after the "normal reassessment period," as defined in Subsection 152(3.1) of the ITA. For most multinational taxpayers, that period is four years beginning after the earlier of the day of mailing a notice of an original assessment for the year or the day of mailing an original notification that no tax is payable for the year. The time limit applies unless the taxpayer has made misrepresentations, committed fraud or filed a waiver, in which case, the minister may reassess a taxpayer at any time (i.e., without any time limit).

With respect to transactions involving non-arm's-length transactions with non residents, the reassessment period is extended by an additional three years, i.e., to seven years. This time period may be further extended if the taxpayer provides the CRA with a waiver (authorization from the taxpayer to the CRA to waive the time limit for reassessment). The taxpayer may provide waivers within the seven-year extended reassessment period. A number of Canada's tax treaties restrict the time for Canada to make an adjustment to a period less than the seven years allowed under the ITA.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

After initially suspending audit activities, the CRA has returned to full audit activities.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

For large corporations, the likelihood of an annual tax audit may be considered to be high, as is the likelihood of transfer pricing being reviewed as part of the audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of a transfer pricing methodology being challenged, if transfer pricing comes under audit, is also high, as the CRA does challenge methodology depending on the facts.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If the methodology is challenged, then the likelihood of an adjustment may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to undergo an audit**

Corporate restructuring, royalties, hybrid debt transactions, financial products and corporate services charges are more likely to undergo an audit.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The CRA launched its APA program in July 1993. As set out in IC94-4R, it allows taxpayers to pursue unilateral, bilateral and multilateral APAs. In addition, the CRA has made a small-business APA program available to Canadian taxpayers under certain conditions. The CRA no longer charges taxpayers to complete an APA.

An APA request can cover a taxation year if the request is made before the filing due date for that year.

- **Tenure**

Typically, the tenure is five years, but terms can vary; often, additional years are added at the end of an APA negotiation.

- **Rollback provisions**

TPM-11 discusses the CRA policy with respect to rolling an APA back to prior years, with the main limitation being that APAs may not be rolled back to years for which a request for contemporaneous documentation under Section 247 has been issued. Effectively, this means that APAs cannot be rolled back to tax years that are currently undergoing a transfer pricing audit.

- **MAP opportunities**

Yes, the taxpayer may request MAP consideration under an applicable treaty.

A time limit specified under either the "associated enterprises" or the "mutual agreement procedure" provision of a double taxation treaty may be relevant in the case of transfer pricing and may not necessarily be the same limit in each article.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

The Canadian competent authority has fully returned to work, although it is continuing to experience slower than normal interactions with a number of jurisdictions. It has shown greater willingness to interact remotely on cases with other jurisdictions and with taxpayers and representatives. Public comments by the CRA indicate it understands that pandemic may impact the critical assumptions for previously negotiated APAs and it may need to revisit those APAs on a case-by-case basis if critical assumptions are breached. On APAs currently under negotiation, the Canadian competent authority will consider the impact of the pandemic on the APA participants on a case-by-case basis. Some APA cases have been settled with truncated term so as to not cover COVID-19-influenced years. The CRA indicated in 2020 that it did not consider that current MAP cases were impacted by the pandemic given that MAP cases currently under negotiation do not include 2020, and future events would not be taken into consideration for earlier years. That is likely still the case. The CRA indicates that, for transfer pricing benchmarking purposes, it intends to continue to rely on single-year benchmarking results.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under Subsection 18(4) of the ITA, deductibility of interest paid to related non resident people is limited to debt equal to 1.5 times the equity. Debt capacity is not subject to specific regulation.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Directorate of State Revenues (*Direcção Nacional de Receitas do Estado* – DNRE).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Articles 65 and 66 of the Corporate Income Tax Code (CITC) define the arm's-length concept, the eligible TP methods, the definition of special relations and declarative requirements.

Ministerial Order No. 75/2015 was published by Cape Verde's Ministry of Finance (Ministério das Finanças) on 31 December 2015 (TP Ministerial Order).

- **Section reference from local regulation**

Article 66 of the CITC.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD transfer pricing guidelines/UN tax manual/EU Joint Transfer Pricing Forum

Cape Verde is not a member of the OECD. It has adopted general concepts of the UN tax manual and the OECD Guidelines in its local regulations. Furthermore, the TP Ministerial Order mentions that the OECD Guidelines are an important reference on TP matters.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Cape Verde has not yet adopted BEPS measures in its TP legislation, but it has already joined the Inclusive Framework for the global implementation of the BEPS Project.

Recently, the part of Action 13 of the OECD BEPS Action Plan devoted to CbCR has been introduced in Cape Verde.

- Coverage in terms of Master File, Local File and CbCR

  Only CbCR recommendations have been adopted. The BEPS Action 13 TP documentation format has not been adopted in Cape Verde.

- Effective or expected commencement date

  CbCR obligation is expected to apply for the fiscal year 2020.

- Material differences from OECD report template or format

  There are differences as Cape Verde has not adopted the master file and local file approach. However, Cape Verde local TP legislation does not outline a specific structure that the TP report should follow. Instead, it lists (in Article 15 of the TP Ministerial Order) the information that the report should include, which is in line with the OECD TP Guidelines.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, as per the TP Ministerial Order, taxpayers must maintain contemporaneous information and documentation.

[1] **https://mf.gov.cv/web/dnre**

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, all taxpayers established in Cape Verde that undertake related-party transactions with resident or non resident related entities need to comply with local TP rules.

- **Does transfer pricing documentation have to be prepared annually?**

As per the TP Ministerial Order, taxpayers must maintain contemporaneous information and documentation regarding the TP policy adopted in the determination of transfer prices on an annual basis.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The entities classified as "large taxpayers" are entities with a turnover greater than CVE200 million or with a global value of paid tax greater than CVE15 million or entities with a high level of risk associated.

Additionally, other entities are subject to preparation of the TP documentation – namely, entities benefiting from the privileged taxation regime, as defined in the General Tax Code, permanent establishments of non resident entities and entities specifically designated by the tax authorities for this purpose.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The report should be consistent with OECD requirements (i.e., group consolidated revenue of EUR750 million).

- **Economic analysis**

They are the same as those identified above. Economic analysis should be a part of the TP documentation, and there are no separate criteria for this obligation.

c) Specific requirements

- **Treatment of domestic transactions**

They have to be reported and should be in line with the arm's-length principle.

- **Local language documentation requirement**

The documentation should be in Portuguese.

- **Safe harbor availability, including financial transactions, if applicable**

This is not explicitly addressed in the legislation.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing is preferred. Aggregation is allowed only if certain conditions are met.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The main disclosure requirements at this level are contained in the Annual Tax and Accounting Information Return (*declaração anual de informação contabilística e fiscal*), in which a taxpayer should, on a yearly basis, indicate whether it has engaged, during that tax year, in intragroup transactions with entities in which it is in a situation of special relation, as well as:

  - Identify the related entities
  - Identify and declare the amount of transactions conducted with each of the related parties
  - Declare if it has organized, by the time the transactions took place, and maintains the documentation relating to the transfer prices applied

The deadline for the submission of such return corresponds to the end of the seventh month after the corresponding tax year-end.

- **Related-party disclosures along with corporate income tax return**

There are no specific TP returns (other than the one described above).

- **Related-party disclosures in financial statement and annual report**

Yes.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Five months from the fiscal year-end.

- **Other transfer pricing disclosures and return**

Seven months from the fiscal year-end.

- **Master File**

This is not applicable.

CbCR preparation and submission

The deadline for submission of the CbCR is the end of the 12th month following the fiscal year-end.

- **CbCR notification**

The deadline for preparation or submission for the CbCR notification is the 30th day of the 5th month following the fiscal year-end.

b) Transfer pricing documentation/Local File preparation deadline

In the absence of provisions covering the deadline to prepare TP documentation, it is reasonable to assume that it corresponds to the deadline of the submission of the Annual Tax and Accounting Information Return – the end of the seventh month after the corresponding tax year-end.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

There is no statutory deadline for submission of TP documentation, but it should be submitted upon request.

- **Time period or deadline for submission upon tax authority request**

This is not applicable.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

All five widely accepted methods recognized among TP administrators and practitioners are acceptable under the local regulations: CUP, resale price, CPM, profit split and TNMM.

It is foreseen that the most appropriate method should be applied to a controlled transaction or to a series of transactions to determine whether those transactions comply with the arm's-length principle.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific requirement.

- **Single-year vs. multiyear analysis of benchmarking**

There is no specific requirement.

- **Use of interquartile range**

There is no specific requirement.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement.

- **Simple, weighted or pooled results**

There is no specific requirement.

- **Other specific benchmarking criteria, if any**

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Entities refusing to file or to prepare the relevant transfer pricing documentation (if not regarded as tax fraud) are liable for a penalty ranging from CVE100,000 to CVE2.5 million. Formerly, the penalty for negligent non-filing or late filing of the transfer pricing documentation was set at CVE375,000.

- **Consequences of failure to submit, late submission or incorrect disclosures**

See above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**

There is none specified.

b) Penalty relief

There is none specified.

10. Statute of limitations on transfer pricing assessments

The statute of limitations in Cape Verde is five years, counting from the beginning of the fiscal year after the one in which the tax issue was raised.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not available.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

It's medium. We are aware that TP audits are already occurring.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It's medium. We are aware that TP audits are already occurring.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

It's medium. We are aware that TP audits are already occurring.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance pricing agreement and mutual agreement procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Only if available in the specific context of a convention to avoid double taxation, namely with Portugal.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not available.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

No relevant regulations or rulings are in place.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Director of Taxation.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The transfer pricing regulation has been introduced in Chad by the Finance Law, 2018, through its Articles 4, 20 and 23. Finance Bill for 2019 has added an additional article (Art. 15), and the Finance Bill for 2020 has added Article 30.

- **Section reference from local regulation**

The Article 1000 of the General Tax Code and the rules nº 04/MFB/SE/DGM/DGI/DELC/2018, 8 July 2018, of the General Director of Taxation give more guidelines about the transfer pricing requirements.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/UN tax manual/EU Joint Transfer Pricing Forum

Chad is not a member of the OECD.

The OECD Guidelines on transfer pricing may be relied upon to determine the arm's-length nature of international transactions and supporting documentation should be prepared. Also, the Chad Government refers to the OECD exclude list for transfer pricing purposes.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

  No.

- Coverage in terms of Master File, Local File and CbCR
- This is not applicable.
- Effective or expected commencement date
- This is not applicable.
- Material differences from OECD report template or format
- This is not applicable.
- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is none specified.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

No, there are guidelines and rules for a transfer pricing return form to be filed and submitted alongside the annual tax return every year by companies.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

There is no transfer pricing documentation in Chad. There is a transfer pricing return form to be prepared annually.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare a stand-alone transfer pricing return.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable. Only transfer pricing return is applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

This is not applicable.

- **Local language documentation requirement**

French or Arabic.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

No.

- **Any other disclosure or compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Yes, there is a transfer pricing return.

- **Related-party disclosures along with corporate income tax return**

Taxpayers must disclose related-party transactions.

- **Related-party disclosures in financial statement and annual report**

Yes, the details of the information to be included in the transfer pricing return form are given in the document "Instruction Specifying the Procedures for Applying the Transfer Pricing Rules."

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

It's 30 April of each year with possibility of extension to 15 May if agreed by the tax administration.

- **Other transfer pricing disclosures and return**

It's 30 April of each year with possibility of extension to 15 May if agreed by the tax administration.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing return deadline is 30 April of each year with possibility of extension to 15 May if agreed by the tax administration.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

The transfer pricing return must be submitted each year, along with the annual tax return, no later than 30 April of each year, for enterprises whose shares or voting rights are held directly or indirectly, or that hold directly or indirectly, the shares or voting rights of a company abroad.

The late submission penalty is applied as below:

- XAF10 million if submitted after 15 May to 31 May
- XAF20 million if submitted after 1 June to 30 June
- XAF25 million if submitted after 1 July to 31 July
- XAF5 million for each month from 1 August

If the tax administration, during a general tax audit, has evidence to presume that such companies had indirectly transferred profit abroad or had conducted intragroup transactions not reported in the transfer pricing return, the following sanctions are applied:

- Rejection of deductibility of intragroup transaction
- Fine of 5% of the total amount of the intragroup transactions of the company with a minimum of XAF50 million per fiscal year

- **Time period or deadline for submission upon tax authority request**

Please see the above comments.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

No.

b) Priority and preference of methods

No.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specified method as per the tax law, but the company should specify the method used.

- **Single-year vs. multiyear analysis**

There is no specified method as per the tax law, but the company should specify the method used.

- **Use of interquartile range**

There is no specified method as per the tax law, but the company should specify the method used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specified method as per the tax law, but the company should specify the method used.

- **Simple, weighted or pooled results**

There is no specified method as per the tax law, but the company should specify the method used.

- **Other specific benchmarking criteria, if any**

There is no specified method as per the tax law, but the company should specify the method used.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not provided.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The late submission penalty is applied as per the below:

- XAF10 million if submitted after 15 May to 31 May
- XAF20 million if submitted after 1 June to 30 June
- XAF25 million if submitted after 1 July to 31 July
- XAF5 million for each month from 1 August

Non-correct disclosure and absence of transfer pricing return are sanctioned as follows:

- Rejection of deductibility of intragroup transaction
- Fine of 5% of the total amount of the intragroup transactions of the company with a minimum of XAF50 million per fiscal year

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties cannot be assessed if companies make the adjustment before any tax audit and no later than 30 June. Any adjustment after 30 June will not be accepted.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not provided.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

The enterprise can request total or partial deductibility of the expenses.

10. Statute of limitations on transfer pricing transfer pricing assessments

There is no specific statute of limitation for transfer pricing, so the statute of limitation that will be applied is the one for the annual tax return which is three years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)**

Medium.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Medium.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The tax law in Chad is silent on APAs.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Yes, indeed, when a loan is concluded with a parent company, the General Tax Code provides two types of limitations in deduction of related loan interest. The first limitation relates to the basis of calculation. Indeed, the basis of calculation of allowable interest on loan granted by a shareholder cannot exceed half of the share capital of the company. The second limitation relates to the applicable rate, which should be a maximum of the Bank of Central African States (Banque des États de l'Afrique Centrale – BEAC) rate plus two points.

When a loan is concluded with affiliate companies that are not parent companies, the interest is not deductible for corporate income tax purposes.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Internal Tax Service (*Servicio de Impuestos Internos* – SII).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 41E of the Income Tax Law (ITL) establishes that any cross-border transaction held with a related party, or with an entity domiciled in a tax haven, or in a back-to-back transaction or any transaction resulting from a restructuring process is subject to transfer pricing regulations.

- **Section reference from local regulation**

Article 41E defines situations where parties are deemed to be related, for example, if the counterparty is domiciled or resident in a jurisdiction or territory considered as a preferential tax regime. For this purpose, any jurisdiction or territory included by SII in the list of Article 41H of the ITL would be considered as a preferential tax regime.

Additionally, the natural persons will be considered as related parties if they are spouses or have a kinship by consanguinity or affinity up to the fourth degree, inclusive.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No, all taxpayers have right to require an extension of 90 days to comply with the transfer pricing obligations, from the beginning of the law.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Chile has been a member of the OECD since May 2010.

Although the transfer pricing rules do not mention the OECD Guidelines, the SII applies the OECD Guidelines as a source of interpretation on transfer pricing audits or APAs.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  Master file and CbCR are applicable for headquarter entities of Chilean multinational groups that meet the requirements. Master file is applicable from FY2020.

  Local file is applicable for some Chilean entities that belongs to multinational groups. The obligation to submit the local file annually applies from FY2020.

- Effective or expected commencement date

  Local file and master file are applicable from FY2020.

- Material differences from OECD report template or format

  Along with the master file document, additional information such as intercompany agreements, full shareholder chart and APAs in force, among other information, must be attached.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the transfer pricing documentation is recognized by

[1] **http://homer.sii.cl/**

the law as a valid proof during a transfer pricing audit. From FY2020 the documentation is mandatory for some taxpayers in Chile.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, the law specifically determines that branches are considered as individual entities for transfer pricing purpose.

- **Should transfer pricing documentation be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Transfer pricing documentation should always be prepared by taxpayers with related-party transactions, but it is only mandatory to submit annually for those taxpayers that meet the following requirements:

- Being classified as large taxpayer
- Having related-party transactions higher than CLP200 million
- Belonging to an MNE that is obligated to submit the CbCR in any jurisdiction

- **Master File**

Master file is applicable from FY2020, and it is only mandatory for those HQ entities of Chilean MNE groups that are obligated to submit the CbCR in Chile.

- **Local File**

Local file is applicable from FY2020.

- **CbCR**

Since 1 January 2016, Chilean parent companies or controllers of MNE groups with revenues higher than EUR750 million, or its equivalent amount in CLP, must prepare the CbCR form (Affidavit No. 1937).

Additionally, since the commercial year 2018, Form 1907, *Annual Transfer Pricing Affidavit*, includes some specific fields to notify which entity of the group is submitting the CbCR and in which jurisdiction it is being done.

- **CbCR notification and CbC report submission requirement**

Only the ultimate parent company (surrogate parent entity) that consolidates the financial statements in Chile will be in charge of submitting a CbCR (Affidavit No. 1937). According to Chilean rules, a different entity may be appointed to submit this report. Only in such a case, the Chilean entity appointed by the foreign ultimate parent entity has to notify the SII of such appointment within 30 days prior to the expiration date on 30 June. However, the appointment of a surrogate entity is not mandatory.

- **CbCR notification included in the statutory tax return**

Since the commercial year 2018, the CbCR notification is included in Form 1907. The SII has included some specific fields in this form to inform which entity of the group is submitting the CbCR and in which jurisdiction it is being done.

- **Economic analysis**

Taxpayers should prepare a transfer pricing study that includes the economic analysis done in order to prove the prices, values or margins obtained in transactions with foreign related parties. The SII may require these analyses for any transaction carried out with a foreign related party. However, for the annual Form 1907, it is only necessary to inform the method for those transactions higher than CLP200 million.

c) Specific requirements

- **Treatment of domestic transactions**

Although Chilean transfer pricing rules do not include a formal obligation to inform transactions between Chilean related parties, there is a general rule in the Chilean ITL that gives the SII the authority to assess whether these transactions were carried out according to the market prices. In practice, a transfer pricing team of the SII assesses transactions between Chilean related parties.

- **Local language documentation requirement**

Some information can be provided in English; however, the default language for the documentation must be Spanish.

- **Safe harbor availability, including financial transactions, if applicable**

The ITL establishes that the royalty rate cannot exceed 4% of

the company's sales when the said transaction has been held with a related party, and other specific conditions need to be in place. This is a limit to the deductibility of expenses.

- **Is aggregation or individual testing of transactions preferred for an entity**

Both alternatives are applicable if they are duly explained considering the terms of the case.

- **Any other disclosure or compliance requirement**

With the new transfer pricing obligations in place (i.e., Form 1950, *Annual Master File Affidavit*, and Form 1951, *Annual Local File Affidavit*), a lot of information should be included as part of this compliance, for example, legal structures, related-party agreements, financial statements, organizational chart with the detail of employees by area, among others.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers listed by the Large Taxpayers Directorate (*grandes contribuyentes*) or classified as large size must file another Form 1913, Global Characterization of the Taxpayer, which must be submitted before the annual income tax return in any case before 30 April. This affidavit has several questions related with transfer pricing matters.

- **Related-party disclosures along with corporate income tax returns**

The transfer pricing return (Form 1907, *Annual Transfer Pricing Affidavit*) must be filed by the last business day of June with respect to the information of the prior fiscal year (a three-month extension may be obtained, one time only each year).

All transactions with foreign related parties must be reported, but only transactions greater than CLP200 million in annual basis (approximately USD300,000) need include details about transfer pricing methodology for analysis. This threshold is not applicable to financial operations that must be fully reported regardless of the amount. The mentioned financial operations include date, maturity, interest rate, principal and kind of interest rate.

Taxpayers that meet any of the following conditions must file the transfer pricing return (Form 1907):

- Companies considered medium or large size as of 31 December of the commercial year to be disclosed
- Companies that entered into transactions with parties domiciled in a jurisdiction or territory which is considered a preferential tax regime, according to Article 41H of the ITL
- Small companies that have entered into transactions of more than CLP500 million (approximately USD725,000 or the equivalent in a foreign currency) with non-domiciled related parties as of 31 December of the commercial year to be disclosed

Transactions with related parties must be registered by the type of transaction and by related entity. The SII also requires technical aspects to be filed, such as:

- Transfer pricing method used
- Profit-level indicator (PLI) applied
- Global or segmented analysis
- Tested party and its result in the transaction analyzed
- Whole operating margin of the Chilean entity, regardless of the method selected for the economic analysis

- **Other information or documents to be filed**

There are other Forms to be filed annually, such as, 1913 which is only applicable for large taxpayers in Chile, Form 1951 (Local File), applicable for those entities that belongs to a MNE group filing the CbCR anywhere, with transactions with related parties higher than CLP200 million and being large entities.

And other Forms such as Form 1937, which is the CbCR and the Form 1950 (MasterFile) that must be submitted by those entities that are obligated to file the CBCR in Chile.

All of them have the same deadline, last business day of June of each year.

Some of those forms, such as 1950 and 1951, require also to include some documents together with the Form, for instance, copy of the intercompany agreements, financial statements, group shareholding charts, among other information.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Corporate income tax return must be filed by 30 April or after, depending on the result of the taxes to be paid (payment or refund).

- Other transfer pricing disclosures and return

Transfer pricing return (Form 1907) should be filed by the last business day of June with respect to the information of the prior fiscal year (a three-month extension may be obtained, one time only each year).

- Master File

Master file should be filed by the last business day of June with respect to the information of the prior fiscal year (a three-month extension may be obtained, one time only each year).

- CbCR preparation and submission

The CbCR (Form 1937) must be prepared and submitted by the last business day of June with respect to the information of the prior fiscal year (a three-month extension may be obtained, one time only each year).

- CbCR notification

If the Chilean entity is designated as surrogate entity, it has to notify from 1 June to 30 June. The constituent entities should notify CbCR through the Form 1907 at the end of June (or September).

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation must be prepared contemporaneously and provided upon request. It is highly recommended that the transfer pricing documentation be prepared in Spanish; however, for Form 1951, it is possible to attach it in English.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

The same as Form 1951, if the form is not applicable, the entity should file the local file upon requested – usually in a period of maximum 30 days.

- Time period or deadline for submission on SII request

The SII allows a maximum of 30 days for delivery from the time of the request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No. All taxpayers have the right to request an extension of 90 days to comply with the transfer pricing obligations.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes; however, for domestic transactions, there are no methods determined by law.

b) Priority and preference of methods

The transfer pricing methods accepted are the same as those established by the OECD Guidelines. Additionally, a sixth or "other" method is acceptable, when not one of the other methodologies is applicable.

Transfer pricing rules in Chile consider the "best method rule," meaning taxpayers must choose the method that best reflects the transaction's economic reality to determine its market value. The taxpayer should be able to demonstrate or sustain the applicability of such a method over the others.

8. Benchmarking requirements

- Local vs. regional comparables

Foreign comparable entities and transactions are accepted in the absence of local comparable entities and transactions, if they are similar in functions, assets and risks of the tested party or tested transaction.

- Single-year vs. multiyear analysis

Single-year testing is recommended for tested parties. However, for the comparable information, it is usual to apply multiple-year analysis to perform the range of the comparable values.

If considering the characteristics of the company is necessary to apply a multiple-year approach for the tested party, it is possible to explain the economic reasons to apply it.

- **Use of interquartile range**

Although the Chilean transfer pricing Rule (ITL Article 41E) does not state a formal parameter to compare the prices, values or margins obtained by the tested party with the interquartile range, its use is highly recommended because the SII usually applies this criteria on transfer pricing audits. The SII usually applies the interquartile range, and now, under the instructions of the Form 1951, the interquartile range must be determined and informed.

- **Fresh benchmarking searches every year vs. rollforwards and update of the financials**

The Chilean transfer pricing rules do not specify whether a fresh benchmarking is necessary every year; nevertheless, the practice follows the OECD recommendations, considering both options.

- **Simple, weighted or pooled results**

The weighted average is usually used; however, it is not mandatory. Best practice must be applied by tax authority.

- **Other specific benchmarking criteria, if any**

It is important that the financial information used for the tested party be comparable to the financial information used for the benchmark of comparable information; for example, differences in accounting standards used may require some comparability adjustments.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The monetary penalty for not having Forms 1907, 1937, 1950 or 1951; submitting them late; or filing them with mistakes is between 10 Chilean annual tax units and 50 Chilean annual tax units, which is approximately USD8,540 to USD42,702, but no more than an amount equal to 15% of the equity of the taxpayer.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The monetary penalty for not having Forms 1907, 1937, 1950 or 1951; submitting them late; or filing them with mistakes is between 10 Chilean annual tax units and 50 Chilean annual tax units, which is approximately USD8,540 to USD42,702, but no more than an amount equal to 15% of the equity of the taxpayer.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Regarding transfer pricing adjustments, price, value or profit margin differences that result from applying Chilean transfer pricing rules are subject to a single tax penalty of 40% (before January 2017, the rate was 35%) of the adjustment determined.

If the SII determines the transfer pricing adjustment as a result of a transfer pricing audit without enough collaboration of the taxpayer, an additional 5% may be applied, unless the taxpayer rendered the information and documentation required during the audit process by the SII, as determined by the former in a notification.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

The application of penalties depends on the potential adjustment determined by the Chilean IRS. Having available the TP documentation would imply a better defense of the transfer pricing methods applied however if it is deemed non-contemporaneous it might be considered not enough proof about the proper application of the methods but this lack of information has not a specific penalty, unless it involves a fault in presentation of the Form 1951 (local File).

- **Is interest charged on penalties or payable on a refund?**

Interest and readjustments for inflation are determined under the application of ITL Article 53.

b) Penalty relief

There is no prescribed penalty relief for not preparing and submitting transfer pricing documentation. However, maintaining contemporary transfer pricing documentation would be accepted by the SII as an important proof of the taxpayer's "good faith." In these cases, the transfer pricing penalty applicable to the potential adjustments may be reduced.

There are discounts applicable if the payment is made in a short period.

10. Statute of limitations on transfer pricing assessments

The general statute of limitations is three years from the latest date on which the tax was due. It could be extended to six years if no return is filed or if the authorities find that the returns are false.

In Chile, the transfer pricing rules are "substance over form." In this sense, the SII can challenge not only the arm's-length principle but also the effectiveness of the transaction and its economic substance.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No formal communication regarding impact on tax audit deadlines. However, some tax auditors may provide a short extension to answer questions. The hard deadline for their internal procedures have not been moved. The SII has an electronic space in its website where taxpayers may upload relevant information, so it is not necessary to give information physically.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Currently, there is a high probability that the SII will audit transfer pricing (most likely if the company has expenses related to services received, royalties paid or interest paid or is operating in loss).

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium or high depending on the specific audit programs determined annually by the SII.

- **Likelihood of an adjustment, if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. If the methodology is challenged, the SII would probably get a different result than the taxpayer.

- **Specific transactions, industries and situations, if any, more likely to be audited**

In Chile, there are specific programs that assess transfer pricing transactions in the mining industry. The transactions that the SII assesses in a transfer pricing audit are intragroup services (management, technical and routine services), payment of royalties, interest accrued, payments for reimbursement of expenses, commodity transactions from different industries, and others.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Taxpayers can propose APA procedures in relation to their transactions. To this end, it is necessary to submit a formal request and a transfer pricing study. The SII, within six months of the taxpayer sharing all the necessary information, can accept all or part of the taxpayer's request or refuse it. The SII could subscribe to unilateral or multilateral APAs. The decision of the SII cannot be challenged through a legal or administrative process.

- **Tenure**

The APA, once stipulated, can last up to four commercial years, after which it can be extended with a prior agreement between the parties involved. This term could be reduced if economic circumstances change drastically from one year to another.

Currently, the Chilean Administration is very interested in signing these kinds of agreements, so it is recommended to use this approach in Chile now.

- **Rollback provisions**

There is none specified in the law, although it can be discussed during an APA.

- **MAP opportunities**

MAP process is recognized by the tax treaties signed by Chile; however, it is not currently being applied.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No; however, APAs have been used by the SII and taxpayers more than before.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

For transfer pricing purpose, the thin-capitalization analysis is based on benchmarking, in order to prove if this transaction would be agreed between unrelated parties. These analyses are based on the OECD Guidelines, without any specific rule about that.

On the other hand, there are specific tax thin-capitalization rules applicable for withholding-tax purposes.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

State Taxation Administration (STA)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

As of 31 December 2021, there are five STA releases that form the overall framework for TP enforcement in mainland China:

- Bulletin Gonggao [2021] No. 24 (Bulletin 24) – *Bulletin on Simplified Procedures for Unilateral Advance Pricing Arrangements (effective from 1 September 2021)*
- Bulletin Gonggao [2017] No. 6 (Bulletin 6) – *Bulletin on Supervisory Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures (MAPs) (effective from 1 May 2017)*
- Bulletin Gonggao [2016] No. 64 (Bulletin 64) – *Bulletin on Issues Related to Improving the Administration of Advance Pricing Arrangements (effective from 1 December 2016)*
- Bulletin Gonggao [2016] No. 42 (Bulletin 42) – *Bulletin on Improving Administration of Related-Party Transaction Reporting and Contemporaneous Documentation (effective from the fiscal year 2016 and onward)*
- Circular Guoshuifa [2009] No. 2 (Circular 2) – *Implementation Measures for Special Tax Adjustments (Trial Implementation) (effective from 1 January 2008)*

Other relevant STA releases include:

- Circular Guoshuifa [2012] No. 13 – *Notice on Internal Procedures of Special Tax Adjustments (Trial Implementation): sets out the guidelines for different tax authorities across China to coordinate their work on tax investigations (effective from 1 March 2012)*
- Circular Guoshuifa [2012] No. 16 – *Notice Regarding Procedural Guidelines for Joint Review of Significant Special Tax Adjustments Cases (Trial Implementation): sets up a joint panel review mechanism for cases involving large taxpayers (capital over RMB100 million or revenues from main operations over RMB1 billion) to ensure consistency (effective from 1 March 2012)*
- Bulletin Gonggao [2013] No. 56 – *Bulletin on the Implementation Measures for Tax Treaty Mutual Agreement Procedures: supplements Circular 2 guidance on MAPs under tax treaties – relevant regulations and rulings (effective from 1 November 2013)*
- Bulletin Gonggao [2015] No. 45 – *Bulletin on Strengthening the Follow-Up Monitoring of Cost Sharing Arrangements: modifies Circular 2 by eliminating preapproval requirements for entering into a CSA while strengthening the follow-up monitoring (effective from 16 July 2015)*

- **Section reference from local regulation**

According to Bulletin 42, a related-party relationship is defined as follows:

- The enterprise directly or indirectly owns 25% or more of the shares of the other enterprise; a third party directly or indirectly owns 25% or more of the shares of both the enterprise and the other enterprise.
  - Where one enterprise owns shares of the other enterprise through an intermediary and the enterprise owns 25% or more of the shares of the intermediary, the percentage of indirectly owned shares is deemed to be the same as the percentage of the other enterprise's shares owned by the intermediary.
  - Where more than two individuals who are spouses, lineal relatives by blood, or under other custodianship or family maintenance relationships co-own the shares of one enterprise, the percentage of owned shares is jointly calculated.
- Where one enterprise owns the shares of another enterprise or a third party owns the shares of both enterprises, but the percentages of the shares being owned does not meet the threshold set out in (1), debt between the enterprise and the other enterprise accounts for 50% or more of total paid-in capital of any of the two enterprises, or 10% or more of one enterprise's debt is guaranteed by the other enterprise (other than loans or guarantees between independent financial institutions).
- Where one enterprise owns the shares of another enterprise or a third party owns the shares of both enterprises, but the percentages of the shares being owned does not meet the threshold set out in (1), one enterprise's business operations depend on the other enterprise's patents, non-patented know-how, trademarks,

[1] **http://www.chinatax.gov.cn/eng/**

copyrights or other concessions.

- Where one enterprise owns the shares of another enterprise or a third party owns the shares of both enterprises, but the percentages of the shares being owned does not meet the threshold set out in (1), one enterprise's business operations, such as the purchase, sales, receipt of services or provision of services, are controlled by the other enterprise.
- More than half of the board members or senior management (including board secretary of a listed company, general manager, vice general manager, chief finance officer and other personnel stipulated in the articles of association) of one enterprise are appointed or delegated by the other enterprise; such personnel of one enterprise simultaneously act as board members or senior management of the other enterprise; or such personnel of both enterprises are appointed by a third party.
- Two individuals who are spouses, lineal relatives by blood, or under other custodianship or family maintenance relationship have one of the relationships stated under (1)-(5) with one enterprise and the other enterprise respectively.
- The two parties have other common interests in substance.

  Except for conditions under (2), when the related-party relationships change over the fiscal year, they should be recognized on the basis of the actual duration of such relationships.

  Two parties that have one of the relationships stated under (1)-(5) merely because their shares are owned by the state, or board members or senior management who are appointed by the departments administering state-owned assets, should not be regarded as related parties.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/no)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

China is not a member of the OECD.

The Chinese TP framework is generally consistent with the framework established by the OECD Guidelines. The STA has observer status on the OECD's TP working group and has been involved in the OECD/G20 BEPS project, including the revisions to the OECD Guidelines relating to risks and intangibles. Still, while reference may be made to the OECD Guidelines, the STA does not see itself as bound by them. The STA has also been involved in the development of the United Nations Practical Manual on Transfer Pricing for Developing Jurisdictions (UN Manual) and has contributed one of the four sections in chapter 10 on jurisdiction practices. The UN Manual is largely consistent with the OECD Guidelines, but there are some differences.

Key areas in which the Chinese approach may differ from other jurisdictions' understanding of the OECD Guidelines approach are location-specific advantages (LSAs) or other local market features, local intangibles and intra-group services, as follows:

- The STA places considerable emphasis on LSAs and takes the view that profits in China should be higher because of the characteristics of the local market, such as location savings and market premiums. Under Bulletin 42, specific documentation of the role of LSAs is a required component of the local file. Under Bulletin 64, the role of LSAs is also a required topic to be addressed in APA application.
- The STA pays more attention to local contributions to intangibles. China's "Country Practices" section of the UN Manual, for example, emphasizes the role played by Chinese affiliates in developing marketing intangibles and manufacturing process improvements. Bulletin 6 retains the framework with respect to the functions that are relevant in determining the allocation of profits from the use of intangible property. After BEPS reforms, the OECD Guidelines identifies five relevant functions: development, enhancement, maintenance, protection and exploitation (i.e., DEMPE). Bulletin 6 adds a sixth function: promotion (i.e., DEMPEP). While promotion functions can likely be subsumed under the other DEMPE functions in an OECD framework, the identification of promotion as a separate function demonstrates the importance China places on value created through marketing activities by Chinese companies.
- The STA increasingly challenges charges made for headquarters services, requiring efficient application of the benefits test. Bulletin 6 follows the internationally accepted and OECD-sanctioned "benefit test." That is, an intra-group service is recognized only if the activities of the service provider provide the service recipient with

economic and commercial value that will enhance its commercial position, and if an independent enterprise, in comparable circumstances, would be willing to pay a third party to perform the activity or to do it itself.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, China adopted BEPS Action 13 for TP documentation effective from 1 January 2016.

- Coverage in terms of master file, local file and CbCR

It covers master file, local file and CbCR.

- Effective or expected commencement date

BEPS Action 13 came to effect in China on 1 January 2016.

- Material differences from OECD report template or format

For the master file, Bulletin 42 requests more detailed information, such as details on industrial structure adjustments (Article 12-(2)), and information on the main functions, risks, assets and personnel of the group's major R&D facilities (Article 12 (3)). In addition, the master file should state which entity within the group should prepare and file the CbC report (Article 12-(5)).

For the local file, Bulletin 42 requires a detailed analysis of location-specific factors and the value chain, as well as location-specific factors' contributions to the value chain (Article 14-(3)-a/b); detailed disclosure of related service transactions (Article 14-(3)-e); disclosure of foreign investment (Article 14-(3)-c); disclosure of related-party share transfer (Article 14-(3)-d) and disclosure of APAs in other jurisdictions or regions (Article 14-(3)-f).

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

The master file and local file should be prepared in accordance with the requirements under Bulletin 42, and those additional items identified above should be addressed for compliance purposes.

- CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in China. However, in the master file, taxpayers should state which entity within the group should prepare and file the CbC report (Article 12-(5)). The CbC report should be prepared and submitted by 31 May of the following year.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 12 May 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, there are TP documentation rules, which require contemporaneous documentation.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch of a foreign company is required to comply with the local TP rules.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, TP documentation has to be prepared annually. There is no minimum requirement. In practice, taxpayers should prepare or update the full report.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has related-party transactions (RPTs).

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Refer to the master file and local file thresholds below.

- **Master file**

The master file thresholds are as follows:

- There are cross-border RPTs during the year, and the ultimate holding company of the MNE group has prepared a master file.

Or

- The annual RPTs exceed RMB1 billion.

- **Local file**

The local file thresholds are as follows:

- Tangible asset transfers exceed RMB200 million (in case of toll manufacturing, value should be based on annual import and export values for customs purposes).

  Or

- Financial asset transfers exceed RMB100 million.

  Or

- Intangible asset transfers exceed RMB100 million.

  Or

- The aggregate amount of other RPTs exceeds RMB40 million (including service transactions, intangibles licensing, tangible property rentals and interest on loans).

- **CbCR**

Chinese resident taxpayers that are the ultimate parent company of a group whose consolidated revenue in the previous year exceeded RMB5.5 billion are required to file a CbC report. China will also accept "surrogate" filings by a Chinese resident taxpayer that is so designated by its group. Since China has an extensive tax treaty and information exchange network, the STA will be receiving and actively reviewing CbC reports filed by groups with ultimate parent companies in other jurisdictions. While there is no local filing requirement, Article 8 of Bulletin 42 states that Chinese tax authorities may request a Chinese taxpayer to provide its group's CbC report in the course of an investigation. This can take place if the ultimate parent company is required by its home jurisdiction to prepare a CbC report but China has been unable to receive the report because of the parent company's failure to file, the absence of a treaty or exchange mechanism between China and that jurisdiction or the failure of such an exchange mechanism to work in practice.

- **Economic analysis**

There is none specified.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation requirement for domestic transactions. However, taxpayers that deal only with domestic related parties can be exempted from documentation.

- **Local language documentation requirement**

The TP documentation needs to be submitted in the local language. Article 21 of Bulletin 42 mandates the use of Chinese language in TP documentation.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified in the regulation. Technically speaking, individual testing of transactions is generally preferred by tax authorities, whereas aggregation testing of transactions is still often observed in practice for compliance purposes.

- **Any other disclosure or compliance requirement**

Special item files: Bulletin 42 also provides documentation requirements for "special item files" with respect to CSAs and thin capitalization, if applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

China does not have TP-specific returns. However, the return disclosures described below are extensive.

- **Related-party disclosures along with corporate income tax (CIT) return**

Under the authority of Article 43 of the Corporate Income Tax Law (CITL), Article 1 of Bulletin 42 requires that taxpayers complete and submit a set of comprehensive RPT annual reporting forms along with their annual tax filing on or before 31 May of the following calendar year. For taxable years before 2016, there were nine RPT forms. For taxable year 2016 and after, there are up to 22 RPT forms that a taxpayer may need to prepare. Three of the RPT forms implement the CbCR requirement, if applicable; there will be three additional forms that are English translations of these three. The other 16 RPT forms are:

- Enterprise Information Return

- Summary of Annual Related-Party Transactions Form

- Related-Party Relationships Form
- Ownership Transfer of Tangible Asset Transactions Form
- Ownership Transfer of Intangible Asset Transactions Form
- Use Right Transfer of Tangible Asset Transactions Form
- Use Right Transfer of Intangible Asset Transactions Form
- Financial Asset Transactions Form
- Financing Transactions Form
- Related-Party Service Transactions Form
- Equity Investment Form
- Cost-Sharing Agreement Form
- Outbound Payment Form
- Overseas Related-Party Information Form
- Financial Analysis of Related-Party Transactions Form (unconsolidated)
- Financial Analysis of Related-Party Transactions Form (consolidated)

- **Related-party disclosures in financial statement/annual report**

  In general, the annual report would include a section of related-party disclosures.

- **CbCR notification included in the statutory tax return**

There is none specified. However, the name and location of its ultimate parent company should be stated in the RPT form, and whether the local entity is designated to file the CbC report of the group.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 May.

- **Other transfer pricing disclosures and return**

31 May.

- **Master file**

Master file should be ready within 12 months after the financial year-end of the ultimate parent company.

- **CbCR preparation and submission**

31 May.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/ local file preparation deadline

The local file and special item files should be ready by 30 June of the following year. The master file should be ready within 12 months after the financial year-end of the ultimate parent company.

c) Transfer pricing documentation/ local file submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

There is no statutory deadline.

- **Time period or deadline for submission on tax authority request**

The documentation should be submitted within 30 days upon request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions – Yes
- Domestic transactions – yes

b) Priority and preference of methods

Under Bulletin 6, there is no priority among TP methods. All the methods identified by the OECD Guidelines are considered

reasonable: CUP, resale price, cost plus, TNMM and profit split (including both contributory profit split and residual profit split). Other methods are also acceptable, if they are consistent with the arm's-length principle. Bulletin 6 identifies three methods that are frequently used for asset valuation as allowable "other methods:" the cost method, the market method and the income method. This is consistent with the OECD Guidelines after BEPS reforms. Bulletin 6 provides that TNMM is not appropriate in transactions where significant intangible assets are involved, but it does not define what intangibles would be considered significant. For TNMM, while all PLIs are recognized in principle, the ones most often used in practice are operating margin and markup on total costs.

In applying TNMM, database searches for comparable companies are generally expected to be limited to publicly traded companies. In any event, non-public Chinese companies are not required to publicly file their financial statements, so there are no jurisdiction-specific databases available.

Bulletin 6 is generally consistent with current practice with respect to toll manufacturing. If comparable companies that has the same business model cannot be found, the value of materials and equipment provided by the principal must be added back to the cost base, when applying a cost-plus method. While working capital adjustments are not allowed in any other case, they are allowed in toll manufacturing cases, if the adjustment is no more than 10%.

8. Benchmarking requirements

- **Local vs. regional comparables**

Pan Asia-Pacific or Chinese companies are acceptable as comparables. Tax authorities have a clear preference for local Chinese comparables, but given the limited number of potential comparables, they will accept regional sets of comparables if necessary. Where foreign comparables are used, tax authorities will seek to make adjustments for LSAs. Article 24 of Bulletin 6 makes it clear that publicly available data is preferred. In addition, Bulletin 6 explicitly authorizes tax authorities to use information that is not publicly available, e.g., secret comparables. Such nonpublic information is used in practice, especially in a risk assessment context.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear testing (up to three years) is acceptable.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Fresh benchmarking search is the suggested practice; however, there is no specification from the regulation.

- **Simple, weighted or pooled results**

There is a preference for weighted average for arm's-length analysis in practice. However, Bulletin 6 provides a wide latitude to tax authorities to use arithmetic means, weighted averages or interquartile ranges in examinations.

- **Other specific benchmarking criteria, if any**

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Taxpayers that do not provide contemporaneous documentation or relevant information on related party transactions or provide false or incomplete information that does not truly reflect the situation of their related party transactions shall be subject to different levels of fines, ranging from less than CNY 10,000 up to CNY 50,000, in accordance with Article 70 of the Tax Collection and Administration Law and Article 96 of the Tax Collection Regulations. In addition, tax authorities also have the authority to deem such taxpayers' taxable income by reference to the profit level of comparable companies, or the taxpayer's cost plus reasonable expenses and profit, or apportioning a reasonable share of the group's total profits; or the deemed profit determined based on other reasonable methods according to Article 44 of the CITL and Article 115 of the Detailed Implementation Regulation (DIR).

- **Consequences of failure to submit, late submission or incorrect disclosures**

General penalties that are applicable to tax record maintenance and tax filing requirements also apply to TP matters. Under Article 62 of the Tax Collection and Administration Law, taxpayers failing to fulfil tax-filing obligations may be fined between RMB2,000 and RMB10,000. This would apply to failure to file TP disclosure forms with the annual tax return. Under Article 60, taxpayers failing to maintain accounting books and other relevant information, or failing to provide such information to tax authorities upon request, may be fined between RMB2,000 and RMB10,000. This would apply to failure to maintain or provide contemporaneous documentation.

Under the CITL and implementation regulations, if a taxpayer continues to refuse to provide information or provides false information, the tax authorities can assess taxable income on a deemed basis, rather than on the basis of TP results.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

While there are no penalties on TP adjustments, there is a 5% interest surcharge if the taxpayer did not file TP disclosure forms or fails to meet the contemporaneous documentation requirements. To meet these requirements, in addition to preparing the documentation described above, the taxpayer must provide it to tax authorities within 30 days of the request (prior to 2016, within 20 days of the request). In all events, whether there is an interest surcharge or not, interest will be applied to the under-reported tax resulting from TP adjustments – based on the base RMB lending rate published by the People's Bank of China.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Taxpayers that do not provide contemporaneous documentation or relevant information on related party transactions or provide false or incomplete information that does not truly reflect the situation of their related party transactions shall be subject to different levels of fines, ranging from less than CNY 10,000 up to CNY 50,000, in accordance with Article 70 of the Tax Collection and Administration Law and Article 96 of the Tax Collection Regulations. In addition, tax authorities also have the authority to deem such taxpayers' taxable income by reference to the profit level of comparable companies, or the taxpayer's cost plus reasonable expenses and profit, or apportioning a reasonable share of the group's total profits; or the deemed profit determined based on other reasonable methods according to Article 44 of the CITL and Article 115 of the DIR.

- **Is interest charged on penalties or payable on a refund?**

Refer to the above section.

b) Penalty relief

As discussed above, the 5% interest surcharge can be avoided if TP disclosure forms are filed and contemporaneous documentation requirements are met.

10. Statute of limitations on transfer pricing assessments

The duration could be as long as 10 years. For example, if the tax authorities initiate a TP audit in 2022, the covered period could be from 1 January 2012 to 31 December 2021.

Article 24 of Bulletin 42 states that contemporaneous documentation should be maintained for 10 years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing -related audits (high/medium/low)**

The likelihood may be considered to be high, because Chinese tax authorities would screen and select the TP audit targets every year on the basis of the information collected from the tax filing systems and other sources. They use big data analysis and internet information to conduct risk assessments and categorize taxpayers by risk levels – as high, medium and low – to identify audit targets.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high, because Chinese tax authorities take a clear stand on local contributions and locally developed intangibles, and often test the effectiveness of TNMM, which is commonly used to compensate the local subsidiaries.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. Even though the TP method can be sustained, the profit margins would usually be adjusted upward.

- **Specific transactions, industries and situations, if any, more likely to be audited**

In recent years, the STA has put in place a taxpayer monitoring system, to differentiate "low-risk" from "high-risk" taxpayers, on the basis of their compliance with tax requirements and the tax positions taken. High-risk taxpayers are much more likely to face formal tax audits. Two industries that are currently being analyzed by tax authorities are pharmaceuticals and luxury goods. This focus illustrates the degree of importance the STA places on LSAs, as the STA finds that both industries

enjoy substantial market premiums. In addition to LSAs, the tax authorities recently have been paying close attention to outbound payments of royalties and service fees. With respect to royalties, tax authorities have focused on the extent to which the Chinese taxpayer has made contributions to the value of licensed intangibles and possibly developed local intangibles, thereby suggesting royalty rate reductions are appropriate. For services, tax authorities have sought authentication that services were actually provided, and that costs were appropriately captured and allocated based on actual benefits received.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral, bilateral and multilateral APAs are available in China. Guidance regarding the APA process and procedures is provided in Bulletin 64. To further promote APAs, Bulletin 24 provides a simplified procedure for unilateral APA in which the tax authorities should decide whether to accept the application within 90 days, and once accepted, the tax authorities should in principle complete the negotiation within six months (excluding the additional time that may be needed for collection of further information). Requirements for APA applicants are that their RPT volume should be in excess of RMB40 million for each of the past three years. They must have duly filed RPT forms with their tax returns and they must have met contemporaneous documentation requirements. There is no application fee.

- **Tenure**

The duration of an APA is generally three to five years.

- **Rollback provisions**

Rollback provisions are available. The retrospective period can extend to a maximum of 10 prior years, if the RPTs are the same or similar to those covered by the APA.

- **MAP opportunities**

Yes, the taxpayer may request an MAP.

- Application for an MAP must be made within a reasonable period of time from the first notification of the action resulting in taxation not in accordance with the provisions of the double taxation treaty (DTT).

If the application is submitted in person, the application date is deemed to be the submission date; if the application is submitted by email, the application date is the date that the STA receives the application.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The CIT law has a thin-capitalization rule disallowing interest expense arising from excessive related-party loans. The safe harbor debt-to-equity ratio for enterprises in the financial industry is 5:1 and for enterprises in other industries is 2:1. However, if there is sufficient evidence (e.g., a thin capitalization special item file) to show that the financing arrangement is at arm's length, these interests may still be fully deductible even if the ratios are exceeded.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Tax and Customs Authority (*Dirección de Impuestos y Aduanas Nacionales* (DIAN))

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The transfer pricing regime is included in Articles 260-1 to 260-11 in the Colombian Tax Code and is regulated by Regulatory Decree 2120 of 2017. The regime has been in force since 2004; however, the aforementioned decree came into effect from 1 January 2017.

- **Section reference from local regulation**

The following section has reference to transfer pricing:

- Articles 260-1 to 260-11 of the Colombian Tax Code
- Regulatory Decree 2120, from December 2017

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD transfer pricing guidelines/UN tax manual/EU Joint Transfer Pricing Forum

Colombia is a member of OECD, but its guidelines are not legally binding. Notwithstanding, guidelines are used as by tax authorities as technical reference criteria for transfer pricing matters.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of master file, local file and CbCR

Yes, it covers all three.

- Effective or expected commencement date

It is effective from the financial year 2017.

- Material differences from OECD report template or format

The master file and CbC reports follow the OECD approach. The local file was the equivalent of the previous transfer pricing study presented by taxpayers until the financial year 2016.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

This is not applicable since there is no penalty protection in Colombia

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 21 June 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, and local taxpayer is subject to transfer pricing rules. Furthermore, branches and permanent establishments.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation must be prepared annually

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under local jurisdiction regulations. Taxpayers must prepare a local file that includes the analysis of the transactions subject to study, complying with the local regulatory requirements mentioned in Articles 260-1 to 260-11 of the Colombian Tax Code and the Regulatory Decree 2120. They should demonstrate that intercompany transactions were carried out at arm's length. The group's master file must be submitted as well.

The documentation must be updated annually, with updates to transactions and amounts, the financial information of the comparable set, economic analysis and functional analysis.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each local entity of an MNE must prepare and submit its obligations separately.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Transfer pricing documentation in Colombia is composed by Local File and Master File, please refer the following sections

- **Master File**

It must be filed by entities that meet the requirements to prepare the local file.

- **Local File**

Yes, if taxpayers whose gross equity is equal to or greater than 100,000 tax units (COP3,630,800,000 for tax year 2021) or whose gross revenues are equal to or greater than 61,000 tax units (COP2,214,788,000 for tax year 2021) and intercompany transactions surpass 45,000 tax units (COP1,633,860,000 for tax year 2021) per type of transaction, the taxpayer must file a local file for those transactions.

In case there are transactions with entities located, resident or domiciled in tax havens, the taxpayer is subject to transfer pricing obligations regardless of their revenues or equity, and the transactions threshold per type of transaction to prepare and submit the local file and master file is 10,000 tax units (COP363,080,000 for tax year 2021).

- **CbCR**

81,000,000 tax units (COP 2,940,948,000,000 for tax year 2021)

- **Economic analysis**

It must be included in the local file.

c) Specific requirements

- **Treatment of domestic transactions**

Transactions between a regular taxpayer and a local related party located in a free trade zone are subject to transfer pricing regulations.

- **Local language documentation requirement**

The local file needs to be submitted in the local language (Spanish), as mandated by law.

The master file may be provided in either English or Spanish. However, at any time during their review, tax authorities might request an official translation of a master file provided in English.

- **Safe harbor availability including financial transactions if applicable**

There are no formal safe harbors in Colombia. Companies that exceed the thresholds detailed above must comply with formal obligations and demonstrate that intercompany transactions were carried out in compliance with the arm's-length principle.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

As part of the transfer pricing return, taxpayers must disclose information about related parties, such as whether they are a foreign or local related party (free trade zone), the jurisdiction of residence and the tax identification number. Information about transactions carried out in tax-haven jurisdictions must also be disclosed.

Other information disclosed on the transfer pricing return includes the type of intercompany transaction, the amount of the transaction, the transfer pricing methodology applied, the tested party, the price or margin obtained in the transaction and the arm's-length range. It is also necessary to include information regarding comparability adjustments, the amount

of the adjustments included in the income tax return (if any) and the financial information that was used (segmented or complete information).

- **Related-party disclosures along with corporate income tax return**

There are no specific transfer pricing disclosures to be included in the corporate income tax (CIT) return. All transfer pricing disclosures are to be included in the transfer pricing informative return.

- **Related party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

This is not applicable; it is included in the transfer pricing return.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

7 April to 6 May 2022.

- **Other transfer pricing disclosures and returns**

For the financial year 2021, the local file, transfer pricing return and CbCR notification will be due between 7 and 20 September 2022. The master file will be due between 12 and 23 December 2022. The specific date for a taxpayer will depend on the last digit of its Tax ID number.

- **Master File**

The Master File must be prepared by 30 November 2022 and must be submitted to the tax authorities between 12 and 23 December 2022.

- **CbCR preparation and submission**

The CbCR submission deadline is between 12 and 23 December 2022.

- CbCR notification

The CbCR notification must be filed between 7 and 20 September 2022.

b) Transfer pricing documentation/local file preparation deadline

The Local transfer pricing documentation must be prepared by 30 June 2022 and must be submitted to the tax authorities between 7 and 20 September 2022.

c) Transfer pricing documentation/Local file submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

Transfer pricing documentation must be submitted to the tax authorities between 7 and 20 September 2022.

- **Time period or deadline for submission upon tax authority request**

The transfer pricing return must be filed with the tax authorities on specific dates depending on the last digit of the Tax ID

d) Are there any new submission deadlines per COVID-19-specific measures? If yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

For the analysis of both international and domestic transactions (the latter refers only to transactions with local related parties located in a free trade zone), Colombian tax law has established five transfer pricing analysis methods, which

follow the OECD Guidelines. They are: CUP, resale price, cost-plus, TNMM and profit-split (which can be applied either in the form of a contribution analysis or a residual analysis).

Method selection should be based on the characteristics of the transaction under analysis. The selected method should be the one that best reflects the economic reality of the transaction, provides the best information and requires the fewest adjustments.

The use of internal comparable, if existing, is prioritized. Special considerations for the analysis of services and financing transactions, purchase and sale of shares, or transactions involving the purchase and sale of commodities or fixed assets, are applicable.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement or tax authority preference for local jurisdiction comparables and all jurisdictions could be included in the benchmarking study. If a geographic criterion is applied, it must be supported in the search strategy process.

- **Single-year vs. multiyear analysis for benchmarking**

The regulation provides that single-year testing (1x1) should be used.

- **Use of interquartile range**

Yes, interquartile range calculation using spreadsheet quartile formulas is acceptable. However, the regulations allow the use of other statistical measures (including the total range).

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year; however, the comparability factors of the comparable companies should be evaluated to confirm whether the comparables still comply with those characteristics. Regulations require the disclosure of the date on which the search was run and any updates on the financial information.

- **Simple, weighted or pooled results**

Weighted average is the best practice.

- **Other specific benchmarking criteria, if any**

There are no specific benchmark criteria required in the local regulation. However, the common practice is to the use the information of companies with public financial information available and not affected by controlled transactions.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Transfer pricing documentation

Penalty regarding transfer pricing documentation is given below:

- Late filing: Within the five days following the deadline, 0.05% of the total amount of the transactions subject to analysis. After, it will be 0.2% of the same base per month of delay, with a limit of 20,000 tax units (COP726,160,000 for tax year 2021).
- "Inconsistencies": 1% of the value of the transactions reported with inconsistencies, limited to 5,000 tax units (COP181,540,000 for tax year 2021).
- Non-submission: 4% of the total amount of the transactions subject to analysis, with a limit of 25,000 tax units (COP907,700,000 for tax year 2021).

- **Consequences of failure to submit, late submission or incorrect disclosures**

Same as above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

A penalty of up to 100% of the additional tax could apply.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

A penalty of up to 100% of the additional tax could apply.

- **Is interest charged on penalties or payable on a refund?**

Interest rate is applied on eventual amendments to the income tax return derived from transfer pricing adjustments. The rate changes quarterly; in the last three years, it has been, on average, around 30%. Penalties do not trigger interest.

b) Penalty relief

Transfer pricing documentation

Reduced penalty (before the tax authority's penalty order):

- **When the taxpayer amends its transfer pricing documentation for inconsistencies or omissions before the tax authority issues its penalty order, the penalty might be reduced to 50% of the amount determined in the official assessment.**

Transfer pricing return

Reduced sanction (before the tax authority's penalty order):

- **When the taxpayer amends its transfer pricing return for inconsistencies or omissions before the tax authority issues its penalty order, the penalty might be reduced to 50% of the amount determined in the official assessment.**
- **The transfer pricing return can be voluntarily amended for two years from the original date of filing.**

For a self-assessment or acceptance of the challenges made by the tax authorities, the applied penalty could be decreased up to 10% of its original value.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing assessments is five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high, tax authorities undertake regular audit programs, which may increase the likelihood to be audited.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

This is the same in above section.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

This is the same in above section.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Tax authorities have changed their audit processes, focusing on the oil and gas, mining, and pharmaceutical industries. In addition, tax authorities challenge the benefits and actual rendering of general and specialized services (such as accounting, administrative, marketing or technical assistance). During an audit, the tax authorities have required companies to evidence the real provision, usefulness, non-duplication and business benefits of the services charged, as well as its compliance with Article 107 of the Colombian Tax Code. It might be also required to demonstrate how the charges for services were calculated by the provider.

Local tax authorities are currently challenging special transactions (such as services and intercompany loans), economic and extraordinary adjustments, unusual approaches for analysis – irrespective of the industry – or the use of gross margin methods.

Commodities sale and purchase transactions have also become a focus in transfer pricing audits.

Methods such as cost-plus or resale price are normally challenged it the benchmark is compounded by external comparables.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No specific distinction; any related-party transaction covered by local regulations may be part of an APA.

There is no specific APA program for low-tax jurisdictions.

- **Tenure**

The APA agreement will be valid for the year it is subscribed to, the year before and up to three taxable years after.

- **Rollback provisions**

Refer to section above.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalisation or debt capacity in the jurisdiction

Thin-capitalization rules are applicable specifically for intercompany debt. The ratio allowed by tax regulations is 2:1 intercompany debt-to-equity.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Congolese tax authorities (formerly *Direction Générale des Impôts et des Domaines* (DGID))

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and effective date of applicability**

General Tax Code, Articles 120 to 120 H, Volume 1: The law was introduced in 2012. To date, there are no rulings or other particular texts regarding transfer pricing.

- **Section reference from local regulation**

Article 120 D of General Tax Code

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Congo is not a member of the OECD.

However, Congo is a member of the OECD/G20 Inclusive Framework on BEPS. Also, the Congolese transfer pricing regulations are consistent with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

This is not applicable.

- Coverage in terms of master file, local file and CbCR

This is not applicable.

- Effective or expected commencement date

This is not applicable.

- Material differences from OECD report template or format

This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Congo is a member of the OECD/G20 Inclusive Framework on BEPS.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

This is not applicable.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

It does not have any transfer pricing documentation guidelines or rules at the moment. However, a detailed transfer pricing instruction is expected to be issued by the Congolese Tax Authorities.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes

- **Should transfer pricing documentation be prepared annually?**

Transfer pricing documentation (local file) and the transfer pricing return need to be prepared annually under local jurisdiction regulations and submitted to the tax authorities. At a minimum, transaction values must be updated, and a memo that confirms changes to prior-year content should be prepared, if any.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

  Yes

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Entities that generate more than XAF500 million of turnover or have at least XAF500 million of gross assets on the balance sheet at the end of the year.

- **Master file**

This is not applicable.

- **Local file**

Needs to be filed with the tax authorities.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is applicable

c) Specific requirements

- **Treatment of domestic transactions**

This is not applicable.

- **Local language documentation requirement**

French.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is Aggregation or Individual Testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure or compliance requirement**

None has been specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The transfer pricing return needs to be prepared annually under local jurisdiction regulations and submitted to the tax authorities.

- **Related-party disclosures and transfer pricing-related appendices**

The transfer pricing statement needs to be submitted annually. This form needs to be submitted, at the latest, six months after the legal deadline for submitting the financial statement return. Filing has to be done by courier and in French. Only cross-border intragroup transactions exceeding a threshold of XAF50,000,000, per type of transaction, need to be disclosed on this tax return form.

- **CbCR notification and CbC report submission requirement**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax (CIT) return**

20 May.

- **Other transfer pricing disclosures and return**

The transfer pricing return and transfer pricing local file need to be submitted within six months of the legal deadline for submitting the CIT return, i.e., 20 November.

The format of a transfer pricing return has not been specified by the local tax authorities until now. Taxpayers are therefore free to use any format to file the transfer pricing return.

- **Master file**

There is none specified.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation and local file preparation deadline

Transfer pricing documentation must be provided upon request in the case of a tax audit.

Transfer pricing documentation is mandatory and must be filed with the tax authorities every year no later than 20 November.

c) Transfer pricing documentation and local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

Each year 20 November.

- **Time period or deadline for submission on tax authority request**

Each year 20 November.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes Specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

It is applicable.

- Domestic transactions

It is not applicable.

b) Priority and preference of methods

The tax authorities accept the following methods: CUP, resale price, cost-plus, profit-split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is none specified.

- **Single-year vs. multiyear analysis**

There is none specified.

- **Use of interquartile range**

There is none specified.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is none specified.

- **Simple vs. weighted average**

There is none specified.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Penalties specific to a failure to comply with the transfer pricing documentation requirements apply.

Failure to submit local transfer pricing return and/or transfer pricing documentation may result in penalties equal to XAF5,000,000.

Failure to submit the documentation within the tax authority's request may result in penalties equal to XAF10,000,000 for each fiscal year audited.

Partial submission of the documentation may result in penalties equal to XAF5,000,000 for each fiscal year audited.

In addition to the fiscal penalties generally applied as a consequence of a transfer pricing reassessment, transfer pricing reassessments from the tax authorities (deemed not to be reflecting the arm's-length principle) trigger an adjustment of the taxable profit for CIT purposes (at one-third of their amounts).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties are generally applied as a result of a transfer pricing reassessment, regardless of the compliance with transfer pricing documentation requirements.

After a transfer pricing reassessment is made, the additional profit is qualified as a deemed distribution of a benefit. The tax treatment of such "benefit" transfer may trigger consequences, such as additional CIT (30% of profit) and a deemed transfer of a dividend (17%). Furthermore, penalties of 50% for CIT and 100% for deemed transfer of dividend may apply.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Penalties are generally applied as a result of a transfer pricing reassessment, regardless of the compliance with transfer pricing documentation requirements.

After a transfer pricing reassessment is made, the additional profit is qualified as a deemed distribution of a benefit. The tax treatment of such "benefit" transfer may trigger consequences, such as additional CIT (30% of profit) and a deemed transfer of a dividend (17%). Furthermore, penalties of 50% for CIT and 100% for deemed transfer of dividend may apply.

- **Is interest charged on penalties or payable on refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing adjustments is the same as for all Congolese corporate tax assessments (four years following the year for which the tax is due).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by local authority

- **Likelihood of transfer pricing-related audits (high, medium or low)**

The likelihood may be considered to be high, as taxpayers that have been audited once usually enter a recurring four-year audit cycle, and transfer prices will always be analyzed, to a greater or lesser extent, during tax audit.

- **Likelihood of transfer pricing methodology being challenged (high, medium or low)**

The likelihood may be considered to be medium or low, as the application of the law is recent and tax authorities are improving their skills regarding this regulation.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high, medium or low)**

The likelihood may be considered to be medium or low, as the application of the law is recent and tax authorities are improving their skills regarding this regulation.

- **Specific transactions, industries and situations, if any, more likely to be audited**

All types of intra-group transactions (e.g., management fees, and royalties and licenses) are subject to scrutiny.

13. Advance Pricing Agreement and Mutual Agreement Procedure

- **Availability (unilateral, bilateral and multilateral)**

Bilateral and unilateral APAs are available.

- **Tenure**

APAs have a fixed term of three years. This can be renewed. Administrative fees are required to be paid to the Congolese authorities for entering into an APA.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Administration of Costa Rica (Dirección General de Tributación, or DGT)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Executive Decree No. 41818-H (the TP Decree), which contains TP regulations, came into effect on 26 June 2019, following publication in the *Official Gazette* No. 145. The TP Decree replaces Executive Decree No. 37898-H which originally adopted TP regulations applicable to individuals or business entities that conduct related-party transactions from 13 September 2013.

On 13 September 2016, the DGT issued DGT-R-44-2016, the TP information return regulations that complemented Article 8 of Decree No. 37898-H. However, on 5 June 2017, the Costa Rican Tax Authorities published Resolution DGT-R-28-2017 in the *Official Gazette*, which modified Article 4 of regulations DGT-R-44-2016 and suspended the term for the submission of TP information until further notice.

On 21 April 2017, the Costa Rican Tax Authorities published, in the *Official Gazette*, Resolution DGT-R-16-2017, which adds the master file and local file to the existing TP documentation requirements, in accordance with BEPS Action 13.

Costa Rican taxpayers that have transactions during the relevant fiscal year with associated enterprises must prepare a master file and a local file, and retain them for four years. Taxpayers will only need to submit this information if requested by the tax authorities. If requested, taxpayers will have 10 working days to submit this information.

On 13 November 2019, the Tax Authorities published the DGT-R-49-2019 resolution which replaces Resolution DGT-R-16-2017 about TP documentation requirements (local file and master file). Although Resolution DGT-R-49-2019 supersedes Resolution DGT-R-16-2017 and includes several changes, it also maintains some of the requirements of Resolution DGT-R-16-2017.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Costa Rica has formally become an OECD member as of 25 May 2021. The OECD Guidelines are a recognized source of technical reference; however local regulations prevail.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No, documentation requirements have incorporated some elements of BEPS Action 13, while adding additional local requirements.

- **Coverage in terms of master file, local file and CbCR**

Yes, both are covered.

- **Effective or expected commencement date**

It is effective from 2017.

- **Material differences from OECD report template or format**

There are significant differences between the OECD report template or format and the documentation requirements under local jurisdiction regulations.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

No.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

[1] http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=75647&nValor3=93918&strTipM=TC

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does it need to be submitted or prepared contemporaneously?

Yes, Executive Decree No. 41818-H and Resolution DGT-R-49-2019 provide the guidelines or rules for TP documentation.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

TP documentation has to be prepared annually under local jurisdiction regulations. The TP report and return must be prepared annually with updates to all the information that allows a correct TP analysis. The local tax authorities require the most recent available financial information for comparables and the tested parties.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master file**

There is no materiality limit.

- **Local file**

There is no materiality limit.

- **CbCR**

Entities whose global and accumulated gross revenues are equal to, or higher than, EUR750 million or its equivalent in the local currency during the reporting tax year must submit the information corresponding to the CbC report.

The following companies or entities, whose global and accumulated gross revenues are equal to or higher than EUR750 million or its equivalent in the local currency during the reporting tax year, must submit the CbC report in Costa Rica:

- Each ultimate parent entity (parent company or controlling company) of a group or a multinational group that is a tax resident in Costa Rica; an "ultimate parent entity" is defined as a parent or controlling company that holds sufficient direct or indirect interest in one or more group entities, and is required to prepare consolidated financial statements under applicable accounting standards, or would be required to do so if the share interest were listed on a stock exchange in its jurisdiction of tax residence.

- A surrogate parent entity (when designated as a sole substitute by the ultimate parent), if the surrogate parent entity is a constituent entity and tax resident in Costa Rica; "surrogate parent entity" refers to an entity of the group designated as a sole substitute of the ultimate parent entity, for purposes of presenting the CbC report in the tax jurisdiction of the surrogate parent entity on behalf of the group.

Nevertheless, an ultimate parent entity residing in Costa Rica is not required to provide the information relating to the CbC report to the Costa Rican Tax Administration if in that year the multinational group has the obligation to provide, and indeed provides the information through a surrogate parent entity residing abroad.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The TP documentation needs to be submitted in Spanish. Executive Decree No.41818-H mandates the use of local

language in TP documentation.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred, if possible.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers are obligated to file a TP information return annually when one or more of the following conditions are met:

  - The taxpayer conducts cross-border and local related-party transactions.
  - Such taxpayer falls under the category of "large taxpayers" *(grandes contribuyentes)* or "large regional companies" *(grandes empresas territoriales)*, or is an individual or entity operating under the free trade zone regime.
  - Such taxpayer carries out national or cross-border transactions with related parties and separately or jointly exceed the amount equivalent to 1,000 (thousand) base salaries in the corresponding year.

However, on 5 June 2017, the Costa Rican tax authorities published Resolution DGT-R-28-2017 in the *Official Gazette*, which suspends the term for the submission of TP information until further notice.

- **Related-party disclosures along with corporate income tax return**

Related-party disclosures have to be made in specific TP returns. No related-party disclosures need to be made on general income tax returns.

- **Related party disclosures in financial statement/annual report**

Not applicable.

- **CbCR notification included in the statutory tax return**

There is none specified.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is two months and 15 days after the end of the fiscal year.

- **Other transfer pricing disclosures and return**

The tax authorities suspended the term for the submission of TP information until further notice.

- **Master file**

Master file needs to be prepared as per local requirements, which include some of the OECD BEPS Action 13 requirements. The master file needs to be prepared in Spanish.

- **CbCR preparation and submission**

For a reporting fiscal year commencing at any point in 2017, CbC reports shall be filed no later than 31 December 2018. For the subsequent reporting fiscal years, a CbC report shall be filed no later than 31 December of the year following, which is the last day of the reporting fiscal year.

- **CbCR notification**

Notifications should be submitted by the last working day of March each year at the latest. Only Costa Rican tax-resident constituent entities that are UPEs of an MNE group with annual consolidated group gross revenue equal to or exceeding EUR750 million during the reporting fiscal year need to file the notification.

b) Transfer pricing documentation and local file preparation deadline

Taxpayers must prepare and maintain TP documentation annually. The TP Executive Decree does not state a deadline.

The documentation must be at the disposal of the DGT upon request.

c) Transfer pricing documentation and local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

There is no statutory deadline for the submission of TP documentation.

- **Time period or deadline for submission on tax authority request**

The time period is 10 working days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions –yes
- Domestic transactions – yes

b) Priority and preference of methods

The specified methods are CUP, resale price, cost-plus, profit-split and TNMM; and the valuation of goods with international quotations method that can be applied as an alternative to the CUP method. The TP Executive Decree requires the application of the most appropriate TP method.

8. Benchmarking requirements

- **Local vs. regional comparables**

There are no benchmarking requirements for local and regional comparables considering the lack of financial information available on local comparables. Thus, international comparables are accepted by the tax authorities.

- **Single-year vs. multiyear analysis**

There is multiple-year testing for comparables. In practice, the number of years is three.

- **Use of interquartile range**

This is not specified. However, the spreadsheet quartile calculation is preferred and common in practice.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search every year over the update of the financials of a prior study is preferred. A TP report must be prepared annually, updating all the information that allows a correct TP analysis. In practice, local tax authorities expect to see the most recent comparable information and use the most recently available financial information for the comparables and the tested party.

- **Simple, weighted or pooled results**

The weighted average is the common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

No express monetary penalties are applied when taxpayers provide incomplete TP documentation or the TP information return. Nevertheless, the monetary penalties for failure to provide complete information set forth in the Tax Code of Standards and Procedures should apply by default.

- **Consequences of failure to submit, late submission or incorrect disclosures**

No express monetary penalties are applied when taxpayers fail to maintain contemporaneous TP documentation or the TP information return. Nevertheless, the monetary penalties for non-compliance set forth in the Tax Code of Standards and Procedures should apply by default.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

No express monetary penalties are applied when taxpayers fail to maintain contemporaneous transfer pricing documentation or the transfer pricing information return. Nevertheless, the monetary penalties for non-compliance set forth in the Tax Code of Standards and Procedures should apply by default.

- **Is interest charged on penalties or payable on a refund?**

In the case of a TP income adjustment, surcharges and penalty interest apply, per the general provisions of the Tax Code of Standards and Procedures.

b) Penalty relief

No penalty relief regime is in place.

10. Statute of limitations on transfer pricing assessments

The standard four-year statute of limitations on general tax assessments should apply. This statutory period is extended to 10 years for unregistered taxpayers, fraudulent returns filed and failure to file. The term is extended in cases of amended returns.

The statute of limitations starts the next month following the due date of the tax return.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general tax audit is categorized as high, especially for taxpayers characterized as large taxpayers and multinational companies with related transactions. The likelihood of TP assessments as part of a general tax audit is considered high as well. For taxpayers characterized as large taxpayers, the DGT designates a fiscal auditor in charge of supervising the entity's tax information, giving the DGT greater visibility of the taxpayer and triggering audits in case minor changes occur (e.g., decrease in operating income).

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

In case TP is scrutinized, the likelihood that the TP methodology will be challenged is also high. In the past, the DGT effectively tried to apply only the CUP method. Although in recent years the DGT has accepted the use of the TNMM, it prefers the use of the CUP method whenever internal comparables exist.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high; in practice, the resolution in most cases results in an adjustment.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The companies that are characterized as large taxpayers have a higher likelihood of being audited.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs are contemplated under the provisions of the TP Executive Decree.

- **Tenure**

The duration of an APA is a maximum of five years.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The thin-capitalization rule establishes a limitation to interest deduction equal to 20% of EBITDA (i.e., earnings before interest, taxes, depreciation and amortization), excluding interests paid on loans with local financial institutions supervised by the Superintendence of Financial Entities (*Superintendencia General de Entidades Financieras* or SUGEF) or foreign financial institutions supervised in their jurisdiction.

The interest expense that exceeds this threshold should be considered as non deductible for income tax purposes and could be taken as a deducible expense in the following tax periods, provided the interest expenses in each year does not exceed 20% of the company's EBIDTA.

This limitation will come into effect with the second tax period from the date the recent Tax Reform (1 July 2020) enters into force with a 30% threshold for the first two tax periods. The limitation will be reduced 2% each year until it reaches the mentioned 20% threshold.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General for Taxation (*Direction Générale des Impôts* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are Articles 36, 36 Bis and 38 of the General Tax Code; Article 50 Bis of the Tax Procedure Book; Article 15 of the 2017 Finance Law; and Article 14 of the 2018 Finance Law.

Article 15 of the 2017 Finance Law requires companies to file a TP return. This provision of the law is applicable since 1 January 2017.

Article 14 of the 2018 Finance Law requires companies to file a CbCR and introduces thin-capitalization rules. These provisions of the law are applicable since 1 January 2018.

- **Section reference from local regulation**

Articles 36, 36 Bis and 38 of the General Tax Code, Article 50 Bis of the Tax Procedure Book.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual OR EU Joint Transfer Pricing Forum

Cote d'Ivoire is not a member of the OECD; however, it follows the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Cote d'Ivoire has adopted BEPS Action 13 for TP documentation in terms of TP return and CbCR.

- Coverage in terms of Master File, Local File and CbCR

  Master or Local File is not applicable, but CbCR is required.

- Effective or expected commencement date

  For tax year ending 31 December 2016 and later for TP return.

  For tax year ending 31 December 2017 and later for CbCR.

- Material differences from OECD report template or format

  There are no material differences.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  A BEPS Action 13 format report typically is sufficient to achieve penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, there are TP documentation rules and requirements to file a TP return and the CbCR.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

There is no specific requirement to prepare the master and

[1] http://www.dgi.gouv.ci/

local files to the tax authorities. However, in case of tax audit, only at the request of the tax authorities, the company could have to justify transactions with affiliate companies, methods of determination of prices, etc. Therefore, this documentation and information will have to be up to date. The minimum requirement to achieve this is updating transaction values and preparing a memo that confirms and lists changes to prior year content.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

A separate TP report is required per legal entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

There is no materiality limit.

- **Local File**

There is no materiality limit.

- **CbCR**

This is applicable for companies with aggregated value of sales of EUR750 million or more.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is no specific requirement.

- **Local language documentation requirement**

The TP documentation needs to be in French.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is no specific requirement.

- **Any other disclosure/compliance requirement**

There is no specific requirement.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The TP return includes intercompany transactions with related parties.

The TP return must include a description of the transfer pricing methods applied for international intragroup transactions.

The TP return must reflect the accounted amounts (not the paid amounts).

- **Related-party disclosures along with corporate income tax return**

Refer to the point above.

- **Related-party disclosures in financial statement and annual report**

There is no specific requirement.

- **CbCR notification included in the statutory tax return**

There is none specified.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 30 June, if required to file a certified financial statement, and 30 May for all other companies.

- **Other transfer pricing disclosures and return**

TP return will have to be submitted by 30 June, if required to file a certified financial statement, and by 30 May for all other companies.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The documentation should be submitted no later than 12 months after the end of the fiscal year (December 31).

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

TP return

It is 30 June for companies required to provide a certified financial statement and 30 May for all the other companies.

CbCR

The documentation should be submitted no later than 12 months after the end of the fiscal year (December 31).

- **Time period or deadline for submission upon tax authority request**

Taxpayers have to submit TP documentation within a maximum period of two months. This period may be extended by one month.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No changes to the local TP rules.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

No.

b) Priority and preference of methods

There is none specified.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific guidance. However, tax authorities could accept local jurisdiction comparables or West African comparables.

- **Single-year vs. multiyear analysis for benchmarking**

There is no specific guidance. Three-year testing could be acceptable.

- **Use of interquartile range**

There is no specific guidance on the use of the interquartile range.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific guidance. There is no need to conduct a fresh benchmarking search every year; updates could be acceptable.

- **Simple, weighted or pooled results**

There is no specific guidance. The simple average for arm's-length analysis could be preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There is no specific requirement

- **Consequences of failure to submit, late submission or incorrect disclosures**

CbCR

A fine of XOF5 million (approximately EUR7,500).

A CbCR that contains wrong information is punishable by a fine of XOF2 million (approximately EUR3,049) by mistake or omission.

TP return

Denial of deductibility of amounts recorded in accounts books.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Please refer to "Penalty exposure" above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is no specific requirement.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

Company can address a request for penalty relief to the Directorate General of Taxation.

10. Statute of limitations on transfer pricing assessments

The limitation period is set to three years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is no specific requirement.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium. This is a new issue that requires focus during the next three years.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Same as the above section.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Same as the above section.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in Cote d'Ivoire.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

No.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is no specific requirement.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

The total amount loaned may not exceed the share capital of the borrowing company. This rule does not apply to sums borrowed from shareholders of holding companies subject to the special tax regime for Ivorian holding companies.

The total amount paid may not exceed 30% of the year-end profit before deduction of corporate income tax, interest charges, amortization and depreciation for the year (EBITDA).

The interest rate applicable to the loan must not exceed the current central bank interest rate plus two percentage points.

The loan must be repaid within five years of the date on which the funds are made available, and the borrowing company must not be subject to any liquidation procedure throughout this period. Related-party interest paid is deductible for tax purposes if the share capital of the borrowing company is fully paid up.

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Croatia[1]

1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Ministry of Finance (*Ministarstvo Financija*).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 13 of the Corporate Income Tax (CIT) Act (in force as of 2005, latest update of respective article as of 1 January 2021).

Article 14 of the CIT Act (in force as of 2005, latest update of respective article as of 1 January 2017).

Article 14a of the CIT Act (respective article in force as of 1 January 2017).

Article 37 of the CIT Bylaw (in force as of 2005, latest update of respective article as of 3 January 2017).

Article 40 of the CIT Bylaw (in force as of 2005, latest update of respective article as of 1 January 2021).

Article 47b of the CIT Bylaw (in force as of 2005, latest update of respective article as of 13 January 2018).

Bylaw for concluding APA (as of 29 April 2017).

- **Section reference from local regulation**

Article 13 of the CIT Act defines related parties as parties in which one entity participates directly or indirectly in the management, control or capital of the other party or the same persons participate directly or indirectly in the management, control or capital of both parties.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Croatia is not a member of the OECD; however, the provisions of relevant Croatian tax legislation are generally based on the OECD Guidelines. Furthermore, the Ministry of Finance issued instructions for the tax officials performing transfer pricing audits, which are also based on the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Croatia has adopted BEPS Action 13 only in relation to CbCR as of 1 January 2017; no master file and local file rules have been adopted at the time of this publication.

- Coverage in terms of Master File, Local File and CbCR

  The master and local files are not covered.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement on the exchange of CbCR

Yes, it was signed on 6 July 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

[1] **http://www.porezna-uprava.hr/**

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation needs to be prepared annually under local jurisdiction regulations. New benchmark study should be prepared, in case there are material changes in the facts and circumstances of the transactions.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

Annual consolidated group gross revenue equaling to or exceeding EUR750 million.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation requirement for domestic transactions in case one party is in a favorable tax position (e.g., if the concerned party pays CIT at lower rates or has tax losses carried forward from previous periods).

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language (i.e., Croatian).

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

The Croatian CIT legislation does not define aggregation or individual testing of transactions. As OECD Guidelines are used and adhered to by the Croatian Tax Authorities in their assessment of transfer prices, aggregation of transaction should be justified if in line with the OECD's recommendations.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Other than the PD-IPO return, the CIT Act and CIT Bylaw do not prescribe specific requirements for separate returns (including information returns) for related-party transactions.

- **Related-party disclosures along with corporate income tax return**

A form outlining the relevant information on transactions with related parties (PD-IPO form) will need to be submitted with the CIT return.

- **Related-party disclosures in financial statement and annual report**

Yes.

- **CbCR notification included in the statutory tax return**

CbCR notification is a separate filing and is not included in the statutory tax return.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Four months after the fiscal year-end (30 April if the fiscal year corresponds to the calendar year).

- **Other transfer pricing disclosures and return**

Four months after the fiscal year-end (30 April if the fiscal year corresponds to the calendar year).

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The report should be filed 12 months after the end of the fiscal year for which the report is prepared.

- **CbCR notification**

Four months after the fiscal year-end (30 April if the fiscal year corresponds to the calendar year). CbCR notification has to be submitted in the first year. Subsequent filing of the CbCR notification (along with the CIT return) is needed only if there is a change in information on ultimate parent entity (UPE)/ surrogate parent entity (SPE).

b) Transfer pricing documentation/Local File preparation deadline

There is no transfer pricing documentation preparation deadline. The changes to the CIT Act and Bylaw that apply to fiscal years starting as of 1 January 2021 define that the taxpayer is obligated to confirm the arm's-length nature of its intercompany pricing at the year-end. If prices are not at arm's length, the taxpayer is obligated to increase its tax base in the CIT return. This implies that transfer pricing documentation should be available along with the deadline for filing the CIT return, although transfer pricing documentation continues to be submitted only upon request (usually in the course of a tax audit or upon filing the CIT return if specifically requested by the taxpayer's tax officer).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of transfer pricing documentation; however, it is to be submitted as supporting documentation upon filing the CIT return if specifically requested by the taxpayer's tax officer.

- **Time period or deadline for submission on tax authority request**

The prescribed deadline for provision of any documentation to the tax authorities is eight days. In practice, this deadline is generally extended.

- **Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted**

Transfer pricing documentation: Due to changes in Croatian legislation (in force as of 8 April 2020), the deadline for submission of CIT returns is extended to six months instead of four months after financial year-ends (i.e., from 30 April 2021 to 30 June 2021).

CbCR notification: Together with CIT return (i.e., on 30 June 2021). Respective change does not apply to taxpayers whose financial year is different than calendar year.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

CIT Act regulations do not provide detailed rules on how to arrive at the arm's-length price that should be applied in related-party transactions. However, the CIT Act prescribes the methods that a taxpayer can use to determine the arm's-length price: CUP, resale minus, cost plus, profit split and TNMM. All the five standard methods are allowed; however, traditional transactional methods (CUP, resale minus and cost plus) should have the priority when establishing whether the conditions imposed between related parties are at arm's length.

If possible, the CUP method should be applied. Other available methods, i.e., transactional profit methods (profit split and TNMM), should be used when traditional methods cannot be reliably applied.

8. Benchmarking requirements

- **Local vs. regional comparables**

Croatian CIT legislation does not prescribe any rules regarding the search approach for preparation of a benchmark analysis. However, the OECD approach is followed.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis (up to three years), as per common practice, is applicable.

- **Use of interquartile range**

Spreadsheet quartile is used, as per common practice; however, there is no preference as such.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific provision in the legislation in relation to performing a fresh benchmarking search every year or updating the financials of a prior study. Per common practice, a fresh benchmarking search is usually performed after a three-year period, while, in between, update of the financials of a prior study is accepted.

- **Simple vs. weighted average**

Both the weighted average and simple average are used in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The Croatian tax legislation does not envisage penalties for incomplete documentation. If transfer pricing documentation is not complete, the Croatian tax authorities could reject transfer pricing documentation and determine arm's-length prices under their own parameters. If intercompany prices are not at arm's length as determined by the Croatian tax authorities, penalty interest for late payment of tax liability could be imposed. Fines of up to HRK200,000 (approximately EUR27,000) for a company and HRK20,000 (approximately EUR2,700) for the responsible individual within the company may also be imposed for any underestimation of the CIT liability. Penalty interest would also be calculated from the date the tax was due until the date the tax is paid.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Fines of up to HRK200,000 (approximately EUR27,000) for a company and HRK20,000 (approximately EUR2,700) for the responsible individual within the company may be imposed for any underestimation of the CIT liability. Penalty interest would also be calculated from the date the tax was due until the date the tax is paid.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

There is none specifically prescribed.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above.

- **Is interest charged on penalties or payable on a refund?**

There is none specifically prescribed. However, general penalties may apply as noted above.

b) Penalty relief

There are no specific provisions concerning penalty relief.

10. Statute of limitations on transfer pricing assessments

According to the Croatian General Tax Act (GTA), as of 1 January 2017, the statute of limitations for determining tax liabilities by the tax authorities and for the taxpayers' right for claiming a tax refund for a particular tax period expires at the end of the sixth year following the year in which the tax liability has arisen. For example, a CIT return for FY2020 should have been submitted by 30 April 2021, and thus the statute-of-limitations period commences on 1 January 2022.

The statute of limitations for collection of tax and interest commences in the year following the year in which the taxpayer determined the tax liability itself or by the end of the year in which the resolution by which the tax authorities determined the tax liability and interest became enforceable.

According to GTA provisions, tax authorities can perform a tax audit in three years following the commencement of the statute of limitations.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Once a tax audit is initiated, there is a high risk of transfer pricing being reviewed within the audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high if the taxpayer is not able to support the prices applied in intercompany transactions with the appropriate documentation.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high if the taxpayer is not able to support the prices applied in intercompany transactions with the appropriate documentation.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Yes. The Bylaw for concluding APA was introduced on 29 April 2017 and allows unilateral, bilateral, and multilateral APA.

- **Tenure**

APAs are concluded for a period of up to five years.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Yes.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No, the Croatian tax authorities have published translated guidance on the transfer pricing implications of the COVID-19 pandemic issued by the OECD on 18 December 2020. OECD Guidance in relation to the impact of COVID-19 pandemic on the APAs should be applied by Croatian tax authorities.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest limitation rule

As of 1 January 2019, new rules for interest limitation has been introduced in Croatian CIT legislation. As a tax-deductible expense, a taxpayer is entitled to borrowing costs incurred in the tax period up to:

- **30% earnings before interest, taxes, depreciation and amortization (EBITDA)**
- **EUR3 million (if the higher amount is achieved this way)**

The non deductible borrowing costs are those costs exceeding the taxable interest income or other economically equivalent taxable income.

The amount of non deductible exceeding costs is reduced for the amounts for which the tax base is increased under thin-capitalization rules and the interest on loans between related parties.

"Borrowing costs" include interest on all forms of debt and other costs economically equivalent to the interests and the costs incurred in connection with the collection of funds (including loans from unrelated parties).

The exceeding borrowing costs may be transferred to the following three tax periods, but in each period up to the maximum prescribed amount.

Thin-capitalization rule

According to Croatian CIT legislation, thin-capitalization rules apply to loans provided by non residents holding at least 25% of the equity or voting rights in a Croatian taxpayer, loans provided by third parties not being Croatian tax residents that are guaranteed by the shareholder and loans provided by related parties not being Croatian tax residents.

On the basis of the thin-capitalization rule, interests on loans exceeding 4:1 debt-to-equity ratio are not tax deductible.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Cyprus Tax Department, Ministry of Finance.

b) Relevant transfer pricing section reference

Currently, the arm's-length principle is codified in Cyprus Income Tax Law (L.118(I) of 2002, as amended, Section 33) with wording similar to that of Article 9 of the OECD Model Tax Convention (on associated enterprises).

In March 2017, the Cyprus Tax Department issued a tax circular introducing a transfer pricing documentation requirement for taxpayers claiming the benefits of the so-called IP Box regime on embedded IP incomes. The transfer pricing study should be prepared in accordance with the OECD Transfer Pricing Guidelines.

On 30 June 2017, the Cyprus Tax Department issued a tax circular (the Circular) revising the transfer pricing framework for companies carrying out intragroup financing activities in Cyprus. More specifically, the scope of the application of the Circular is limited to intragroup financing activities (granting of loans or cash advances) that are financed by debt instruments, regardless of whether the source of funding is with related or third parties.

As of 1 July 2017, Cypriot entities granting loans financed out of debt should support the margin (spread) to be applied on the above intragroup (back-to-back) financing arrangements with a transfer pricing study, which must be prepared by an independent advisor based on the OECD Transfer Pricing Guidelines. The Circular includes additional guidance in terms of substance and transfer pricing requirements in line with the OECD Transfer Pricing Guidelines, as well as guidance to the required content of a transfer pricing study. Based on the Circular, the transfer pricing analysis of such financing arrangements should be conducted on the basis of documenting the remuneration of the Cypriot financing entity, irrespective of the intercompany interest rates applied on the incoming and outgoing loans.

The provisions of the Circular are effective from 1 July 2017 and cover all existing and future financing arrangements, irrespective of any tax rulings issued prior to 30 June 2017.

Cyprus is expected to introduce detailed transfer pricing legislation and transfer pricing documentation requirements in 2021, which will be based on the OECD Transfer Pricing Guidelines with effect as of 1 January 2022 (please see section below for additional details).

- **Section reference from local regulation**

Section 33 of the Cyprus Income Tax Law (L118(I) of 2002, as amended, Section 33) refers to transactions between connected and related parties.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Cyprus is not a member of the OECD. However, the local transfer pricing regulations are expected to be in line with the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Cyprus has adopted BEPS Action 13 only in relation to CbCR. No master file and local files rules have been adopted (refer to the above section for details of the upcoming adoption of such rules for the tax year 2022 onward).

- Coverage in terms of Master File, Local File and CbCR

  CbCR is covered, while master file and local file are not covered for the year 2020. Please refer to the above section for details of the upcoming adoption of such rules for tax year 2022.

- Effective or expected commencement date

  Cyprus is expected to introduce detailed transfer pricing legislation and transfer pricing documentation requirements in 2021, which will be based on the OECD Transfer Pricing Guidelines with effect as of 1 January 2022.

[1] **https://www.mof.gov.cy**

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 1 November 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

There is none specified apart from the documentation requirements limited to intercompany loans financed by debt and for embedded intellectual property (IP) income for the tax year 2020. For documentation requirements on all other types of transactions with respect to tax year 2022 and onward, please refer to the above section for details of the upcoming adoption of new transfer pricing legislation.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

A local branch of a foreign company should be considered as a separate legal entity for Cypriot tax purposes; thus, it should be subject to local transfer pricing rules.

- **Does transfer pricing documentation have to be prepared annually?**

With regard to the existing transfer pricing documentation rules in place (i.e., intercompany loans financed out of debt), the prepared transfer pricing documentation needs to be updated annually in cases where any amendments compared with the previous year (e.g., modification of loans, and changes in functional and risk profile) were concluded.

Based on the upcoming transfer pricing legislation (with respect to tax year 2022 and onward), the documentation will have to be prepared annually.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Each entity having a documentation requirement is expected to prepare a separate local file documenting its intercompany transactions falling under the scope of the local transfer pricing legislation.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality threshold for the tax year 2020. For the tax year 2022, it is expected that a materiality threshold will be introduced.

- **Master File**

This is not applicable at the present; however, such documentation requirement is expected to be introduced during 2021, effective as of 1 January 2022. Based on the provisions of the draft expected legislation, companies are exempt from the requirement to prepare a master file if they are not the ultimate parent entity or a surrogate parent entity of their corporate groups for CbCR purposes.

- **Local File**

This is not applicable at the present; however, such documentation requirement is expected to be introduced during 2021, effective as of 1 January 2022. Based on the provisions of the draft expected legislation, Cypriot companies having intercompany transactions of an aggregated amount of EUR750,000 or higher per type of transaction are expected to have a documentation obligation for the year 2022 onward.

- **CbCR**

Companies with consolidated group revenue of EUR750 million or more in the preceding fiscal year are required to comply with the CbCR legislation.

- **Economic analysis**

There is no materiality threshold.

c) Specific requirements

- **Treatment of domestic transactions**

There is documentation obligation for domestic transactions only for intragroup financing transactions related to loans financed out of debt. The broader transfer pricing rules to be introduced in 2021 are not expected to include an exception for domestic transactions.

- **Local language documentation requirement**

Local transfer pricing documentation may be prepared in English. If requested by the tax authorities, taxpayers should also be prepared to provide the local file translated in Greek within 60 days upon request.

- **Safe harbor availability including financial transactions if applicable**

Safe harbor is available for companies performing pure intermediary financing activities, at the rate of 2% on assets after tax and, for companies with functions similar to a regulated financial institution, a return on equity of 10% after tax. No other safe harbor rules are available.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

For the year 2020 and 2021, Cypriot companies may voluntarily submit an electronic Summary Information Table (SIT), containing basic information on their intercompany transactions concluded within the year.

For the tax year 2022, Cypriot companies should have an obligation to submit an SIT, irrespective of their requirement to prepare local file documentation. The SIT should be submitted within nine months following the end of the tax year.

It should be noted that local transfer pricing documentation and the SIT should be signed off by a person in Cyprus with license to act as an auditor according to Cyprus Companies Law.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Current transfer pricing rules provide for the electronic submission of a SIT, containing basic information on taxpayer's intercompany transactions concluded within the year.

The submission of the SIT is voluntary for tax year 2020 and 2021; however, it is expected to be mandatory from year 2022 onward.

- **Related-party disclosures along with corporate income tax return**

Related-party balances and transactions are disclosed on an aggregated basis in the company's income tax return.

- **Related-party disclosures in financial statement/annual report**

Related-party transactions and balances are required to be disclosed in the "Notes of the Financial Statements" prepared under IFRS.

- **CbCR notification included in the statutory tax return**

Statutory annual tax return does not make reference to CbCR notifications.

- **Other information/documents to be filed**

There are none specified other than the above.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is within 15 months from the financial year-end (e.g., for the fiscal year ending 31 December 2020, the deadline is 31 March 2022).

- **Other transfer pricing disclosures and return**

The SIT should be submitted within nine months from the corresponding year-end (e.g., for the tax year 2022, the deadline for the submission of the SIT is 30 September 2023). With an expected effect for tax year 2022 onward, the expected deadline for the preparation of the local file is 12 months from the tax year-end. Local file should be delivered to the tax authorities within 60 days upon their formal request.

- **Master File**

With an expected effect for tax year 2022 onward, the expected deadline for the preparation of the master file is the same as the deadline for the local file, i.e., 12 months from the tax year-end.

The master file is also not submitted electronically but is expected to be delivered to the Cypriot tax authorities within 60 days upon their formal request.

- **CbCR preparation and submission**

The deadline is within 12 months from the end of the fiscal year (e.g., for groups with year-end 31 December 2021, the reporting deadline is 31 December 2022).

- **CbCR notification**

The deadline is by the last day of the reporting fiscal year (i.e., for fiscal years ending on 31 December 2021, the deadline is by 31 December 2021).

b) Transfer pricing documentation/Local File preparation deadline

Up to tax year 2020, the time frame for the preparation of transfer pricing documentation reports (e.g., for supporting the embedded IP income or for loans financed by debt) is the same as the filing deadline for company tax returns (which is 15 months from the end of the relevant tax year).

For years 2022 onward, the expected transfer pricing regulations indicate that the transfer pricing documentation files should be prepared within 12 months from the respective tax year-end.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

No.

- **Time period or deadline for submission upon tax authority request**

The deadline is within 60 days upon the tax authorities' formal request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

Currently, the arm's-length principle is codified in the Cyprus Income Tax Law (L.118(I) of 2002, as amended, Section 33) with wording similar to that of Article 9 of the OECD Model Tax Convention (on associated enterprises), and no specific guidelines have been issued with regard to the preferred transfer pricing methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

Pan-European benchmarking studies are expected to be preferred by the tax authorities upon the introduction of the legislation in 2022. For the years 2020 and 2021, this is not applicable.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year (three years) analysis is accepted.

- **Use of interquartile range**

Spreadsheet quartile function is generally accepted.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

This is not applicable for the tax years 2020 and 2021. Based on the expected legislation to be effective as of 1 January 2022, a search may be used for a maximum of three years with appropriate updates performed each year.

- **Simple, weighted or pooled results**

Weighted average is accepted.

- **Other specific benchmarking criteria, if any**

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Any transfer pricing adjustments that may arise during a tax audit may trigger additional income tax liability (plus applicable interest and penalties).

- **Consequences of failure to submit, late submission or incorrect disclosures**

Any transfer pricing adjustments that may arise during a tax audit may trigger additional income tax liability (plus applicable interest and penalties).

There are no specific transfer pricing penalties at present. However, it is expected that the Assessment and Collection of Taxes Law of Cyprus will be amended in 2022 to include administrative penalties relative to transfer pricing documentation.

More specifically, the upcoming penalties are expected to be triggered in the events of:

- Late submission of the SIT
- Late delivery of transfer pricing documentation files to the tax authorities upon official request
- Non-submission of the SIT
- Non-delivery of transfer pricing documentation
- Non-accurate or incomplete submission or delivery of the SIT of transfer pricing documentation file.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**
- **This is not applicable.**
- **Is interest charged on penalties or payable on a refund?**

It is evaluated on a year-by-year basis.

b) Penalty relief

The taxpayer has the right to submit an objection; however, the burden of proof lies with the taxpayer.

10. Statute of limitations on transfer pricing assessments

The statute of limitation is the same as it is for income tax (i.e., 6 years from the end of the year of assessment, which may be increased to 12 years in the case of fraud).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium. Tax authorities have initiated transfer pricing audits; however, the authorities usually challenge the pricing applied on intercompany transactions and frequently request documents supporting the pricing during tax audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be low but expected to be increased in the following years. In case transfer pricing is reviewed as part of the audit, the probability that transfer pricing methodology will be challenged is currently low since there is currently no detailed transfer pricing legislation.

Moreover, the introduction of the expected broader local transfer pricing requirements in 2022 will likely result in a more in-depth evaluation of the transfer pricing methodologies in place by taxpayers.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

This is not applicable at the present, since there are no specific guidelines yet with regard to which is the most acceptable transfer pricing methodology. The applicability of the above will need to be assessed upon the introduction of the broader local transfer pricing legislation in 2022.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No APA program available. In the upcoming transfer pricing legislation that is expected to be enacted in 2022, both unilateral, bilateral and multilateral APAs will be available.

- **Tenure**

In particular, APAs will be codified in the law that will provide for both unilateral, bilateral and multilateral APAs to be agreed with the tax authorities for over a fixed period of time.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

MAP opportunities are applicable under the bilateral double tax treaties.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable. Anti-Tax Avoidance Directive provisions for the interest limitation rules are applied as of 1 January 2019.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ministry of Finance (*Ministerstvo Financí České Republiky* – MF).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The Czech Income Tax Act and Directives D-10, D-34, D-32 and D-334 of the Czech MF and General Financial Directorate (the Directives are not legally binding, but are widely respected); transfer pricing obligation applicable since 1993.

- **Section reference from local regulation**

Section 23/7 of the Czech Income Tax Act.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

This is not applicable.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The Czech Republic is a member of the OECD. However, the OECD Transfer Pricing Guidelines are not implemented into the Czech tax legislation directly, but the recommendation to use Transfer Pricing Guidelines is present in Guideline D-22.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes; however, only the CbCR obligation has been effectively adopted.

- Coverage in terms of Master File, Local File and CbCR

  The master and local files are not covered. However, Directive D-334, containing similar requirements on the scope of transfer pricing documentation and issued by the Czech MF, is followed in the Czech Republic.

- Effective or expected commencement date

  There is none specified.

- Material differences from OECD report template or format

  There is none specified.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is no concept of penalty protection in Czech tax law.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

The Czech Republic tax legislation currently does not have a formalized legal requirement for the existence of transfer pricing documentation. However, Czech taxpayers generally bear the burden of proof in tax proceedings; thus, upon a tax audit, they are obligated to demonstrate that their transfer prices are in line with the arm's-length principle. In recent years, the transfer pricing documentation has always been required during tax audits.

Directive D-334 outlines the requirements of the expected scope of documentation of a transfer pricing methodology agreed upon between related parties.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

[1] **https://www.financnisprava.cz/assets/cs/prilohy/d-zakony/D-332.pdf**

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation should be prepared annually under the local jurisdiction regulations (although it is not legally obligatory; refer to the previous section).

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

No.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

There is no materiality limit.

- **Local File**

There is no materiality limit.

- **CbCR**

If the consolidated revenues of the group amounted to at least EUR750 million in the previous fiscal year, they need to submit a CbCR.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

The same rules apply with respect to cross-border and domestic transactions.

- **Local language documentation requirement**

Based on the Czech Tax Code, all documents provided to the tax authorities have to be in the Czech language. However, transfer pricing documentation is also accepted in English at times.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

This is not applicable.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is none specified.

- **Related-party disclosures along with corporate income tax return**

Effective from 1 January 2001, the executives of a controlled entity are required to complete a memorandum with respect to relationships and transactions with companies in the group. This does not apply if a controlling agreement is concluded. Note that this is based on commercial legislation, rather than tax legislation, and the memorandum has no direct tax impact or tax aspects.

From 2014, taxpayers are obliged to fill in a mandatory enclosure with the CITR that includes reporting of intragroup transactions. Qualifying companies have to submit information regarding related parties, such as name and registered office. They should also present a list of selected transactions entered into with the aforementioned related parties in a special enclosure with their tax return. The transactions are to be classified by type, such as sale of goods, provision of services, financial transactions and payment of royalties.

In addition, all taxpayers are required to disclose, in the CITR, whether they were engaged in transactions with related parties.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The CITR needs to be submitted three months after the year-end or six months after the year-end, if the taxpayer is subject to the obligatory audit or the tax return is filed by a certified tax advisor.

- Other transfer pricing disclosures and return

A transfer pricing appendix to the CITR needs to be submitted three months after the year-end or six months after the year-end, if the taxpayer is subject to the obligatory audit or the tax return is filed by a certified tax advisor.

- Master File

This is not applicable.

- CbCR preparation and submission

The report needs to be filed 12 months after the year-end.

- CbCR notification

The notification filing deadline is the end of the respective year. It needs to be filed only if there are changes in the filed information, compared with the notification for the previous year.

b) Transfer pricing documentation/local File preparation deadline

Upon the request of the tax authorities.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

No.

- Time period or deadline for submission on tax authority request

The taxpayer has to deliver the transfer pricing documentation within the prescribed deadline, which is usually 15 days, but it may be extended to at least 30 days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

This is not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

The MF follows the OECD Guidelines. The CUP method is generally preferred. Use of profit-based methods is acceptable where substantiated.

8. Benchmarking requirements

- Local vs. regional comparables

There is no legal requirement for local jurisdiction comparables. There is a preference for local comparables, even though EU comparables are usually accepted in practice.

- Single-year vs. multiyear analysis for benchmarking

Multiyear (three years) analysis, as per common practice, is preferred.

- Use of interquartile range

Spreadsheet quartile is used as per common practice.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

There is no need to conduct a fresh benchmarking search every year; however, an update of the financials is recommended annually.

- Simple, weighted or pooled results

The weighted average, as per common practice, is preferred.

- Other specific benchmarking criteria, if any

There is a 25% independence threshold based on Czech tax law.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

This is not applicable.

- **Consequences of failure to submit, late submissions or incorrect disclosures**

There are no specific penalties for not having transfer pricing documentation.

There is a penalty of up to CZK1.5 million (approximately EUR60,000) for not filing the CbCR.

There is a penalty of up to CZK0.5 million (approximately EUR20,000) for not filing the CbCR notification or the transfer pricing appendix to the CITR.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Generally, when the tax authority successfully challenges transfer pricing, a penalty of either 20% of the unpaid tax or 1% of the decreased or reduced tax loss will be applied. Thereafter, interest is assessed at 14% above the "repo rate" (or repurchase agreement rate) of the Czech National Bank (Czech: *Česká Národní Banka* – CNB), for a maximum of five years.

- **Is interest charged on penalties or payable on a refund?**

No.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

This is not applicable.

b) Penalty relief

No penalty relief regime is in place. It is at the discretion of the MF to decrease penalties; however, this is limited to specific situations.

When the tax authorities issue a final report (decision) about the tax audit, including calculation of the tax assessment and a payment order, the taxpayer may appeal to the Appeal Financial Directorate. Although bringing an appeal does not suspend the effect of the contested decision, the additional tax, penalties and late-payment interest do not have to be paid until the appeal decision date.

Subsequently, the taxpayer may sue the Appeal Financial Directorate in the Regional Court. The additional tax, penalties and late-payment interest are already payable.

The Regional Court judgment may be appealed to the Supreme Administrative Court.

Regardless of the above-described remedies provided by Czech domestic law, the taxpayer's respective counterparty may, upon the tax assessment, initiate the MAP on the basis of the EU Arbitration Convention or the respective double tax treaty before its tax authorities (if enabled by law in the respective jurisdiction).

10. Statute of limitations on transfer pricing assessments

The statute of limitations could be three years as of the CITR deadline, but it may be extended in the case of tax scrutiny, supplementary CITR, tax losses (up to an additional 5 years to the standard statute of limitations for the year when the tax loss was realized and the subsequent five years) or investment incentives (up to an additional 10 years to the standard statute of limitations).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Overall, the likelihood may be considered to be medium. However, the transfer pricing audits are initiated on the basis of the results of complex screening performed by the Czech tax authorities and risk profiles of taxpayers (though not regularly).

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high; as mentioned above, the tax audits are initiated when the tax authorities have a specific suspicion.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high, as the tax authorities generally take a pragmatic approach and focus on areas where it is relatively easy for them to make the adjustment.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Intangibles, royalties, long-term losses and service fees are seen as the most common transfer pricing audit issues. Although no specific jurisdiction is targeted for transfer pricing audits, transactions with tax-haven jurisdictions are closely scrutinized. The scrutiny of transfer pricing will only intensify, and in press statements, the MF has directed that the tax authorities should particularly focus on transfer pricing. In addition, they have created a specialized group of full-time specialists within the tax authority dedicated to transfer pricing issues.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral or multilateral)**

An APA program is available, and Czech taxpayers may request unilateral, bilateral and multilateral APAs. Upon the taxpayer's request, the tax administrator decides whether the taxpayer has chosen a transfer pricing method that would result in a transfer price determination on an arm's-length basis. As of 2018, Czech tax non residents may ask an APA for the allocation of profits to a permanent establishment. D-32 details the procedure for issuing binding assessments and the particulars for the application.

- **Tenure**

The tenure period is usually three or four years.

- **Rollback provisions**

The binding assessment can be issued only for transactions that are effective in a particular tax period or that will be effective in the future. It is impossible to apply for a binding assessment of business relationships that have already affected tax liability. However, in practice, the decisions are respected for previous periods as well.

- **MAP opportunities**

MAP procedure is available in line with the EU arbitration convention and respective double tax treaties.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

The tax deductibility of financing expenses (interest and associated expenses) with respect to related-party loans (including back-to-back loans) is limited by a debt-equity ratio of 4:1 (6:1 for banks and insurance companies). Financing expenses with respect to profit-participating loans are non deductible for tax purposes. Also, limitations are imposed on the deductibility of financing expenses related to shareholdings.

Further, in 2019, the interest deductibility limitation rule was implemented through the Anti-Tax Avoidance Derivative (ATAD) transposition. A deductibility limit for exceeding borrowing costs is the higher of 30% tax earnings before interest, tax, depreciation and amortization (EBITDA) or CZK80 million. The rule does not apply to stand-alone taxpayers or to listed financial enterprises. Borrowing costs subject to this rule are defined broadly in line with ATAD. Disallowed exceeding borrowing costs may be carried forward and claimed in future tax periods (however, transfer to previous tax periods and transfer of unused capacity to future tax periods are not allowed). The interest deductibility limitation rule applies together with the thin-capitalization rule and other limitations on financing expenses.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Direction of Tax (Direction Générale des Impôts – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

  TP regulations and rulings include:

  - Law n°004/2003, dated 13 March 2003, as amended and completed to date related to reform of the tax procedure at Articles 24 bis (TP documentation requirements).
  - Article 24 ter (filing obligation of TP return)
  - Article 24 quarter (conclusion of Advance Pricing Agreements)
  - Article 93 bis (TP return penalties)

The effective date of application is 1 January 2015.

- **Section reference from local regulation**

Special tax provisions, refer above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The DRC is not a member of the OECD, but in practice, it follows the OECD methods.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- **Coverage in terms of Master File, Local File and CbCR**

There's only the requirement for local file documentation. BEPS Action 13 provisions and CbCR are not applicable.

- **Effective or expected commencement date**

Effective date is 1 January 2015, and the filing requirement is since 1 January 2017.

- **Material differences from OECD report template or format**

Local TP requirements do not follow the BEPS Action 13 format for the local file.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, a local TP documentation has to be provided to the DGI only upon request in case of a tax audit.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity**

No, TP reports aren't required for each entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

First filing requirements in 2017 of a TP return (documentation allégée) of the TP documentation. The filing due date is two months after the filing of the corporate income tax (i.e., 30 June).

The filing obligation is applicable only to companies realizing an annual net turnover of USD1 million.

Filing of the TP return is only applicable for transactions above or equal to USD20,000 on each transaction realized with affiliated companies outside the DRC.

- **Master File**

This is not applicable.

- **Local File**

As of 1 January 2017, there is an obligation to file the TP return with the DGI.

Local TP documentation has to be provided to the DGI only upon request in case of a tax audit (since 2015).

- **CbCR**

This is not applicable.

- **Economic analysis**

It's not provided by the law; however, in practice, the following analysis methods are used: CUP, resale price method (RPM), cost plus method, comparable profits method (CPM), TNMM and the transactional profit split method (PSM).

There's the possibility to obtain prior agreement on the method for determining the price of intragroup transactions for a period not exceeding four years (since 2020). This was further confirmed in the new Finance Bill for 2022.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, domestic transactions are expected to follow arm's-length principles as they may be under scrutiny during tax audit.

- **Local language documentation requirement**

French.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

As a note, the TP return does not replace the supporting documents relating to each transaction.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The document to be filed with the tax authority is the TP return. It has to be submitted in French as part of the taxpayer's annual tax return. Online submission is permissible.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax (CIT) compliance deadline is 30 April, following each fiscal year-end.Other transfer pricing disclosures and return

The annual TP return due date is 30 June of each year.

- **Master File**

There is no filing requirement; it's to be kept in-house in case of a tax audit.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) Transfer pricing documentation/Local File submission deadline

There is no filing requested for the TP documentation.

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

This is not applicable.

- **Time period or deadline for submission upon tax authority request**

The deadline is 20 days following the tax auditor's request of the TP documentation.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost plus, profit split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

Both can be applicable. However, if local comparables are applicable, it would be preferred.

- **Single-year vs. multiyear analysis for benchmarking**

There is none specified provided.

- **Use of interquartile range**

There is none specified provided.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is none specified provided.

- **Simple, weighted or pooled results**

There is none specified provided.

- **Other specific benchmarking criteria, if any**

There is none specified provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The risk of non-compliance is that in the event of an audit by the DGI, the absence of complete TP documentation could lead tax administrators to reject certain deducted professional charges linked to these transactions. In addition, since the publication of the 2020 Finance Law, the failure to declare the documentation of the transfer price gives rise to a fine of CDF500,000 (approximately USD270) per day of delay.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The risk of non-compliance is that in the event of an audit by the DGI, the absence of TP documentation could lead tax administrators to reject certain deducted professional

charges linked to these transactions. In addition, since the publication of the 2020 Finance Law, the failure to declare the documentation of the transfer price gives rise to a fine of CDF500,000 (approximately USD270) per day of delay.

- **If an ad justment is sustained, can penalties be assessed if documentation is deemed incomplete?**

There's no guidance provided; however, after a TP reassessment is made, the profit indirectly transferred should be qualified as a deemed distribution of a benefit. Such "benefit" transfer should entail a CIT of 30% and withholding tax (WHT) of 20% on the distributed amounts payments. Accordingly, penalties will apply at the rate of 20% of the tax evaded, or discretionary taxation, and 40% if recurring. The recovery penalties are set at 2% of the principal per month of delay.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is none specified.

- **Is interest charged on penalties or payable on a refund?**

In the case of a reassessment or a discretionary taxation, a delayed interest of 2% is applied per month of delay, capped at 50% of the tax evaded or reconstituted by the office.

b) Penalty relief

There is none specified provided, but we can assume that further discussion can be held with the DGI.

10. Statute of limitations on transfer pricing assessments

Five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium. However, during normal audits, queries on TP are formulated by the tax inspectors.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium if they assume that the company chose this method to lower the taxable base.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be low if management can explain the methodology used and, as written, obtain prior agreement on the methodology.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The industries are large companies: telecommunication, oil and gas, mining, and subcontracting mining companies.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

The possibility to initiate an APA has been added into the Law (Article 24 quarter) for a maximum period of four years. Practical aspects of submission are to be clarified.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are debt-to-equity rules. The DRC does not have any thin-capitalization rules, but several measures may apply to related-party transactions.

The DRC has several measures applicable to related-party transactions that are not conducted on an arm's-length basis. These provisions include the disallowance of loan interest with respect to rates exceeding the annual average of the effective rates charged by the credit institutions of the jurisdiction in which the lending company is established, and the repayment of principal beyond five years.

Management fees paid to a related party may be deducted from the CIT base if the following conditions are satisfied:

- **The services rendered can be clearly identified, i.e., they are genuine services that are effectively rendered and directly related to operating activities.**
- **The services cannot be rendered by a local company, i.e., overhead expenses recharged to the local entity are excluded.**
- **The amount paid for the services corresponds to the remuneration paid in identical transactions between independent companies.**

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority [1]

Danish Customs and Tax Administration (Skattestyrelsen)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The following regulations contain references to TP documentation:

- **Tax Assessment Act Section 2, which states that controlled transactions should be at arm's length**
- **Tax Control Act Section 37–42, which defines the documentation requirements that are further detailed in the executive order**
- **Executive Order No. 1297 of 31 October 2018**
- **Section reference from local regulation**
- **Tax Assessment Act Section 2: The arm's-length principle**
- **Tax Control Act Section 37-42 has reference to TP documentation.**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No, none relating specifically to COVID-19 situation.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Denmark is a member of the OECD.

The OECD Guidelines are generally recognized as a source for interpretation (soft law) of the Danish TP rules (the arm's length principle).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Denmark has adopted BEPS Action 13 for TP documentation in terms of Master File, Local File and CbCR.

- Coverage in terms of Master File, Local File and CbCR

  It covers the master file, local file and CbCR.

- Effective or expected commencement date

  It is applicable for years beginning on or after 1 January 2016.

- Material differences from OECD report template or format

  There are no material differences from the OECD report template or format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, TP documentation is required to be prepared contemporaneously to offer protection from penalties and discretionary assessment.

Under the current law, documentation for financial years starting prior to 1 January 2021 should be submitted only upon request, with 60 days to submit. This deadline cannot be extended.

For financial years starting on or after 1 January 2021,

[1] **https://www.skat.dk/**

new legislation requires TP documentation to be submitted annually. The deadline for submitting is 60 days after the filing of the tax return. Generally, the tax return filing is due six months after the end of the financial year (please see Section 6. a for more details).

For companies with calendar year fiscal years, this means that TP documentation (master file and local file) must be filed to the tax authorities no later than 29 August in the following fiscal year (i.e. 29 August 2022 for companies with fiscal year end 31 December 2021).

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local Danish branch is required to prepare TP documentation.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, TP documentation for Danish entities and branches is subject to requirement of being contemporaneously prepared and needs therefore to be prepared annually.

Non-compliance with the deadline may mean that:

- Taxable income may be determined on a discretionary/estimated basis. (The burden of proof shifts from the tax authorities to the taxpayer.)
- TP penalties can be imposed.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

TP documentation exemption clause: Companies belonging to a consolidated group with fewer than 250 employees (FTE) and either of the following are exempt from the requirement to prepare TP documentation:

- **Less than Danish krone (DKK) 125 million in assets**
- **Less than DKK250 million in revenue**

Note that the thresholds are at consolidated basis for the group, not only the Danish entities/branches.

The exemption does not apply to transactions with counterparties resident in jurisdictions that are not EU/EEA members and do not have a double-tax treaty with Denmark.

When exempt, the company is still subject to TP principles (the arm's-length principle) and the exemption from preparing TP documentation does not mean that the entity/branch cannot be subject transfer pricing scrutiny by the Danish tax authorities.

- **Master File**

No separate threshold. See above for TP documentation.

- **Local File**

No separate threshold. See above for TP documentation

- **CbCR**

CbC report filing and CbCR notification requirements apply in line with the OECD Guidelines. The threshold for CbCR is DKK5.6 billion (EUR750 million)

- **Economic analysis**

There is no materiality limit.

A controlled transaction can be deemed insignificant if it is a non-reoccurring transaction with a limited/low economic value. Transactions that are deemed immaterial for transfer pricing purposes should be identified and listed but are not subject to detailed documentation requirements (not subject to a comparability/economic analysis).

c) Specific requirements

- **Treatment of domestic transactions**

For fiscal years starting before 1 January 2021 there is no exemption for domestic transactions. Domestic transactions should therefore be included for TP documentation purposes, despite often being within a consolidated tax group (mandatory joint taxation). Despite the documentation requirement, the DTA will generally only take an interest in such transactions in cases of asymmetric tax regimes (tonnage or hydrocarbon taxation, etc.) or in case of entity-specific carryforward losses within a mandatory joint taxation.

For fiscal years starting on or after 1 January 2021, an exemption from documenting domestic transactions for Danish TP documentation purposes has been introduced. Following this, preparation of TP documentation covering domestic transactions will only be required in cases of being between parties subject to asymmetrical tax regime (tonnage tax, hydrocarbon tax, special losses within the joint taxation group, etc.) or when required to understand the basis for a cross-

border transaction.

- **Local language documentation requirement**

TP documentation is required to be prepared in Danish, English, Swedish or Norwegian language.

- **Safe harbor availability, including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Generally individual testing per transaction type and counterparty.

- **Any other disclosure/compliance requirement**

No other requirements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

TP-specific disclosures are embedded within companies'/ branches' tax returns.

In certain cases however, e.g., for companies subject to hydrocarbon taxation, companies/branches are required to report controlled transactions using Form 05.022.

- **Related-party disclosures along with corporate income tax return**

In the tax return, entities and branches are required to report controlled transactions. The taxpayer is requested to specify nature and volume of controlled transactions, jurisdiction of counterparties, assess whether the entity/branch is subject to exemption from Danish TP documentation requirements, etc.

Information regarding the TP method applied and outcome testing is not reported in this form. Also, the tax return does not include a statement that controlled transactions are on arm's-length terms and conditions.

- **Related-party disclosures in financial statement/annual report**

No.

- **CbCR notification included in the statutory tax return**

No.

Notification for the CbCR must be filed separately for Danish entities and branches before the end of the fiscal year.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

General principle is six months after fiscal year-end, meaning that entities/branches with calendar year fiscal year have filing deadline on 30 June.

The six-month filing deadline applies also to entities/branches with non-calendar year fiscal year, however with the exemption that tax return filing deadline can never be later than 1 September. This means that certain entities/branches can be subject to a filing deadline shorter than six months.

- **Other transfer pricing disclosures and return**

Form 05.022 (if applicable) is subject to the same filing deadline as the corporate income tax return.

- **Master File**

Sixty days after deadline for filing the tax return. This applies only for fiscal years starting on or after 1 January 2021. This means that many MNEs will have to accelerate the preparation of the master file to meet the Danish filing deadline.

For fiscal years starting prior 1 January 2021, the master file should be contemporaneously prepared but only be filed upon request (within 60 days after the request).

- **CbCR preparation and submission**

No later than 12 months after the fiscal year-end of the fiscal year the reporting concern.

- **CbCR notification**

The deadline is by the end of the fiscal year in question.

b) Transfer pricing documentation/Local File preparation deadline

For financial years starting prior to 1 January 2021, TP

documentation should be finalized at the time the tax return is submitted – i.e., the TP documentation should be prepared contemporaneously and submitted only on request. At request the entity/branch will have 60 days to file the documentation (consisting of master file and local file).

For financial years starting on or after 1 January 2021, TP documentation must be submitted within 60 days after the deadline of the tax return. For calendar year companies, this means 29 August (year-end + six months + 60 days).

Missing or insufficient TP documentation, or TP documentation that can be evidenced not being contemporaneously prepared, expose the taxpayer to potential discretionary assessments of the taxable income and potential penalties for non-compliance with Danish TP documentation requirements.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

Yes, refer to the above point b). The submission deadline for fiscal years starting on 1 January 2021 or later apply to master files as well as local files. The deadline can be extended only in special cases.

- **Time period or deadline for submission upon tax authority request**

For financial years starting prior to 1 January 2021, the taxpayer has to submit the TP documentation within 60 days once requested by the tax authorities. Hence, it requires Danish taxpayers to be able to submit the TP documentation (master file and local file) 60 days after their filing of the tax returns. The deadline cannot be extended.

For financial year-end starting on or after 1 January 2021, TP documentation should be submitted (without request) within 60 days after the tax return filing deadline.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Not currently.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**
- **Domestic transactions: Yes**

b) Priority and preference of methods

The following TP methods are accepted: CUP, resale price, cost plus, profit split, TNMM and others. When selecting the most appropriate method, the taxpayer should consider the aspects regarding the application of methods stated in the OECD Guidelines.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local benchmarks are not required as per local requirements. Consequently, pan-European benchmarks are accepted.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year testing is generally accepted but not always recognized. For principal TP structures, there is a tendency to test whether the margins of limited-risk entities (contract manufacturer or limited risk distributor) are within the interquartile range every year (single-year testing). It should not automatically be taken for granted that multiyear testing can mitigate the TP risk attributable to single-year outcomes.

- **Use of interquartile range**

Yes, the interquartile range calculation using spreadsheet quartile formulas is preferred.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Frequency of new benchmarks and benchmark refreshes/roll-forwards are consistent with recommendations as per OECD Guidance.

- **Simple, weighted or pooled results**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The penalty amounts to DKK250,000 per legal entity per year for which either no, insufficient or non-contemporaneously prepared TP documentation is submitted. Penalties are non-deductible for tax purposes.

Penalties can be reduced by 50% if sufficient TP documentation is subsequently submitted.

No automatic penalty regime as there will be an individual assessment of penalties on a case-by-case basis if gross negligence or intend. Tax authorities have the burden of proof.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Same penalty regime as specified above.

In case of no or late submission, it should be expected that penalties will be imposed.

In addition, if the taxpayer does not fulfil the disclosure requirements as stated in tax returns and Form 05.022 (refer to the section above on TP-specific returns), or if the information provided is not correct, a penalty can be imposed.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

If the tax authorities increase the income, an additional fine of 10% may be imposed on the income adjustment. The penalty amounts are non deductible.

Where there is an income adjustment, a non deductible surcharge will be levied on all prior-year adjustments of corporate taxes payable. In addition, interest will be charged on the related late payment of taxes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above.

- **Is interest charged on penalties or payable on a refund?**

Non deductible interest accrues on late tax payments related to assessments for prior years' income. The interest was 0.7 % in 2020, 2019 and 2018 (0.8% in 2017, 2016, 2015 and 2014).

Refunds are also subject to interest.

b) Penalty relief

If the taxpayer provides insufficient or no documentation and subsequently provides documentation that meets the requirements, the fine will be reduced to half of the original amount (DKK125,000). However, the 10% penalty on any income adjustment could still apply. As stated above, adequate TP documentation submitted in due time will provide penalty protection.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for a TP assessment is 1 May of the sixth year following the fiscal year concerned (e.g., the statute of limitations for the fiscal year 2016 is 1 May 2022).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high, especially in cases of business restructurings, operating losses, material intragroup financing arrangements, IP asset transfers, decreases in taxable income, etc.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Depending on the circumstances, the likelihood of a challenge can be considered high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Depending on the circumstances, the likelihood of an adjustment can be considered high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The tax authorities are particularly focused on:

- **Valuation of intellectual property (IP), particularly related to the transfer of intangible assets abroad to low-tax countries**
- **Loss-making entities**

- Business restructurings
- Group financing, including intercompany loans, cash pools and guarantees
- Management services — both inbound and outbound
- Licensing (royalty)

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APAs are available.

- Tenure

The tenure is usually five years, but may be shorter or longer.

- Rollback provisions

Rollback is available on request although they will not prevent Danish Customs and Tax Administration from initiating tax audits of previous income periods.

- MAP opportunities

MAPs are available.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under thin-capitalization rules, interest paid by a Danish company or branch to a foreign group company is not deductible to the extent that the Danish company's debt-to-equity ratio exceeds 4:1 at the end of the debtor's financial year and that the amount of controlled debt exceeds DKK10 million.

The Danish thin-capitalization rules are supplemented through an "interest ceiling rule" and earnings before interest, taxes, depreciation and amortization (EBITDA) rule.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration of the Dominican Republic (Dirección General de Impuestos Internos, or DGII)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

  Article 281 of the Dominican Tax Code and Decree No. 78-14.

  Decree 256-21 that modifies Articles 5,7,10 and 18 of Decree No. 78-14, applicable from FY2021.

  General Norm 08-2021 that regulates CbC report and notification, applicable from FY2022.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The Dominican Republic is not an OECD member and there is no reference in which the OECD Guidelines can be relied upon for interpretation.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- **Coverage in terms of Master File, Local File and CbCR**

All three, i.e., master file, local file and CbCR, are covered.

- **Effective or expected commencement date**

1 January 2021 for local file and master file.

The general norm will apply as of the 2022 multinational group's reporting tax year.

- **Material differences from OECD report template or format**

There are significant differences between the OECD report template or format and the documentation requirements under local jurisdiction regulations.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

No.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does it need to be submitted or prepared contemporaneously?**

Yes, they need to be prepared and submitted annually.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

The TP documentation report and return must be prepared annually, with updates to all the information that allows a correct TP analysis. The local tax authorities require the most

[1] **https://dgii.gov.do/Paginas/default.aspx**

recent available financial information for the comparables and the tested party.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes

b) Materiality limit or thresholds

- **Transfer pricing documentation**

  Taxpayers are exempt from preparing a TP study in certain situations:

  - Taxpayers whose total amount of intercompany transactions does not exceed Dominican peso (DOP) 12,193,981.70 (adjusted every year for inflation) and have no transactions with entities located in tax havens or under preferential tax regimes
  - For related-party transactions with entities resident in the Dominican Republic, provided such intercompany transactions do not result in a tax deferral or overall reduction of tax revenues

Nevertheless, taxpayers excluded from the documentation requirements are still subject to complying with the arm's-length principle and are required to file the TP information return.

- **Master File**
  - Taxpayers whose total amount of intercompany transactions does not exceed DOP12,193,981.70 (adjusted annually for inflation) and who have no transactions with entities located in tax havens or under preferential tax regimes
  - Taxpayers conducting related party transactions with entities resident in the DR (for the local transactions part only), provided that such intercompany transactions do not result in a tax deferral or reduction of the taxable income
- **Local File**
  - Taxpayers whose total amount of intercompany transactions does not exceed DOP12,193,981.70 (adjusted annually for inflation) and who have no transactions with entities located in tax havens or under preferential tax regimes.
  - Taxpayers conducting related party transactions with entities resident in the DR (for the local transactions part only), provided that such intercompany transactions do not result in a tax deferral or reduction of the taxable income.

A detailed analysis should be performed by the taxpayer to determine if there are any indications of tax deferral or reduction of the taxable income.

Taxpayers excluded from this documentation requirement are still subject to comply with the arm's-length principle and to file the transfer pricing informative return.

The Tax Administration reserves the right to require any information it deems necessary to analyze the arm's length nature of the intercompany transactions performed.

- **CbCR**

Taxpayers that are the ultimate parent entity or constituent entity of a multinational group that is tax resident in the Dominican Republic and has consolidated annual revenue equal or greater than DOP38.8 billion (approx. EUR600 million).

- **Economic analysis**

Refer the section above.

c) Specific requirements

- **Treatment of domestic transactions**

Taxpayers with domestic transactions are not obligated to prepare a TP documentation report unless the amounts agreed upon between the parties reduce tax liability or produce deferred taxation in the Dominican Republic. Notwithstanding the above, taxpayers with domestic transactions must file the TP return.

- **Local language documentation requirement**

The TP documentation needs to be submitted in the local language. Article 21 of General Norm No. 07-14 states that entities and individuals must file (when required by the Tax Administration) accounting and financial documents that support the information provided in the corresponding tax return. These documents must be filed in Spanish.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

In practice, tax administration tends to prefer an individual testing of transactions, if possible.

- **Any other disclosure/compliance requirement**

Transfer pricing informative return (DIOR), that must be filed on an annual basis.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Article 18 of Decree No. 256-21 states that taxpayers should file an annual informative return (DIOR).

Information to be disclosed includes related parties' tax address and tax identification numbers, transaction classifications, amounts, profit-level indicator of the tested party of each transaction, interquartile range or results of comparables, and the methods applied for analysis, among others. The return should be filed within 180 days for fiscal years previous to FY2022. For FY2022 and onward, the return should be filed within 120 days after the closing date of the fiscal year, by the time the corporate income tax return (IR-2) is filed.

- **Related party disclosures along with corporate income tax return**

No.

- **Related party disclosures in financial statement/annual report**

No.

- **CbCR notification and CbC report submission requirement**

Yes.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing should be made within 120 days after the closing date of the fiscal year.

- **Other transfer pricing disclosures and return**

For fiscal years prior to FY2022, the filing of the DIOR should be made within 180 days after the fiscal year-end. From FY2022 and onwards this return should be filed within 120 days after the fiscal year end, by the time the corporate income tax return (IR-2) is filed.

- **Master File**

From fiscal year 2021 all taxpayers must submit to the DGII the Master File within 180 days after the transfer pricing informative return is filed.

- **CbCR preparation and submission**

From FY2022, CbCR should be submitted within 12 months from fiscal year-end.

- **CbCR notification**

A constituent entity of a multinational group that is tax resident in the Dominican Republic must notify the DGII as to whether it is the ultimate parent entity (UPE) or the surrogate parent entity. The constituent entity must use the formal communication procedures for notifying the DGII and report whether it is the UPE or surrogate parent entity no later than the last day of the multinational group's reporting tax year.

In addition, when a constituent entity of a multinational group that is resident for tax purposes in the Dominican Republic is not the UPE or the surrogate parent entity, it must notify the DGII of the legal name and tax residence jurisdiction of the reporting entity no later than three months before the end of the multinational group's reporting tax year.

If the constituent entity fails to notify the DGII of the reporting entity, all taxpayers that are constituent entities of the multinational group, resident or domiciled in the Dominican Republic, will be appointed, and the penalties provided in Article 281 ter. of the Dominican Tax Code will be applied.

b) Transfer pricing documentation/Local file preparation deadline

The documentation must be readily available by the time the transfer pricing informative return (DIOR) is filed.

c) Transfer pricing documentation/Local file submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

From FY2021 and onward, the local file and master file must be submitted to the DGII within 180 days of the filing date of the transfer pricing informative return or DIOR.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has five days to submit the TP documentation once requested by the tax authorities in an audit inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions — Yes
- Domestic transactions — Yes

b) Priority and preference of methods

Article 281 of the Dominican Tax Code establishes the following methods to assess the arm's-length standard: CUP, resale price, cost plus, TNMM, profit split and transparent market concept (the sixth method).

8. Benchmarking requirements

- **Local vs. regional comparables**

There are no benchmarking requirements for local and regional comparables, considering the lack of financial information available on local comparables. Thus, international comparables are accepted by the tax authorities.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year testing for the comparables is applicable. In practice, the number of years is three.

- **Use of interquartile range**

Article 12 of Decree No. 78-14 requires the application of an interquartile range.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search every year over the update of the financials of a prior study is preferred. A TP report must be prepared annually, updating all the information that allows a correct TP analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

- **Simple, weighted or pooled results**

Weighted average is common in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Article 281 ter of the Dominican Tax Code, with reference to Article 257, dictates that failure to provide complete TP documentation could result in penalties of up to three times 0.25% of the previous year's gross income or from 5 to 30 minimum wages.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Article 281 ter of the Dominican Tax Code, with reference to Article 257, dictates that failure to provide TP documentation on time, or failure to provide true, complete or accurate information, could result in penalties of up to three times (0.25% of the previous year's gross income or from 5 to 30 minimum wages).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Any additional tax generated by DGII price adjustments should be subject to surcharges (10% for the first month and 4% for the subsequent months) and interest (1.10% on a monthly basis).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Any additional tax generated by DGII price adjustments should be subject to surcharges (10% for the first month and 4% for the subsequent months) and interest (1.10% on a monthly basis).

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above for interests charged on penalties. No interest is paid on refunds.

b) Penalty relief

Taxpayers can benefit from reductions of the surcharges assessed as a result of any DGII adjustment:

- **A 40% reduction of the surcharges is assessed if the company decides to voluntarily amend its tax return without any prior notice from the tax authorities.**
- **A 30% reduction of the surcharges is assessed if, after being audited, the difference between the estimated tax and the effectively paid tax represents less than 30% of the latter.**

10. Statute of limitations on transfer pricing assessments

The statute of limitations is three years; the term is affected by amended returns. However, if a taxpayer fails to file a return, the period is extended to five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general tax audit is currently categorized as medium. The likelihood of a TP assessment as part of a general tax audit is considered high. In the past five years, the DGII has been active in tax audits regarding TP issues.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

In case TP is scrutinized, the likelihood that the TP methodology will be challenged is high. In practice, the DGII has continued to focus on TP with no exceptions to large and non-large taxpayers and with a current focus on, and auditing, MNEs with complex transactions. The methodologies applied by these types of enterprises tend to be challenged by the DGII in TP audits. For instance, the DGII has been adjusting commodities transactions with the use of the sixth method.

In addition, the DGII has been challenging comparables when using the TNMM, agreements when using the CUP method and royalty transactions, among others.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high because, in most audits, the DGII challenges either the methodology or the comparables.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The hospitality and commodities industries are more likely to be audited.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs, bilateral or multilateral, are contemplated in Article 281 bis of the Dominican Tax Code and in Decree No. 78-14.

- **Tenure**

Taxpayers can request an APA for a certain time period and renew it for an additional three years.

APAs should be requested within the first three months of the corresponding taxpayer's fiscal year and can be requested, among others, for financing transactions with third parties to exceed the thin-capitalization rules.

The DGII must issue a response within the first 24 months after the request is filed. If no response is issued, the request may be presumed to have been denied.

The decree establishes the information that must be included in the APA request.

Furthermore, Article 281 of the Dominican Tax Code contemplates a protection regime (*regimen de protección*) oriented to specific industries or economic activities, even though the law does not mention the specific industries or activities subject to this regime. The DGII could determine a minimum price or margin if the taxpayer agrees and reflects it in its income tax return. Such a price or margin could be calculated having regard to the total value of income, assets, costs and expenses, and other variables that may be justified.

The DGII issues a corresponding resolution once the industry or economic activity is selected.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

No .

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Article 287 of the Dominican Tax Code states that the limitation on interest deduction will be limited to the indebtedness capacity of the entity, considering that, numerically, this capacity could not exceed three times the value of its equity.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Internal Revenue Service (Servicio de Rentas Internas, or SRI) and National Customs Service (Servicio Nacional de Aduanas del Ecuador, or SENAE).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The transfer pricing regime is part of the corporate income tax (CIT) enacted in the ax aw (Ley Orgánica de Régimen Tributario Interno, or LORTI), and its application is prescribed in LORTI, tax administration resolutions and communications, and a technical guidelines document prepared by the SRI that is available on its website.

As the OECD's Transfer Pricing Guidelines are used as a technical reference, the OECD BEPS Actions 8, 9 and 10 are also used as guidelines for the pertinent transactions. However, LORTI, tax administration resolutions, Ecuadorian laws or international treaties signed by Ecuador hold supremacy over the OECD Guidelines. In this regard, Action 13 is not applicable, as SRI resolutions define adaptations to the content of the documentation and to the methodology to be accepted by local tax administration.

- **Section reference from local regulation**

Related parties are defined in LORTI's first unnumbered article after the fourth, its regulations' Article 4 and SRI's resolution on tax havens, as transactions with those regimes are deemed as related-party transactions per Ecuadorian tax law.

In addition, tax law includes definitions of the arm's-length standard, the methods accepted locally, comparability criteria and penalties for late completion of the taxpayer's transfer pricing obligations.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Ecuador is not a member of the OECD; however, in May 2017, Ecuador became part of the OECD Forum on Transparency and Information Exchange.

In September 2018, Ecuador signed a multilateral agreement between competent authorities for the Common Reporting Standard (CRS) MCAA, which is the first international agreement for the adoption of the automatic exchange of financial information under the Convention on Mutual Administrative Assistance.

In December 2018, local government established a commission to coordinate and establish the steps to follow for addition process of Ecuador as member of the OECD.

The OECD Guidelines are applicable as technical guidelines for matters not being regulated by any internal law, regulation or resolution or by any international treaty. The regulation established that the guidelines to analyse a transaction will be those that were the most current on 1 January of the fiscal year during which the transaction was made. In this regard, the OECD Guidelines amendments including the BEPS actions will be applicable for transactions that Ecuadorian companies hold with related parties (domestic or cross-border) starting 1 January 2018.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

  No.

- Coverage in terms of master file, local file and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

The BEPS Action 13 format report is not sufficient to achieve penalty protection. To achieve this standard, all the specific regulations of SRI resolutions on documentation, including the local tax administration transfer pricing guidelines, must be closely followed.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No, Ecuador is not part of the Inclusive Framework.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Ecuador has its own local transfer pricing documentation guidelines supported in the LORTI, tax administration resolutions and communications, and a technical guidelines document prepared by the SRI. The OECD Transfer Pricing Guidelines must be used as the transfer pricing technical reference for items not covered by laws, treaties or SRI resolutions.

Tax law regulation on transfer pricing includes many factors, such as:

- Compulsory delivery of documentation when a defined threshold is met
- Thresholds based on the addition of transactions following rules that cover profit and loss and balance sheet accounts
- Domestic transactions affected by the transfer pricing regime – may not be part of the threshold calculations if certain conditions are met
- Certain indirect allocated expenses paid to related parties being restricted
- The CIT for banana exports becoming revenue-based where the taxable revenue is derived from transfer prices calculated by the SRI
- The use of the interquartile range, when more than one comparable is found, being compulsory for every applicable method – transfer pricing adjustment to be calculated to the median of the comparable set
- The use of a single year (contemporaneous to the transaction) of financial statements of comparable companies being requested, as well as the exclusion of companies with more than one business activity
- The tax administration's likely usage of secret comparable
- Application of the transfer pricing regime being waived if certain conditions are met
- Specific regimes applying for crude oil, metallic minerals and banana exports

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, local branch needs to comply with regulations applicable to any other entity.

- **Should transfer pricing documentation be prepared annually?**

Yes, transfer pricing documentation must be prepared annually under local jurisdiction regulations. It must cover every transaction, independently of the obligation of filing it when the thresholds are met, which are explained in the section below.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Transfer pricing documentation rules in Ecuador requires stand-alone transfer pricing reports for each entity in the jurisdiction because domestic transactions are affected by the transfer pricing regime. They may not be part of the threshold calculations if certain conditions are met.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The tax administration has defined "relevant transactions" to exclude domestic (exceptions apply) and certain cross-border transactions to quantify the amount that triggers the transfer

pricing formal obligations, as explained below:

- Taxpayers are required to file the Transfer Pricing Annex (transfer pricing Annex) if the relevant transactions exceed USD3 million.
- Taxpayers are required to submit the Transfer Pricing Report (transfer pricing Report) if the relevant transactions exceed USD15 million.

Notwithstanding the thresholds that trigger documentation submission, the SRI may require, at any time, the transfer pricing Annex or the transfer pricing Report, even though the company does not reach the threshold amounts, and on transactions that did not accumulate for the threshold.

- **Master file**

The issuance of a BEPS master and local file is not required by Ecuadorian tax law. However, taxpayers have the obligation to issue a local transfer pricing report according to the specifications defined by local regulations.

- **Local file**

Same as above.

- **CbCR**

Issuance of a CbCR is not required by Ecuadorian tax law.

- **Economic analysis**

Ecuadorian tax law does not establish any thresholds for the preparation of economic analysis. All transactions, regardless of their amount, must comply with the arm's-length principle and therefore should have an analysis.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions will receive the same treatment as foreign transactions.

- **Local language documentation requirement**

The official national language, Spanish, shall be used for documentation presented for administrative procedures with public institutions in Ecuador.

- **Safe harbor availability, including financial transactions, if applicable**

Taxpayers may obtain exemption from the transfer pricing regime when they comply with all these conditions concomitantly:

- Have a payable CIT greater than 3% of their taxable revenues
- Not perform any transactions with tax havens, or lower- or preferred tax jurisdictions
- Not have government contracts related to the exploration and exploitation of nonrenewable resources

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transaction for an entity is preferred to document the accomplishment of the arm's-length standard.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The transfer pricing regime requires several specific obligations to be fulfilled in terms of the information that is required by the tax administration, as well as by the external auditors because of Tax and Companies Laws compliance requests.

The following is typical information that should be prepared and shared or submitted to government institutions:

- Audited financial statements and their notes, including tax and transfer pricing compliance assessments and opinions that make it compulsory to communicate the transfer pricing analysis outcome before the issuance of the audit report
- Income tax return, which includes transfer pricing-specific fields (amount of related-party transactions that trigger local transfer pricing obligations) and the recognition of any potential transfer pricing adjustment that affect the income tax calculation
- Informative transfer pricing form (transfer pricing Annex)
- Transfer pricing Report
- Tax Compliance Report, which must be filed by external auditors each year, including details of transfer pricing-related information

The transfer pricing Report and the transfer pricing Annex, typically due in June, have specific classifications for financial

transactions; the Tax Compliance Report, typically due in July, includes specific sections for them. Companies having an absolution to Advance Pricing ruling requests must file a compliance report in May.

- **Related-party disclosures along with corporate income tax return**

Detailed information about the related parties involved in transactions held by Ecuadorian taxpayers must be disclosed in an appendix in the transfer pricing documentation and in the main documentation as well. This appendix must be filed concomitantly to the documentation and consists of a summary of the transactions and the analysis results.

- **Related-party disclosures in financial statement and annual report**

Financial statements in Ecuador follow the IFRS accounting standards, and by law, the external auditors must include in the notes to the financial statements an opinion about the accomplishment of the arm's-length standard for the related-party transactions for the audited year.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The tax administration has defined two types of regime for taxpayers when referring to companies incorporated in Ecuador: 1) General Regime and 2) Special Taxpayers.

General Regime

For this regime the submission deadline for the specific obligations to be fulfilled by taxpayers under the General Regime is defined according to the ninth digit of their tax identification number.

Special Taxpayer

For this regime the submission deadline for the specific obligations to be fulfilled by taxpayers is until 9 April.

- **Other transfer pricing disclosures and return**

The transfer pricing Annex and transfer pricing Report must be filed no later than two months after filing the CIT return. In this sense, deadlines will be established according to the taxpayer regime detailed in the corporate income tax return section.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation and local file preparation deadline

Transfer pricing documentation must be prepared annually under local regulations. Documentation requirements will be determined according to the thresholds of related-party transactions (domestic, foreign and tax havens). Local transfer pricing documentation must be submitted according to what is specified in the previous section.

c) Transfer pricing documentation and local file submission deadline

Local transfer pricing documentation must be submitted according to what is specified in the previous section.

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

The transfer pricing Annex and transfer pricing documentation must be submitted within two months after the CIT return of the company.

- **Time period or deadline for submission on tax authority request**

When the tax authority notifies the taxpayer of non-compliance or late submission of the transfer pricing Report and transfer pricing Annex, it will establish a deadline of 5 to 10 business days to submit information.

However, if the tax authority detects inconsistencies in declarations or annexes filed by the taxpayer, it will establish a deadline of 10 to 20 business days for the taxpayer to present the correction of the detected errors.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

The legislation accepts the following methods:

- CUP
- Resale price
- Cost plus
- Transactional profit split
- TNMM

The five transfer pricing methods in the OECD Transfer Pricing Guidelines (profit split and residual profit split are recognized as one method) may be used.

- **Domestic transactions**

Same as above.

b) Priority and preference of methods

Our regulations do not establish the compulsory hierarchy application between direct and indirect methods and allowed the Ecuadorian tax administration to issue technical guidelines that all taxpayers must follow unless they can document the reasons behind the use of a different methodology.

8. Benchmarking requirements

- **Local vs. regional comparables**

The SRI prefers the use of local comparable companies instead of foreign comparable companies; however, the use of a local company as a comparable will be limited to the fact that its information be available in public sources as of 9 April of the fiscal year following the fiscal year analyzed (Example: for the year 2021 the financial information of the local comparable must be public until 9 April 2022).

- **Single-year vs. multiyear analysis**

The PLI for analyses must be calculated only with the financial information for the year when transactions were made.

- **Use of interquartile range**

Interquartile ranges are compulsory whenever more than one comparable is available.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search needs to be conducted every year. For the application of methods that use external comparable companies (resale price, cost plus and especially TNMM), the same fiscal year must be used for the tested party and the comparable companies.

- **Simple vs. weighted average**

Simple average.

- **Other specific benchmarking criteria, if any**
  - The PLI should be calculated using just the financial information for the year under analysis (2021). Tax authority requires the use of contemporaneous financial information with the 2021 information of the comparable companies and tested party.
  - In the absence of financial data for the contemporaneous fiscal year, the financial information of the prior year (2020) may be used, if it shows that the relevant conditions were similar in both periods.
  - The use of financial information of more than one year to calculate the PLI (average calculation for the PLI of the comparable companies) should be factually justified based on business cycles or other comparability criteria.
  - The use of comparable companies with operating losses is allowed as long as the taxpayer can demonstrate reliably and with documentation that there are market situations that led both the comparable company and the tested party to incur losses in the year under analysis.
  - If the selected method requires a PLI, it must not use a denominator that contains the operations that are being tested, unless it is duly verified that its use does not influence the result of the analysis.
  - More detailed review of the comparable companies is required to identify other business segments that are not comparable with the tested party. Local tax authority prefers a comparison using the segmented financial information excluding the non-comparable business segmented financial information.
  - The application of working capital adjustments to the financial information of the comparable companies and

the tested party must be explained and supported. Since transfer pricing documentation 2018, there is not an obligation to apply working capital adjustments and the company can use the non-adjusted range.

- The arm's-length range should be calculated with regular statistics formulas (EY interquartile range or weighted average is not allowed).

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Ecuador has a specific transfer pricing penalty regime. Penalties of up to USD15,000 would be applied if taxpayers do not submit the transfer pricing report or the transfer pricing annex, or if inaccuracies, mistakes, differences, lack of information (incomplete documentation) or false data is detected.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Tax administration issued a document (*Instructivo para el Establecimiento de Sanciones Pecuniarias*) that is used to establish the penalty amount according to the seriousness of the fault or misdemeanour (late delivery or incomplete or erroneous information sent by the local taxpayers). Based on this document, late filing could result in a penalty of up to USD333.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

A 20% surcharge on the assessment will be applied.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

A 20% surcharge on the assessment will be applied.

- **Is interest charged on penalties or payable on a refund?**

A specific interest rate will be charged on adjustments and is paid on refunds. This interest rate is variable and is defined as 1.5 times the Ecuadorian lending rate.

b) Penalty relief

No penalty relief regime is in place.

The 20% surcharge may be prevented when an assessment is accepted at the draft stage of the administrative action, before the final assessment has been issued. Once the adjustment has been assessed, a claim resource may be presented before the tax authority, to be resolved by a claims team.

10. Statute of limitations on transfer pricing assessments

The statute of limitations is four years from the date of the CIT return filing.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high, medium or low)**

If a taxpayer is selected for a general tax audit, the likelihood that transfer pricing is reviewed as part of that audit may be considered to be high.

- **Likelihood of transfer pricing methodology being challenged (high, medium or low)**

If transfer pricing is reviewed as part of the audit, the likelihood that the transfer pricing methodology will be challenged may be considered to be high. In audits in which transfer pricing is a subject, the percentage of reviews where assessments are based on challenging the methodology (or at least the set of comparable companies) is more than 75%.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)**

The likelihood of a transfer pricing adjustment during a transfer pricing audit may be considered to be high, as the local tax administration tends to propose very unorthodox positions from an OECD point of view.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Recent activities have been focused on intangible property – and services-related transactions. Nevertheless, the likelihood of methodologies being challenged during an audit are similar for every taxpayer.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA-like procedure that takes the form of pricing or methodology consultations and information disclosure.

- **Tenure**

The ruling term includes the year before the response date (in cases where the response is issued before the CIT return filing for the previous year), the year when the response is issued and the following three tax years.

- **Rollback provisions**

In case that the answer to the consultation would result in favourable terms to the taxpayer, the taxpayer will have to carry out amendments to the tax return for the fiscal years' previews to the date of favourable answer from the tax administration.

- **MAP opportunities**

No.

14. Have there been any impacts or changes to Advanced Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Due to the impact of the pandemic, the deadlines to resolve the APAs were extended by law because of the inability of tax administration officials to work remotely from their homes.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

When a transaction is performed between related parties, a thin-capitalization rule should be met.

The interest generated by foreign loans granted directly or indirectly by related parties to banks, insurance companies, and entities of the financial sector of the popular and solidarity economy will be deductible provided that the ratio between the total external loans and equity does not exceed 300%. In case of excess, the interest would be non deductible.

For other companies and individuals, the interest generated by foreign loans granted by related parties will be deductible, provided they do not exceed the 20% of the earnings before interests, taxes, profit sharing, depreciations and amortizations. In case of excess, the interest would be non deductible.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Egyptian Tax Authority (ETA)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Egyptian Income Tax Law (ITL) No. 91 of 2005, Article 30 of the ITL
  - Articles 38, 39 and 40 of executive regulations
  - TP guidelines issued in October 2018
  - Articles 12 and 13 of Unified Tax Procedures Law No. 206 and amended Law No. 211 of 2020
  - Articles 1, 14,15,16,17,18,19 and 20 of the executive regulations to the Unified Tax Procedures Law
- **Section reference from local regulation**

To raise taxpayer awareness of TP principles and how to apply Article 30 of the ITL and Articles 38, 39 and 40 of its executive regulations, the ETA, with the assistance of the OECD, issued its first version of TP guidelines back in 2010. This was followed by the issuance of a new updated version of these TP guidelines in October 2018. In issuing the updated version, the ETA used the OECD TP guidelines as a basic reference and relied heavily on it. The ETA decided to introduce the new version of its TP guidelines in a series of parts, with the first part focusing on the main concepts and issues. Accordingly, the first part provides taxpayers with guidance on the arm's-length principle, comparability analysis, TP methods and documentation requirements; and second part focuses on principles and application of APAs in detail.

The upcoming versions of the TP guidelines will address other issues, such as the application of the arm's-length principle to transactions involving intangible property, intragroup services and CCAs. ETA will also offer further explanation to the tax treatment of permanent establishments (PEs) including the attribution of profits between the head office and the PE. ETA also plans to issue separate guidance focusing on industry-specific guidelines to address key TP issues for certain industries and provide a practical guide to the appropriate application of the arm's-length principle in such industries.

Article 30 of the ITL gives ETA the authority to adjust a taxpayer's profits if its transactions with related parties were not made on an arm's-length basis.

The ETA commissioner may conclude agreements with associated persons to follow one or more methods in determining the arm's-length price.

The General Anti-Avoidance Rule (GAAR):

- The rule was introduced under Article No. 92 (bis) of Law No. 53 of 2014, which was published by the Egyptian Government on 30 June 2014. Article No. 92 provides that tax implications of transactions would not be acknowledged (upon determining a tax assessment) where it is proved that the purpose or one of the main purposes of such transactions was to avoid or postpone taxes.

The law exemplified rigorous tax planning as cases in which:

- The expected profit from the transaction prior to tax deduction is minimal as compared with the tax benefits attained from the examined transaction.
- The transaction resulted in obvious tax exemptions that do not reflect the risks experienced by the taxpayer or its financials based on the transaction.
- The transaction includes some criteria that have contradictory impacts eliminating each other.

In all cases, the burden of proving the transaction's ineffective purpose falls upon the ETA. However, the taxpayer may provide evidence that could disprove accusations of taking an inflexible stand toward tax planning.

To ensure that the ETA does not act ineffectively, the Minister of Finance issues a decree forming a committee led by the head of the ETA or his or her deputy to examine cases of tax avoidance. The taxpayer would not be penalized for tax avoidance unless the committee decides otherwise.

2. Are there changes expected to the local transfer pricing rules due to COVID-19 ? (Yes/No)

No.

3. OECD Guidelines treatment and reference

a) Extent of reliance on OECD TP guidelines/UN tax manual/EU Joint Transfer Pricing Forum

[1] **http://www.mof.gov.eg/English/About%20MOF/Pages/Egyptian%20Tax%20Authority.aspx**

Egypt is not a member of the OECD. However, Egypt heavily relied on the OECD Transfer Pricing Guidelines in issuing the Egyptian TP guidelines in October 2018.

Furthermore, pursuant to the executive regulations of the ITL, in the case that none of the five methods referred to in the law (CUP, resale price, profit split, transactional net margin and cost plus) are applicable, any other acceptable method suitable for the taxpayer may be followed.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- **Coverage in terms of master file, local file and CbCR**

Yes, all three are covered.

- **Effective or expected commencement date**

This is applicable for transactions carried out from fiscal year starting on or after January 1, 2018.

- **Material differences from OECD report template or format**

There is none specified.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

There is none specified.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, it is part of the inclusive framework.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, it needs to be submitted contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch of a foreign company needs to comply with the local TP rules.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, TP documentation has to be prepared annually.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone TP reports, provided that it engages in related-party transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

It is not applicable as transfer pricing documentation in Egypt is applicable as per OECD BEPS Action 13.

- **Master file**

During the fiscal year, any taxpayer with overall related-party transactions exceeding EGP8 million in value must prepare and submit a Master File as per the specified deadlines.

- **Local file**

During the fiscal year, any taxpayer with overall related-party transactions exceeding EGP8 million in value must prepare and submit a Local File as per the specified deadlines.

- **CbCR**

An Egyptian parent company of a multinational group with consolidated group revenue of at least EGP3 billion has to file CbC report in Egypt.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions, as all related-party transactions should be documented.

- **Local language documentation requirement**

The TP documentation needs to be submitted in the local language (i.e., Arabic). Any correspondence with the ETA should be in Arabic; however, the ETA will accept English documentation, but may ask for an official translated copy.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Depending on the nature of transactions.

- **Any other disclosure or compliance requirement**

There is none specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no separate returns to be filed for TP. However, disclosure of related-party transactions is required on the corporate tax return (CTR), specifically in Table 508 of such CTR.

- **Related-party disclosures along with corporate income tax return**

The CTR, in its related-party disclosure section Table 508, requires taxpayers to provide the following information:

- Name of the related party or parties
- The nature of the relationship
- Type of the related parties' transactions
- The value of the transactions for current and previous year
- The jurisdiction of origin for goods and jurisdiction of the services supplier
- The pricing method used in each related-party transaction
- Identical information concerning transactions with unrelated parties

- **Related-party disclosures in financial statement/annual report**

Yes, related-party transactions are required to be disclosed in financial statement and annual reports.

- **CbCR notification included in the statutory tax return**

No, CBCR notification is to be submitted separately by the last day of the fiscal year to which the CbCR relates to.

- **Other information/ documents to be filed**

There is none specified.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Corporate income tax return is required to be submitted within four months from the end of the financial year.

- **Other transfer pricing disclosures and return**

None specified.

- **Master file**

For Egyptian entity having headquarters in Egypt or Egyptian entity part of overseas multinational group with no master file submission requirement at ultimate parent entity's jurisdiction, the master file in Egypt is required to be submitted along with the local file. For Egyptian entity part of overseas multinational group where master file submission requirement is specified in the ultimate parent entity's jurisdiction, the master file in Egypt is required to be submitted on the same date as per the timeline at ultimate parent entity's jurisdiction.

- **CbC report preparation and submission**

CbC report must be filed within one year after the end of the reporting fiscal year.

- **CbCR notification**

CbCR notification must be submitted not later than the last day of the fiscal year to which the CbCR relates to.

b) Transfer pricing documentation/local file preparation deadline

There is none specified. The deadlines specified relate to preparation of the local file.

c) Transfer pricing documentation/local file submission deadline

d) There is none specified. The deadlines specified relate to submission of the local file.

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

Yes, local file shall be submitted within two months following the filing or submission of CTR.

- **Time or deadline for submission on tax authority request**

There is none specified.

a) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions — Yes
- Domestic transactions - Yes

b) Priority and preference of methods

In Articles 39 and 40 of the ITL, the executive regulations establish the methods of determining the arm's-length price.

According to Article 39, the fair-market price shall be determined according to the CUP, cost-plus or resale price methods.

The amendments under Article 39 added two new methods of determining the arm's-length price: the transactional net margin method and the profit-split method.

According to amendments under Article 40, the hierarchical approach in selecting TP methodology was canceled. The taxpayer has the right to choose one of the methods referred to in Articles 39 and 40, according to the nature of the transaction and the conditions of dealing, and there is no longer a priority in applying a certain method before the other.

The taxpayer has the right to follow any appropriate method, provided that adequate documents are available to support the application of that method are presented.

8. Benchmarking requirements

- **Local vs. regional comparables**

In Egypt, there is a lack of local comparable data; however, ETA accepts Middle East and Africa comparables. Global comparables are accepted if sufficient efforts are made to demonstrate that local comparables are not available.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year analysis (three years) is preferred.

- **Use of interquartile range**

There are no preferences officially stated in the guidelines; however, full range is used as a practice.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year; however, updating the financials of a prior study is required. In general, a fresh benchmarking study should be conducted every three years.

- **Simple, weighted or pooled results**

The weighted average is used for arm's-length analysis; however, there are no preferences officially stated in the guidelines.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The consequence for incomplete three-tiered documentation is likely to be considered as non-compliance with submission timelines resulting in prescribed penal provisions and/or additional challenges during audit.

Penalties for non-submission, late submission or incomplete documentation are based on the following:

- For corporate income tax returns due to be filed on or after 20 October 2020, failure to declare accurate value of related party transactions (Table 508), penalty at the rate 1% of the total value of the undeclared related-party transactions (local and cross-border transactions) during the fiscal year.

- Failure to submit a master file or local file by prescribed due date, penalty at the rate 3% of the total value of the related-party transactions (local and cross-border transactions) during the fiscal year.
- Failure to submit a country-by-country (CbC) report (if the taxpayer is the ultimate parent entity of a multinational group) or notification (if the taxpayer is the constituent entity) by prescribed due date, penalty at the rate 2% of the total value of the related-party transactions (local and cross-border transactions) during the fiscal year.

Where there is multiple non-compliance, the penalties payable by a taxpayer for a fiscal year are capped at 3% of the total value of the related-party transactions (local and cross-border transactions) for that year.

The penalties related to the master file, local file and CbC report or notification apply to documents required to be submitted to the Tax Authority on or after 4 December 2020.

- **Consequences of failure to submit, late submission or incorrect disclosures**

As per the Unified Tax Procedures Law, there are additional penal provisions for non-submission, late submission or incorrect submission.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties for audit adjustment are based on the following:

- Twenty percent of the difference between final tax due as per the Egyptian Tax Authority (ETA) and the tax due as per the tax return, this will apply if the difference is less than 50% of the final tax due.
- Forty percent of the difference between final tax due as per the ETA and the tax due as per the tax return, this will apply if the difference is more than 50% of the final t ax due.

  It is important to note that the penalties set forth above can be reduced by 50%, if an agreement is made between the taxpayer and the ETA before the appeal committee.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

This is not applicable.

- **Is interest charged on penalties or payable on a refund?**

Central bank credit and debit rate plus 2% on the due amount.

b) Penalty relief

There is none specified.

10. Statute of limitations on transfer pricing assessments

The term could be as long as five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium. There is no formal TP scrutiny yet – it is during the corporate income tax audit phase where the tax inspector will inspect the taxpayer's books and request to file the TP study during the corporate income tax inspection in case it's not filed before. And it will inform the Transfer Pricing department within the ETA for further review. Recently, the Transfer Pricing department has formally started sending notices to the taxpayers who have not submitted their TP documentation to send notifications to taxpayers with related-party transactions requesting TP documentation.

Considering the TP guidelines published on 23 October 2018, if a taxpayer does not submit adequate TP documentation, the ETA is likely to treat the taxpayer as a high-tax risk, increasing the likelihood of audit and a TP adjustment. As this could also shift the burden of proof to the taxpayer to disprove the ETA's assessment position, taxpayers with related-party transactions should review the new guidelines and ensure they can produce adequate TP documentation.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the methodology being challenged may be considered to be low. In case a valid TP analysis is performed with adequate justification on selection of the most appropriate method, it is unlikely to be challenged.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If the tax authority has challenged the TP methodology, the likelihood of an adjustment may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The scenarios listed below could trigger questionings or tax inspections:

- Change in business model
- Consistent loss makers

Sector-specific TP audit challenges:

- Distribution
- Services
- Manufacturing

In practical experience, pharma sector taxpayers face audit challenges as compared to other sectors.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Yes, unilateral APAs are available in Egypt. However, so far, no APA has been entered into by ETA.

- **Tenure**

There is none specified.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Yes.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There are no COVID-19-related impacts on transfer pricing-specific audits. Pending TP audits are continuing; however, the Egyptian Tax Authority has demonstrated flexibility in terms of timelines due to current circumstances.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under the new tax law, the maximum debt-to-equity ratio is 4:1. If the debt exceeds such ratio, the excess interest may not be claimed as a deductible expense.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General of Internal Taxes (Dirección General de los Impuestos Internos, or DGII) and Ministry of Finance (Ministerio de Hacienda, or MH)

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and the effective date of applicability
  - Articles 62 A, 124, 147, 199-A, 199-B, 199-C, 199-D and 244 of the Salvadoran Tax Code
  - Administrative Guideline, or Guía de Orientación (GO), No. 001/2018, intended to provide general guidance to taxpayers about the tax treatment of related-party transactions or transactions with entities domiciled in tax haven jurisdictions

Transfer pricing regulations have been effective as of 29 December 2009.

- Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19 ? (Yes/No)

Not applicable.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

El Salvador is not a member of the OECD.

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

No.

- Coverage in terms of Master File, Local File and CbCR

This is not applicable.

- Effective or expected commencement date

This is not applicable.

- Material differences from OECD report template or format

This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?

Yes, there are the Articles 62-A, 124, 147, 199-A, 199-B, 199-C, 199-D and 244 of the Salvadoran Tax Code, as well as Administrative Guideline, or Guía de Orientación (GO), No. 001/2018, which is intended to provide general guidance to taxpayers about the tax treatment of related-party transactions or transactions with entities domiciled in tax haven jurisdictions.

Taxpayers should prepare and maintain contemporaneous transfer pricing documentation within the first five months following the close of the financial year (i.e., by 31 May).

- Does a local branch of a foreign company need to comply with the local transfer pricing rules?

Yes.

[1] https://www.mh.gob.sv/

- **Should transfer pricing documentation be prepared annually?**

Yes, the minimum requirement to achieve this would be that the transfer pricing report and return must be prepared annually, updating all the information that allows a correct transfer pricing analysis. Use of the most recently available financial information for the comparables and the tested party is requested.

In addition, the documentation is necessary for the external tax auditor to verify and reflect in the tax audit report that the said transactions comply with transfer pricing regulations.

Under the rules of the Tax Code (TC), when a taxpayer has assets with a value exceeding USD1,142,857 or sales higher than USD571,429 during the previous fiscal year, it must appoint an external tax auditor (certified public accountant) to perform a statutory tax audit and file the resulting tax audit report (dictamen fiscal) within the first five months following the tax year that was audited (deadline of 31 May or, when applicable, the next business day).

Subsection (f) of Section 135 of the TC includes an obligation for an external tax auditor to include a note in its report regarding transactions conducted by the taxpayer with its related parties or entities domiciled in tax haven jurisdictions, indicating whether the taxpayer complies with the transfer pricing legislation.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes .

b) Materiality limit or thresholds

- **Transfer pricing documentation**

For Form F982, the threshold is USD571,429 on intercompany transactions.

- **Master File**

El Salvador has not implemented or included master file requirements.

- **Local File**

El Salvador has not implemented or included Local File requirements.

- **CbCR**

El Salvador has not implemented or included CbCR requirements.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation requirement for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language, per Article 333 of the Civil and Commerce Procedural Code.

- **Safe harbor availability, including financial transactions, if applicable**

There are no specific requirements for preparing safe harbor availability.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred, if possible.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Section 124-A of the TC establishes an obligation for taxpayers to file an information return for transactions conducted with related parties (Form F-982) within the first three months that follow the fiscal year-end, when these transactions (individually or in the aggregate) are equal to or exceed USD571,429 annually. Form F-982 is to be filed separately from the income tax return.

- **Related-party disclosures along with corporate income tax return**

Under the TC, when a taxpayer has assets with a value in excess of USD1,142,857 or sales higher than USD571,429 during the previous fiscal year, it is required to appoint an

external tax auditor (certified public accountant) to perform a statutory tax audit and file the resulting tax audit report within the first five months following the tax year that was audited (deadline of 31 May or, when applicable, the next business day).

Subsection (f) of Section 135 of the TC includes an obligation for an external tax auditor to include a note in its report regarding transactions conducted by the taxpayer with its related parties or with entities domiciled in tax-haven jurisdictions, indicating whether the taxpayer complied with the transfer pricing legislation.

- **Related party disclosures in financial statement/annual report**

Same as above.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation has to be filed on or before 30 April.

- **Other transfer pricing disclosures and return**

The documentation has to be filed on or before 31 March.

- **Master File**

This is not applicable.

- **CbCR notification**

This is not applicable.

- **CbC report preparation and submission**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Taxpayers should prepare and maintain contemporaneous transfer pricing documentation within the first five months following the close of the financial year (i.e., by 31 May).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No, the submission is to be done upon request of the tax authorities.

- **Time period or deadline for submission on tax authority request**

There is no specific time range, but the tax authority usually grants 15 working days to submit the documentation once requested.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

International transactions – Yes

Domestic transactions – Yes

b) Priority and preference of methods

The law does not regulate specific transfer pricing methods, but it establishes that tax authorities are empowered to apply the market price method when adjusting prices.

Additionally, the GO establishes that the following methods are acceptable: CUP, resale price, cost-plus, TNMM and profit split.

8. Benchmarking requirements

- **Local vs. regional comparables**

Considering the lack of financial information available on local comparables, international comparables are accepted by the tax authorities.

- **Single-year vs. multiyear analysis**

Multiyear testing is for the comparables only; in practice, the number of years is three.

- **Use of interquartile range**

The spreadsheet quartile calculation is indicated in the GO.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking study needs to be conducted every year. In practice, local tax authorities require use of the most recent available financial information for the comparables and the tested party.

- **Simple vs. weighted average**

The weighted average is preferred for arm's-length analysis; in practice, three-year weighted average arm's-length ranges are frequently calculated.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

In case of incomplete or incorrect information is filed in the transfer pricing return, Section 244 literal (l) of the TC establishes a penalty of 0.5% of the taxpayer's equity (as reflected on the taxpayer's balance sheet), minus any surplus on the revaluation of assets, with a minimum of three monthly minimum wages.

When there is no balance sheet, or it is not possible to determine the taxpayer's equity, a penalty of nine monthly minimum wages applies. In addition, if the documentation is not complete or does not allow full confirmation that all transactions comply with the arm's-length principle, the tax administration is empowered to adjust such transactions to the median of the interquartile range.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to maintain transfer pricing documentation leads to a penalty of 2% of the taxpayer's equity, as reflected on the taxpayer's balance sheet, minus any surplus on the revaluation of assets. This is imposed when the taxpayer does not have supporting documentation or fails to comply with the obligation to maintain all documentation for 10 years for transactions conducted with related parties, and those with individuals or legal entities domiciled, incorporated or resident in tax-haven jurisdictions. The said penalty cannot be less than nine monthly minimum wages. [2]

Failure to comply with Section 135-(f)

In case the external tax auditor fails to comply with the new requirement under Section 135 (f) of the TC, a penalty of five monthly minimum wages is established for the tax auditor, regardless of any other penalty that may be imposed by the local certified public accounting council for not complying with the responsibilities of the profession.

Additionally, when the tax auditor's non-compliance is because the taxpayer failed to provide the information and documentation requested and required by the tax auditor, a penalty of 0.1% of the taxpayer's equity (as reflected on the taxpayer's balance sheet), minus surplus on the revaluation of assets, would be imposed on the taxpayer. The said penalty is at least four monthly minimum wages.

Failure to file related-parties information return

In case of non-compliance with the filing obligation of the information return, Section 244 literal (l) of the TC establishes a penalty of 0.5% of the taxpayer's equity (as reflected on the taxpayer's balance sheet), minus any surplus on the revaluation of assets, with a minimum of three monthly minimum wages.

When there is no balance sheet, or it is not possible to determine the taxpayer's equity, a penalty of nine monthly minimum wages applies.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In the case of adjustments for underpayments either on income tax or value-added tax, depending on certain circumstances, penalties from 25%–50% of the unpaid tax could be applicable. The penalties could not be less than USD568 or USD2,736, depending on the type of sanction applied.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

In the case of adjustments for underpayments either on income tax or value-added tax, depending on certain circumstances, penalties from 25%–50% of the unpaid tax

[2] **The minimum wage is established by El Salvador's Labor Ministry. As of 1 January 2015, and according to Executive Decree No. 104 published in the Official Gazette No. 119, the monthly commercial minimum wage to which the TC refers was established as USD251.70.**

could be applicable. The penalties could not be less than USD568 or USD2,736, depending on the type of sanction applied.

- **Is interest charged on penalties or payable on refund?**

No.

b) Penalty relief

According to Section 261 of the TC, if there is voluntary disclosure and payment is received by the tax authorities before any notice of an examination, a 75% penalty reduction applies; if an examination is already ongoing, a 30% penalty reduction may still apply.

After a tax audit, the Tax Authority (Reviewer Office) issues an audit report that contains the findings of the audit (e.g., potential tax adjustments, if any). The taxpayer has five days to file the initial "non-conformity" script and 10 additional days to file the corresponding proofs (15 working days in total). The tax authority will review the arguments and proofs filed, and issue a resolution. After the tax authority sends the letter of determination (its final resolution that contains the final tax adjustments and penalties in charge of the taxpayer), the taxpayer has 15 working days to file an appeal before the Administrative Board of Appeals (still at an administrative level).

The appeals process has three phases (up to one to three years): the initial appeal script, the proofs phase and the final allegations phase. Once the Administrative Board issues its resolution, in case it is unfavorable for the taxpayer, the taxpayer can file a complaint script at a judicial level (within 60 working days from the date of notification of the final resolution).

10. Statute of limitations on transfer pricing assessments

Under the current legislation, and in particular under the rules of the TC, the ordinary statute of limitations is three years; however, when no tax return has been filed, the statute of limitations is extended to five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high, medium or low)**

The likelihood of a general tax audit currently is categorized as medium. As part of every general tax audit, the tax authorities review compliance with transfer pricing regulations. Thus, the likelihood that transfer pricing will be scrutinized as part of a general tax audit may be considered to be high.

- **Likelihood of transfer pricing methodology being challenged (high, medium or low)**

In case transfer pricing is scrutinized, the likelihood that the transfer pricing methodology will be challenged may be considered to be medium. In practice, the DGII consistently has been questioning the application of transfer pricing methods (i.e., the CUP method with internal comparables instead of the TNMM), the profit-level indicator and the use of comparables with losses, mainly.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)**

It's high, because in most audits, the DGII challenges either the methodology or the comparables.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is none specified.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

No.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

No.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Estonian Tax and Customs Board

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The following articles of the Estonian Income Tax Act relate to transfer pricing:

- Article 8: Associated persons
- Article 50, sections 4 to 8: Taxation of profits transferred
- Article 53, sections 4 to 6: Permanent establishments
- Article 14, section 7: Sole proprietors
- Article 50, section 7: Documentation requirements

Current Estonian transfer pricing legislation is effective as of 1 January 2007 and amended as of 1 January 2011.

- **Section reference from local regulation**

Article 8 – Associated persons of Estonian Income Tax Act – has reference to transfer pricing.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Yes. Significantly updated transfer pricing regulation enters into force on 1 January 2022.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Estonia is an OECD member.

The tax authorities follow the OECD Guidelines. However, domestic legislation is the prevailing law.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Current transfer pricing regulation, in effect since 2007, has been deemed to be generally compliant with BEPS Action 13. Estonian transfer pricing regulation is being aligned with OECD Guidelines post-BEPS. Comes into force 1 Jan 2022.

- **Coverage in terms of master file, local file and CbCR**

The regulation covers CbcR, master file and local file.

- **Effective or expected commencement date**

New transfer pricing regulation comes into force 1 January 2022. CbCR requirements came into force in April 2017 to be applicable retrospectively starting for FY2016.

- **Material differences from OECD report template or format**

There are no material differences; however, there are some additional requirements stipulated in local regulation compared with those of BEPS Action 13.

The additional requirements for master files are the following:

- Group legal and ownership structure chart should include parent undertakings, subsidiaries and associated enterprises. An overview of the activities of the members of the consolidated group should be provided.
- Important business restructurings in the previous financial year should include changes in the structure of the consolidated group and in the activities of the members of the consolidated group.
- Description of the MNE's business is not required to be prepared in relation to the five main products. Instead, a general overview of the business activities of the group should be provided (including the changes in the business strategy compared with the previous financial year).
- Brief written functional analysis describing the principal contributions to value creation by individual entities within the group (in the controlled transactions) should also include changes compared with the previous financial year.
- General information about controlled transactions should be provided, including parties to the transaction, their type (tangible or intangible property, or services) and values.

[1] **httransfer pricings://www.riigiteataja.ee/en/eli/516012017002/consolide**

- List of expense distribution agreements should be provided along with preliminary decisions regarding transfer prices.
- Group's transfer pricing policy should be described.

The additional requirement for local files is listed below:

- Detailed description of the business and business strategy of the local entity should include the description of changes in the entity's business strategy compared with the previous financial year.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Considering the above should be sufficient.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 Jan 2016. The intended first information exchange was by September 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, transfer pricing documentation must be submitted upon request.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, all Estonian group companies and permanent establishments are obliged to prepare transfer pricing documentation to prove the arm's-length nature of the intercompany transactions.

- **Should transfer pricing documentation be prepared annually?**

Yes, transfer pricing documentation must be updated annually with the most recent data per company or group, industry (if need be), as well as a functional analysis and economic analysis, if changes have occurred, and benchmark studies.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit based on transaction value; however, transfer pricing documentation is applicable to:

- A resident credit institution, financial institution, insurance agency or a listed company
- A counterparty that is a resident of a low-tax-rate territory
- A resident legal person or a non resident with a permanent establishment in Estonia meeting the following criteria:

  a. Number of employees (including associated persons) is at least 250.

  b. Turnover of the financial year preceding the transaction with associated persons was at least EUR50 million.

  c. Consolidated balance sheet total assets were at least EUR43 million.

- **Master file**

No specific limits or thresholds are applicable.

- **Local file**

No specific limits or thresholds are applicable.

- **CbCR**

Consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for all related-party transactions, domestic and cross-border.

- **Local language documentation requirement**

Transfer pricing documentation needs to be submitted in the

local language (i.e., Estonian). Transfer pricing documentation may also be prepared in English, but the tax authorities may require translation of certain parts of the documentation.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure or compliance requirement**

Taxpayers must, on quarterly basis, declare to the tax authorities all intra-group loans and other similar financing instruments (cash pools, deposits, overdrafts, etc.), except to immediate subsidiaries, within previous quarter, including provided and received amounts and actual received interest.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Currently, Estonian tax laws do not require a separate return for related-party transactions.

- **Related-party disclosures along with corporate income tax return**

An annual report, including a description of transactions with related parties, must be filed within six months of the end of the relevant financial year. If a taxpayer has obligation to prepare transfer pricing documentation, such documentation must be completed every financial year.

Transfer pricing documentation does not have to be filed with the tax return or annual report.

- **Related-party disclosures in financial statement and annual report**

An annual report, including a description of transactions with related parties, must be filed within six months of the end of the relevant financial year.

- **CbCR notification included in the statutory tax return**

CbCR notification should be filed electronically on the tax authority website (as a separate form and not as part of the tax return) or by email on annual basis within six months after the end of the financial year for which the reporting is to be made.

If Estonian tax resident is the reporting entity of the MNE group meeting the threshold of EUR750 million, it should submit the CbC report to the tax authority by 31 December of the calendar year following the financial year that is a reporting year.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

It should be filed by the 10th date of each month.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

The filing deadline is 31 December (12 months after the end of the financial year for which reporting is to be made).

- **CbCR notification**

It should be filed within six months after the end of the financial year for which the reporting is to be made.

b) Transfer pricing documentation and local file preparation deadline

Transfer pricing documentation should be finalized by the time of submitting upon request.

c) Transfer pricing documentation and local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

There is no statutory deadline for the submission of transfer

pricing documentation, but it needs to be prepared annually.

- **Time period or deadline for submission on tax authority request**

Taxpayers are obligated to submit transfer pricing documentation within 60 days of the tax authority's request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes

- Domestic transactions

Yes

b) Priority and preference of methods

The Tax and Customs Board accepts the CUP, resale price, cost-plus, profit-split and TNMM methods or, if necessary, any other suitable method. There is no hierarchy of methods; all are treated equally. However, if available, internal and Estonian domestic data is preferred for determining the arm's-length price.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local benchmarks are preferred, but pan-European sets are acceptable.

- **Single-year vs. multiyear analysis**

Multiyear analysis is acceptable.

- **Use of interquartile range**

Estonian legislation does not define arm's-length range. However, interquartile range is commonly applied in practice. As of 2022, arm's length range defined as interquartile range. EY quartile is used in common practice.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

A benchmarking search must be up to date every year. Fresh benchmarking search must be performed every three years in case no major changes in the controlled transaction take place, otherwise yearly; update of benchmark study's financials must be performed yearly.

- **Simple vs. weighted average**

A simple average is used in common practice, but not specified in transfer pricing regulation.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

If the required documentation or the relevant tax return is not submitted on time, the fine may be as high as EUR3,200. Failure to submit information to the tax authority intentionally, or submission of false information if the tax or withholding obligation is decreased thereby or the claim for refund is increased, is punishable by a fine of up to EUR32,000. When a taxpayer intentionally submits wrong information on its tax return that reduces the tax paid, a criminal penalty may be imposed, and the fine may be as high as EUR16 million.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The income tax rate is 20% on the gross amount of the difference between the transfer price and arm's-length price (i.e., 20/80 of the net amount) and is payable even if a company has losses.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

The income tax rate is 20% on the gross amount of the difference between the transfer price and arm's-length price (i.e., 20/80 of the net amount) and is payable even if a company has losses.

- **Is interest charged on penalties or payable on a refund?**

If tax is assessed, interest on the tax amount at the rate of 0.06% per day, up to the principal tax amount, will be imposed retroactively as of the date when the tax was supposed to be paid until actual payment (here, interest is subject to income tax at the rate of 20/80 as a non-business-related expense).

b) Penalty relief

There is no penalty relief if a taxpayer has the necessary documentation, but the transfer pricing is determined to be at non-arm's length and there is an income tax adjustment. However, imposing a fine is probably more an exception than a rule. Interest for the delay of the tax payment is always assessed.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for making an assessment of tax is three years. In the event of intentional failure to pay or withhold an amount of tax, the limitation period for making an assessment of tax is five years. The statute of limitations begins as of the due date of submission of the tax return that was either not submitted or contained information leading to an incorrect determination of the tax due.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high, medium or low)**

The likelihood may be considered to be high in the case of intra-group loans, management and support services, restructurings, intellectual property transactions, large-amount transactions, and primary business transactions; it may be considered to be high in the case of large multinationals.

- **Likelihood of transfer pricing methodology being challenged (high, medium or low)**

The likelihood may be considered to be medium; refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high, medium or low)**

The likelihood may be considered to be medium to high; refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Intragroup financing and management and support services are under critical scrutiny regardless of the industry and company. Additionally, primary business transactions of a company are always under critical scrutiny, as well as large-amount transactions and transactions involving intellectual property.

On 1 January 2018, an amendment to the Income Tax Act came into force, obligating Estonian resident companies and non resident companies with a permanent establishment in Estonia to prove at the request of the tax authorities that their intra-group loan granted to a shareholder, partner or member of the company (with a term exceeding 48 months) does not constitute hidden profit distribution. If the circumstances of a loan transaction indicate a hidden profit distribution, income tax at the rate of 20% on the loan amount shall apply (tax base is divided by 0.8 before multiplied by the tax rate). Tax authorities are required to allow the company at least 30 days to demonstrate their capacity and intention of collecting the loan.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Currently, Estonian tax laws do not provide an opportunity to conclude APAs.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Yes, however no concrete procedure is established in the

legislation. MAP has been applied in practice.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Exceeding borrowing costs are taxable if they exceed EUR3 million and 30% of EBITDA.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Fiji Revenue and Customs Services (FRCS)

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and the effective date of applicability

Legal Notice 11, Fiji Transfer Pricing Regulations 2012, has reference to TP.

- **Section reference from local regulation**

Section 3 (Associates), subsection 2 of the Fiji Transfer Pricing Regulations, has reference to TP.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Fiji is not a member of the OECD. The FRCS adopts the positions outlined in the OECD Guidelines for MNEs and tax administrations, and it proposes following the OECD Guidelines in administering Fiji's TP rules. Consequently, the FRCS Guidelines supplement, rather than supersede, the OECD Guidelines, and the OECD Guidelines should be referred to if more detail is required.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- **Coverage in terms of Master File, Local File and CbCR**

This is not applicable.

- **Effective or expected commencement date**

This is not applicable.

- **Material differences from OECD report template or format**

This is not applicable.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does it need to be submitted or prepared contemporaneously?**

A clarification from the tax office is that it must be prepared.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Fiji's TP regulations apply equally to branches (and other permanent establishments as defined in Article 5 of the OECD Convention Model Tax Convention).

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the minimum requirement to achieve this is a TP analysis or transfer pricing documentation of the foreign jurisdiction benchmarking documentation.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

[1] **https://www.frcs.org.fj/**

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is no specific requirement for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language, according to Fiji Transfer Pricing Regulations 2012 Part III.

- **Safe harbor availability including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no separate TP return required to be filed in Fiji.

- **Related-party disclosures along with corporate income tax return**

There are no specific disclosure requirements. However, it is advisable to provide details of the following, together with the income tax return; otherwise, the FRCS may disallow a deduction for the same:

  - Payments to non residents, such as dividends, interest, management fees, "know-how" payments, royalties or contract payments made

In some instances, the FRCS may require additional details before assessing an income tax return.

- **Related-party disclosures in financial statement/annual report**

Yes, there is a requirement for such disclosure.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 31 March or three months after the financial year-end.

- **Other transfer pricing disclosures and return**

The filing deadline for other TP disclosures and return is usually the fiscal year-end or the date of the extension.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation needs to be finalized by

the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement). Dates depend on the fiscal year-ends. For example, for FYs ending 31 December, the deadline is usually at the end of the third month – i.e., March – of the following year, or at the date the tax office provides for under the tax agent lodgment program.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

The transfer pricing documentation should be submitted each year, along with the tax return.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has 14 days to submit the transfer pricing documentation once requested by the tax authorities, but an extension can be requested.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

FRCS has extended the deadline for tax returns due for filing during the months of April 2021 to 31 December 2021 and waived all late filing penalties until 31 December 2021 for taxpayers and tax agents affected by movement restrictions, lockdowns or containment zones.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions – It applies to international transactions.**
- **Domestic transactions – There is none specified for domestic transactions.**

b) Priority and preference of methods

The FRCS accepts the most reliable method or methods chosen from the following:

- CUP
- Resale price
- Cost-plus
- Profit-split
- TNMM

TNMM and the profit-split method are the most commonly used in Fiji. Because Fiji is in a developing state, most transactions are cross-border and performed by multinationals.

8. Benchmarking requirements

- **Local vs. regional comparables**

A local benchmarking can be used for benchmarking requirements in Fiji.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis (five years) is a common practice.

- **Use of interquartile range**

In recent TP audits, the interquartile range was used by the tax authorities.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year, and financial updates are acceptable.

- **Simple, weighted or pooled results**

The weighted average is a common practice.

- **Other specific benchmarking criteria, if any**

The FRCS, at most times, uses the Australian Taxation Office (ATO) industry benchmarking on profitability.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Will apply as below. The law requires satisfactory documentation to be maintained.

- **Consequences of failure to submit, late submission or incorrect disclosures**

In accordance with the Income Tax (Transfer Pricing) Regulations 2012, the following penalties apply:

- Failure to keep required transfer pricing documentation is an offense, and upon conviction, the person is liable for a fine of at least Fijian dollar (FJD)100,000.

In accordance with the Tax Administration Decree, the following penalties apply:

- **For failing to keep, retain or maintain accounts, documents or records as required under a tax law:**
  - If the failure is knowingly or recklessly made, the taxpayer faces a penalty equal to 75% of the amount of tax payable for the tax period to which the failure relates.
  - In any other case, the taxpayer faces a penalty equal to 20% of the amount of tax payable for the tax period to which the failure relates.
- **For making false or misleading statements:**
  - If the statement or omission was made knowingly or recklessly, the taxpayer faces a penalty equal to 75% of the tax shortfall.
  - In any other case, the taxpayer faces a penalty equal to 20% of the tax shortfall.
  - The amount of penalty imposed under the abovementioned cases is increased by 10 percentage points if this is the second application of the penalties related to making false or misleading statements, and 25 percentage points if this is the third or a subsequent application.
- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above. Yes adjustments can be made at the discretion of the Commissioner or the CEO.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the section above. Yes penalties can be assessed.

- **Is interest charged on penalties or payable on a refund?**

No interest is charged on penalties. As for refunds, the market interest rate determined by the Reserve Bank of Fiji is applicable on refunds withheld by the tax office.

b) Penalty relief

Shortfall penalties may be reduced by 10 percentage points if the person voluntarily discloses the shortfall prior to the earlier of:

- The discovery by the FRCS of the tax shortfall
- The commencement of an audit of the tax affairs of the taxpayer

Shortfall penalties may also be reduced if a taxpayer has a historically good compliance record.

10. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations applying only to TP assessments. Accordingly, the statute of limitations applying to all assessments will also apply to TP assessments.

In accordance with the Tax Administration Decree, the amendment of a tax assessment may be made:

- In the case of fraud, willful neglect or serious omission by or on behalf of the taxpayer, at any time

  Or

- In any other case, within six years of the date the FRCS served the notice of assessment on the taxpaye

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood is usually low as the FRCS lacks the qualified resources to conduct such related audits repeatedly. Tax audits are undertaken at the discretion of the FRCS. The FRCS selects audit targets based on certain criteria and risk profiling, including:

- Company incurring ongoing losses
- Lower-than-expected profitability
- Dealings with associates in tax haven jurisdictions
- Dealings with associates in special-purpose tax haven jurisdictions – these jurisdictions have relatively high headline tax rates but offer significant tax savings for specified activities
- Those who offer special reduced tax rates for a particular activity

- Poor compliance processes and records
- Intragroup charges – e.g., management and technical fees
- Large royalty payments and excessive debt levels (i.e., interest payments)
- Transfer of intangibles
- Business restructurings

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

From experience, if a tax audit is conducted on a TP client, there is a medium likelihood that the FRCS will look into the basis of the related-party transaction. In other words, a referral is made to the TP team, which in most cases will conduct an analysis of the methodology – a challenge will be low.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high; if the methodology is challenged, the tax office will divert resources to the case if the exposure is substantial.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Manufacturing and services, such as banking and insurance (refer to the section above for more details), are more likely to be audited.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs were not available in Fiji at the time of this publication but may be considered later in the context of introducing a binding rulings process. Currently, there is one APA in existence in Fiji.

However, the FRCS encourages taxpayers to discuss related-party transactions with the FRCS prior to entering into them, with a view toward eliminating any TP implications of the same, even though such discussions are not binding on either party.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

An entity may have offshore borrowings up to FJD5 million per year without the prior approval of the Reserve Bank of Fiji. Foreign-owned companies may borrow locally any amount if a total debt-to-equity ratio of 3:1 is maintained. The total debt consists of local and offshore borrowings. Equity includes paid-up capital, shareholders' non-interest-bearing loans, retained earnings and subordinated interest-bearing loans.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Finnish Tax Administration

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The relevant reference is the Act on the Tax Assessment Procedure, Sections 14a to 14e, 31, 32, 75 and 89. The previous Finnish transfer pricing rules entered into force on 1 January 2007. The current provisions concerning the Master and Local files under BEPS Action 13, as well as the rules on CbCR, entered into force on 1 January 2017. The rules concerning CbCR apply, however, to financial years that began on or after 1 January 2016.

- **Section reference from local regulation**

Act on the Tax Assessment Procedure, Section 14 and 31

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Finland is a member of the OECD.

The Finnish transfer pricing regulations and tax practice in general follow the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Finland has adopted BEPS Action 13 for transfer pricing documentation in its local regulations.

- **Coverage in terms of Master File, Local File and CbCR**

The master and local files are covered in accordance with OECD recommendations.

- **Effective or expected commencement date**

1 January 2017

- **Material differences from OECD report template or format**

There are no material differences between the OECD report template or format and Finland's regulations.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

No; however, it is possible that the penalties can be reduced or removed if the taxpayer presents supplementary transfer pricing documentation that supports the arm's-length nature of the intragroup transactions. Determination of penalties will be made on a case-by-case basis.

According to a decision issued by the Finnish Supreme Administrative Court in 2014, penalties should not be assessed in transfer pricing cases where the taxpayer has adequately followed the arm's-length principle in intragroup pricing.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Sections 14a to 14e of the Act on the Tax Assessment Procedure contain rules on the preparation of transfer pricing documentation. No contemporaneous documentation during

[1] **https://www.vero.fi/en/businesses-and-corporations/about-corporate-taxes/transfer_pricing/**

the tax year would be required. The Finnish tax authorities have also issued separate guidelines concerning transfer pricing.

Finland has implemented the Master and Local file requirements as well as CbCR as proposed in BEPS Action 13.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes; however, there is no annual obligation to submit transfer pricing documentation. The completed transfer pricing documentation should be submitted only if requested by the tax authorities. There are no specific, separate minimum requirements for how the documentation should be updated from year to year (the standard requirements apply).

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

No; however, all cross-border transactions should be presented in the documentation, which involve the local entities.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The obligation to prepare transfer pricing documentation is stated in Section 14a of the Act on the Tax Assessment Procedure, and the transfer pricing documentation applies to the following entities:

- A company that together with its group companies employs 250 people or more
- A company that together with its group companies has a consolidated turnover of EUR50 million or more and consolidated net assets of EUR43 million or more
- A company that does not qualify as a small or medium-sized enterprise as defined in the EU Commission Recommendation (2003/361/EC) concerning the definition of micro, small and medium-sized enterprises

The documentation requirements apply if one of the abovementioned criteria is fulfilled. The figures used in calculating the above-mentioned criteria are figures for the consolidated group.

- **Master File**

The obligation to prepare master file documentation applies if one of the above-mentioned criteria is fulfilled, and if the total value of the taxpayer's cross-border intercompany transactions during the fiscal year in question exceeds EUR500,000.

- **Local File**

The obligation to prepare local file documentation applies if one of the above-mentioned criteria is fulfilled. Local file documentation needs to be prepared, although if the total value of intercompany transactions between two parties does not exceed EUR500,000, less-extensive documentation is allowed (functional analysis, comparability analysis and description of the transfer pricing method may be omitted).

- **CbCR**

Finnish CbCR requirements apply if the group revenue exceeds EUR750 million in the financial year immediately preceding the reporting financial year.

- **Economic analysis**

Refer to the section below.

c) Specific requirements

- **Treatment of domestic transactions**

There is no transfer pricing documentation obligation for domestic transactions. Arm's-length pricing should nevertheless also be applied in domestic transactions.

- **Local language documentation requirement**

Transfer pricing documentation can be prepared in Finnish, Swedish or English. The Finnish Tax Administration can request a Finnish or Swedish translation in case the documentation is prepared in English. However, in practice this is not very common.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing is preferred

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

If a taxpayer (including a Finnish branch of a foreign company) is obligated to prepare the transfer pricing documentation in Finland, the Finnish tax authorities also require Form 78 to be completed and disclosed with the annual corporate income tax return. Information regarding cross-border intragroup transactions, which normally cannot be directly found in the company's financial statements, is reported on Form 78.

However, information regarding the transfer pricing method applied is not reported in this form.

- **Related-party disclosures along with corporate income tax return**

There is none specified.

- **Related-party disclosures in financial statement and annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

There is a separate process to be followed where a CbC report is required.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax return has to be filed at the end of the fourth month after the end of the financial year (i.e., 30 April if the financial year ends on 31 December).

- **Other transfer pricing disclosures and return**

It is the same as the deadline for filing the corporate income tax return (i.e., 30 April if the financial year ends on 31 December).

- **Master File**

The deadline is 60 days upon request. However, there is no obligation to provide the master file earlier than six months after the end of the accounting period.

- **CbCR preparation and submission**

The CbC report should be submitted within one year from the end of the financial year (i.e., by 31 December 2021 for a financial year that ends on 31 December 2020).

- **CbCR notification**

CbCR notification should be submitted by the last day of the financial year of the ultimate parent entity. For example, if FY2021 of the ultimate parent entity ends on 31 December 2021, the CbCR notification for that financial year should be submitted by 31 December 2021.

b) Transfer pricing documentation/Local File preparation deadline

There is no specific deadline for the preparation of transfer pricing documentation (master file and local file), but a taxpayer should be prepared to provide the transfer pricing documentation within 60 days if requested by the tax authorities. However, a taxpayer is not obligated to provide the transfer pricing documentation earlier than six months after the end of the accounting period.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

There is no statutory requirement to submit transfer pricing documentation to the tax administration every year.

- **Time period or deadline for submission on tax authority request**

A taxpayer must deliver the transfer pricing documents within 60 days upon request. However, a taxpayer is not obligated to provide the transfer pricing documentation earlier than six months after the end of the accounting period.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes, there is a transfer pricing documentation obligation.
- Domestic transactions: There is no transfer pricing documentation obligation for domestic transactions; however, the arm's-length principle should also be followed for domestic transactions.

b) Priority and preference of methods

Taxpayers may choose any of the OECD transfer pricing methods, as long as the chosen method or a combination of the chosen methods results in arm's-length pricing. In its selection of the most suitable method, a taxpayer should consider the aspects regarding the application of methods as stated in the OECD Guidelines.

8. Benchmarking requirements

- **Local vs. regional comparables**

There are no specific regulations governing the preparation of benchmarking studies, but the preference is for local or Nordic comparables. Pan-European comparables are, however, generally accepted in local tax practice.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear (e.g. three-year) analysis is followed, as per common practice.

- **Use of interquartile range**

Both EY and spreadsheet quartiles are used, as per common practice. Finland follows the OECD Guidelines and IQR range is preferred.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no requirement to conduct a fresh benchmarking search every year.

- **Simple, weighted or pooled results**

No preference is stipulated by law. However, the Finnish Tax Administration has used weighted average in their guidance.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

A tax penalty of up to EUR25,000 can be imposed for failure to comply with the transfer pricing documentation requirements, even if the pricing of intragroup transactions has been at arm's length.

- **Consequences of failure to submit, late submission or incorrect disclosures**

A tax penalty of up to EUR25,000 can be imposed for failure to comply with the transfer pricing documentation requirements, even if the pricing of intragroup transactions has been at arm's length.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

A tax penalty of up to EUR25,000 can be imposed for failure to comply with the transfer pricing documentation requirements, even if the pricing of intragroup transactions has been at arm's length.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

A tax penalty of up to EUR25,000 can be imposed for failure to comply with the transfer pricing documentation requirements, even if the pricing of intragroup transactions has been at arm's length.

- **Is interest charged on penalties or payable on a refund?**

If the income of the taxpayer is adjusted upward, the resulting additional tax liability will incur interest at two different rates. A lower rate of interest, adjusted annually (2% in 2018), is calculated until approximately 10 months after the end of the financial year. An interest at a higher rate (7% in 2018) applies from approximately 10 months after the end of the financial year until the due date of the additional tax liability resulting from the adjustment. Somewhat different rules apply to the calculation of interest for the tax assessment for years preceding 2017.

The rate of interest payable on tax refunds varies annually and was 0.5% during 2021.

b) Penalty relief

It is possible that the penalties can be reduced or removed if the taxpayer presents supplementary transfer pricing documentation that supports the arm's-length nature of the intragroup transactions. Determination of penalties will be made on a case-by-case basis.

According to a decision issued by the Finnish Supreme Administrative Court in 2014, penalties should not be assessed in transfer pricing cases where the taxpayer has adequately tried to follow the arm's-length principle in its intragroup pricing.

The following dispute resolution options are available if an adjustment is proposed by the tax authority:

- **The taxpayer can initiate an MAP procedure in order to remove the double taxation.**
- **The taxpayer can also appeal the tax assessment decision.**

10. Statute of limitations on transfer pricing assessments

The time limit for the adjustment of income, due to the failure to apply arm's-length principles to the pricing of a transaction, is six years after the end of the calendar year during which the financial statement was closed. This statute of limitations applies to financial years that ended on or after 1 January 2017. The previous rules were, in this regard, identical.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high, as transfer pricing is one of the key topics of the tax authorities.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of a challenge to the transfer pricing methodology should be moderate, provided that the transactions are reflecting the commercial rationale and the pricing models follow the OECD recommendations.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium to high; it is very typical that a reassessment will be imposed by the tax office if a challenge is made during a tax audit.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Transactions involving transfer of intellectual property rights and business restructurings

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

It is possible to apply for an APA with the Finnish Tax Administration. There is, however, no formal APA program available in Finland.

- **Tenure**

APAs are concluded for a fixed term, but there are no formal rules concerning the term in Finland.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty (DTT) to which Finland is signatory. Most of Finland's DTTs permit taxpayers to present their case to the tax authority of the Ministry of Finance within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the tax authority under the EU Arbitration Convention (90/436/EEC).

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no thin-capitalization rules; as such, interest limitation rules have been implemented instead. As of the financial year 2019, new rules concerning interest deductibility have become applicable. Broadly, the deductibility of a company's net financing expenses is limited to 25% of that company's adjusted taxable income. The adjusted taxable income is described as "taxable earnings before interest, tax and depreciation (EBITD)" and is calculated as taxable income including group contributions received and adding back interest expenses, group contributions paid and tax depreciations. The interest deduction limitation is applied only if the net interest expense exceeds EUR500,000. Non-related party net interest expense is deductible up to EUR3 million and is deducted primarily as part of the 25% tax EBITD quota.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

French tax authorities (FTA) (Direction Générale des Finances Publiques, or DGFiP; formerly, Direction Générale des Impôts, or DGI)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The regulations or rulings related to TP in the French Tax Code (FTC) are found in the following articles (applicable since several years but revised regularly):

- Article 57: arm's-length principle
- Article 223 quinquies B: annual declaration of related-party transactions
- Article 223 quinquies C: CbCR
- Article 238A: the reversal of the burden of proof in the case of transactions with tax haven (entities taxed at less than half the taxation they have if they were French tax resident)
- Article 209B: CFC regulation
- Articles 212-I and 39-1 3: part of the thin-capitalization legislation (applied in the context of intragroup financing arrangements such as intragroup interest payments or intragroup debt)
- Article 1735 ter: TP documentation penalty regime
- Article 1729F: CbCR penalties

The regulations or rulings related to TP in the French Procedural Tax Code (FPTC) are found in the following articles:

- Articles L 13 AA and L 13 AB: TP documentation requirements applicable to certain taxpayers
- Article R 13 AA-1: additional guidance on how to apply Article L 13 AA
- Article L 13 B: general TP documentation requirements for all taxpayers during a tax audit (this reverses the burden of proof from the tax authority on to the taxpayer and can only be applied if certain conditions are met)
- Article L 10: general information requests during a tax audit

- **Section reference from local regulation**

FTC Article 39-12 has reference to TP documentation.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

France is a member of the OECD and concluded an extensive network of double tax agreements (DTAs) with foreign jurisdictions based on OECD Model Tax Convention.

The FTA generally considers the French TP regulations to be consistent with the OECD Guidelines and are following the BEPS developments closely (certain BEPS initiatives have been introduced into law).

However, court cases deny the applicability of certain TP principles when they were released after the conclusion of the DTA between France and the foreign jurisdiction. This is notably the case for the provision related to the Authorized OECD Approach from the OECD PE report in relation to allocation of capital.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

France has adopted BEPS Action 13. CbCR requirements were adopted for financial years starting on or after 1 January 2016, whereas master file and local file requirements were adopted for financial years starting on or after 1 January 2018 (previous contemporaneous documentation format was based on the EUJTPF recommendation).

- **Coverage in terms of Master File, Local File and CbCR**

CbCR, master file and local file are covered.

- **Effective or expected commencement date**

CbCR is covered for the financial years starting on or after 1 January 2016.

[1] **https://www.impots.gouv.fr/portail/**

Master and local files are covered for financial years starting on or after 1 January 2018. However, for the years prior to 2018, another format was already required and had to be updated contemporaneously.

- **Material differences from OECD report template or format**

The decree that complements Article L 13 AA (i.e., the French TP documentation requirements) added the following elements to the OECD's BEPS Action 13 recommendations:

- The master file and local file have to be made available in electronic format.
- All financial data contained in the master file and local file have to be made available in an electronic format that allows the FTA to verify the calculations (e.g., in spreadsheet).
- A specific format, in terms of section headings and the order of the sections, is specified, but the overall content required to be included in master file and local files is consistent with the OECD's BEPS Action 13 recommendations.
- The entity's financial information in the local file needs to be sourced from the French statutory accounts, and the corresponding account numbers need to be provided in the local file.
- The local entity must provide the reconciliation between management accounts used for TP purposes and statutory accounts. The reconciliation makes the link between the costs as booked in the General Ledger, the allocation to the appropriate "service/product," then the calculation of the margin and the corresponding revenue booked as reported in the General Ledger. This requirement is very restrictive for taxpayers and more burdensome than what is required in the OECD Guidelines given the need to fully reconcile the statutory profit and loss (P&L) and the calculations of transfer prices.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A BEPS Action 13 format report should be sufficient to achieve penalty protection, but financial data contained in the report needs to be provided in electronic format.

In addition, the financial reconciliation required between management accounts used for TP purposes and statutory accounts should be provided in the local file.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does documentation need to be submitted or prepared contemporaneously?**

Yes, and the TP documentation needs to be contemporaneous.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, local branches are under the scope of French TP documentation requirements.

- **Does transfer pricing documentation be prepared annually?**

TP documentation needs to be prepared and updated annually under local jurisdiction regulations.

For financial years starting on or after 1 January 2018, the OECD's BEPS Action 13 recommendations (master file and local file) apply with some specific add-ons on financial data reconciliation.

However, comparable searches only need full updating every three years under the condition that no material changes occurred during that period. Still an annual update of the financials of the comparables is required.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity should prepare a stand-alone TP report.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Taxpayers that fulfill at least one of the following conditions need to prepare TP documentation compliant with Article L 13 AA of the FPTC:

- Entities that generate (at statutory level) more than EUR400 million of turnover or have at least EUR400 million of gross assets on the balance sheet at the end of the year

- Entities that are owned, directly or indirectly, by an entity that passes this EUR400 million threshold
- Entities that own, directly or indirectly, an entity that passes this EUR400 million threshold

For the Transfer Pricing Statement (Article 223 quinquies B, refer below for further details), the above-mentioned threshold of EUR400 million is lowered to EUR50 million.

- **Master File**

This is not applicable prior to 2018; another format was applicable.

For financial years starting on or after 1 January 2018, Article L 13 AA of the FPTC was amended to reflect the outcome of BEPS Action 13, i.e., the adoption of the master file (or local file) approach to TP documentation.

- **Local File**

This is not applicable prior to 2018; another format was applicable.

For financial years starting on or after 1 January 2018, Article L 13 AA of the FPTC was amended to reflect the outcome of BEPS Action 13, i.e., the adoption of the local file (or master file) approach to TP documentation.

- **CbCR**

The threshold is EUR750 million consolidated revenue.

- **Economic analysis**

There is no materiality limit prior to 2018.

For financial years starting on or after 1 January 2018, only the "most important intra-group transactions" need to be benchmarked. A separate decree, published in July 2018, specifies that the "most important intra-group transactions" are cross-border intragroup transactions that exceed EUR100,000 by type of transactions. A "type of transaction" is, for example, tangible goods purchase, tangible goods sale, service provision, trademark royalty, IT license, sale of a tangible asset or purchase of an intangible asset.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, this does not exclude domestic transactions from potential scrutiny during tax audit.

- **Local language documentation requirement**

The TP documentation does not need to be submitted in the local language, and English-language reports are commonly provided to the FTA. However, the FTA does have the power to demand a translation into French of all or parts of the documentation.

- **Safe harbor availability, including financial transactions, if applicable**

The only safe harbor available in France relates to intragroup lending; a French borrower that pays a rate that is equal to or lower than the "legal rate" will not be questioned or reassessed on that interest rate. The legal rate is published quarterly by the FTA and is a variable rate based on data communicated by French banks to the FTA on interest rates these banks provide to borrowers on loans of at least two-year maturity. This legal rate is, thus, a variable rate.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

The local entity must provide in the local file the reconciliation between management accounts used for TP purposes and statutory accounts.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Transfer Pricing Statement CERFA 2257-SD (Article 223 quinquies B) needs to be submitted as part of the taxpayer annual CIT return. In any way, this form needs to be submitted electronically at the latest within six months after the legal deadline for submitting the CIT return itself. The threshold for entities having to lodge a TP form is the same as for master file and local file but lowered from EUR400 million to EUR50 million.

- **Related-party disclosures along with corporate income tax return**

The TP documentation (i.e., required by either Article L 13 AA or Article L13B) only needs to be provided upon request during a tax audit.

The Transfer Pricing Statement (required by Article 223 quinquies B) needs to be submitted as part of the taxpayer's

annual tax return (CERFA Form 2257-SD). In any way, this form needs to be submitted at the latest within six months after the legal deadline for submitting the tax return itself. Filing has to be done electronically and in French. The threshold for entities having to lodge a Transfer Pricing Statement is lowered from EUR400 million to EUR50 million, but only cross-border intra-group transactions exceeding a threshold of EUR100,000 per type of transaction need to be disclosed on this tax return form.

CbCR disclosures or notifications are required by Article 223 quinquies C.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

Yes, this is applicable only if the UPE or the SPE is not located in a jurisdiction that has adopted CbCR requirements and has not signed the automatic exchange of information protocol.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Generally, the deadline is three months after the financial year-end; a minor extension is granted for companies closing on 31 December (end of April or beginning of May).

- **Other transfer pricing disclosures and return**

The Transfer Pricing Statement (Cerfa Form 2257-SD) needs to be submitted with the tax return or not after six months of the legal deadline for submitting the tax return itself.

- **Master File**

The master file should be provided upon request in case of a tax audit. If not provided upon request, the taxpayer has 30 days after formal request. This can, under very strict situations be extended to up to 60 days, but the decision to allow such an extension is at the discretion of the tax inspector and rarely granted in practice.

- **CbCR preparation and submission**

It should be submitted within 12 months after the end of the financial year.

- **CbCR notification**

The deadline is the same time as submitting the tax return, i.e., generally, it is three months after the financial year-end for companies closing on 31 December (end of April or beginning of May).

b) Transfer pricing documentation/local file preparation deadline

TP documentation needs to be provided only upon request in the case of a tax audit.

However, as the taxpayer has only 30 days to provide its TP documentation after having received such a request, proactive preparation is recommended.

The master file and local file should be ready at the time of filing the CIT return.

c) Transfer pricing documentation/local file submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

There is no statutory deadline for the submission of TP documentation; it only needs to be finalized by the time it is submitted upon request.

- **Time period or deadline for submission on tax authority request**

The local file should be provided under very strict situations upon request in case of a tax audit. If not provided upon request, the taxpayer has 30 days after the formal request. This can potentially be extended up to 60 days, but the decision to allow such an extension is at the discretion of the tax inspector.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Transfer pricing documentation: No

TP declaration/form/filing: The TP declaration for FYE 31 December 2019 may be submitted up to 31 December 2020 (i.e., 6 months after the revised deadline for filing the CIT return (see below)). For companies with fiscal year ends other

than 31 December that benefit from a deferred date for filing their CIT return, deferred filing of the TP declaration is also permitted. Additional details have not been provided at this stage by the French Tax Authority.

CbCR notification: Yes for CIT returns due from 31 December 2019 to 29 February 2020, the filing date has been postponed to 30 June 2020. For returns due from 1 March to 31 March 2020, the filing date has been postponed to 31 July 2020.

CbC report: No

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes, it is applicable.**
- **Domestic transactions: No TP documentation obligation exists in France for domestic transactions. However, domestic transactions can be scrutinized in case of tax audit.**

b) Priority and preference of methods

FTA accepts the following methods: CUP, resale price, cost-plus, profit-split and TNMM. The CUP method is considered as the most reliable method when it can be applied.

Other methods may be accepted by the tax authorities if justified and if the remuneration is compliant with the arm's-length principle.

8. Benchmarking requirements

- **Local vs. regional comparables**

French comparables are preferred when the tested party is French. However, pan-European comparables are sufficient for TP documentation penalty protection.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year testing (three years) is preferred.

- **Use of interquartile range**

The spreadsheet quartile range is preferred.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year. French administrative guidance allows for fully updating the benchmarking studies every three years instead of annually on the condition that no material changes occurred during the period.

However, inspectors tend to ask for an annual refresh of the financial information (i.e., the addition of the most recent available financial information) when comparables' searches have not been updated.

- **Simple, weighted or pooled results**

The weighted average is generally used for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The independence of comparables is required by law. Independence is either a question of law (exceeding 50% of ownership) or fact (whether one management's decision can be influenced by the other entity).

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Yes, companies that are caught by Article L 13 AA but fail to meet their transfer pricing documentation requirements expose themselves to a penalty that is the greater of: A minimum of EUR10,000 for each fiscal year concerned 5% of the additional corporate income tax payable as a consequence of a transfer pricing reassessment 0.5% of the amount of non-documented transactions

- **Consequences of failure to submit, late submission or incorrect disclosures**

Penalties specific to the failure to comply with the TP documentation requirements apply in addition to the fiscal penalties generally applied as a consequence of a TP reassessment. TP reassessments from the FTA trigger an adjustment of the taxable profit for corporate income tax purposes (and other taxes depending on the case).

Specific TP penalties apply when the taxpayer fails to answer the tax authorities' request for documentation either on the basis of Article L 13B of the FPTC (which relates to general TP documentation requirements if the FTA can provide evidence of a TP issue before it applies this article) or on the basis of Articles L 13AA and L 13AB of the FPTC (which relate to

special TP documentation requirements).

The failure to provide complete information in the framework of Article L 13B of the FPTC may result in:

- A reassessment of the company's taxable profit based on information the tax authorities possess
- The application of a penalty of EUR10,000 for each year audited

The failure to provide sufficient TP documentation under the framework of Articles L 13AA and L 13AB of the FPTC will trigger penalties. Such TP documentation-related penalties are the highest of the following amounts:

- A minimum of EUR10,000 per entity and per period not documented
- A 0.5% charge of the volume of transactions that were not documented

Or

- A 5% charge of the reassessments based on Article 57 of the FTC (arm's-length principle)

The failure to submit a Transfer Pricing Statement as required by Article 223 quinquies B of the FTC or make erroneous statements on this tax return form (Form 2257-SD) will trigger penalties as follows:

- EUR150 if the Transfer Pricing Statement is not submitted

Or

- EUR15 per error with a minimum penalty of EUR60 and a maximum penalty of EUR10,000

The failure to submit a Transfer Pricing Statement will increase the risk of a tax audit as the FTA uses this tax return form as a risk assessment tool.

The failure to comply with the legal CbCR requirements (i.e., Article 223 quinquies C of the FTC) will trigger a penalty of maximum EUR100,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties generally applied as a result of a TP reassessment regardless of compliance with TP documentation requirements are as follows:

- After a TP reassessment is made, the additional profit is qualified as a deemed distribution of a benefit. The tax treatment of such "benefit" transfer may trigger the same consequences as a deemed transfer of a dividend, depending on the definition of "dividend" in the applicable tax treaty. Accordingly, a withholding tax on the reassessed amounts is imposed by the FTA when the applicable tax treaty allows for imposing withholding taxes. When the double tax treaty permits the FTA to treat the TP reassessment as a deemed dividend distribution, the actual withholding tax applied depends on the relevant tax treaty provisions. In the absence of a specific tax treaty, the withholding tax rate applied is 30% and increases to 75% when the foreign entity is based in a "noncooperative" jurisdiction. Note that the effective rate will be the grossed-up rate (i.e., 300% effective withholding tax rate in the case of a reassessed transaction with a "noncooperative" jurisdiction).
- If the transfer is treated as a deemed dividend, the tax authorities also usually apply a 10% penalty for not declaring the withholding tax. Such penalty is applied regardless of the good faith of the taxpayer.
- However, if certain cumulative conditions are met, at the request of the taxpayer, the withholding taxes may be waived. These cumulative conditions are enshrined in Article L62 A of the FPTC but basically require that the taxpayer files, before the FTA issues the tax bill, a written request to apply Article L62 A and that the amounts classified as deemed dividends are repatriated to the benefit of the French taxpayer within 60 days from the request. However, the taxpayer cannot have recourse to Article L62 A if the non-French related party that entered into the reassessed transaction with the French entity is located in a noncooperative state or territory.
- Supplementary penalties apply if the taxpayer committed a willful offense (formerly referred to as "bad faith" penalties) (40%) – this is much more frequently applied by the tax authorities – or acted fraudulently (80%). In these cases, taxpayers are denied recourse to the European Union Arbitration Convention and often also from MAPs through the applicable double tax treaty (possibly subject to discussion, however, depending on treaty provisions).

It should be noted that the assessment of a TP documentation penalty under Article L 13AA (TP documentation penalty regime) does not prevent the taxpayer from seeking recourse under MAP provisions. In addition, the adjustment may result in a reassessment of other taxes and contributions, such as

business or local taxes and employee profit-sharing regimes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the section above.

- **Is interest charged on penalties or payable on a refund?**

Late interest payments are applied in the case of tax reassessments made on the grounds of Article 57 of the FTC. The ordinary late payment interest rate is 0.4% per month (i.e., 4.8% per year), reduced to 0.2% for periods starting on or after 1 January 2018. In other words, when a late payment interest calculation bridges a period that included months prior to and after 1 January 2018, 0.4% is applied to the months prior to 1 January 2018 and 0.2% for periods after 1 January 2018.

Tax reimbursements that may be made by the French Government as a consequence of a MAP do not attract interest.

b) Penalty relief

During a tax audit and before the tax authorities send the notice of reassessment, taxpayers, under the framework of Article L 62 of the FPTC, are allowed to correct their errors or omissions in consideration of a reduced late-payment interest rate (3.36% per year), which is equal to 70% of the ordinary late-payment interest rate. In this respect, taxpayers must file a complementary tax return and pay the corresponding additional taxes at the same time.

The taxpayer can contest penalties for willful offense (40%) or penalties for fraudulent activities (80%) in court if such penalties are maintained at the end of the usual tax audit procedures.

10. Statute of limitations on TP assessments

The statute of limitations for TP adjustments is the same as for all French corporate tax assessments, which is generally three years following the year for which the tax is due. For example, a financial year that closed on 31 December 2017 will be statute-barred by 31 December 2020. Similarly, a financial year that closed on 31 March 2017 will also be statute-barred by 31 December 2020 (i.e., calendar-year principle applies). If no reassessment notice has been received by the taxpayer by 31 December 2020 at the latest, the year 2017 will be statute-barred.

However, carry-forward losses can be audited as long as they are carried forward. But if the losses occurred in periods being statute-barred, the FTA could only reassess up to the amount of the losses in those statute-barred years – i.e., they could not reassess additional taxable income in those statute-barred years and, at maximum, cancel the losses.

If the FTA request international tax assistance (Article L 188A of the FPTC) – administrative assistance procedures between tax authorities of different countries – the statute of limitations is extended up to three additional years in order to give the non-French authorities the time to respond and the FTA the time to take into account this response in their analyses.

The general three-year statute of limitations can also be extended in specific cases, such as when an asset (e.g., going-concern and clientele) was transferred but not declared at the time of transfer (extension from three to six years in this particular case). An effective extension to 10 years applies in cases where permanent establishments are deemed to exist by the FTA and where the non-French entity never declared any taxable activities in France to the FTA.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of Transfer pricing-related audits (high, medium or low)**

The likelihood may be considered to be high as taxpayers that have been audited once usually enter a recurring three- or four-year audit cycle and transfer prices will always be analyzed, to a greater or lesser extent, during tax audit.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood may be considered to be high as it is rare that a French tax inspector would invest the time and effort to investigate transfer prices in detail without at least trying to reassess.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood may be considered to be high as no French tax inspector would ever challenge a TP methodology without coming to the conclusion that this challenge is based on the assertion that the French taxable base was too low. However,

amounts are often subject to discussion on recourses post tax audit during the pre-litigation phase.

France still has an active litigation activity on TP with several cases reviewed by courts and several decisions rendered.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Loss situations are highly scrutinized and the reason for opening tax audits and starting discussion on TP from the beginning of the tax audit in many cases.

In recent years, US-headquartered technology companies have been subject to highly publicized (in newspapers, for instance) tax police raids and tax audits.

Also, intra-group financial transactions, in particular with Luxembourg, have been heavily scrutinized in the past three to four years.

But, as a general comment, all types of intra-group transactions (e.g., management fees and royalties or licenses) are subject to scrutiny.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Bilateral, multilateral and, subject to certain well-defined conditions, unilateral APAs are available (Article L 80 B 7° of the FPTC).

- **Tenure**

APAs have a fixed term of three or five years. An APA submission, i.e., an official request to be allowed into the APA program, needs to be lodged at the latest six months before the start of the first year the APA would apply. For example, for a 1 January 2020 start of the APA, the APA submission would need to be lodged by 30 June 2019 at the latest. No administrative fees are required to be paid to the French authorities for entering into an APA.

- **Rollback provisions**

There is no rollback possibility.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty (DTT) to which France is a signatory. Most of France's DTTs permit taxpayers to present their cases to the tax authority within three years from the first notification to the taxpayers of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary; the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the tax authority under the EU Arbitration Convention (90/436/EEC).

14. Have there been any impacts or changes to Advanced Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No work of Competent Authority (CA) slowed down and postponement of several bilateral meetings with counterparty CAs.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

In an effort to comply with the European Union (EU) Anti-Tax Avoidance Directive (ATAD), major changes to the current French interest deductibility limitation rules have been implemented to fiscal years open as from 1 January 2019:

New general limitation: Net interest expenses are deductible from the taxable income of a company only to the extent that they do not exceed the higher of the two following thresholds: (i) EUR3 million or (ii) 30% of the adjusted taxable income of the company (i.e., corresponding to the taxable income before the offset of tax losses and without taking into consideration net financial expenses and – to some extent – depreciation, provisions and capital gains or losses), altogether referred to as the "regular threshold."

Debt-to-equity ratio: Should the company be thinly capitalized and exceed a specific 1.5:1 debt-to-equity ratio, a portion of the net interest expense, determined by application of the following ratio to the net interest expense, is subject to the regular threshold:

- **Average amount of indebtedness toward unrelated parties + [1.5 x equity] (numerator)**
- **Average amount of indebtedness (denominator)**

The remaining portion of the net interest expense is to be tax deductible only within the limit of the higher of the two following thresholds: (i) EUR1 million or (ii) 10% of the abovementioned adjusted taxable income (strengthened

threshold). The portion of net interest expense that is subject to the strengthened threshold corresponds to the difference between: (i) the total amount of net interest expense and (ii) the amount of net interest expense subject to the regular threshold in accordance with the above-mentioned computation.

According to a specific safe harbor provision, despite the fact that a company is thinly capitalized, it is subject to the strengthened threshold if the debt-to-equity ratio of the company is not higher, by more than two percentage points, than the debt-to-equity ratio of the consolidated group to which it belongs (i.e., application of the regular threshold to the total amount of net interest expense).

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Transfer pricing desk of the Tax Administration (Direction Générale des Impôts, Cellule Prix de Transfert)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer pricing reference has been included in the General Tax Code as early as 2009. However, effective transfer pricing rules, documentation filing obligations and deadlines, as well as penalties are applicable as of 1 January 2017 under the General Tax Code.

A Tax Statement of practice has also been issued by the Tax Administration on 22 June 2018 to detail the content of the transfer pricing documentation.

Section 12 and Sections P 831, P 831 bis, P 831 ter, P 832 and P 860 of the General Tax Code contain the main transfer pricing provisions, effective since 1 January 2017.

- **Section reference from local regulation**

Under the General Tax Code:

- Section 12 (definition of the transfer pricing scope);
- Sections P 831, P 831 bis, P 831 ter, P 832 and P 860 (transfer pricing documentation content, filing obligation and deadlines);
- Sections P-1010 bis and P-1010 ter (non-compliance penalties); and
- Section 11-a of the special regime for group of companies (definition of related party as companies that are directly or indirectly under common control whether from a legal perspective or that are in substance under common control).

Under the Tax Statement of practice issued by the Tax Administration, the content of the transfer pricing documentation is detailed.

[1] **http://www.dgi.ga/**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Not covered in COVID Tracker

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Gabon is a member of the Exchange and Research Centre for Leaders of Tax Administrations (an OECD body for the fight against tax evasion). The OECD Guidelines are followed in the local transfer pricing regulations.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for TP documentation in the local regulations?**

Yes.

- **Coverage in terms of Master File, Local File and CbCR**

Companies within the TP scope are required to file the local file and the master file. The CbCR is also mandatory but has temporarily been suspended since 2018.

- **Effective or expected commencement date**

The effective commencement date for the adoption of BEPS Action 13 was 1 January 2017.

- **Material differences from OECD report template or format**

There are no material differences between the OECD report template or format and Gabon's regulations.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

No, since the 2018 Tax Statement of practice, mentioned above, in addition to the TP reports for the local file and the master file, companies are required (effective as of 2018) to file two transfer pricing returns, namely "PT01" and "PT02," to respectively synthetize information from the master file and the local file.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 26 January 2017

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, the master file, the local file and the transfer pricing returns (PT01 and PT02) need to be submitted contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Prepared and filed annually

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, stand-alone local files need to be prepared for each entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable. We confirm that no threshold is applicable for master file.

- **Master File and Local File**

This is not applicable. We confirm that no threshold is applicable for master file.

- **Local File**

This is not applicable. We confirm that no threshold is applicable for local file.

- **CbCR**

In accordance with Article 831 of the tax code, parent or ultimate parent corporations are required to file a CbC report within 12 months of the end of the fiscal year if the consolidated annual turnover, excluding tax, is greater than or equal to XAF491,967,750,000 (USD930,470,656).

- **Economic analysis**

This is applicable for the local file and the master file.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are not included in the scope of transfer pricing documentation.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language (i.e., French). There is no written law, but in Gabon, only documents in French or certified translated copies in French are acceptable.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

NA

- **Any other disclosure or compliance requirement**

Not to our present knowledge of the applicable rules.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The transfer pricing returns PT01 and PT02 are filed with the local file and the master file.

- **Related-party disclosures along with corporate income tax return**

Related-party disclosures are required in the corporate income tax return.

- **Related-party disclosures in financial statement/annual report**

Same as the above.

- **CbCR notification included in the statutory tax return**

A form has not been specified yet; however, it is expected to be made through a written official letter as it is the case for any other formal communication with the Tax Administration.

- **Other information or documents to be filed**

There is none specified.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

30 April of each year.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master file**

30 April of each year.

- **CbCR preparation and submission**

31 December of the following year, suspended since 2018.

- **CbCR notification**

Not later than deadline for filing of statutory corporate tax return i.e. 30 April of each year.

b) Transfer pricing documentation/Local File preparation deadline

There is no deadline for preparation. But obviously it is recommended to prepare it at the same time of the corporate income tax return and have it ready before the filing deadline.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or local file?**

April 30 of each year.

- **Time period or deadline for submission on tax authority request**

Companies within the scope are required to submit by April 30 of each year. Non-compliance with this obligation will trigger penalties for not submitting the documentation or providing an incomplete documentation.

The Tax Administration has, however, the possibility (not a firm obligation under the law but solely subject to their appreciation) to request a noncompliant company to submit the documentation or complete it within 60 days from the request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No information provided yet from the government or the Tax Administration. April 30 remains the filing deadline.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

This is not applicable.

b) Priority and preference of methods

The tax authority should accept the methods prescribed by the OECD (i.e., CUP, resale price, cost-plus, TNMM and profit-split); there are no preferences.

8. Benchmarking requirements

- **Local vs. regional comparable**

There is no preference considering there is no official local database.

- **Single-year vs. multiyear analysis for benchmarking**

Single-year testing is required, but multiyear also may be accepted.

- **Use of interquartile range**

There are no formal requirements for use of the interquartile range.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct fresh benchmarking search every year; rollforwards and update of the financials are acceptable.

- **Simple, weighted or pooled results**

Both are acceptable.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

With the draft of the Finance Law for 2017, for failure to submit the transfer pricing documentation, the taxpayer is subject to a penalty of 5% of the global amount of the transaction (a minimum penalty of XAF65 million per year).

For failure to submit the CbC report, the taxpayer is subject to a penalty of 0.5‰ of the consolidated turnover excluding tax, capped at XAF100 million per year.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Any adjustment will be apprehended in the frame of a tax audit.

Tax adjustments for transfer pricing are subject to the normal penalty rules. In the case of an audit by the tax authorities, an incorrect corporate tax return is subject to a penalty of 1.5% based on the amount recovered, capped at 50%. In the case of willful neglect, the penalty is increased by 100%.

In the case of fraud, the penalty is 150% over and above the penalty for an incorrect tax return.

- **Is interest charged on penalties or payable on a refund?**

There is none specified.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not applicable.

b) Penalty relief

Waiving of penalties is possible on special request to the tax authority. The MAP and the arbitration procedure are some of the dispute resolution options.

10. Statute of limitations on transfer pricing assessments

The statute of limitations is four years after the payment of corporate tax is due. Taxes are due by 30 April following the calendar year-end.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not covered in COVID Tracker

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high. Although transfer pricing legislation is relatively new in Gabon, tax audits are increasingly focusing on related-party transactions.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Refer to the above section.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the above section.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The situations are recurrent loss position and failure to file transfer pricing documentation.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral, bilateral and multilateral APA programs are available. APAs are issued for a fixed term that is not provided by the law and will depend on the sector of activity of the taxpayer. There is no specific provision in the law for rollback of APAs, and its acceptability for past years will depend on discussions with the authorities.

- **Tenure**

Refer to the section above.

- **Rollback provisions**

Refer to the section above.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not covered in COVID Tracker.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is mostly included in oil and gas contracts regarding thin capitalization. Debt capacity rules are included in the Organization for the Harmonization of Business Law in Africa (OHADA) Uniform Act on commercial companies.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority [1]

Revenue Service of Georgia (RS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The transfer pricing general principles are provided in Articles 126 to 129 of the Georgian Tax Code (GTC)[2] and the Instruction on Pricing International Controlled Transactions[3] (transfer pricing instruction).

- **Section reference from local regulation**

Article 126 and Article 127.5[4] of GTC.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual /EU Joint Transfer Pricing Forum

Georgia is not a member of the OECD.

Georgian transfer pricing rules generally follow the OECD Guidelines. The transfer pricing Instruction contains a direct reference to the OECD Guidelines and sets forth that issues not regulated by the GTC or the transfer pricing instruction shall be regulated by the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Georgia has not adopted BEPS Action 13, although it is anticipated.

- Coverage in terms of Master File, Local File and CbCR

  Master File and Local File are not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 30 June 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the transfer pricing Instruction[5] determines the information to be included in the transfer pricing documentation.

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[1] **https://rs.ge/Home-en**

[2] Law of Georgia No. 5202 of 8 November 2011, **https://matsne.gov.ge/ka/document/view/1043717.**

[3] Approved by Decree No. 423 of the Minister of Finance of Georgia on 18 December 2013, **https://matsne.gov.ge/ka/document/view/2078069.**

[4] Georgian TP rules also apply to transactions between a Georgian resident company and an unrelated foreign company, where the latter is a resident of a jurisdiction with preferential tax treatment. The list of jurisdictions with preferential tax regimes is determined by Ordinance No. 615 of 30 December 2016 of the Georgian Government, **https://matsne.gov.ge/ka/document/view/3523434.**

[5] Article 17

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation needs to be prepared annually under local jurisdiction regulations. Taxpayers with a turnover of less than GEL8 million (approx. USD3 million) will be considered to satisfy the documentation requirements even where the financial indicators of external comparables are only updated every third year, provided there have been no material changes to the Georgian enterprise's business, the business operations of the comparables or the relevant economic circumstances. In all other cases, there is no exception or special rule.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

This is not specified.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

Annual consolidated group revenue of EUR750 million for the preceding fiscal year.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

The Georgian transfer pricing rules are not applicable to domestic transactions. Thus, there are no documentation requirements in this regard.

- **Local language documentation requirement**

The transfer pricing documentation may be submitted in Georgian or English. However, whenever the documentation is submitted in English, the tax authorities may request a Georgian translation to be arranged by the taxpayer.

- **Safe harbor availability, including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

No.

- **Any other disclosure or compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable; however, any transfer pricing adjustment by the taxpayer must be reflected in the monthly corporate income tax return.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

No.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

This is to be filed on a monthly basis.

- **Other transfer pricing disclosures and return**

This is to be filed upon request.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

Not later than 31 December of the next year of the reporting fiscal year of the MNE group.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation should be finalized by the time of submission upon request.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for submission of transfer pricing documentation; it only needs to be finalized by the time of submission upon request.

- **Time period or deadline for submission on tax authority request**

Taxpayers are obligated to submit the documentation within 30 calendar days of the tax authority's request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: no

b) Priority and preference of methods

The transfer pricing law includes five methods similar to those used in international transfer pricing practices: (1) CUP, (2) cost-plus, (3) resale price, (4) TNMM, and (5) profit-split. The CUP method has first priority, whereas the profit-split is the method to be used as a last resort.

The three traditional methods prevail over the TNMM and profit-split method. Some other method can be used if none of the approved methods can provide reliable results, and such other method yields a result consistent with that which would be achieved by independent enterprises engaging in comparable uncontrolled transactions under comparable circumstances. In such cases, a taxpayer shall bear the burden of demonstrating that the abovementioned requirements have been satisfied.

A taxpayer should select the most appropriate method according to the nature of its business, comparability factors and the availability of relevant information. If there is a lack of internal comparables or information (or if these internal comparables or information is not accurate or reliable enough), the taxpayer may use external comparables from the foreign markets. Under the transfer pricing Instruction, use of secret comparables is prohibited.

8. Benchmarking requirements

- **Local vs. regional comparables**

The application of foreign comparables is acceptable because of the lack of information sources within Georgia. But the impact of geographic differences and other factors need to be analyzed, and, where appropriate, comparability adjustments should be made in accordance with the transfer pricing instruction.

- **Single-year vs. multiyear analysis**

Generally, a taxpayer is expected to conduct an economic analysis using the benchmarks relevant to the financial year in which controlled transactions occurred. However, where required information is not available, the taxpayer is allowed to use the benchmarking data for the years preceding the year of its transaction, but not more than four years prior to the financial year in which the tested transaction took place.

- **Use of interquartile range**

The spreadsheet quartile is used as per the Georgian transfer pricing rule specifying calculation approach.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

It is necessary to conduct a fresh benchmarking search every year or to update the financials of a prior study. Taxpayers with a turnover of less than GEL8 million (approx. USD 3 million) could update an economic analysis based on external comparables every third year, provided there have been no material changes to the business operations of the comparables or relevant economic circumstances.

- **Simple, weighted or pooled results**

There is no specific regulation in this regard; both simple and weighted averages may be used.

- **Other specific benchmarking criteria, if any**

There are no specific regulations in place. The benchmarking criteria shall comply with the general comparability factors as determined by the transfer pricing Instruction.[6] The applicable independence criterion is 50% or less.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Penalty of GEL 5,000.

- **Consequences of failure to submit, late submission or incorrect disclosures**

No specific penalties are defined for when a taxpayer does not submit transfer pricing documentation; if the documentation is not submitted by the deadline, the standard penalty for the failure to submit information to the tax authorities will apply. Any transfer pricing adjustment will be treated as distributed profit and taxed with profit tax according to the Georgian tax legislation. In addition, if the tax authorities reassess the transaction, penalties of 50% of the adjusted sum will apply.

The general penalties for failing to submit required information apply. The penalty is GEL400. A penalty of GEL1,000 applies in case of repeated violation.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

If the tax authorities reassess the transaction, penalties of 50% of the adjusted sum will apply.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not provided.

- **Is interest charged on penalties or payable on a refund?**

Interest is not charged on penalties. However, late-payment interest of 0. 05% per overdue day may apply.

b) Penalty relief

No specific penalty relief is available. In practice, having proper transfer pricing documentation reduces the risk of transfer pricing adjustments.

However, the tax authority, the authority considering a dispute or the court may release a faithful taxpayer from a tax sanction under GTC, if the tax offense was caused by the payer's mistake/lack of knowledge

10. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations on transfer pricing assessments. The general statute of limitations in Georgia is three years. It will be extended for one year, if less than a year remains before the expiration of the period and the taxpayer has filed with a tax authority a taxpayer's claim or a tax return (including an adjusted tax return) for the relevant period. Tax cannot be reassessed after this period has elapsed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high; from 1 January 2017, the existing regulation for levying a profit tax in Georgia changed and the so-called tax on distributed profits model was introduced. In particular, the object of taxation of a resident entity became only distributed profit, and, according to the new regulation, controlled transitions with related parties are deemed as distribution of profit if they do not comply with the arm's-length principle. Thus, the likelihood of the potential transfer pricing audit may further increase.

[6] Articles 5 and 6.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high; refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high; refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

A unilateral APA (between a resident taxpayer and the RS) is available. The fee to apply for an APA is GEL30 000.

The transfer pricing Instruction and the GTC also refer to a possibility of conclusion of a bilateral or multilateral APA. Procedures related to such APAs may differ from those outlined for a unilateral APA. Further clarifications regarding the details and the way of application for a bilateral or multilateral APA may follow from the Georgian Ministry of Finance.

- **Tenure**

The tenure could be as long as three years (with a possibility of extension).

- **Rollback provisions**

No rollback is allowed.

- **MAP opportunities**

Subject to the provisions of the applicable tax treaty, where a Georgian enterprise becomes aware that the actions of the Revenue Service or a tax treaty partner will result in taxation not in accordance with the provisions of the relevant tax treaty, the Georgian enterprise may present the case the RS and request that the case be resolved by mutual agreement procedure.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

No.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

German taxes are administered either by the German Federal Central Tax Office (*Bundeszentralamt für Steuern*) or by German state authorities.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

German transfer pricing rules are not included in one integrated section of the German tax code but in several provisions in different legislative acts, which are:

- Constructive dividend, Section 8 (3) Corporate Income Tax Act[2]
- Hidden capital contribution, Section 4 (1) Income Tax Act[3] and Section 8 (1) Corporate Income Tax Act[4]
- Contribution or withdrawal, Section 4 Income Tax Act[5], (e.g., for partnerships)
- Section 1 Foreign Tax Act[6]

The most influential provision is Section 1 of the Foreign Tax Act, which stipulates the arm's-length principle (gesetze-im-internet.de/astg/__1.html). The German interpretation of the arm's-length principle generally follows the definition in Article 9 of the OECD Model Tax Convention. However, Section 1 (1) of the Foreign Tax Act stipulates that for the interpretation of the arm's-length principle, it is assumed that both parties involved in an intercompany transaction have full knowledge about all facts and circumstances (information transparency).

Section 1 Foreign Tax Act has been updated with effect from 1 January 2022. This does not only concern the structure of Section 1 but also the content by including the regulations prescribed by the German Act to Implement the Anti-Tax Avoidance Directive (ATAD-*Umsetzungsgesetz*) and the German Withholding Tax Relief Modernization Act (*Abzugsteuerentlastungsmodernisierungsgesetz*). Such changes concern, for instance, the introduction of the DEMPE concept (Section 1 (3c) Foreign Tax Act or the outsourcing of the price adjustment clause in Section 1a Foreign Tax Act).

Detailed transfer pricing regulations concerning the cross-border transfer of functions were incorporated into Section 1 Foreign Tax Act on 1 January 2008. An executive order law providing details on how the new transfer pricing provisions relate to business restructurings and transfer of functions is effective from 2008 (https://www.gesetze-im-internet.de/fverlv/index.html).

As of 1 January 2013, a law amending Section 1 Foreign Tax Act incorporates the authorized OECD approach (AOA) on the allocation of profits to permanent establishments into German law. The AOA treats a permanent establishment as a (nearly) fully separate entity for tax purposes. This includes the recognition of internal dealings between the head office and a foreign permanent establishment, such as the supply of goods, a service provision and even licensing arrangements. These dealings have to be priced in accordance with the arm's-length principle (i.e., including a profit element). Given the lack of legally binding agreements between the different parts of one enterprise, contemporaneous transfer pricing documentation becomes crucial to defend the transfer prices applied for internal dealings. The domestic rules stipulate that Germany will not tax the profits of the permanent establishment that are determined based on the AOA if the AOA is not yet implemented in the applicable double tax treaty. However, for the treaty relief, the taxpayer has to provide evidence that the other contracting state does not apply the AOA and that this will lead to double taxation.

In October 2014, an executive order law with regard to the application of the arm's-length principle to permanent establishments was released (https://www.gesetze-im-internet.de/bsgav/index.html). The main issues covered by the executive order law are the attribution of assets and risks to a permanent establishment, and the allocation of the (free) capital or surplus to the different parts of the enterprise. In addition, the executive order law contains specific provisions with respect to permanent establishments of banks and insurance companies, and construction and exploration sites. Notably, the executive order law stipulates that the taxpayer has to prepare an "auxiliary calculation" on an annual basis with respect to assets, capital, remaining liabilities, and revenues and expenses attributable to the permanent establishment, including deemed revenues and expenses resulting from internal dealings. The auxiliary calculation has to be prepared, at the latest, when the tax return for the respective financial year is filed. The executive order law is applicable for fiscal years beginning after 31 December 2014.

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[1] Foreign Tax Act, Section 1.

[2] **https://www.gesetze-im-internet.de/kstg_1977/__8.html**

[3] **https://www.gesetze-im-internet.de/estg/__4.html**

[4] **https://www.gesetze-im-internet.de/kstg_1977/__8.html**

[5] **https://www.gesetze-im-internet.de/estg/__4.html**

[6] **https://www.gesetze-im-internet.de/astg/__1.html**

With regard to transfer pricing documentation and country-by-country reporting, the following provisions are relevant:

- German transfer pricing documentation requirements are stipulated in Section 90 (3) German General Tax Act (transfer pricing documentation – https://www.gesetze-im-internet.de/ao_1977/__90.html) as well as in an executive order law to Section 90 (3) (https://www.gesetze-im-internet.de/gaufzv_2017/index.html). Section 90 (3) General Tax Act was amended in December 2016 with effect for tax periods starting after 31 December 2016 to include the requirement to prepare jurisdiction-specific (Local File) and global (Master File) documentation. In addition, the respective executive order law to Section 90 (3) German General Tax Act was also updated with effect as of 20 July 2017.
- In addition, the German legislator introduced non-public CbCR standards as proposed by the OECD in its report on Action 13 of the BEPS project with mandatory CbCR for fiscal years beginning after 31 December 2015 in Section 138a German General Tax Act (https://www.gesetze-im-internet.de/ao_1977/__138a.html). The bill also included the implementation of the European Automatic Information Exchange Directive, which was adopted in December 2015 and governs the exchange of information concerning advance cross-border rulings and APAs as well as some other additional information reporting obligations imposed on MNEs.
- Section 162 (3) and 162 (4) of German General Tax Act stipulate penalties in case of non-compliance with transfer pricing documentation rules (https://www.gesetze-im-internet.de/ao_1977/__162.html).

In addition to the above legislation, the German tax authorities have issued a number of circulars helping to interpret the German transfer pricing provisions and outlining their interpretation of the laws. These administrative regulations do not constitute binding law for taxpayers or the courts, but are binding for the tax authorities and, therefore, indicate how the tax authorities will treat specific intercompany transactions between related parties. The purpose of these administrative regulations is to provide a directive concerning the tax treatment of transfer pricing cases, and to ensure a uniform application of rules and methods. In 2020–21, the German Ministry of Finance published several circulars that are essential for transfer pricing purposes, namely the following:

- "Administrative Principles 2020," dated 3 December 2020, published in the *Federal Tax Gazette* dated 30 December 2020.
- "Administrative Principles for Transfer Pricing – Principles for the adjustment of income in accordance with Sec. 1 AStG," dated 14 July 2021, published in the Federal Tax Gazette dated 30 September 2021. This circular is applicable for all open years and replaces many transfer pricing circulars that had been in place for many years, such as "Principles for the Examination of Income Allocation in the case of internationally related Enterprises," dated 23 February 1983, known as "Administrative Principles."
- "Guidance note on international mutual agreement and arbitration procedures in the field of taxes on income and capital," dated 27 August 2021, published in the Federal Tax Gazette dated 11 October 2021. This circular replaces the formular circular on this matter dated 9 October 2018.

In addition, the following circulars are still in place and are of particular relevance for transfer pricing purposes:

- Released 13 October 2010, "Administrative Principles for the Examination of Income Allocation between related parties in cases of cross-border Transfer of Business Functions" includes 81 pages of clarifications on applying Section 1(3) Foreign Tax Act[7] and the Executive Order Law on Transfer of Business Functions.
- Published in March 2017, "Administrative Principles on the Profit Attribution to Permanent Establishments" includes 152 pages of details and clarifications of the AOA that is implemented in Section 1(5) Foreign Tax Act and the Executive Law.,

Other relevant circulars include inter alia administrative circulars concerning cross-border secondment of personnel (dated 9 November 2001), as well as a circular related to joint tax audit and simultaneous checks (dated 6 January 2017).

- **Section reference from local regulation**

In principle, there is no specific percentage of shareholding required to qualify as a "related party" under German transfer pricing rules. Section 1 (2) Foreign Tax Act provides for a minimum direct or indirect shareholding of 25%. However, if this threshold is not met, transfer pricing adjustments can nevertheless be made on the basis of Section 8 (3) Corporate Income Tax Act (constructive dividend) or Section 4 Income Tax Act (hidden capital contribution), which do not require a minimum shareholding percentage. Parties can also qualify as being "related" where one party can exert influence on the

[7]Please note that as of 1 January 2022, the structure of Section 1 Foreign Tax Act changed. The transfer of functions rules are now mainly stipulated in Section 1 (3b) Foreign Tax Act.

other party, or has an interest in the income generated by the other party.

Following the implementation of the EU Anti-Tax Avoidance Directive, the definition of the "related party" in Section 1 (2) Foreign Tax Act was extended with effect of 1 January 2022.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Germany is a member jurisdiction of the OECD. The OECD Guidelines provides support for domestic use, but do not constitute binding law in Germany. German transfer pricing regulations and practices do differ from those of the OECD Guidelines with regard to certain issues (e.g., the application of transactional profit methods, documentation requirements and the treatment of transfers of functions). The German tax authorities consider the German transfer pricing laws and regulations to be generally consistent with the OECD Guidelines. In tax audit practice as well as in tax court procedures, the OECD Guidelines are often applied and used as a point of reference. With respect to CCAs, the administrative regulations even directly reference Chapter VIII of the OECD Guidelines.

In this regard, the new "Administrative Principles Transfer Pricing" dated 14 July 2021 reference the OECD Guidelines (which also form an integral part of the circular as they are included as an Appendix 1) in order to ensure international orientation and an alignment with the OECD Guidelines. However, although the circular includes this statement and often refers to specific chapters and articles of the OECD Guidelines, the Administrative Principles Transfer Pricing may deviate from the OECD Guidelines on certain topics, which is also stipulated in the circular ("Guidelines" in Chapter 3).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, Germany has adopted BEPS Action 13 for transfer pricing documentation, effective from 1 January 2016. For this purpose, Section 90 (3) General Tax Act had been amended.

- **Coverage in terms of Master File, Local File and CbCR**

Yes, Section 90 (3) General Tax Act has been amended to include the obligation to prepare a Master File as well as a Local File if the specific "de minimis" thresholds are exceeded.

Rules regarding CbCR are governed by Section 138a General Tax Act.[8]

- **Effective or expected commencement date**

German transfer pricing documentation obligations were implemented in 2003. As of fiscal years starting after 31 December 2016, German taxpayers are obliged to prepare a Master File- or Local File-type transfer pricing documentation.

With regard to CbCR, the regulation has been effective since 1 January 2016 (with exception for the surrogate companies effective from 1 January 2017).

- **Material differences from OECD report template or format**

In principle, there should not be material differences between the OECD report template or format and Germany's regulatory requirements. However, taxpayers need to be aware that German transfer pricing documentation obligations apply on a transaction-by-transaction basis and that there are no materiality thresholds per transaction. In addition, the catalog provided in the respective executive order law to Section 90 (3) German General Tax Act slightly differs from the OECD Local File template. For example, Section 4 (1) No. 4 lit. a of the executive order law stipulates that the taxpayer has to document the date or period when transfer prices have been determined (price-setting approach). In addition, information available at the time the transfer prices were determined has to be documented (Section 4 (1) No. 4 lit. b). While these differences could be described as clarifications of the OECD Local File template, there is no official statement of the German tax authorities confirming that the German documentation requirements do not exceed the requirements as set forth under the OECD Local File template. In particular, it is questionable whether the specific documentation obligations listed in Section 4 (2) executive order law are in compliance with the OECD Local File template, e.g., the documentation requested for cost allocations or CSAs, research and development activities, explanations for losses, and the impact of business strategies and business restructurings. In practice, German tax authorities often

[8] https://www.gesetze-im-internet.de/ao_1977/__138a.html

request very detailed and specific information beyond OECD requirements.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

It is generally considered reasonable to assume that transfer pricing documentation prepared in line with the BEPS Action 13 format report would not be considered as being "essentially unusable" under the German penalty rules and regulations. However, taxpayers should be aware that this understanding has not yet been confirmed by a tax court ruling or an official statement by the German tax authorities. Most importantly, taxpayers should be aware that penalties may be levied on a transaction-by-transaction basis without any materiality threshold in terms of intercompany volume.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, there are transfer pricing documentation guidelines or rules. The obligation to prepare transfer pricing documentation is included in Section 90 (3) General Tax Act. Documentation for extraordinary transactions, such as corporate restructurings as well as implementation of or changes to material long-term contractual relationships, must be prepared within a reasonably short period (i.e., within six months after the end of the business year in which they occurred).

Documentation for all types of transactions must be presented to the authorities upon their request, typically in the course of a tax audit. The time limit for presentation is 60 days following the request (respectively, 30 days in case of extraordinary transactions); extensions may be granted for special reasons.

Rules regarding CbCR are governed by Section 138a General Tax Act.

The statutory rules on transfer pricing documentation are supplemented by an executive order law to Section 90 (3) German General Tax Act as well as the new administrative circular dated 3 December 2020 ("Administrative Principles 2020").

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, the rules were expanded to cover the income allocation between an enterprise and its foreign branch.

- **Does transfer pricing documentation have to be prepared annually?**

According to German transfer pricing documentation rules, tax auditors have the right to request transfer pricing documentation for transactions between a German taxpayer and its foreign related parties, and the taxpayers have to submit the documentation within 60 days upon request. Thus, while there is no strict legal requirement to update transfer pricing documentation on an annual basis, it is strongly recommended to at least update budgets, information on intercompany transaction volumes and segregated P&L financial data once a year. Regarding the update of benchmarking studies and other economic analysis, there is no strict rule in the German transfer pricing law, executive order law or administrative circular that such studies have to be updated on an annual basis. In practice, benchmarking studies are often updated every three years.

For extraordinary business transactions (e.g., transfer of intellectual property and business restructurings), transfer pricing documentation has to be prepared contemporaneously, i.e., at the latest within six months after the end of the fiscal year in which the transaction took place. Transfer pricing documentation for extraordinary business transactions has to be submitted within 30 days upon request by the tax authorities.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

In principle, yes; however, the necessary information of more than one entity can be compiled in one report.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is a materiality limit for preparing transfer pricing documentation. Exception for small- and medium-sized companies apply. The company does not have to prepare

transfer pricing documentation if annual consideration (paid or received) from intercompany transactions involving the supply of goods with foreign related parties do not exceed EUR6 million and if the annual consideration (paid or received) in connection with other intercompany transactions (e.g. services) do not exceed EUR600,000. Once these "de minimis" thresholds are exceeded, the transfer pricing documentation obligations apply on a transaction-by-transaction basis without a separate materiality threshold per transaction. Therefore, in principle, transfer pricing documentation has to be prepared for every single intercompany transaction upon request by the tax auditors independent of the transaction volume.

- **Master File**

There is a materiality limit for preparing the BEPS Master File. The Master File only has to be prepared by a German entity where its revenue was higher than EUR100 million in the preceding fiscal year.

- **Local File**

Other than the general "de minimis" thresholds described above, there are no materiality limits for preparing the Local File.

- **CbCR**

There is a materiality limit to prepare CbCR. For German domestic ultimate parent companies, CbCR only has to be prepared where the consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

- **Economic analysis**

There is no materiality threshold for preparing an economic analysis, i.e., an economic analysis has to be prepared for each intercompany transaction with a related party if transfer pricing documentation for this transaction is requested by the tax authorities independent of the transaction volume. However, the law does not require a benchmarking study or database analysis to be prepared if the arm's-length nature of the transfer prices can be evidenced otherwise.

c) Specific requirements

- **Treatment of domestic transactions**

There are no transfer pricing documentation obligations for domestic intercompany transactions. However, with regard to domestic intercompany transactions, taxpayers still have a duty to respond to tax authority inquiries, and to cooperate with them to clarify the facts and circumstances of the case. This may include providing existing information related to the specific transactions upon request of the tax authorities as well as answering the tax authorities' questions regarding these transactions. For domestic transactions, only the general adjustment provisions are applicable but not Section 1 Foreign Tax Act.

- **Local language documentation requirement**

In principle, the transfer pricing documentation has to be submitted in German (reference Section 2 paragraph 5 of the executive order law to Section 90 (3) German General Tax Act). However, the taxpayer can apply for the transfer pricing documentation to be prepared in a foreign language. The application has to be filed at the latest without undue delay after receiving a request for submitting transfer pricing documentation. In practice, many German tax auditors accept English transfer pricing documentation reports or are satisfied with receiving a (partial) German translation of the reports.

- **Safe harbor availability, including financial transactions if applicable**

Apart from the "de minimis" thresholds for preparing transfer pricing documentation mentioned above, there are no safe harbor rules on which the taxpayer could rely upon.

- **Is aggregation or individual testing of transactions preferred for an entity**

In general, the arm's-length analysis has to be performed on a single transaction basis. However, in case single transactions are closely connected to each other such that an analysis on a single transaction basis is not possible, an aggregated approach might be followed.

- **Any other disclosure/compliance requirement**

There are some specific transfer pricing-related Directives on Administration Cooperation (DAC 6) mandatory disclosure requirements that may be applicable.[9]

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are in general no specific transfer pricing-related returns to be prepared and/or filed.

However, in October 2014, an executive order law with regard to the application of the arm's-length principle to

[9] See Section 138d – 138k General Tax Act; **https://www.gesetze-im-internet.de/ao_1977/__138d.html** et seq.

permanent establishments was released (see above). Notably, the executive order law stipulates that the taxpayer has to prepare an "auxiliary calculation" on an annual basis with respect to assets, capital, remaining liabilities, and revenues and expenses attributable to the permanent establishment, including deemed revenues and expenses resulting from internal dealings. The auxiliary calculation has to be prepared, at the latest, when the tax return for the respective financial year is filed. The executive order law is applicable for fiscal years beginning after 31 December 2014. Other than that, there are no other specific transfer pricing-related returns required.

- **Related-party disclosures along with corporate income tax return**

Apart from the general standard documentation and notification requirements under the General Tax Act and the Foreign Tax Act, there are no specific disclosure requirements specifically related to transfer pricing. However, the relevant tax return forms may include certain questions or information relevant for transfer pricing as well (e.g., information on related parties in low-tax jurisdictions for German CFC regulations, information on constructive dividends and information on foreign permanent establishments).

- Related-party disclosures in financial statement/annual report

  Yes, there is certain related-party information to be disclosed in the financial statements according to German GAAP.

- CbCR notification included in the statutory tax return

  Yes.

- Other information or documents to be filed

  Some DAC 6 mandatory disclosure requirements may be applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

For tax periods beginning after 31 December 2017, the corporate income tax return generally must be filed by 31 July of the year following the tax year (for previous tax years, the deadline was 31 May of the year following the tax year). If the taxpayer is represented by a tax advisor, the tax return usually can be filed not later than the last day of February of the second calendar year following the tax year (for previous tax years, German tax authorities accepted in this case a tax return filed by 31 December of the year following the tax year).[10]

- **Other transfer pricing disclosures and return**

Transfer pricing documentation (Master File or Local File) has to be submitted within 60 days upon request. Such request typically comes within a tax audit that takes place a number of years after the year in question. Transfer pricing documentation for extraordinary business transactions has to be submitted within 30 days upon request by the tax authorities.

- **Master File**

Available upon request 60 days – for purpose of conducting a tax audit.

- **CbCR preparation and submission**

The deadline for filing the CbC report is one year after the end of the relevant fiscal year.

- **CbCR notification**

The CbCR notification has to be filed with the tax return for the relevant fiscal year.

b) Transfer pricing documentation/Local File preparation deadline

Ordinary intercompany transactions do not have to be documented contemporaneously, and it is sufficient if the transfer pricing documentation is finalized within 60 days upon request of the tax authorities.

In contrast, extraordinary business transactions need to be documented contemporaneously, i.e., at the latest within six months after the end of the fiscal year in which the transaction took place. Transfer pricing documentation for extraordinary transactions has to be submitted within 30 days upon request.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

[10] There was special extension granted for fiscal year 2019 due to COVID-19. If the taxpayer was represented by a tax advisor, the tax return for fiscal 2019 could have been filed latest by end of August 2021.

There is no statutory deadline for submission of transfer pricing documentation.

The transfer pricing documentation has to be submitted within 60 days upon request (30 days for extraordinary business transactions).

- **Time period or deadline for submission on tax authority request**

transfer pricing documentation for ordinary intercompany transactions has to be submitted within 60 days upon request. The documentation for extraordinary business transactions has to be submitted within 30 days upon request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

German tax authorities will analyze the intercompany transactions in line with the extensive rules and regulations as explained above. In this regard, they will now especially rely on the "Administrative Principles Transfer Pricing 2021," which generally refer to the OECD Guidelines.

- **Domestic transactions**

Although Section 1 Foreign Tax Act is not applicable to domestic transactions, in practice, German tax authorities generally analyze domestic intercompany transactions applying the same methods. However, given that Section 1 Foreign Tax Act is not applicable for domestic transactions, there are some exceptions where the arm's-length principle and the relevant methods are not necessarily applicable in domestic transactions (e.g., use of intellectual property for free).

b) Priority and preference of methods

German tax auditors will analyze the arm's-length nature of the transfer prices based on Section 1 Foreign Tax Act. It should be emphasized that the structure and partially the content of Section 1 Foreign Tax Act has been revised with effect of 1 January 2022. The law does not prioritize any transfer pricing methods anymore but suggests that the arm's length price shall generally be determined based on the transfer pricing method best suitable with respect to the comparability analysis and the availability of third-party comparable data, Section 1 (3) Sentence 5 et seq. Foreign Tax Act. Any differences between the circumstances of the third-party comparable transactions and the transaction under review that may have an impact on the application of the transfer pricing method should be eliminated by appropriate adjustments if this leads to an increase of the comparability. If no comparable data exists, the law stipulates that taxpayers have to conduct a hypothetical arm's-length analysis to derive arm's-length transfer prices.

Following the application of the arm's length principle, Section 1 (3a) Foreign Tax Act further describes how to proceed with the derived range of values. If only limited comparability exists, the range of available third-party comparable data must be narrowed (e.g., if there is no specific indication, the interquartile range should be used according to Section 1 (3a) Sentence 3 Foreign Tax Act).

In case the value used by the taxpayer is outside the full range or limited range, the arithmetic mean of the range of values is assumed to be the arm's-length transfer price for the transaction under review, if the taxpayer cannot prove that another value within the range better complies with the arm's-length principle.

If a hypothetical arm's-length analysis is applied to derive arm's-length transfer prices, the range of negotiation is defined by the minimum price a hypothetical seller would accept and by the maximum price a hypothetical purchaser would pay. The taxpayer must use the arithmetic mean of the range of values if the taxpayer provides no reasons that another value within the range of negotiation complies with the arm's-length principle.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local benchmarks are preferred, but European benchmarks are usually accepted if no local benchmarks are available. In tax audits, the validity of benchmark studies is often a major point of dispute between the taxpayer and the tax authorities.

- **Single-year vs. multiyear analysis for benchmarking**

Single-year testing is preferred for tested arm's-length analysis, but multiyear analyses are often accepted. Again, in tax audits, the validity of benchmark studies is often a major point of dispute between the taxpayer and the tax authorities.

- **Use of interquartile range**

The interquartile shall be used to test the arm's-length nature. This is now also suggested by Section 1 (3a) Sentence 3 Foreign Tax Act if there is no specific indication to use another narrowing method.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no legal requirement to perform a new benchmarking search or a financial update of a benchmarking study on an annual basis.

In practice, a fresh search is recommended to be performed latest every three years while a financial update shall be prepared annually.

- **Simple average, weighted average or pooled results**

The weighted average is preferred for testing the arm's-length analysis.

- **Other specific benchmarking criteria, if any**

Usually, benchmarking studies should not include other companies with a common shareholder that owns 25% or more of the company's shares, and should also exclude the company's own subsidiaries in which it has a share of 25% or more.

9. Transfer pricing penalties and relief

a) Penalty exposure

b) Consequences for incomplete documentation

The tax authority can impose a penalty of EUR10,000 for failing to provide a county-by-jurisdiction report, providing an incomplete report, or providing the report late (Section 379 (2) no 1c, (5), General Tax Act.

- **Consequences of failure to submit, late submission or incorrect disclosures**

If a taxpayer does not comply with the transfer pricing documentation requirements to the extent outlined in Section 90(3) German General Tax Act, a refutable assumption applies, and the tax authorities are allowed to assume that the taxpayer's income had been reduced by the amount of inappropriate transfer prices, thereby forming the basis of a transfer pricing adjustment.

The tax authorities may apply Section 162 (3) General Tax Act if the taxpayer submits insufficient or no documentation, or if extraordinary transactions have not been recorded contemporaneously. In all three cases, the tax authority is authorized to estimate the income provided the taxpayer does not rebut the assumption. This also holds true when a taxpayer does not disclose relevant data available only from the foreign related parties. If the tax authorities have to estimate the arm's-length transfer prices and it is only possible to determine the relevant income within a certain range, the range may be fully exploited to the taxpayer's detriment.

If the taxpayer fails to submit transfer pricing documentation, or if the documentation submitted is insufficient or essentially unusable, a penalty of 5% to 10% on the income adjustment may be applied, with a minimum penalty of EUR5,000.

In addition, for late filing, the taxpayer may face a penalty of up to EUR1 million (minimum penalty of EUR100 per day of delay, Section 162 (4) General Tax Act).

The ultimate amount is finally up to the discretion of the tax authority as far as not explicitly stipulated in law.

Penalties are imposed after the closing of a tax audit. The aforementioned penalties constitute non deductible expenses for tax purposes. Section 146(2c) of the General Tax Code further allows the assessment of penalties of up to EUR250,000 in case documents are not provided to tax auditors in a timely manner upon request.

As of 2017, the penalty regime has been tightened and follows a transactional approach. The penalty regime for late filing is currently checked for compliance with EU laws by the ECJ (see case C-431/21).

As mentioned above, non-compliance with the CbCR obligation may be subject to a penalty of up to EUR10,000 according to Section 379 General Tax Code.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties can be assessed based on the taxpayer's non-compliance with the documentation requirements. An actual income adjustment is not subject to penalties. If the taxpayer fails to submit transfer pricing documentation or if the documentation provided is unusable or insufficient, a penalty of 5% to 10% on the income adjustment may be applied, with a minimum penalty of EUR5,000.

If no or insufficient transfer pricing documentation for a certain transaction is submitted, the burden of proof shifts to the taxpayer, and the German tax authorities can assess income adjustments up to the most unfavorable point (for the taxpayer) within the arm's-length range. Taxpayers, therefore,

have to ensure that their transfer pricing documentation is complete and includes all intercompany transactions they are involved in, e.g., including intercompany financial transactions.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

If documentation is deemed non-contemporaneous, the tax authorities may claim that the documentation provided is unusable or insufficient since the information/data is outdated. In such case, a penalty of 5% to 10% on the income adjustment may be applied, with a minimum penalty of EUR5,000 (see above).

- **Is interest charged on penalties or payable on a refund?**

Interest is only assessed on the additional tax payments (6% per annum, which is non deductible for tax purposes), Section 238 (1) General Tax Act. Interest starts accruing 15 months after the end of the calendar year in which the tax liability arose, Section 233a General Tax Act.[11] The penalties constitute non deductible expenses for tax purposes.

In its decision dated 8 July 2021, the German Federal Constitutional Court held that interest payments made in accordance with Section 233a General Tax Act in conjunction with Section 238 (1) General Tax Act are inconsistent with the German principle of equality stipulated in Art. 3 (1) German Constitutional Law. This holds true if the aforementioned legislation was applied to interest periods starting 1 January 2014 onward. The current legislation is still applicable to interest periods ending prior to or anytime in 2018. However, the Court set a deadline for the German legislator to revise the respective section of the General Tax Act until 31 July 2022.

c) Penalty relief

The taxpayer is required to present compliant transfer pricing documentation to the German tax authority to avoid penalties. The taxpayer can avoid the consequence of a refutable assumption (Section 162 (3) General Tax Act) if the taxpayer submits sufficiently compliant transfer pricing documentation any time prior to a ruling of a lower tax court. In this case, the court will not apply Section 162 (3) General Tax Act in its ruling. However, penalties for late submission will be levied.

In general, if an adjustment is assessed by the tax authorities in post-audit tax assessment notes that the taxpayer does not want to accept, the taxpayer is able to appeal the assessment at the local tax authority. Separate appeals will have to be filed against any penalty assessments. If an appeal is rejected by the tax authorities, the taxpayer can file a claim at the local tax court.

In case the adjustment is not in line with respective double tax treaties or with the EU Arbitration Convention, the taxpayer may also file a request for MAP or arbitration at the Federal Central Tax Office.

10. Statute of limitations on transfer pricing assessments

In general, the assessment period for taxes (Section 169 General Tax Act) is four years. For customs duties, it is shorter, and in cases of grossly negligent evasion of taxes or tax fraud, it is much longer (10 years in the case of tax fraud). These periods commence at the end of the calendar year in which the tax liability arose. No special time limit provisions apply if intercompany transactions are involved.

However, taxpayers should be aware that under specific circumstances tax authorities are allowed to retroactively adjust the transfer price within a period of up to 7 years (reduced from prior 10 years due to changes in local law and especially in Section 1 Foreign Tax Act as consequence of implementation of the German Withholding Tax Relief Modernization Act (Abzugsteuerentlastungsmodernisierungsgesetz) in cases where a significant intangible asset has been transferred between related parties (so-called price adjustment clause now stipulated in Section 1a Foreign Tax Act).

The general regime of the statute of limitations applies in accordance with the General Tax Act. Accordingly, each case has to be carefully considered to determine the specific statute of limitations. Most taxes are levied by way of assessment. Assessments can be made only within the statutorily prescribed assessment period, which is subject to the statute of limitations for assessments.

The assessment period, however, does not start before the end of the calendar year in which the taxpayer has submitted the tax return (but also does not start later than three years after the year the tax liability arose), Section 170 General Tax Act. There are a number of statutory exceptions to the end of the statute of limitations for assessments (e.g., it should be kept in mind that the limitation period is interrupted when a tax audit begins), Section 171 General Tax Act.

Section 175a General Tax Act stipulates that tax assessments can be amended due to the result of an MAP or EU arbitration

[11] There was special extension granted for FY 2019 due to COVID-19 pandemic. With respect to fiscal year 2019, the interest starts accruing 21 months after the end of the calendar year in which the tax liability arose (i.e., 1 October 2021).

procedure up to one year after the effective date of such agreement, regardless of whether the aforementioned statutes of limitations have expired before.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a tax audit in Germany may be considered to be high for domestic and foreign groups of companies. Usually, a tax audit covers a three- to four-year period on a continuous basis. The likelihood of transfer pricing issues being scrutinized during a tax audit is also high and continuously rising. It is expected that transfer pricing issues will continue to attract significant attention in tax audits, in particular, with respect to transactions qualifying as extraordinary business transactions under the documentation provisions, such as the transfer of functions. Further, many tax audits increasingly focus on (brand) royalty charges and financing transactions. The German Federal Tax Office often joins the local tax authorities within an ongoing tax transfer pricing audit, especially with regard to financing transactions.

In the last years, German tax authorities have been very active with regard to coordinated tax audits with other jurisdictions, mostly within the EU (Section 12 of the EU Administrative Assistance Act).

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the transfer pricing mechanism will be challenged if transfer pricing is reviewed as part of the audit is also high in view of the generally firm tax audit environment regarding transfer prices in Germany.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

In case the transfer pricing methodology is challenged, there is a high likelihood that tax authorities will claim an adjustment based on their own methodology and estimates applied to the detriment of the taxpayer. The likelihood of whether the taxpayer's position can ultimately be defended strongly depends on the fact and circumstances of the case.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The likelihood of a transfer pricing audit is particularly high in the following circumstances:

- Companies facing (long-term) losses
- Companies being involved in a business restructuring
- Companies that have intercompany business transactions with related parties located in low-tax jurisdictions
- Companies that have significant intercompany financing transactions.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

In Germany, taxpayers may apply for a bilateral or multilateral APA in relation to transfer pricing questions. German tax authorities usually do not grant unilateral APAs on transfer pricing questions in cases where there is a double tax treaty including an article on MAPs. The German Ministry of Finance issued an APA circular on 5 October 2006 that defines the APA procedures and provides guidance with regard to the negotiation of APAs. Additionally, Section 89a General Tax Code has been introduced, which provides a local legislative basis for the APA procedure. Based on the new law, binding up-front multilateral agreements are now also possible for non-transfer pricing-related matters.

In this context, the fees for APAs have been revised: EUR30,000 for a new APA and EUR15,000 for a renewal of the APA. Aforementioned fees are reduced to 25% in case the APA does not concern transfer pricing (i.e., EUR7,500 for a new APA, EUR3,750 for renewal of APA). For small taxpayers (i.e., those with intercompany tangible goods transactions below EUR6 million and other intercompany transactions below EUR600,000), the filing fee is limited to EUR10,000 for a new APA and EUR7,500 for a renewal of APA. Beyond this, reduced fees may also apply in case of a coordinated bilateral or multilateral tax audit. This has to be evaluated for the individual case.

The administrative competence for APAs is centralized in the Federal Central Tax Office.

- **Tenure**

From application to conclusion, the APA process can take 18 months to several years. According to the APA circular, the APA term should be not less than three years and not more than five years. In practice, however, APAs can and have already been negotiated for (much) longer time periods depending on the facts and circumstances of the case. According to Section 89a (3) General Tax Code, an agreement reached between two competent authorities will be made conditional in two regards: the taxpayer must consent to the intergovernmental agreement and must waive its right to appeal tax assessments to the extent that they are in line with the content of the APA.

- **Rollback provisions**

There is no automatic rollback procedure. In contrast, Section 89a (1) General Tax Code now stipulates that an APA will only cover such transactions that can be assessed in detail and have not been realized yet.

- **MAP opportunities**

In this regard, special attention shall be paid to the revised circular "Guidance note on international mutual agreement and arbitration procedures in the field of taxes on income and capital" dated 27 August 2021 (replacing circular dated 9 October 2018) which comments on various questions concerning the application and conduct of aforementioned procedures.

The taxpayer must be eligible under one of Germany's double taxation treaties, or the EU Arbitration Convention (90/436/EEC) or (for FYs starting 1 January 2018 onwards) the implementation of the EU Directive on Tax Dispute Resolution Mechanisms (EU-Doppelbesteuerungsabkommen-Streitbeilegungsgesetz) to request an MAP. A formal and timely request to the Federal Central Tax Office, including a description of the facts and a legal assessment, is required. The request has to be submitted by the taxpayer or an authorized representative. MAP requests are accepted in the case of a taxpayer-initiated foreign bona fide adjustment.

A taxpayer has to present the case to the tax authority within three years from the first notification to the taxpayer of the actions giving rise to the MAP.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

After the unplanned stop in the beginning of the COVID-19 crisis in 2020, the tax audits meanwhile generally continue (some still with delay). The procedure always depends on the individual tax auditor, also whether virtual or physical meetings take place.

With regard to APAs (in particular critical assumptions) German tax authorities/the competent authority takes a case-by-case approach and carefully examines the impact of the COVID-19 crisis on the particular industry the taxpayer operates in.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are specific interest barrier rules (so-called German *Zinsschranke*), see Section 4h Income Tax Act[12] and Section 8a Corporate Income Tax Act.[13]

[12] **https://www.gesetze-im-internet.de/estg/__4h.html.**

[13] **https://www.gesetze-im-internet.de/kstg_1977/__8a.html.**

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Ghana Revenue Authority (GRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer Pricing Regulations, 2020 L.I. 2412.

- **Section reference from local regulation**

Section 31 of the Income Tax Act 2015, Act 896 (as amended)

Section 128 of the Income Tax Act 2015, Act 896 (as amended)

Paragraph 1 of the Transfer Pricing Regulations, 2020

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Ghana is not a member of the OECD.

The OECD Guidelines are considered as an interpretive guide by the Commissioner-General (CG) of the GRA.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  The regulation covers CbcR, master file and local file.

- Effective or expected commencement date

  November 3, 2020.

- Material differences from OECD report template or format

  Low-value services – acceptable markup on cost up to 3%.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Filing of report within deadline protects against penalty for failure to submit report.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the transfer pricing documentation needs to be contemporaneously maintained and submitted to the tax authority.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes. transfer pricing documentation has to be prepared contemporaneously under local jurisdiction regulations. The documentation must produce evidence that all related-party transactions in a year satisfy the arm's-length principle.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

There is no official guidance in this area.

[1] **https://gra.gov.gh/**

b) Materiality limit or thresholds

- **Transfer pricing documentation**

See below.

- **Master File**

None.

- **Local File**

$200,000.

- **CbCR**

Annual consolidated group revenue of GHS2.9 billion or more.

- **Economic analysis**

$200,000.

c) Specific requirements

- **Treatment of domestic transactions**

Yes, there is a documentation obligation for domestic transactions. The Transfer Pricing Regulations do not discriminate between domestic and cross-border transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in English.

- **Safe harbor availability, including financial transactions if applicable**
- **Low-value services with a cost-plus markup that does not exceed 3%.**
- **Technology transfer agreements registered with the Ghana Investment Promotion Centre where the charges for royalties, know-how or management/technical fee does not exceed 2% of net profit.**
- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure or compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Regulation 11(1) of the 2020 Regulations L.I. 2412 requires all taxpayers who engage in transactions with persons with whom they are in a controlled relationship to file transfer pricing returns.

- **Related-party disclosures along with corporate income tax return**

See previous answer.

- **Related-party disclosures in financial statement/annual report**

In the financial statements.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Not later than four months after the end of each basis period.

- **Other transfer pricing disclosures and return**

Not later than four months after the end of each basis period.

- **Master File**

Not later than four months after the end of each basis period.

- **CbCR preparation and submission**

Twelve months after the last day of the reporting fiscal year of the MNE group.

- **CbCR notification**

Twelve months after the last day of the reporting fiscal year of the MNE group.

b) Transfer pricing documentation/Local File preparation deadline

Not later than four months after the end of each basis period.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Not later than four months after the end of each basis period.

- **Time period or deadline for submission upon tax authority request**

There is no specified time in legislation. In practice, the transfer pricing unit has been known to give clients 14 days, as it is the unit's expectation that taxpayers have this documentation already as required by law.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: yes

b) Priority and preference of methods

None.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local comparables. In practice, comparables from economies similar to Ghana are acceptable to the GRA.

- **Single-year vs. multiyear analysis for benchmarking**

None are specified, but multiyear analysis inferred.

- **Use of interquartile range**

Three-year interquartile range.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no legal requirement to conduct a fresh benchmarking search every year. In practice, benchmarking is updated on a three-year basis.

- **Simple, weighted or pooled results**

Weighted average.

- **Other specific benchmarking criteria, if any**

Independence threshold of 50%.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Penalties for making false or misleading statements apply, calculated as 100% of the tax shortfall where the statement was made without reasonable excuse; it's 30% of the tax shortfall in any other case. Applicable for local file specifically.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Having documentation does not preclude adjustments.

If an adjustment is sustained, it becomes an adjusted assessment for which payment must be made within 30 days. After these 30 days, interest may be assessed, computed at 125% of the statutory (central bank prime) rate and compounded monthly.

If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

If an adjustment is sustained, it becomes an adjusted assessment for which payment must be made within 30 days. After these 30 days, interest may be assessed, computed at 125% of the statutory (central bank prime) rate and compounded monthly. Having documentation does not preclude adjustments.

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

b) Penalty relief

The burden of proof for arm's length is on the taxpayer. If the taxpayer can prove that it complies, it is an acceptable defense.

Dialogue with the tax authorities and provision of

documentation to support arm's length is the first line of dispute resolution. Taxpayers who are entitled to benefits under Ghana's double tax agreements may also avail themselves to the MAP. For other taxpayers, the next option would be to go to court.

10. Statute of limitations on transfer pricing assessments

The general statute of limitations prescribes 12 years after the end of the relevant year of assessment, after which the CG cannot recover tax. The tax law, however, mandates records to be maintained for a maximum of six years from the financial year-end. When fraud is involved, there is no limit.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

None.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

High.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the pricing method being challenged in a transfer pricing audit may be considered to be medium to high and depends on client-specific circumstances.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. Almost all the audit cases we have been involved in have seen adjustments proposed by the GRA.

- **Specific transactions, industries and situations, if any, more likely to be audited**

All sectors.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not available.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Where there is an effective double tax agreement, MAPs are available.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

None.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

A resident person, other than a financial institution, is deemed to be thinly capitalized if the ratio of interest-bearing or foreign currency-denominated debt (to a non resident parent) to equity exceeds 3:1. Interest deductions or exchange losses arising on debt in excess of the 3:1 ratio are disallowed.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Commissioner of Income Tax, Income Tax Office.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The reference is stated under the heading "Anti-avoidance." This does not set out any specific TP rules but refers to documents published by the OECD as part of its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. This was effective from 1 January 2011 onward.

"Artificial and fictitious" definition is effective from 25 October 2018.

- **Section reference from local regulation**
  - Income Tax Act 2010 Section 40(3)(c)
  - Income Tax Act 2010 Section 74

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Gibraltar is not a member of the OECD.

The general anti-avoidance provisions in the tax law state that those provisions must be construed in a manner that best secures consistency among those powers and internationally accepted principles for the determination of profit in respect of activities within a multinational group of companies – notably, the rules that, at 1 January 2011, were contained in Article 9 of the Model Tax Convention on Income and on Capital published by the OECD – and such documents issued by the OECD on or after 1 January 2011, which are designated by the relevant minister and published in the Gibraltar Gazette.

From 25 October 2018 onward, "artificial and fictitious" is defined in terms of being "not consistent with the international standard of the arm's-length principle as defined by the OECD as part of their Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations as amended from time to time."

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Gibraltar has not adopted or implemented BEPS Action 13 for TP documentation.

- Coverage in terms of Master File, Local File and CbCR

  There is a requirement for CbCR. Master File and Local File are not required.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or**

[1]https://www.gibraltar.gov.gi/income-tax-office

prepared contemporaneously?

No.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

This is not applicable.

- **Does transfer pricing documentation have to be prepared annually?**

This is not applicable.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The report is applicable to MNE groups with total consolidated revenue of EUR750 million (in accordance with EU Directive 2016/881).

- **Economic analysis**

There's no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is no specific requirement for treatment of domestic transactions.

- **Local language documentation requirement**

There is no requirement to submit the documentation in the local language.

- **Safe harbor availability, including financial transactions if applicable**

The Commissioner of Income Tax may tax an entity on the basis that the deduction for expenses incurred other than on an arms-length basis in favor of a connected party is restricted to the lower of (i) 5% of gross turnover and (b) 75% of the net profit of the entity before taking account of those expenses.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

There is no specific requirement in tax legislation, however, these are generally required by the applicable accounting standards.

- **CbCR notification included in the statutory tax return**

The CbCR notification filing deadline is nine months after the fiscal year-end.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax return filing date is nine months after the end of the month in which the fiscal year ends.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The filing deadline for CbC preparation and submission is 12 months after the relevant financial year.

- **CbCR notification**

The CbCR notification filing deadline is nine months after the fiscal year-end.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission upon tax authority request**

The authorities may impose a deadline of 30 days (or more) for providing information when an inquiry is made.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: No**
- **Domestic transactions: No**

b) Priority and preference of methods

There is nothing specific in the legislation, other than the above-mentioned reference to documents published by the OECD.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is none specified.

- **Single-year vs. multiyear analysis for benchmarking**

There is none specified.

- **Use of interquartile range**

There is none specified.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is none specified.

- **Simple, weighted average or pooled results**

There is none specified.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are no specific transfer pricing penalties. If tax is underpaid, or paid late, a surcharge of 10% of the underpaid amount is due immediately after the date at which the tax was due. A further surcharge of 20% of the underpaid amount is due if the amount remains underpaid after another 90 days. Additional penalties are payable for failing to comply with specific provisions in the Income Tax Act 2010, though none specifically relate to TP.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the section above.

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

b) Penalty relief

There is no specific provision in the legislation for relief from surcharges. Penalties may be removed at the discretion of the Commissioner of Income Tax.

10. Statute of limitations on transfer pricing assessments

The Commissioner of Income Tax has one year from the date that a return is received to give notice of his or her intention to make an inquiry about a return. After that date expires, for up to six years from the end of the relevant accounting period or tax year, the Commissioner of Income Tax may raise an assessment upon discovery that a person has not had the tax assessed or was assessed at a lesser amount than ought to have been assessed. There is a limit of twenty years after the end of the relevant financial year end for additional assessments to be raised when any form of fraudulent or willful default or neglect has been committed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Formal tax audits are relatively rare. Ad hoc queries are frequently raised by the Income Tax Office on behalf of the Commissioner of Income Tax, though queries relating to TP are relatively uncommon.

In practice, because of Gibraltar's relatively low rate of corporate tax (12.5% for most companies), the requirement to justify transfer pricing is more likely to arise from the jurisdiction in which the Gibraltar taxable entity's counterparty is taxable. This would not apply when the counterparty is based in a zero-tax jurisdiction.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be low, as formal audits are very rare occurrences. If they occur, it is likely that a potential issue has been identified.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium. Again, if an audit takes place, it is likely that a potential issue was identified.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Taxpayers may request advance tax rulings from the Commissioner of Income Tax, in accordance with the Income Tax (Tax Rulings) Rules 2018, which is effective from 25 October 2018. A standard form is provided, which should be used to request a ruling.

In determining whether sufficient evidence has been provided, the Commissioner must take into account any relevant OECD or other international benchmarks or standards.

- **Tenure**

A tax ruling will specify a period, not exceeding three years, during which it may be relied upon.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

No.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest paid is deemed a dividend where the debt-to-equity ratio exceeds 5:1 and the interest is paid to a connected party that is not a company, or interest is paid to an arm's-length party where the loan is secured by assets belonging to a connected party that is not a company.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ministry of Finance.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer pricing in Greece is driven by the Income Tax Code (L. 4172/2013) and the Tax Procedures Code (L. 4174/2013), double taxation treaties, and supranational norms. Other decisions and guidelines issued are provided below:

- Circular POL 1142/02.07.2015 aims to clarify transfer pricing issues affecting intercompany transactions pertaining to tax years starting 1 January 2014. It provides long-anticipated clarifications on matters including the concept of "associated or affiliate persons," the calculation of the interquartile range, the use of databases for comparable company search and the benchmarking studies to be used for documentation purposes.
- Issued by the General Secretary of Public Revenues, Decision 1097/2014, as amended by Decision 1144/2014, provides the mandatory contents of the transfer pricing documentation file for intercompany transactions referring to financial years starting on or after 1 January 2014.
- Decision 1284/2013 of the General Secretary of Public Revenues determines the procedures for the conclusion, amendment, revocation and annulment of an APA. The decision refers to the procedures of both unilateral and bilateral APAs for cross-border intercompany transactions that take place in financial years starting 1 January 2014.
- APA guidelines and templates from the Ministry of Finance were issued in October 2014.

The CbCR requirements that are applicable to Greek tax resident entities that are members of an MNE group with a consolidated group turnover exceeding EUR750 million were introduced by L. 4484/2017 in August 2017.

- **Section reference from local regulation**

The Income Tax Code (L. 4172/2013, Article 2) defines the term "associated person," which applies to legal persons, individuals and any other body of persons. The term encompasses two persons whereby:

- One of them directly or indirectly holds shares, parts or quotas of at least 33% in the other, which is estimated on the basis of total value or number, or equivalent profit participation rights or voting rights.
- A third person, directly or indirectly, participates in them in any of the aforementioned ways.
- There is, between them, direct or indirect management dependence or control, the possibility of one person exercising a decisive influence on the other, or the possibility of a third person doing so on both of them.

Circular 1142/2015 provides examples of cases in which management dependence or control, or the possibility of one person exercising a decisive influence exists.

Circular 1049/2019 regulates issues related to the MAP in accordance with bilateral conventions for the avoidance of double taxation.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Greece is a member of the OECD. The aforementioned legislative framework confirms the application of the OECD Guidelines. More specifically, according to the Income Tax Code, the provisions regarding intercompany transactions are, in principle, interpreted and implemented in accordance with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Greece has adopted the three-tier approach (i.e., Master File, Local File and CbCR) as described in OECD BEPS Action 13.

[1] **https://www.minfin.gr & https://www.aade.gr**

- Coverage in terms of Master File, Local File and CbCR

  Both the Master File and Local File are covered (with minimum content defined in local rules), whereas entities subject to documentation requirements need to prepare both files.

- Effective or expected commencement date

  The Master File and Local File are required since the financial year 2008; however, the required minimum content of the files became closer to the suggested content in BEPS Action 13 from the financial year 2014.

- Material differences from OECD report template or format

  The main differences of the minimum required content of the Master File for Greek transfer pricing documentation purposes and the sample content suggested under BEPS Action 13 are:

- The Greek rules require the description and high-level functional analysis in the Master File to be performed for all material transactions relevant to the Greek entities, and not to be limited to the services, intangibles and financial transactions.

- The Greek rules require special reference to the group's business strategy.

- The Greek rules require reference to CCAs or court decisions relevant for transfer pricing purposes apart from reference to APAs.

- The Greek rules require a short description of the entities with which the Greek entities report intercompany transactions to be included also in the Master File.

  The main differences of the minimum required content of the Local File for Greek transfer pricing documentation purposes and the sample content suggested under BEPS Action 13 are:

- The Greek rules require analysis of all transactions, not only of material transactions.

- The Greek rules require explicit reference to the group pricing policy applied and to any debit or credit transfer pricing adjustments that may have taken place.

- The Greek rules require analysis to be included regarding any business restructurings subject to "transfer of functions" rules (Article 51 of the Income Tax Code).

- The Greek rules require a flowchart of transactions.

- The Greek rules require additional information such as financial statements of affiliates with which ICO transactions exist and that are located in noncooperative jurisdictions.

- The Greek rules require a statement to be included by the taxpayer committing that additional information may be provided upon request.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The penalties for late/inaccurate filing of the CbCR stands at EUR10,000, while the penalty for the non-filing of the CbCR amounts to EUR20,000.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016. The MCAA on the exchange of CbCRs was ratified by L. 4490/2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, there are transfer pricing documentation guidelines or rules in Greece. The transfer pricing documentation file has to be prepared annually up to the deadline for the submission of companies' corporate income tax (CIT) return; it has to be submitted to the Greek tax authorities within 30 days following their request.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch of a foreign company that is subject to documentation requirements has to prepare a transfer pricing documentation file and disclose its intragroup transactions by filing a summary information table (SIT).

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the transfer pricing documentation has to be prepared annually under local jurisdiction regulations. Furthermore, all sections of the transfer pricing documentation files have to be updated. If profit-based documentation methods are applied through the performance of a comparability search, the comparable data defined on the basis of the benchmarking study can be used for the next two consecutive financial years. However, the comparable companies' financial data should be annually updated, and the compliance of the final set of comparable companies with the comparability and independence requirements should be examined for each financial year.

The transfer pricing file as per Decision 1097/2014 consists of both a Master File and a Local File in line with the OECD BEPS Action 13 initiative:

- The Master File is common for all group companies and contains common, standardized information for the group affiliates as well as for the branches.
- The Local File (Greek file) contains additional information regarding the Greek companies.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, its entity subject to documentation requirements is required to prepare a stand-alone transfer pricing documentation file.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Persons subject to documentation requirements include taxpayers with a total value of intercompany transactions of more than EUR200,000 or EUR100,000, depending on whether their turnover is more or less than EUR5 million, respectively.

Entities exempt from income tax obligations are also exempt from transfer pricing documentation requirements.

- **Master File**

Persons subject to documentation requirements are also subject to Master File preparation requirement. Liable persons include taxpayers with a total value of intercompany transactions of more than EUR200,000 or EUR100,000, depending on whether their turnover is more or less than EUR5 million, respectively.

Entities exempt from income tax obligations are also exempt from transfer pricing documentation requirements.

Taxpayers qualifying as subject to documentation requirements need to document all transactions irrespective of value, whereas expense transactions fully tax-adjusted for corporate income tax purposes are exempt from documentation requirements.

- **Local File**

Persons subject to documentation requirements are also subject to Local File preparation requirement. Liable persons include taxpayers with a total value of intercompany transactions of more than EUR200,000 or EUR100,000, depending on whether their turnover is more or less than EUR5 million, respectively.

Entities exempt from income tax obligations are also exempt from transfer pricing documentation requirements.

Taxpayers qualifying as subject to documentation requirements need to document all transactions irrespective of value, whereas expense transactions fully tax-adjusted for corporate income tax purposes are exempt from documentation requirements.

- **CbCR**

The CbCR requirements are applicable to Greek tax resident entities that are members of an MNE group with a consolidated group turnover exceeding EUR750 million.

On 1 December 2017, Greece's Independent Public Revenue Authority (AADE) published Decision 1184/2017, providing guidelines on the implementation of CbCR in Greece.

- **Economic analysis**

Taxpayers qualifying as subject to documentation requirements need to document all transactions irrespective of value, whereas expense transactions fully tax-adjusted for CIT purposes are exempt from documentation requirements.

c) Specific requirements

- **Treatment of domestic transactions**

There is no specific requirement for the treatment of domestic transactions in a distinct manner. Domestic transactions are in scope of transfer pricing documentation requirements similar to cross-border transactions.

- **Local language documentation requirement**

On the basis of Decision 1097/2014, the transfer pricing documentation (i.e., Master File and Local File) needs to be

submitted to the Greek tax authorities upon request in the Greek language. The Local File is required to be maintained in Greek even prior to submission.

- **Safe harbor availability including financial transactions, if applicable**

There are no safe harbor rules available.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is not an explicit reference in the Greek transfer pricing rules; however based on Greek transfer pricing rules' reference to OECD Guidelines, the preferred approach is individual testing, while aggregation is acceptable upon proper justification.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Companies must submit a Summary Information Table (SIT) of their intercompany transactions to the tax administration up to the deadline for the submission of companies' CIT returns.

- **Related-party disclosures along with corporate income tax return**

Taxpayers disclose their intragroup transactions by annually filing electronically a SIT of transfer pricing information. For intragroup transactions taking place from 1 January 2015, the SIT must be filed up to the deadline for the submission of companies' CIT returns.

- **Related party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

There is a CbCR notification and CbC report submission requirement in Greece.

A taxpaying member of an MNE group, which is subject to CbCR submission requirements, should release under Table Θ of its CIT return:

- The group it belongs to
- Whether it has submitted a CbCR
- The jurisdiction or tax jurisdiction of the UPE
- The jurisdiction or tax jurisdiction to which the CbCR has been submitted

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The CIT return filing deadline is six months following the year-end (for entities with 31 December as year-end, this is, in principle, by 30 June of the next year).

- **Other transfer pricing disclosures and return**

Companies are obligated to electronically submit a SIT of their intercompany transactions to the tax authorities up to the deadline for the submission of companies' CIT return (i.e., in principle, 30 June for companies with a financial year-end on 31 December).

- **Master File**

The taxpayer should submit the transfer pricing file consisting of a Master File and a Local File within 30 days upon tax authorities' request. Master File and Local Files, although not required to be submitted until requested, they should be prepared by the time of the CIT return filling deadline.

- **CbCR preparation and submission**

The UPE of an MNE group or any other reporting entity, established in Greece, must submit the CbCR for each financial year electronically to the competent authority within 12 months from the end of the MNE group's reporting financial year. If the application for submitting the CbCR is not operational because of a technical failure, the deadline will be extended by seven working days.

- **CbCR notification**

In general, the deadline is on the last day of the reference year; however, for reporting financial year 2016, an extension of the notification deadline has been granted. This means that constituent entities should submit the notification by the deadline for the CbCR submission (i.e., for MNE groups with

a reporting financial year ending on 31 December 2016, the first notification must be filed by 31 December 2017).

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation should be prepared annually up to the deadline for the submission of companies' CIT return (in principle, within six months from the year-end); it is not filed with the tax authorities until it is officially requested.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

The taxpayer should be able to present the transfer pricing file to the audit authorities within 30 days following their request (requests always require the files to be submitted in Greek).

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions — yes
- Domestic transactions — yes

b) Priority and preference of methods

Greek regulations follow the OECD Guidelines. More specifically, Decision 1097/2014, as amended by Decision 1144/2014, adopts the OECD authorized methods. However, the traditional transaction methods (CUP, resale price and cost-plus) are preferred, while transactional profit methods are allowed when the traditional methods do not lead to reliable results. In particular, transactional profit transfer pricing methods, such as the TNMM and profit-split, can be used only in cases in which the above traditional transfer pricing methods are considered ineffective because of the absence of available or sufficient comparables, provided that a detailed justification is included in the documentation files.

8. Benchmarking requirements

- **Local vs. regional comparables**

For performing the comparable company search, any database may be used as long as relevant details on the database are included in the transfer pricing file. In practice, the Greek tax authorities accept pan-European benchmarking studies; in case that the Greek entity is the tested party then feasibility of a local (Greek) benchmarking study is advisable to be checked based on availability of Greek potentially comparable entities.

- **Single-year vs. multiyear analysis for benchmarking**

If profit-based documentation methods are selected to calculate the acceptable interquartile range, the weighted-average financial data of the comparable companies for the three financial years preceding the year under review should be utilized (this is a legal requirement).

The tested party's results should always refer to one year (this is a legal requirement).

- **Use of interquartile range**

The arm's-length range, determined based either on prices or on profit margins, is the interquartile range; the calculation method coincides with the spreadsheet formula.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

On the basis of Decision 1142/2015, the comparable data defined based on a benchmarking study can be used for the next two consecutive financial years; however, the financial data should be annually updated, and the compliance of the final set of comparable entities with the comparability and independence requirements should be examined for each financial year (this is a legal requirement).

- **Simple, weighted or pooled results**

The weighted average is preferred in testing an arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The search strategy should incorporate the independence criteria as provided by the Greek legislation currently in force. In this respect, the term "associated person" refers to persons that:

- Are affiliated, due to the participation of one person, to the other, holding, directly or indirectly, shares, partnership units or equity participation of at least 33% based on value or number, or profit rights or voting rights
- Are affiliated to any other person holding, directly or indirectly, shares, partnership units, voting rights or equity participation of at least 33% based on value or number, or profit rights or voting rights in one of the affiliate persons
- Are affiliated to any other person with which there is a direct or indirect significant management dependence or control; or the person that exercises decisive influence on or may significantly influence the company's decision-making; or in cases where both persons have an exclusive direct or indirect relationship of material management dependence or control; or may be of significant management influence by a third party

In light of the above, a 33% shareholding screening step, as well as a 33% subsidiary screening step, should be included.

The final set of comparable observations should consist of at least five observations in order to calculate the interquartile range. Furthermore, the calculation of the quartiles should be based on a specific formula (this is a legal requirement) that is identical to the spreadsheet formula.

During the comparability search, information reasonably available to the taxpayer when preparing the documentation should be used, while the use of databases is restricted to releases available two months prior to a company's year-end and up to the deadline for the submission of the companies' CIT return (this is a legal requirement).

The profit margins of the controlled entity should be calculated with reference to the local tax legislation irrespective of the accounting standards used for drafting its financial statements.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Penalty will not be imposed for filing incomplete documentation.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Transfer pricing penalties include:

- Penalties for the late filing of the SIT are calculated at 0.1% on the value of the transactions subject to documentation requirements (minimum penalty of EUR500 and maximum penalty of EUR2,000). In the event of filing an amended SIT, a penalty applies only to the extent that the declared amounts are amended and such amendments exceed the amount of EUR200,000. In the event that the amended amounts exceed EUR200,000, the penalty is calculated at 0.1% on the value of the transactions subject to documentation requirements (minimum penalty of EUR500 and maximum penalty of EUR2,000).
- Penalties for an inaccurate filing of the SIT are calculated at 0.1% on the value of the amounts to which the inaccuracy relates (minimum penalty of EUR500 and maximum penalty of EUR2,000). If the inaccuracy consists of differences in the amounts declared and does not exceed 10% of the value of the total transactions subject to documentation, no penalty applies.
- Penalties for the non-filing of the SIT are calculated at 0.1% on the value of the transactions subject to documentation requirements, with a minimum penalty of EUR2,500 and a maximum penalty of EUR10,000.
- In the case of failure to provide the tax authorities with transfer pricing documentation within 30 days from the official request, a penalty of EUR5,000 applies, which is increased to EUR10,000 if transfer pricing documentation is provided after 60 days, and to EUR20,000 if it is provided after 90 days or not provided at all.
- The penalty for non-submission of the CbCR has been set at EUR20,000, whereas the penalty for late submission or submission of inaccurate information has been set at EUR10,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In the case of non-compliance with the arm's-length principle, the difference in taxable profits will increase the tax base of the company. In addition, the general income tax inaccuracy penalties, ranging from 10% to 50% of the tax underpayment, as well as default interest, will apply.

If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

No, there are not penalty provisions in the Tax Procedures Code (L. 4174/2013) on the submission of an incomplete or noncompliant transfer pricing documentation file, unless it is considered that its non-compliance is equivalent to non-

submission (in which case the non-submission penalties are applicable).

- **Is interest charged on penalties or payable on a refund?**

In the case of late payment of any amount of tax within the statutory period, including the late submission of tax returns, the taxpayer is obligated to pay interest on that amount starting from the statutory deadline. The interest rate currently is set at 8.76% annually (0.73% monthly).

b) Penalty relief

No penalty relief is available.

Upon the completion of a tax audit, the taxpayer is notified of a temporary assessment note. According to Article 28 of L. 4174/2013 (Tax Procedures Code), the taxpayer may file, within 20 days, a memo to the tax authorities stating his or her views of the tax audit's findings.

Within one month from the receipt of the taxpayer's memo or from the due date for such submission, the tax auditors shall issue the final assessment note, which will be handed over to the taxpayer together with the relevant audit report.

Within 30 days of the notification of the final assessment note, the taxpayer may file an administrative appeal before the Dispute Resolution Department of Article 63 of L. 4174/2013, seeking a revision of the case (tax audit results and final assessment note). The Dispute Resolution Department should issue its decision within 120 days from the filing or submission of the administrative appeal.

If the Dispute Resolution Department fails to issue a decision within 120 days, the appeal is deemed to have been implicitly rejected. Having said that, the Dispute Resolution Department will examine only the tax items challenged by the company through the administrative appeal. In the case of an adverse decision on the administrative appeal or implicit rejection thereof, the taxpayer may appeal before the Administrative Court within 30 days as of the notification of the decision (or the implicit rejection).

EU arbitration through a MAP procedure and through double tax treaties' MAP procedure may be available depending on the tax residency of the counterparties and their eligibility.

10. Statute of limitations on transfer pricing assessments

Taxpayers must keep documentation files for a period equal to the statute of limitations for the performance of a tax audit, as specified by the provisions of the general tax provisions applicable for the said financial year.

Open tax years as of 1 January 2022 are, in principle, the financial year 2016 and onward, whereas the statute of limitations is, in principle, six years following year-end.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In the course of the statutory audit, certified auditors may be required to issue a tax certificate to the companies they audit by performing a special audit of their tax affairs, which takes place at the same time as the statutory audit. Based on this, the transfer pricing documentation file should be available to the certified auditors before the tax certificate is issued. Further, based on our recent experience, local tax authorities tend to scrutinize taxpayers' transfer pricing arrangements in the course of tax audits, focusing especially on the review of the benchmarking studies included in the documentation files.

The likelihood of a tax audit by the local tax authorities, in general, can be considered as high, based on recent experience. Further, in the course of general audits, the likelihood that transfer pricing will be reviewed is characterized as certain, based on the audit program followed by the Greek tax authorities. Tax authorities tend to challenge related-party transactions, and there is a clear trend toward increased awareness of transfer pricing issues among local tax auditors.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium; the Greek tax auditors are focused more on the results of the transfer pricing policy rather than on the policy itself unless they find this as an opportunity to assess differences. Nevertheless, there were few recent cases that the Greek tax auditors challenged the transfer pricing methodology.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high; usually, the

authorities challenge the transfer pricing methodology only if it leads to an adjustment.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The Tax Procedures Code, along with implementing decisions, provides the possibility of an APA from 1 January 2014. An APA will cover any relevant criteria used for the intragroup pricing.

These criteria mainly include the transfer pricing method, the comparable data to be used and any relevant adjustments to be made as well as the critical assumptions under which the approved transfer pricing methodology will remain valid.

A taxpayer in Greece may apply for a unilateral, bilateral or multilateral APA.

- **Tenure**

An APA term cannot exceed four years and a retroactive effect is not possible.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Greece has concluded, so far, 57 deferred tax claims (DTCs), which (except for the DTC with the United Kingdom) contain MAP provisions. In addition, MAP under EU Arbitration Convention (EUAC) is feasible.

The submission of a written request (by Greek tax residents) in Greek language is required for the initiation of a MAP by the Greek competent authority. Depending on its content, a MAP request is submitted to and examined by the following tax authorities of the Independent Authority for Public Revenues:

- All MAP requests except for transfer pricing cases should be addressed to the Independent Authority for Public Revenue's International Economic Relations Directorate – Tax Affairs Section.
- MAP requests for transfer pricing cases should be addressed to the Independent Authority for Public Revenue's General Directorate of Tax Administration Directorate of Audits – Section D.
- A copy of the request, without its accompanying documents, should be also communicated to the Independent Authority for Public Revenue's International Economic Relations Directorate – Section A.

A MAP case must be presented within the time limits laid down by the applicable DTC or EUAC from the first notification of the action resulting in taxation not in accordance with the provisions of the DTC. Most of the DTCs that Greece has concluded set a time limit of two or three years. The EUAC sets a limit of three years unless a year is statutorily barred.

MAP or judicial appeal procedure can be pursued simultaneously provided the hearing of the case has not taken place upon the filing of the MAP request.

There is no suspension of tax collection during the MAP process.

Following BEPS Action 14 minimum standard, Greece has adopted part V of the Multilateral Instrument (MLI) on the MAP. Greece has made notification on a number of matters. Additionally, Greece has chosen to apply Part VI of the MLI on Mandatory Binding Arbitration (MBA). Greece reserved the right to set a three-year period limit for MAP, following which a taxpayer may request initiation of the MBA mechanism, instead of a two-year period, provided for in Article par. 1 (b) of the MLI. The MLI has not been ratified yet by the Greek Government in order for the covered agreements to be modified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under the GITC (article 49 of L.4172/2013, as amended by article 11 of L. 4607/2019), the maximum threshold up to which exceeding borrowing costs are deducted is 30% of taxpayers EBITDA, while the threshold up to which exceeding borrowing costs are fully deductible is EUR3 million. On the other hand, GITC allows to a taxpayer to carry forward without

any time limitation exceeding borrowing costs, that cannot be deducted in the current tax year. It should be noted that the maximum threshold up to which exceeding borrowing costs are deducted does not apply to exceeding borrowing costs incurred on loans used to fund a long-term public infrastructure project, in cases where the project operator, borrowing costs, assets and income are all in the EU.

Based on the relevant provisions, the aforementioned EBITDA is defined as the sum of taxable income, tax-adjusted amounts for exceeding borrowing costs as well as tax-adjusted amounts for depreciation and amortization, while tax exempt income is not taken into account for such calculation. For the purposes of applying the above, exceeding borrowing costs are defined as the difference between a taxpayer's taxable interest revenues and other economically equivalent taxable revenues and the deductible borrowing costs of such taxpayer, while the term "borrowing costs" includes interest expenses on all forms of debt as well as expenses incurred in connection with the raising of finance. The interest limitation rule expressly excludes from its scope several types of financial undertakings (e.g. credit institutions, insurance companies, alternative investment funds, UCITS).

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Tax Administration Superintendence (Superintendencia de Administración Tributaria – SAT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are Articles 54 to 67 of LAT or Tax Legislation Update (TLU) (Ley de Actualización Tributaria – Decree No. 10-2012) and Articles 37 to 66 of the TLU Regulations No. 213-2013.

In addition, in October 2016, the tax authorities published transfer pricing technical guidelines that establish parameters related to the presentation, content, calculation formulas and analysis to perform an adequate and standardized transfer pricing analysis. But most importantly, they refer to BEPS initiatives such as the master file requirement as part of transfer pricing documentation.

Regarding the validity of these guidelines, pursuant to Section 3(h) of the Organic Law of the Tax Administration Superintendence, Decree 1-98 of the Guatemalan Congress, the Guatemalan tax authorities are empowered to issue and implement any sorts of mechanisms or guidance that may enable the taxpayers to comply with their tax obligations more easily. However, the transfer pricing guidelines have not been ratified by the Guatemalan Congress and should not be understood as legally binding to the taxpayer.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Guatemala is not a member of the OECD, and there is no specific reference to the OECD Guidelines in the regulations.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

It has not been formally implemented in the transfer pricing legislation. However, in October 2016, the tax authorities published transfer pricing technical guidelines that refer to BEPS initiatives such as the master file requirement as part of the transfer pricing documentation.

- Coverage in terms of Master File, Local File and CbCR

  It has not been formally implemented in the transfer pricing legislation. However, in October 2016, the tax authorities published transfer pricing technical guidelines that refer to BEPS initiatives such as the master file requirement as part of the transfer pricing documentation. In such guidelines, the tax authorities indicate that the transfer pricing documentation must contain information related to the MNE group listing the information to be included.

- Effective or expected commencement date

  The master file requirement on the transfer pricing technical guidelines is applicable for transactions from fiscal year 2016 onward.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

[1] https://portal.sat.gob.gt/portal/

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, and the transfer pricing documentation needs to be contemporaneous.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

The transfer pricing report and return must be prepared annually, updating all the information that allows to a correct transfer pricing analysis. The local tax authorities require use of the most recent available financial information for the comparables and the tested party.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no specific requirement for the treatment of domestic transactions.

- **Local language documentation requirement**

According to Article 369 of the Guatemalan Commerce Code, accounting must be kept in Spanish. In addition, even when the transfer pricing regulations do not expressly state this as mandatory, the Law of the Judicial Branch, in its Article 37, provides that all documents proceeding from abroad that have been prepared in a foreign language should be translated in order to be fully effective in Guatemala prior to being filed before any governmental entity.

- **Safe harbor availability including financial transactions, if applicable**

There is no specific requirement for safe harbor availability.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred, if possible.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Regulations to Chapter VI of the TLU were enacted in 2013. The main provision of these regulations is the filing obligation in the form of a transfer pricing information return.

From FY2015 onward, taxpayers are required to file a transfer pricing information return in the form of an appendix to the annual income tax return, which must be presented by 31 March each year. Such appendix is a separate form from the income tax return.

- **Related-party disclosures along with corporate income tax return**

Taxpayers are required to attach their audited financial

statements that must be prepared according to "generally accepted accounting principles."[2] No mandatory provisions regarding the inclusion of intercompany transactions are in force; however, it is common practice for external auditors to include a section on intercompany transactions.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be submitted on or before 31 March.

- **Other transfer pricing disclosures and return**

Transfer pricing informative return should be submitted on or before 31 March.

- **Master File**

The documentation should be prepared by the time of lodging the tax return, to be submitted upon request.

- **CbCR preparation and submission**

There is none specified.

- **CbCR notification**

There is none specified.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation needs to be prepared by the time of lodging the tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

The taxpayer needs to submit the transfer pricing documentation within 20 days once requested by the tax authorities.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

No.

b) Priority and preference of methods

Acceptable transfer pricing methods are the CUP, resale price,

[2] In Guatemala, the term "generally accepted accounting principles" has no formal definition. Accounting regulations are derived from the Code of Commerce, which imposes the following rules:

- Annual accounts are stated in the Spanish language.
- Trial balances are recorded in Guatemalan quetzals.
- Annual accounts are based on the general ledger, journal entries, inventory and financial statements.
- Guatemala uses the double-entry principle.
- Trial balances and annual accounts are derived from the general ledger, journal entries, inventory and financial statements.
- The books must clearly show the origin, the substance and the accounting classification of each transaction. Each transaction must be supported by a written document, which must be available in a hard-copy format for statutory audit and other verification purposes.

Guatemala has no single source of accounting regulations. Accounting practice and procedures are essentially derived from the following legislation:

- Code of Commerce
- Accounting Manual, which applies only to banking and financial institutions subject to the control of the Bank Superintendent
- Accounting Manual for companies in the power generation and distribution sector

cost plus, profit split, TNMM, and the imports and exports valuation method (the "sixth method").

The CUP, resale price and cost plus methods take priority over the transactional methods. In addition, the sixth method is preferred for transactions involving imports or exports of goods with well-known prices in international markets.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no benchmarking requirement using local comparable companies because of the lack of publicly available financial information.

- **Single-year vs. multiyear analysis**

Multiyear testing is preferred for the comparables; in practice, the number of years is three.

- **Use of interquartile range**

Spreadsheet quartile is preferred, as per common practice.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The transfer pricing report and return must be prepared annually, updating all the information that allows a correct transfer pricing analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

- **Simple, weighted or pooled results**

The weighted average, as per common practice, is preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

According to Article 66 of the Regulations to the TLU, penalties for failure to comply with the transfer pricing obligations correspond to the general tax penalties. According to Article 94 (13) of the Tax Code, penalties for failure to present the transfer pricing documentation upon request of the tax authority would be GTQ5,000 for the first time, GTQ10,000 for the second time and GTQ10,000 plus 1% of the taxpayer's gross income from then on.

Additionally, if the taxpayer does not comply with the submission of the requested transfer pricing information, the tax authorities generally apply the fine provided in Article 93 of the Tax Code regarding the tax offense involving refusing to cooperate with the requirements performed within a tax audit process. Penalties imposed may consist of fines or eventually lead to closure of the business.

In addition, any additional tax generated by price adjustments made by the SAT is subject to surcharges and penalty interest.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, in case of incorrect compliance:

- A fine equivalent to 100% of the tax due
- Late payment interest defined by the SAT
- GTQ100 (approximately USD12.90) as a formal fine for the rectification (applicable for the transfer pricing return)

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes, in case of incorrect compliance:

- A fine equivalent to 100% of the tax due
- Late payment interest defined by the SAT
- GTQ100 (approximately USD12.90) as a formal fine for the rectification (applicable for transfer pricing return)

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

b) Penalty relief

Penalties can be reduced up to 85% for the failure to submit documentation (only for the first time) if the omission is corrected by the taxpayer.

When the taxpayer accepts the errors in the determination of tax liability, before the tax authorities pre-grant a hearing, the taxpayer must pay the resulting tax and interest payments with a discount of 40% and penalty for late payment reduced by 80%, provided it makes the payment within the next five

days from the date of issue of the administrative record (Section 145 "A" Tax Code).

However, upon the letter of determination issued by the tax authorities, the fine equal to 100% of the omitted tax may be reduced as follows (Section 46 Tax Code):

- If the payment is made at the administrative hearing granted by the tax authorities, a 75% discount should be granted.
- If the payment is made before filing for an administrative appeal, a 50% discount should be granted.
- If the payment is made before filing a claim before the Tax Court, a 25% discount should be granted.

According to the local tax code, taxpayers may express their disagreement with the position taken by tax authorities. In the first stage, the administrative procedure is available prior to the judicial process.

10. Statute of limitations on transfer pricing assessments

The statute of limitations on assessments is four years from the date of filing the tax return.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general tax audit and transfer pricing assessments as part of a general tax audit may be considered to be high. The SAT has been active in performing transfer pricing audits on taxpayers and sending massive requests to submit transfer pricing documentation from most taxpayers that inform intercompany transactions each year.

Likelihood of transfer pricing methodology being challenged (high/medium/low)

When transfer pricing is scrutinized, the likelihood that the transfer pricing methodology will be challenged may be considered to be high. In practice, the SAT consistently has been questioning the application of transfer pricing methods (i.e., sixth method instead of the CUP method), comparables with losses, and the formulas and interest rate for capital adjustments to the comparables, among others.

Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)

In most audits where the SAT challenges either the methodology or the comparables, the likelihood of an adjustment may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Taxpayers that have not complied with previous transfer pricing obligations, experiencing losses, and transactions regarding the import and export of commodities are more likely to be audited.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

APAs are contemplated in Article 63 of the TLU. Taxpayers can request an APA for a maximum of four years. The procedures for establishing an APA are established in Articles 57 to 63 of the Regulations to the TLU.

- **Tenure**

The term could be as long as four years.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

No.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Guinean Revenue Authorities (Direction Générale des Impôts – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are the General Tax Code (GTC) Articles 117 (arm's-length principle) and Article 23 of the finance law N°L/2018/069/AN of 26 December 2018 relating to year 2019 (annual declaration of foreign related-party transactions and TP documentation obligation).

The effective date of applicability is 1 January 2019.

- **Section reference from local regulation**

Title 1 Direct Taxes: Chapter 1, Determination of the net profits or net income of the various categories of income, Section 3, BIC and Paragraph 3 – Control of declarations.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Guinea is not a member of the OECD. However, in practice, Guinea adopts its principles.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Although this has not been officially formalized, the content of the TP regulations is largely based on the provisions of BEPS Action 13.

- Coverage in terms of Master File, Local File and CbCR

  All three, i.e., master file, local file and CbCR, are covered.

- Effective or expected commencement date

  The effective date is 1 January 2019.

- Material differences from OECD report template or format

  Yes, particularly for businesses trading marketable commodities, such as extractive industries.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

Local specifications are to be considered particularly for businesses trading in marketable commodities, such as extractive industries, as specific provisions apply, and those being involved in intragroup transaction with central supply entities.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, it needs to be prepared and made available to tax authorities in electronic version and in French during a tax audit.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This obligation to prepare a TP documentation applies in particular to entities established in Guinea:

- **Whose annual turnover excluding taxes or gross assets appearing in the balance sheet is more than GNF1,000 billion (Guinean francs)**
- **Who hold or control, at the financial year-end closing, directly or indirectly, more than half of the capital or voting rights of a company whose annual turnover excluding taxes or gross assets, appearing in the balance sheet, is more than GNF1,000 billion**
- **Which are held or controlled at the end of the financial year, directly or indirectly, for more than half of their capital or voting rights by a company, whose annual turnover excluding taxes or gross assets in the balance sheet is more than GNF1,000 billion**

In addition, entities that do not meet the threshold requirements for documentation obligation (i.e., GNF1,000 billion) must nevertheless provide the completed simplified declaration (which included a file that can be assimilated to CbCR) as soon as their annual turnover, excluding taxes, or the gross asset listed in their balance sheet is more than GNF1,000 billion.

- **Master File**

As from financial years opened after 1 January 2019, the content of the documentation is largely aligned with BEPS Action 13 (master file and local file).

- **Local File**

As from financial years opened after 1 January 2019, the content of the documentation is largely aligned with BEPS Action 13 (master file and local file).

- **CbCR**

See the above answer.

- **Economic analysis**

There is no materiality limit prior to 2019. For financial years starting on or after 1 January 2019, only the transaction with related entities that amount to more than GNF1 billion are concerned.

c) Specific requirements

- **Treatment of domestic transactions**

The same rules apply for domestic transactions.

- **Local language documentation requirement**

The documentation must be provided in French and in electronic version.

- **Safe harbor availability, including financial transactions, if applicable**

There is no specific guidance.

- **Is aggregation or individual testing of transactions preferred for an entity**

No.

- **Any other disclosure or compliance requirement**

There is none specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The TP return needs to be submitted in French as part of the taxpayer's annual tax return, at the latest on 30 April. Online submission is not yet possible.

- **Related-party disclosures along with corporate income tax return**

The TP documentation needs to be provided only upon request during a tax audit, at the latest on 31 July.

- **Related-party disclosures in financial statement/annual report**

No.

- **CbCR notification included in the statutory tax return**

Yes.

- **Other information/documents to be filed**

None.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The deadline is 30 April following each fiscal year-end.

- Other transfer pricing disclosures and return

The annual TP return due date is 30 April of each year.

- Master File

The TP documentation must be prepared and made available at the latest three months after the filing of the annual tax return (which is due on April 30 of each year).

- CbCR preparation and submission

CbCR is included in the TP return as an appendix, and therefore, the deadline for submission is 30 April of each year.

- CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

No.

- Time period or deadline for submission on tax authority request

The deadline is 30 days, following the tax auditor's request for the TP documentation.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

The law does not refer to any priority or preference methods.

8. Benchmarking requirements

- Local vs. regional comparables

There is no specific indication. However, local comparables are preferred.

- Single-year vs. multiyear analysis for benchmarking

There is no guidance provided.

- Use of interquartile range

There is no guidance provided.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

There is no guidance provided.

- Simple, weighted or pooled results

There is no guidance provided.

- Other specific benchmarking criteria, if any

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences for incomplete documentation

None.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to respond or a partial response is subject to either of the following sanctions:

- **A maximum fine of 1% of the amount of the transactions concerned by the documents that have not been made available to the Tax Administration after formal notice, knowing that this fine must be adjusted depending on the seriousness of the shortcomings noted**
- **In the event of rectification and if the amount is higher, a 10% increase in the reassessed amounts charged to the taxpayer, without prejudice to other penalties and fines which are actually applicable**

In addition, the absence of a response or a partial response may result in the automatic imposition of fines on the taxpayer.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

After a TP reassessment is made, the profit indirectly transferred should be qualified as a deemed distribution of a benefit. Such "benefit" transfer should entail CIT (25%) and withholding tax (WHT) on distributed amounts payments at 10%.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

NO

- **Is interest charged on penalties or payable on a refund?**

No interest will apply on the penalties mentioned above.

b) Penalty relief

Subject to further negotiations with tax authorities.

10. Statute of limitations on transfer pricing assessments

Three years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

First, it should be noted that the probability depends on the sector of economic activity the taxpayer operates in. For instance, companies in these business sectors – mining, oil and gas, banking, insurance, and telecommunications – are much more likely to be controlled.

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The industries are large companies: telecommunications, oil and gas, mining, and financial institutions and insurance companies.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Guinea does not have specific thin-capitalization rules, but the following limitations are imposed for the deductibility of interest paid to foreign parties in respect of funds provided to local companies:

- **The interest rate must be capped to Central Bank of the Republic of Guinea (Banque Centrale de la République de Guinée — BCRG) interest rate.**
- **The share capital of the local company must be fully paid.**
- **The total amount of the loan must not exceed the share capital (limitation not usually applied).**
- **In addition, under the 2019 Finance Act, the deductibility of loan interest among related companies is now limited to 15% of the borrowing company's restated income. The restated result is the result of the ordinary activities of the entity to which are added:**
  - The deductible interest expense pursuant to Article 97, i.e., compliance with the general conditions for the deductibility of expenses, compliance with the WHT due, compliance with the limit of the normal refinancing rate of the BCRG and release of at least half of the capital
  - Tax on industrial or commercial profits, corporation tax and minimum flat tax
  - Allowances for depreciation deductible, pursuant to Article 98
  - Depreciation allowances deductible, pursuant to Articles 101 and 102 of tax code

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration of Honduras (*Servicio de Administración de Rentas* – SAR).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Decree No. 232-2011, effective from 1 January 2014, establishes Transfer Pricing Law, Articles 1 to 22.
  - Executive Decree No. 027-2015, effective from 18 September 2015, contains regulations on transfer pricing, Articles 1 to 40.
  - Communication-DEI-SG-004-2016.
  - Article 113 of Tax Code.
- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Honduras is not a member of the OECD.

The OECD Guidelines can be relied upon for interpretation of the rules, as long as they do not contradict the Honduran tax system; however, local transfer pricing regulations prevail.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.
- Effective or expected commencement date

  This is not applicable.
- Material differences from OECD report template or format

  This is not applicable.
- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines and rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, transfer pricing documentation must be prepared contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the transfer pricing report and return must be prepared annually, updating all the information that allows a correct transfer pricing analysis. Use of the most recent available

[1] https://www.sar.gob.hn/

financial information for the comparables and the tested party is requested.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Through Article 113 of Decree No. 170-2016 and in effect since 2017, the obligation to document domestic related-party transactions is repealed except those transactions carried out with domestic (related or not) entities established under a special tax regime. However, domestic related-party transactions must be informed annually in the transfer pricing informative return.

- **Local language documentation requirement**

The documentation needs to be submitted in the local language, according to Civil Code, Article 45.

- **Safe harbor availability, including financial transactions, if applicable**

There is no specific safe harbor available in Honduras.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred, if possible

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

An information return on the transactions conducted with related parties should be filed annually, as follows:

- For fiscal years that end in December, taxpayers must file the transfer pricing return between 1 January and 30 April.

For a special fiscal year that does not end in December, taxpayers must file the transfer pricing return (*Declaración Jurada Informativa Anual Sobre Precios de Transferencia*) within three months after the fiscal year-end.

- **Related-party disclosures along with corporate income tax return**

Taxpayers must report on the income tax return whether they conducted transactions with related parties and disclose the total amount of such related-party transactions, indicating whether they are assets, liabilities, income or expense items.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax return should be filed annually, as follows:

- For fiscal years that end in December, taxpayers must file the return between 1 January and 30 April.

- For a special fiscal year that does not end in December, taxpayers must file the return within three months after the fiscal year-end.

- **Other transfer pricing disclosures and return**

There is none specified.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Taxpayers are required to prepare transfer pricing documentation annually by the due date of the income tax return. The documentation should be filed only if requested by the SAR.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

10 days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Not applicable after FY2017. However, domestic related-party transactions must be informed annually in the transfer pricing informative return.

b) Priority and preference of methods

The provisions require the application of the most appropriate transfer pricing method. The specified methods are the CUP (and the "sixth method" that is considered within the CUP method), resale price, cost plus, profit split, TNMM and any other alternative method (as long as it is possible to demonstrate that no other method can be reasonably applied and that it represents what third parties will agree upon under comparable arm's-length circumstances). A taxpayer can use an alternative method when it is in accordance with the international practice and standards and previously approved by the SAR.

8. Benchmarking requirements

Local vs. regional comparables

There are no benchmarking requirements for local and regional comparables, considering the lack of financial information available on local comparables. Thus, international comparables are accepted by the tax authorities.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year testing (up to five years) is acceptable for the comparables. However, in practice the number of years is three.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is requested by regulations.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search vs. a financial update needs to be conducted every year. The transfer pricing report and return must be prepared annually, updating all the information that allows a correct transfer pricing analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

- **Simple, weighted or pooled results**

Weighted average is preferred, as per common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

If taxpayers fail to provide information or provide false, incomplete or inaccurate information in response to a request by the SAR, a penalty of USD10,000 applies.

If taxpayers report taxable income less than it should have been under arm's-length conditions, a penalty of 15% on the corresponding income adjustment applies.

If taxpayers fail to provide the correct information or fail to declare a correct taxable income, then the penalties will be the greater of 30% or USD20,000.

If taxpayers fail to comply with any other provision of the Transfer Pricing Law, a penalty of USD5,000 applies.

- **Consequences of failure to submit, late submission or incorrect disclosures**

If taxpayers fail to provide information or provide false, incomplete or inaccurate information in response to a request by the SAR, a penalty of USD10,000 applies.

If taxpayers report taxable income less than it should have been under arm's-length conditions, a penalty of 15% on the corresponding income adjustment applies.

If taxpayers fail to provide the correct information or fail to declare a correct taxable income, then the penalties will be the greater of 30% or USD20,000.

If taxpayers fail to comply with any other provision of the Transfer Pricing Law, a penalty of USD5,000 applies.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the section above.

- **Is interest charged on penalties or payable on a refund?**

In the case of a transfer pricing income adjustment, interest applies (3% on a monthly basis, up to 36%), per the general provisions of the Tax Code.

b) Penalty relief

Article 162 of the Tax Code indicates that taxpayers can benefit from reductions of the surcharges assessed for non-compliance of a formal obligation:

- 50% reduction, if the taxpayer rectifies before any competent authority proceeding
- 30% reduction, if the taxpayer rectifies before the competent authority assesses and notifies the penalty or initiates the collection process and without the taxpayer initiating any reconsideration request process
- 10%reduction, if it rectifies before the collection process of the penalty conducted by the judicial authority
- If the taxpayer is categorized as a small taxpayer, it has an additional reduction of 20%

If an adjustment is proposed by the tax authority, dispute resolution options available are:

- An appeal that has to be filed with the Honduran tax authorities – first administrative instance
- An appeal that has to be filed with the Secretary of Finance – second administrative instance
- An extraordinary review appeal

10. Statute of limitations on transfer pricing assessments

The term could be five to seven years. It can be extended with the filing of an amended return.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general tax audit may be considered to be high, as is the likelihood of transfer pricing assessments as part of a general tax audit. During the past years, the SAR has sent information requests to several taxpayers related to their documentation reports, therefore initiating transfer pricing audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high, given the overall firm stance of tax authorities.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Any intercompany transaction and any industry and situation. In the past, the SAR has focused its transfer pricing audits in services transactions, questioning whether the services have been rendered, the need of the services, the allocation of the expense, as well as the benefit the services provide.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs are contemplated under the provisions of Decree 232-2011 and Executive Decree 027-2015. However, the corresponding regulations have not yet been enacted.

- **Tenure**

The duration of an APA is a maximum of five years.

- **APA rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Inland Revenue Department (IRD).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

On 13 July 2018, the Government of Hong Kong Special Administrative Region gazetted Inland Revenue (Amendment) (No. 6) Ordinance 2018 (the Amendment Ordinance).

The Amendment Ordinance codifies transfer pricing principles into the Inland Revenue Ordinance (Cap. 112) (IRO). The effective dates for the regulations are staggered across the accounting period beginning on or after 1 January 2018 (for CbCR), 1 April 2018 (for master file and local file) and years of assessment beginning on or after 1 April 2018 (for the Fundamental Transfer Pricing Rule (FTPR) and APAs).

Other relevant sections of the IRO include:

- Section 16, about deductibility of expenses in arriving at assessable profits
- Section 17, about prohibited deductions
- Section 61A, about transactions designed to avoid tax liability

In addition, the Departmental Interpretation and Practice Notes (DIPN) contain the IRD's interpretation and practices related to the law. These notes are issued as information and guidance and have no legal binding force. The relevant prevailing DIPNs include:

- DIPN 45, *Relief from Double Taxation due to Transfer Pricing or Profit Reallocation Adjustments,* issued in April 2009
- DIPN 48, *Advance Pricing Arrangement*, revised in July 2020
- DIPN 51, *Profits Tax Exemption for Offshore Private Equity Funds,* issued in May 2016
- DIPN 52, *Taxation of Corporate Treasury Activity,* issued in September 2016
- DIPN 53, *Tax Treatment of Regulatory Capital Securities,* revised in August 2020
- DIPN 58, *Transfer Pricing Documentation and Country-by-country Reports,* issued in July 2019
- DIPN 59, T*ransfer Pricing Between Associated Persons,* issued in July 2019
- DIPN 60, *Attribution of Profits to Permanent Establishments in Hong Kong,* issued in July 2019
- Local GAAP: Hong Kong Financial Reporting Standards (HKFRS), which are largely based on International Financial Reporting Standards (IFRS)

- **Section reference from local regulation**

Sections under Inland Revenue Ordinance (Cap. 112) (IRO). The key sections that are specific for transfer pricing regulations are Sections 50AAC to 50AAO, Sections 58B to 58O and Schedule 17I.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No) [2]

No ; however, on 28 July 2021, the IRD published an update on "Tax Issues arising from the COVID-19 Pandemic." It is stated that the IRD will generally follow the "Guidance on the transfer pricing implications of the COVID-19 pandemic" released by the OECD, which maintains that the arm's-length principle remains the applicable standard for the purpose of evaluating the transfer pricing of controlled transactions in the face of the pandemic, though due regard must be given as to how the outcomes of the economically significant risks controlled by the parties to the transactions have been affected by the pandemic.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Hong Kong is a BEPS Associate jurisdiction (announced in June 2016). The Hong Kong transfer pricing framework is largely based on the OECD Guidelines, and the IRD generally will not differ from the transfer pricing methodologies recommended

[1] **https://www.ird.gov.hk**

[2] **https://www.ird.gov.hk/eng/tax/tia_covid19.htm**

by OECD Guidelines. The Amendment Ordinance specifically references the 2017 OECD Guidelines within the legislation and indicates that the arm's-length provision (along with other rules) should be consistently determined in accordance with OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, the Amendment Ordinance (gazetted on 13 July 2018) adopts the OECD's recommended three-tiered documentation structure, comprising a master file, local file and the CbCR based on BEPS Action 13.

- Coverage in terms of Master File, Local File and CbCR

  The Amendment Ordinance covers the master file, local file and CbCR.

- Effective or expected commencement date

  The effective date is the accounting period beginning on or after 1 January 2018 (for CbCR) and 1 April 2018 (for master file and local file).

- Material differences from OECD report template or format

  The prescribed information required to be disclosed in the master file and local file is consistent with the OECD Action 13 requirements.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

The scale of penalties to be imposed on a person, in relation to transfer pricing examinations, is a function of the nature of transfer pricing treatment and the effort spent to determine the arm's-length amount. The availability of documented transfer pricing treatment and its ability to satisfy the reasonable efforts test in determining the arm's-length amount will be used as a basis to determine whether a person is liable to additional tax and the level of additional tax applicable. Please refer to penalty relief for further details.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Hong Kong joined the Inclusive Framework and committed to implement the four minimum standards in June 2016.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 26 July 2018.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the Amendment Ordinance gazetted on 13 July 2018 introduced mandatory transfer pricing documentation requirements and rules in Hong Kong. The documentation is required to be prepared contemporaneously if the Hong Kong entity meets certain thresholds and is to be submitted upon request.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local transfer pricing rules.

- **Should transfer pricing documentation be prepared annually?**

The Amendment Ordinance assesses the taxpayers' obligation for preparing transfer pricing documentation on an annual basis. Taxpayers that exceed the documentation threshold in the specific accounting period are required to prepare transfer pricing documentation for that accounting period.

Taxpayers that meet the exemption thresholds have no mandatory requirements to prepare the master file and local file. However, it is required that their related-party transactions be at arm's length.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone transfer pricing reports if it has related-party transactions that meet the materiality thresholds.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

For fiscal years starting on or after 1 April 2018, Hong Kong taxpayers are required to prepare master file and local file documentation. Exemptions based on business size and related-party transaction volume have been adopted.

A waiver on the requirement to prepare master file and local file documentations for specified domestic transactions has also been applied.

Specifically, enterprises engaging in transactions with associated enterprises will not be required to prepare master file and local file documentation if they can meet either one of the following exemption criteria:

- Exemption based on size of business (satisfying any two of the three conditions):
  - Total revenue not more than HKD400 million
  - Total assets not more than HKD300 million
  - Average number of employees not more than 100
- Exemption based on related-party transactions (if the amount of a category of related-party transactions, excluding specified domestic transactions, for the relevant accounting period is below the proposed threshold, an enterprise will not be required to prepare a local file for that particular category of transactions):
  - Transfer of properties (other than financial assets and intangibles): HKD220 million
  - Transactions in respect of financial assets: HKD110 million
  - Transfer of intangibles: HKD110 million
  - Any other transaction (e.g., service income and royalty income): HKD44 million
- Exemption in respect of domestic transactions: master and local files need not be prepared for specified domestic transactions between associated persons.

If an enterprise is fully exempted from preparing a local file (i.e., its related-party transactions of all categories are below the prescribed thresholds), it will not be required to prepare a master file either.

- **Master File**

Please refer to the requirements on materiality limit and threshold for transfer pricing documentation.

- **Local File**

Please refer to the requirements on materiality limit and threshold for transfer pricing documentation.

- **CbCR**

The CbCR filing threshold is HKD6.8 billion for Hong Kong ultimate parent entities (which is set in accordance with the OECD recommendation, i.e., EUR750 million).

- **Economic analysis**

Please refer to the requirements on materiality limit and threshold for transfer pricing documentation.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic related-party transactions are exempted from being adjusted on the basis of the FTPR, which requires transactions to meet the arm's-length principles, to the extent that it meets certain conditions such as not having a Hong Kong tax advantage or not having a tax avoidance purpose.

The local file of the Hong Kong entity is not required to cover specified domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation may be prepared in either English or Chinese.

- **Safe harbor availability including financial transactions if applicable**

Please refer to the requirements on materiality limit and threshold for transfer pricing documentation.

- **Is aggregation or individual testing of transactions preferred for an entity**

The application of aggregation or individual testing is generally consistent with the OECD Guidelines. Therefore, the testing approach should be assessed on a case-by-case basis.

- **Any other disclosure or compliance requirement**

There is none specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Supplementary Form S2 is an additional form to the profits tax return for transfer pricing purposes.

In addition, having declared the obligation to prepare master file and local file in the Supplementary Form S2 of the profits tax return, selected taxpayers may be requested to complete Form IR1475, Transfer Pricing Documentation – Master File and Local File, electronically and submit it to the IRD within one month upon receipt of the request.

- **Related-party disclosures along with corporate income tax return**

IRD announced on 23 January 2019 a revised profits tax return for corporations (i.e., BIR51 and a set of new Supplementary Forms S1 to S10). With effect from the year of assessment 2018–19, Hong Kong taxpayers are required to disclose certain related-party information (i.e., the location of the non resident associated persons) and confirm their transfer pricing documentation compliance in the BIR51 and Supplementary Form S2, Transfer Pricing.

- **Related-party disclosures in financial statement/annual report**

Yes, related-party transactions are required to be disclosed in the annual financial statement. Please refer to HKAS 24 (Revised), Related Party Disclosures.

- **CbCR notification included in the statutory tax return**

The CbCR notification is separately filed. However, Hong Kong taxpayers are required to confirm their CbCR compliance in the revised tax returns, which are effective from the year of assessment 2018–19.

- **Other information/documents to be filed**

There is none specified.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Tax returns are normally due for filing within one month from the date of issue of the profits tax return, but an extension of time may be granted if a reasonable request is filed with the IRD.

Tax representatives can apply for an extension under the Block Extension Scheme; the due date is normally extended as follows. The Block Extension Scheme for lodgement of 2020–21 tax returns by tax representatives can be found here:

ird.gov.hk/eng/pdf/bel21e.pdf

Accounting date	Extended due date
For N Code Return (accounting date between	2 May
1 April 2020 and 30 November 2020)	31 May 2021
For D Code Return (accounting date between	15 November
1 and 31 December 2020) For M Code Return (accounting date between	16 August 2021
1 January 2021 and 31 March 2021)	15 November 2021
For M Code Return and current year loss cases	31 January 2022

- **Other transfer pricing disclosures and return**

It is included within the profits tax return (i.e., Supplementary Form S2), and therefore, the same dates apply.

If the taxpayer is selected to complete the Form IR1475 as mentioned above, the form is required to be submitted within one month upon receipt of the request.

- **Master File**

A master file has to be prepared within nine months after the end of the Hong Kong entity's accounting period.

- **CbCR preparation and submission**

A CbCR has to be prepared and submitted within 12 months after the end of the ultimate parent entity's accounting period when there is a CbCR filing obligation for the Hong Kong ultimate parent entity or a local filing requirement.

- **CbCR notification**

CbCR notifications are due within three months after the end of the ultimate parent entity's accounting period.

b) Transfer pricing documentation/Local File preparation deadline

The master file and local file must be prepared within nine months after the end of the Hong Kong entity's accounting period.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of transfer pricing documentation.

- **Time period or deadline for submission on tax authority request**

There is no specific guidance on the time to submit transfer pricing documentation. However, typically, in an audit or inquiry, a taxpayer is given 30 days (extensions are available) to reply to the tax authorities.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is no extension in terms of preparation or submission deadlines for master file, local file, CbCR and CbCR notification.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

The IRD recognizes the methods outlined in the OECD Guidelines, which include the traditional transaction methods (CUP, resale price and cost plus) and profit methods (profit split and TNMM). Other methods are also allowed, to the extent that the OECD-recognized methods are not applicable.

- Domestic transactions

Same as the international transactions (however, this applies only when the domestic related-party transactions are not exempted from transfer pricing rules and documentation).

b) Priority and preference of methods

The most appropriate method should be selected. Although traditional transaction methods may be preferred, as they are considered to be the most direct means of establishing the arm's-length price, the profit methods are accepted in circumstances where traditional methods are not comparable or reliable.

8. Benchmarking requirements

- **Local vs. regional comparables**

The quality of comparable data is more important than the number of comparables identified. DIPN 59 suggests that Hong Kong comparables should be considered in the first instance. If there are no Hong Kong comparables, or the potential Hong Kong comparable companies identified are not applicable, then it may be necessary to consider using comparables from other jurisdictions. Appropriately selected overseas data is accepted by the IRD. The same or similar market principle is important. Jurisdictions recognized as Hong Kong's closest reference jurisdictions in terms of demographics, size of economy and stage of economic development should be considered.

- **Single-year vs. multiyear analysis**

Multiple-year data is considered useful in providing information about the relevant business and product life cycles of the comparables.

- **Use of interquartile range**

The use of ranges, such as an interquartile range, would be accepted.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Financials should be updated every year, and new searches should be performed every three years.

- **Simple, weighted or pooled results**

Weighted average data for each comparable, computed based on the most recently available three to five years of data, is considered to be typically reflective of a normal product life cycle.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

- **Consequences of failure to submit, late submission or incorrect disclosures**

According to the Amendment Ordinance, penalties in relation to master file and local file will be a fine at level 5 (i.e., HKD50,000), along with a court order due to failure to comply without reasonable excuse. A fine will be escalated to level 6 (i.e., HKD100,000) when there is a failure to comply with the court order.

In addition, a failure to file or notify CbCR without a reasonable excuse will trigger a fine at level 5 (i.e., HKD50,000), with a further fine of HKD500 for every day thereafter under certain conditions, along with a court order. On failure to comply with the court order, the fine will be at level 6 (i.e., HKD100,000). For filing misleading, false or inaccurate information, the fine will be at level 5 (i.e., HKD50,000). If such misleading, false or inaccurate information is filed with willful intent, penalties will be either on summary conviction (i.e., a fine at HKD10,000 and imprisonment for six months) or on conviction on indictment (i.e., a fine at HKD50,000 and imprisonment for three years). These penalties related to CbCR apply to directors and key officers as well as service providers engaged by the reporting entity.

In addition to the transfer pricing penalties stated above, the IRD can impose penalties for the broader corporate tax-related issues.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, for transfer pricing-specific adjustments, penalties assessed will be limited to the amount of tax undercharged.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes, for transfer pricing-specific adjustments, penalties assessed will be limited to the amount of tax undercharged

- **Is interest charged on penalties or payable on a refund?**

It is not applicable on penalties. However, there may be interest charges under unconditional holdover of the tax in dispute. Tax reserve certificates can be purchased to address this.

b) Penalty relief

The scale of penalty to be imposed on a person is a function of the nature of transfer pricing treatment and the effort spent to determine the arm's-length amount. In order to have a documented transfer pricing treatment, a person must have records that are prepared within nine months after the year-end of the relevant accounting period of the person. Such records should also sufficiently explain the applicability of the arm's-length nature of the transactions.

For the purpose of maintaining consistency in penalty calculation and in the generality of cases, the following penalty loading table is used.

Transfer pricing treatment	Normal loading	Maximum with commercial restitution
No documented transfer pricing treatment	50%	75%
Documented transfer pricing treatment without reasonable efforts	25%	50%
Documented transfer pricing treatment with reasonable efforts	Nil	Nil

The domestic objection and appeal process for income tax is available to the taxpayer. In addition, the taxpayer may request to resolve the issue through an MAP if the counterparty to the transaction is a resident of a jurisdiction that has a tax treaty with Hong Kong.

10. Statute of limitations on transfer pricing assessments

It will be six years after the end of the assessment year. In the case of fraud or willful evasion, the statute of limitations is extended to 10 years from the end of the assessment year.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Please refer to the expected changes to Hong Kong's local transfer pricing rules due to COVID-19.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium to high, because the IRD has increased its attention on related-party transactions. While there are no transfer pricing-specific field auditors, and there is no separate division within the IRD that deals specifically with transfer pricing cases, transfer pricing may be reviewed as part of an audit if the IRD suspects that transactions have not been carried out on an arm's-length basis (e.g., goods are sold or purchased at a deflated or inflated price, service or royalty fees are not commensurate with the benefits received, or transactions are with tax-haven locations).

An audit related to transfer pricing will be aimed at reviewing the intercompany pricing policies and any analysis prepared to support the pricing, considering the facts of the business and the transactions. Transfer pricing inquiries typically arise as part of general field audits, with the deductibility of expenses or payments to related parties being a common line of inquiry. Specifically, tax adjustments in such cases arise when the taxpayer claims that a percentage of revenue is non-Hong Kong sourced. The IRD expects that a similar percentage of costs associated with that activity is also non-Hong Kong sourced.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the transfer pricing methodology being challenged may be considered to be medium to high, depending on the complexity of the related-party transactions. This is because transfer pricing-associated audits or inquiries typically arise as part of general field audits, with the deductibility of expenses or payments to related parties being a common line of inquiry. Therefore, when viewed from a corporate tax perspective, there is often a focus on transactional- and product-level pricing without fully recognizing the transfer pricing structure and methodology.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood of an adjustment may be considered to be medium to high if a transfer pricing methodology is challenged, if the case under review has been ongoing for a lengthy period and if it involves material tax assessments. The risk is also high if the taxpayer is unable to provide sufficient information, on a timely basis, to support its tax positions and if the responses do not adequately address the information being requested as part of the audit.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The likelihood of a tax audit in Hong Kong may be triggered by a variety of situations, such as fluctuating profit margins, if the accounts of a business are heavily qualified, profits or turnover are deemed unreasonably low, filing of tax returns is persistently delayed or omitted, business records are not properly maintained, or requested information is not provided.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

There is an APA program available in Hong Kong. The APA program will cover unilateral, bilateral and multilateral agreements.

- **Tenure**

In general, an APA will apply for three to five years.

- **Rollback provisions**

Yes, rollback may be considered, subject to certain conditions.

- **MAP opportunities**

Yes, MAP should be initiated within the time limit from the first notification of the actions giving rise to taxation not in accordance with the provisions of the double taxation treaties (DTTs). In general, the time limit is specified in the MAP article of the relevant DTT (e.g., three years). Failure to observe the time limit may result in the rejection of MAP request by the IRD.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No, in general, the IRD will uphold existing advance pricing arrangements (APAs), unless a condition leading to the revocation, cancellation or revision of the APA has occurred.

Where material changes in economic conditions lead to the breach of the critical assumptions, taxpayers should notify the IRD not later than one month after the breach occurs.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There is no thin-capitalization rule in Hong Kong.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Tax and Customs Administration (*Nemzeti Adó- és Vámhivatal* – NTCA).[1]

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and the effective date of applicability

Section 18 of the Act on Corporate Tax and Dividend Tax, Correction of Prices Applied Among Affiliated Companies, has been applicable since 1996.

- Section reference from local regulation

Based on Section 4.23 of the Act on Corporate Tax and Dividend Tax, "affiliated company" shall mean:

a) The taxpayer and the person in which the taxpayer has a majority control – whether directly or indirectly – according to the provisions of the Civil Code

b) The taxpayer and the person that has majority control in the taxpayer – whether directly or indirectly – according to the provisions of the Civil Code

c) The taxpayer and another person if a third party has majority control in both the taxpayer and such other person – whether directly or indirectly – according to the provisions of the Civil Code, where any close relative holding a majority control in the taxpayer and the other person shall be recognized as third parties

d) A non resident entrepreneur and its domestic place of business and the business establishments of the non resident entrepreneur, furthermore, the domestic place of business of a non resident entrepreneur and the person who maintains the relationship defined under Paragraphs a)–c) with the non resident entrepreneur

e) The taxpayer and its foreign branch and the taxpayer's foreign branch and the person who maintains the relationship defined under Paragraphs a)–c) with the taxpayer

f) The taxpayer and other person if between them dominating influence is exercised relating to business and financial policy having regard to the equivalence of management

g) Paragraphs a)–c) notwithstanding, affiliation shall be considered to exist:

ga) For the purposes of Point 11, Point 53, Paragraph f) of Subsection (1) of Section 8 and Section 16/A even if the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 25% or more or is entitled to receive 25% or more of the profits in an entity, with the proviso that for the purposes of these provisions compliance with Paragraph f) shall not be taken into account

gb) For the purposes of Section 16/B even if the taxpayer holds directly or indirectly a participation in terms of voting rights or capital ownership of 50% or more or is entitled to receive 50% or more of the profits in an entity, with the proviso that having regard to participation in terms of voting rights or capital ownership the influence of persons acting in concert shall count together and in the case of taxpayers within a consolidated group of companies for financial accounting purposes Paragraph f) shall be taken into account

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The Act on CIT contains specific reference to the OECD Guidelines. If the Hungarian tax laws do not include regulations on specific issues, the OECD Guidelines may be used as a primary reference.

A new decree (i.e., Decree No. 32/2017 (X.18.) of the Minister of Finance on the documentation requirements related to transfer pricing was published in Hungary, which follows the recommendations of OECD BEPS Action 13 and implements the three-tiered approach pertaining to BEPS Action 13 (i.e., master file, local file and CbCR).

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

[1] https://en.nav.gov.hu

BEPS Action 13 has been implemented for transfer pricing documentation in Hungary.

- Coverage in terms of Master File, Local File and CbCR

  It covers master file, local file and CbCR.

- Effective or expected commencement date

  The documentation requirements under Action 13 are in place in accordance with the new Hungarian transfer pricing decree. It is mandatory to prepare the transfer pricing documentation with the structure regulated by the new decree for financial years starting on or after 1 January 2018.

- Material differences from OECD report template or format

There are material differences between the formats of the OECD report template and the local jurisdiction regulations in the context of the local file, which are:

- Administrative data of the related parties (i.e., name, registered seat (official location), tax number or company registration number, the name and seat of the registering authority) and the relationship between associated parties
- The date of the preparation of the local file
- The justification and reasons for consolidation (if such a report was prepared)
- The details of court or other official procedures (in progress or finished) related to the arm's-length price

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A BEPS Action 13 format report typically would not be sufficient to achieve penalty protection. See the section above.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes, Hungary is part of the OECD/G20 Inclusive Framework on BEPS.

- **d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR**

Yes, signed on 1 December 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, contemporaneous requirement.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, local branches of foreign companies have to comply with the transfer pricing documentation and CbCR-related obligations if they conclude that intercompany transactions and their volume exceed the materiality threshold in a given year.

- **Does transfer pricing documentation have to be prepared annually?**

Transactions have to be documented for each year that falls under the documentation obligation. Even if the main terms and conditions of the transaction did not change significantly compared with the previous year, it is mandatory to prepare new transfer pricing report covering the relevant financial year, for financial years starting on or after 1 January 2018. Updating the benchmarking analysis is required.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

The transfer pricing decree prescribes that local documentation has to be prepared for each taxpayer for each intercompany transaction. If intercompany transactions have been concluded between the local entities, the transactions' arm's-length nature should be tested and analyzed from the perspective of both entities.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is a materiality limit for the preparation of the transfer pricing documentation (i.e., local files and master file). The materiality limit is HUF50 million (approximately EUR140,000). When determining whether a transaction falls under the documentation obligation, the rules of consolidation also have to be considered (i.e., the transactional value of the transactions with similar terms and conditions has to be summed up when tested against the documentation threshold).

- **Master File**

The master file has to be prepared for transactions exceeding HUF50 million in a given tax year.

- **Local File**

The local file has to be prepared for transactions exceeding HUF50 million in a given tax year.

- **CbCR**

CbCR has to be prepared and filed according to OECD standards for all Hungarian tax resident entities that are members of an MNE group with annual reports that show consolidated group revenue of at least EUR750 million.

- **Economic analysis**

There is a materiality limit for the preparation of economic analysis. If a transaction is considered to be a low value-adding service, no economic analysis has to be prepared. In every other case, economic analysis has to be prepared for the specific transaction.

Specific requirements

- **Treatment of domestic transactions**

There is no specific requirement for the treatment of domestic transactions. The obligation and requirements are the same as for international transactions.

- **Local language documentation requirement**

There is no requirement for the transfer pricing documentation to be prepared exclusively in the local language.

In Hungary, the master file and the local file can be prepared in languages other than Hungarian. If the transfer pricing documentation is prepared in other languages (except English, German and French), the Hungarian Tax Authority can request for an attested Hungarian translation of the documents. However, in line with the current expectation of the Hungarian Tax Authority, the transfer pricing documentation should be prepared in Hungarian, English, German or French.

- **Safe harbor availability including financial transactions if applicable**

No safe harbors are applicable except for guidance on low value-added services.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is none specified.

- **Related-party disclosures along with corporate income tax return**

Within 15 days of concluding its first contract with a related party, the taxpayer must report the name, registered seat and tax number of the contracting party to the NTCA. The cessation of the related-party status must also be reported.

In the CIT return, the tax base should be adjusted if the price used in the related-party transaction differs from the fair market price. In their year-end corporate tax returns, taxpayers must declare the type of transfer pricing documentation they have elected to prepare.

According to Hungarian transfer pricing regulations, the taxpayer is not required to file the transfer pricing documentation with the NTCA; however, the taxpayer needs to present the documentation during a tax audit upon request.

- **Related-party disclosures in financial statement/annual report**

Companies' financial statements include certain compulsory disclosures about related-party transactions (e.g., interest income and expense received or paid to related parties).

- **CbCR notification included in the statutory tax return**

No, Hungarian constituent entities (CEs) will need to submit a notification to the tax authority by the last day of the reporting fiscal year.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The CIT return deadline is 31 May. The general rule is as follows: "Taxpayers shall satisfy their obligation to file tax returns concerning corporate tax and dividend tax by the last day of the fifth month following the last day of the tax year to which it pertains."

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

The deadline for preparing the master file is the date specified in the regulations applicable to the ultimate parent company of the group. However, the master file must be prepared no later than 12 months after the last day of the tax year in question. Additionally, if no master file is being prepared within the group, or the ultimate parent company is a Hungarian tax resident, the deadline to prepare the master file in this case is the same as the local file preparation deadline, i.e., five months after the last day of the fiscal year.

- **CbCR preparation and submission**

Reporting entities have to file the CbCR with the Hungarian Tax Authority within 12 months of the last day of the reporting fiscal year.

- **CbCR notification**

The Hungarian subsidiaries of MNEs should notify the Hungarian Tax Authority about the following information until the last day of the relevant reporting financial year, i.e., 31 December: the name of the reporting entity, the tax residence of the reporting entity, the name of the MNE group, and the reporting fiscal period of the MNE group or the last day of the reporting FY of the MNE group.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation (i.e., the local file together with the master file) needs to be prepared by the time of filing the tax return to achieve penalty protection (e.g., if required). The deadline for the preparation of the local file is the same as the deadline for the submission of the CIT return.

As an extension from the general rules, the deadline for preparing the master file is the date specified in the legal regulations applicable to the ultimate parent company of the group. However, the master file must be prepared no later than 12 months from the end of the fiscal year.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission upon tax authority request**

The local file (together with the master file) has to be readily available by the documentation deadline. Upon request of the Hungarian Tax Authority, no extra time is provided for taxpayers after the CIT return's submission deadline. If the transfer pricing documentation is not available upon request, default penalties for non-compliance can be levied. The documentation will also have to be prepared regardless of the fact that penalties are levied. Repeated and higher penalties may be levied in the case of continued non-compliance.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No, there aren't any.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The traditional methods (i.e., CUP, resale price and cost plus) and the profit-based methods recommended by the OECD (i.e., TNMM and profit split) are acceptable. Other methods can also be used, but only after the five major methods have been rejected.

As an important requirement in a relatively wide array of cases, the application of the interquartile range is mandatory since 2015. As a result, taxpayers are required by law to apply the interquartile range in their pricing and assess their Hungarian tax liabilities accordingly.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are preferred in the Hungarian unilateral APA practice, but otherwise not mandated by law.

The Hungarian Tax Authority expects to apply Hungarian comparables as a first step. As a result, the authority challenges accepted comparables other than the local comparables based on the general practice.

Furthermore, if setting the geographic criteria only to Hungary does not result in sufficient comparable companies, the criteria can be extended to V4 countries (Czech Republic, Hungary, Poland and Slovakia). If this still does not provide a sufficient number of companies, then the geographic criteria can be extended to Eastern Europe and EU28 countries.

- **Single-year vs. multiyear analysis for benchmarking**

A multiyear analysis is preferred in testing the arm's-length analysis in terms of the PLI[2] of the comparable entities.

- **Use of interquartile range**

It is mandatory by law unless a full functional analysis is prepared and documented for each comparable used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

In line with the OECD Transfer Pricing Guidelines, a new search has to be prepared every three years. For the two years not covered by a new comparable search, the financial update of the sample is required. With respect to financing transactions, a new search is expected to be prepared for each year. These requirements are derived from the practices of the Hungarian Tax Authority, and they are enforced rigorously. Furthermore, according to the new Hungarian transfer pricing decree, the former practice of the Hungarian Tax Authority is supported by legislation in this respect.

- **Simple, weighted or pooled results**

The simple average is preferred, but is not mandated by law; a pooled method is preferred (every data is a separate observation).

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

A default penalty of up to HUF2 million (approximately EUR5,600) may be levied for not fulfilling the transfer pricing documentation requirements. Repeated infringement of the documentation requirement may trigger a default penalty of up to HUF4 million (approximately EUR11,200). Repeated default on fulfilling the documentation requirement on the same transfer pricing documentation may trigger a default penalty four times higher than the default penalty levied when levying the penalty for the first infringement. As a general rule, the default penalty can be levied for each missing or incomplete set of transfer pricing documentation per fiscal year.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Yes, a default penalty of up to HUF2 million (approximately EUR5,600) may be levied for not fulfilling the transfer pricing documentation requirements. Repeated infringement of the documentation requirement may trigger a default penalty of up to HUF4 million (approximately EUR11,200). Repeated default on fulfilling the documentation requirement on the same transfer pricing documentation may trigger a default penalty four times higher than the default penalty levied when levying the penalty for the first infringement. As a general rule, the default penalty can be levied for each missing or incomplete set of transfer pricing documentation per fiscal year.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

If a transfer pricing adjustment is assessed, the Hungarian Tax Authority can levy tax penalty (generally, 50% of the tax shortage) along with late payment interest (the Hungarian National Bank (Magyar Nemzeti Bank – MNB) base rate plus five percentage points from 2019).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

[2] A profit level indicator ("PLI") is a measure of a company's profitability (e.g. operating revenue/turnover, operating profit/loss) that is used to compare comparables with the tested party. If a comparable search is performed in the Amadeus/TP Catalyst database, the NTCA prefers a multiyear analysis to be performed when testing the comparable companies' PLI. If however, a comparable search is being performed analysing a financial intercompany transaction, the single-year PLI should be tested.

If a transfer pricing adjustment is assessed, the Hungarian Tax Authority can levy tax penalty (generally, 50% of the tax shortage) along with late payment interest (the Hungarian National Bank base rate plus five percentage points from 2019).

- **Is interest charged on penalties or payable on a refund?**

Yes, it is charged at the prime rate of the Hungarian National Bank plus five percentage points. No late payment interest shall be charged on late payment interest.

b) Penalty relief

If taxpayers waive their right to appeal against the resolution issued at the first instance on posterior tax assessment, and pay the tax difference imposed in the resolution by the due date, the taxpayers should be exempt from paying 50% of the tax penalty imposed.

10. Statute of limitations on transfer pricing assessments

In the absence of a tax return or appropriate reporting, the statute of limitations lapses on the last day of the fifth calendar year calculated from the tax year in which taxes should have been declared, reported or paid. However, within the framework of the Arbitration Convention, it is possible to request a tax base adjustment even after the statute of limitations has expired.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

After a slowdown in 2020 due to people not being able to work at 100% capacity, there has been a significant increase in the number of transfer pricing-specific tax audits in 2021.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The risk of transfer pricing issues being scrutinized during an NTCA audit is steadily growing. The NTCA now routinely checks the existence and completeness of the documentation (i.e., whether all transactions are covered).

For larger transactions, the NTCA usually inspects whether the content and formal requirements are fulfilled in the documentation. Since the beginning of 2007, the NTCA has started to train transfer pricing specialists. Consequently, the NTCA's knowledge of the application of transfer pricing methods has increased significantly. Since 2009, targeted transfer pricing audits have been commonplace; the number of audits and the amount of assessments are growing at a rate of roughly 50% each year. Since 2012, there have been two groups within the NTCA dedicated to transfer pricing issues. One group has specialized mainly in transfer pricing audits of large taxpayers, while the other deals solely with APA and transfer pricing-related MAP requests. Another specialist group was set up in late 2017 with the intention to double transfer pricing audit capacity nationwide. As of 1 October 2021, the group dedicated solely to APA and transfer pricing-related MAP requests, works under the Ministry of Finance.

The likelihood of comprehensive NTCA audits is characterized as medium overall.

For medium and large taxpayers, however, the risk of an audit with a transfer pricing focus can be characterized as high. Large taxpayers are likely to be reviewed every two to three years. In particular, the NTCA places significant focus on loss-making taxpayers and the enforcement of the interquartile range, especially at limited-risk entities.

In line with the new tax procedural rules implemented in Hungary effective from 1 January 2018, the tax audit processes will take shorter duration, which will result in the taxpayers having limited time available for providing information during tax audit processes compared with the former rules.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The NTCA habitually challenges the transfer pricing methodology, especially for situations in which:

- The profitability of the Hungarian party is not tested in the documentation.
- The taxpayer came to an unusual conclusion regarding the transfer prices.
- The pricing method is unusual (i.e., not TNMM).
- The transactions themselves can be regarded as unusual or unique (especially hybrids, CCAs and certain royalty arrangements).

The NTCA continuously cooperates with other countries' tax authorities and follows the international transfer pricing auditing practices as well, through which it constantly develops

its dedicated transfer pricing experts and their auditing practices. Based on experience, the NTCA is now rather knowledgeable about matters concerning method selection; therefore, the risk of the taxpayer's application of a particular transfer pricing methodology being challenged is characterized as medium to high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Such a likelihood may be considered to be medium to high. Whenever the NTCA challenges the methodology, it will almost certainly also prepare an alternative financial analysis that implies an adjustment.

- **Specific transactions, industries and situations, if any, more likely to be audited**

See the "Likelihood of transfer pricing-related audits" section above.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

On 1 January 2007, a formal APA regime was introduced in Hungary. Unilateral, bilateral and multilateral APAs are available according to the provision.

- **Tenure**

Anonymous prefiling consultation with the Ministry of Finance APA team is free. APAs may be requested for ongoing and future transactions, can be relied on for three to five years and can be extended for a further three years. Starting from the date of filing a valid APA request, the taxpayer does not have to prepare transfer pricing documentation for the transactions covered by the APA.

- **Rollback provisions**

There is no rollback provision provided by the law.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty (DTT) to which Hungary is a signatory. Most of Hungary's DTTs permit taxpayers to present a case to the Hungarian Tax Authority within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the Hungarian Tax Authority under the EU Arbitration Convention (90/436/EEC).

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

The tax officers expect that some of the previously issued APAs will have to be modified and renegotiated due to the crisis.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Based on grandfathering rules, loans concluded before 17 June 2016 (and not modified thereafter) are subject to the previous thin-capitalization rules that apply a 3:1 debt-to-equity ratio, although a taxpayer may opt to apply the current rules instead.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate of Internal Revenue.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Reference to transfer pricing can be found in the following:

- Article 57(4) of the Icelandic Income Tax Act No. 90/2003 (documentation requirements), effective from 1 January 2015
- Article 57(3) of the Icelandic Income Tax Act No. 90/2003 (definition of related parties), effective from 1 January 2015
- Regulation No. 1180/2014 on the documentation and transfer pricing in transactions between related parties, effective from 1 January 2015
- Regulation No. 1166/2016 on CbCR, effective from 1 January 2017; new Regulation No. 766/2019 effective from 22 August 2019

- **Section reference from local regulation**

Article 57 of the Icelandic Income Tax Act No. 90/2003 has reference to transfer pricing .

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Iceland is a member of the OECD.

Tax authorities recognize the OECD Guidelines. According to the law, tax authorities may assess and adjust pricing between related parties on the basis of the OECD principles.

Given the newness of both Chapter IX of the OECD Guidelines and the domestic transfer pricing rules, it is unclear how business restructurings will be affected.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- **Coverage in terms of Master File, Local File and CbCR**

The implementation of BEPS covers Master File, Local Files and CbCR.

- Effective or expected commencement date

  BEPS Action 13 has come into effect from 1 January 2016.

- Material differences from OECD report template or format

In general, the Icelandic transfer pricing rules follow the OECD Guidelines. However, additional requirements are stipulated in the following articles of Regulation No. 1180/2014:

- Article 6: Any changes in transfer prices from previous years should be explained.
- Article 7: For service transactions, the taxpayer should be able to demonstrate the arm's-length nature of the allocation of costs and that the costs charged correspond to the benefit received.
- Article 8: Transactions involving intangible assets require additional information related to the intangible asset itself (e.g., the present value of future income from the intangible asset).

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

No, the Local File must additionally meet the requirements stated in Articles 6, 7 and 8 of Regulation No. 1180/2014.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

[1]https://www.rsk.is/english/tax-offices/.

Yes, as of 12 May 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the transfer pricing documentation needs to be prepared before the deadline of the annual tax return.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

The transfer pricing documentation has to be prepared annually under Iceland's local jurisdiction regulations, which follow the OECD Guidelines. Additionally, if there have been any changes in the transfer prices from the previous year, the changes must be documented. As part of the tax return, the taxpayer must file a form (RSK 4.28) providing specific information on transactions with related parties and whether each type of transaction has been documented appropriately. The transfer pricing documentation is to be submitted upon request from the Directorate of Internal Revenue.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

No one report is sufficient for the group.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is a materiality limit for transfer pricing documentation. In accordance with Article 57(4) of the Icelandic Income Tax Act, taxpayers reporting a revenue exceeding ISK1 billion in the previous financial year are required to prepare transfer pricing documentation for the subsequent financial year.

- **Master File**

If revenue in 1 fiscal year or total assets at the start or end of a fiscal year exceed ISK1 billion, the company is required to prepare a Master File.

- **Local File**

If revenue in one fiscal year or total assets at the start or end of a fiscal year exceed ISK1 billion, the company is required to prepare a Local File.

- **CbCR**

There is a threshold of EUR750 million or ISK100 billion consolidated revenue for the preparation of a CbC report.

- **Economic analysis**

There is a de minimis threshold provided for in Article 12 of Regulation No. 1180/2014 whereby transactions that have a limited economic volume and significance on the operations of the taxpayer should only be mentioned in the transfer pricing documentation and are not covered further by the documentation. The de minimis threshold does not apply for transactions related to intangible assets.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

In accordance with Article 15 of Regulation 1180/2014, the transfer pricing documentation should be available in Icelandic or English.

- **Safe harbor availability, including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Iceland tax regulations allows for individual testing of transactions.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Legal entities subject to the documentation requirements must submit form RSK 4.28 with their tax return by 31 May. Form RSK 4.28 requires taxpayers to provide the name of related parties, tax identification numbers, jurisdiction of incorporation, and type and volume of the transaction as well as a "check-the-box" confirmation of whether the transaction has been documented.

- **Related-party disclosures along with corporate income tax return**

Yes.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

No, multinationals operating in Iceland and falling within the scope of Article 91(a) of the Income Tax Act, i.e., with revenues amounting to ISK100 billion in 2018, should file the notification with the Directorate of Internal Revenue by the last day of the reporting period of the ultimate parent entity.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax return filing deadline is 31 May. An extension can be applied for under certain circumstances.

- **Other transfer pricing disclosures and return**

The filing deadline for other transfer pricing disclosures and return is 31 May.

- **Master File**

Completed upon deadline – by the date of the tax return (31 May).

- **CbCR preparation and submission**

The CbCR submission deadline is no later than 12 months following the close of the financial year.

- **CbCR notification**

The CbCR notification shall be filed no later than 1 month after the last day of reporting fiscal year of the MNE Group. The company must file Form RSK 4.31.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation should be finalized along with the tax returns. The documentation is to be submitted only upon request by the Directorate of Internal Revenue.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No; however, the documentation should be prepared by the time the tax return is filed – i.e., 31 May.

- **Time-period or deadline for submission on tax authority request**

The taxpayer will have 45 days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

There is none specified.

b) Priority and preference of methods

The pricing methods are based on the OECD Guidelines. The provision does not specify any one method or prioritize the methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

There are no local benchmarking requirements for Iceland. In accordance with Article 14 of Regulation No. 1180/2014, the Directorate of Internal Revenue may request that a benchmark study be provided.

- **Single-year vs. multiyear analysis**

As the transfer pricing rules in Iceland have only recently been implemented, there has been no clear communication on whether the single-year or multiyear analysis is preferred.

- **Use of interquartile range**

It is unclear whether the interquartile range will be applied by the Directorate of Internal Revenue.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Based on the OECD Guidelines, a fresh benchmarking search every third year is recommended, with an annual update of the financial data.

- **Simple, weighted or pooled results**

There has been no clear communication on whether the simple average or the weighted average will be preferred by the Directorate of Internal Revenue.

- **Other specific benchmarking criteria, if any**

There has been no clear communication on what the appropriate independence criteria should be. However, based on the definition of "related parties" in Article 57(4) of the Icelandic Income Tax Act, the independence threshold should be below 50%.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

According to new law no. 61/2021the penalty amounts are as follows:

ISK3 million for each financial year in which a company has not fulfilled its documentation obligation in part or in full.

ISK3 million if the company does not fulfill its obligation to document within 45 days of request from the tax authority.

ISK1.5 million if the company has submitted documentation that the DIR does not consider satisfactory and the company has not made corrections in accordance with the DIR´s requirements within 45 days.

Penalties may be imposed for a maximum of six income years immediately preceding the year for which the penalty was imposed and can amount to a maximum of ISK6 million. The penalty is reduced by 90%, 60% and 40% respectively, if deficiencies in documentation are rectified within 30 days, two months and three months of the DIR´s ruling. Same as below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The provision states that tax authorities may assess and adjust pricing between related parties as they are defined in the provision based on the OECD principles. These adjustments can be performed within the domestic statute of limitations period (i.e., for the six previous years from the date of the adjustment). A 25% penalty can be applied to the adjustment of pricing in case of underpayments.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above. The penalties are only applied to the adjustment of pricing in case of underpayments.

- **Is interest charged on penalties or payable on a refund?**

There is none specified.

b) Penalty relief

According to Article 108 of Act 90/2003 on income tax, the general rule is that a penalty can be avoided if the taxpayer is not responsible for the situation causing the adjustment of pricing or if the situation is caused by a force majeure.

Failure to comply with documentation rules does not provide penalty relief.

If the taxpayer does not agree with the adjustment proposed by the Directorate of Internal Revenue, the adjustment can be appealed to the Internal Revenue Board, which is the supreme administrative appeals authority for cases regarding taxation, value-added tax (VAT) and duties; it is independent of the Directorate of Internal Revenue and the Ministry of Finance.

10. Statute of limitations on transfer pricing assessments

The statute of limitations period is six years prior to the year of assessment.

11. Are there any COVID-19 related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit, in general, depends on several factors, such as the surveillance plan of the tax authorities, the type of business, revenue and compliance. The risk can, therefore, be defined as medium.

The Directorate of Internal Revenue has recently established a dedicated transfer pricing team. Therefore, the likelihood that a transfer pricing audit will be initiated is considered medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

As a dedicated team has only recently been established by the Directorate of Internal Revenue, we are unable, at this time, to assess the likelihood of transfer pricing methodology being challenged.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

See the previous section.

- **Specific transactions, industries and situations, if any, more likely to be audited**

See the previous section.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The Directorate of Internal Revenue has, to date, not issued any bilateral APAs. Furthermore, it is uncertain, at this time, whether it will be possible to obtain a binding ruling for transfer pricing purposes (equivalent to unilateral APAs).

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules are included in the Income Tax Act. The rules limit interest deduction to 30% of earnings before interest, taxes, depreciation, and amortization (EBITDA).

The rules do not apply if:

a) **Interest expense of taxable party from loan agreements between related parties is less than ISK100 million.**

b) **Interest expense of taxable party is from loan agreements between consolidated companies that are jointly taxed or meet the criteria for joint taxation.**

c) **The taxable party demonstrates that its equity ratio is no less than 2% below the equity ratio of the group it is a part of.**

d) **The taxable party is a financial institution or an insurance company.**

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Income Tax Department under the Central Board of Direct Taxes (Department of Revenue of the Ministry of Finance).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer pricing legislation in India is contained in Chapter X of the Income Tax Act, 1961 (the Act). Further, the rules for interpretation and implementation of the provisions are contained in the Income Tax Rules, 1962 (the Rules).

Transfer pricing legislation in India is effective from financial year 2001–02 for international transactions and from FY2012–13 for specified domestic transactions (SDTs).

- **Section reference from local regulation**

In the Act, Sections 92 to 92F and Section 286 govern and regulate the transfer pricing provisions in India. Further, Sections 270A, 271, 271AA, 271BA, 271G and 271GB provide for various types of penalties in cases of non-compliance with the prescribed transfer pricing provisions. The rules for interpretation and implementation of the provisions are rules 10A to 10THD, 44G and 44GA of the Rules.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

The CBDT Circular No. 1/2022 dated 11 January 2022 has extended the due dates for various compliances in India for the year ending 31 March 2021. Accordingly, the deadline for India transfer pricing compliances for the year ending 31 March 2021 now stands as follows:

- **Filing of accountant's report and maintenance of transfer pricing documentation:**
  - Statutory due date: 31 October 2021
  - Revised due date as per the circular: 15 February 2022
- **Filing of Master File:**
  - Statutory due date: 30 November 2021
  - Revised due date as per the circular: 15 March 2022

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Indian transfer pricing legislation is broadly based on the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. Even though India is not a member of the OECD, the OECD Transfer Pricing Guidelines have been recognized as providing useful aid in applying the Indian transfer pricing rules to the extent they are not inconsistent with the income tax law. During the examination process, transfer pricing officers (TPOs) have generally acknowledged and placed reliance on the OECD Transfer Pricing Guidelines, UN Practical Manual on Transfer Pricing for Developing Countries (UN transfer pricing manual) as well as other foreign jurisdiction transfer pricing rules, case law and practices when applying domestic transfer pricing rules, as long as these are not inconsistent with any specific provision contained in the Indian transfer pricing rules. Similarly, courts in India have acknowledged the relevance of the OECD Transfer Pricing Guidelines for understanding Indian transfer pricing rules. However, in certain situations where the Indian rules specifically deviate from the OECD Transfer Pricing Guidelines, the courts have held that specific Indian rules take precedence over the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

BEPS Action 13 requires countries to adopt a standardized three-tiered approach to documentation that includes Master File, Local File and CbCR.

As regards Local File, India has not formally adopted the Action 13 Local File template; however, the Indian transfer pricing regulations have specifically prescribed contemporaneous documentation requirements since the introduction of the transfer pricing regime in India. The contents are largely in line with the OECD Transfer Pricing Guidelines but with certain modifications.

[1] **https://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx**

Master File and CbCR were introduced in the Indian transfer pricing legislation with effect from FY2016-17.

- **Coverage in terms of Master File, Local File and CbCR**

Refer to previous question for details.

- **Effective or expected commencement date**

Transfer pricing documentation requirement is in place from FY2001-02. Master File and CbCR are applicable from FY2016-17.

- **Material differences from OECD report template or format**

Local File: As provided above, India has not formally adopted the Action 13 Local File template; however, the Indian transfer pricing regulations have specifically prescribed contemporaneous documentation requirements since the introduction of transfer pricing regime in India. The contents are largely in line with the OECD Transfer Pricing Guidelines but with certain modifications.

Master File: The master file content as required under the Indian master file rule is largely in line with the contents as prescribed under the Action 13 report barring a few additional requirements provided as follows:

- Maintenance of a list of all the entities of the international group along with their addresses – this information does not form part of Action 13 report.
- A description of the functions performed, assets employed and risks assumed by the constituent entities of the international group that contribute at least 10% of the revenues or assets or profits of the group – the Action 13 report requires a brief written functional analysis describing the principal contributions to value creation by individual entities within the group.
- A list of all the entities of the international group engaged in development and management of intangibles along with their addresses – the Action 13 report requires a general description of location of principal research and development (R&D) facilities and location of R&D management.
- A detailed description of the financing arrangements of the international group, including the names and addresses of the top 10 unrelated lenders – the Action 13 report requires a general prescription of group financing activities, including financing arrangements with unrelated lenders.
- In a number of instances, master file rule requires a "detailed description," instead of a "general description" mentioned in the Action 13 report, particularly with respect to transfer pricing policies relating to research and development (R&D), intellectual property (IP) and financing arrangements.

CbCR: There are no deviations.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Rule 10D prescribes the contemporaneous transfer pricing documentation rules. Accordingly, the expectation is to align the documentation in line with the Rule 10D requirement to mitigate penalty risk.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

India signed the MCAA on 12 May 2016 and notified the same on 28 July 2017 to give effect to the MCAA. On 27 June 2018, India released Instruction No. 02/2018 (the Guidance) to provide guidance on the appropriate use of CbCR. The Guidance provided that India would separately enter into bilateral competent authority agreements (BCAAs) for the automatic exchange of CbCR either based on the existing bilateral tax treaties or the Tax Information Exchange Agreements where other jurisdictions have not signed or ratified the CbCR MCAA. Based on the MCAA or the relevant BCAAs, India will exchange CbCR filed by a parent entity of an MNE group or an alternate reporting entity (ARE) resident in India for financial years starting from 1 April 2016 and will also receive CbCR of non resident MNE groups that have constituent entities in India.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Contemporaneous local documentation needs to be maintained by the taxpayer in respect of the international transactions if the aggregate value of international transactions during the year exceeds INR10 million (approx. USD155,000). However,

basic documents and information justifying the intercompany transfer prices must be maintained in all cases.

Indian transfer pricing regulations provide that the documentation should be prepared contemporaneously and should exist no later than the due date for filing return of the income for the relevant financial year. Accordingly, the documentation should be maintained and finalized by the taxpayer by 31 October[2] of the following financial year in which such international transactions or SDTs take place.

Further, please note that the taxpayer should obtain a certificate from an accountant in the prescribed form (i.e., Form 3CEB) in respect of the international transactions or SDTs and furnish such certificate on or before the said due date. Therefore, maintaining the local transfer pricing documentation by such due date is critical since it ensures that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices and other conditions for transactions between associated enterprises (AEs) and in reporting the income derived from such transactions in their tax returns.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Contemporaneous local documentation needs to be maintained by the taxpayer in respect of the international transactions if the aggregate value of international transactions during the year exceeds INR10 million (approx. USD155,000). However, basic documents and information justifying the intercompany transfer prices must be maintained in all cases.

- **Master File**

Master File requirements apply to every taxpayer being a constituent entity of an international group if the following two conditions are satisfied:

- **The consolidated revenue as reflected in the consolidated financial statement of the international group for the accounting year exceeds INR5 billion (approx. USD66 million).**
- **Either of the below transactional thresholds is achieved for the accounting year:**
  - The aggregate value of international transactions as per the books of accounts maintained by the taxpayer exceeds INR500 million (approx. USD7 million).
  - The purchase, sale, transfer, lease or use of IP as per the books of accounts maintained by the taxpayer exceeds INR100 million (approx. USD1 million).
- **Local File**

As mentioned earlier, the Indian transfer pricing regulations have specifically prescribed contemporaneous documentation requirements since the introduction of the transfer pricing regime in India. The contents are largely in line with the OECD Transfer Pricing Guidelines but with certain modifications.

- **CbCR**

Applicable to an international group with consolidated group revenues exceeding INR6,400 crores as on the last day of the preceding accounting year.

CbCR provisions are applicable if the consolidated group revenue as reflected in the consolidated financial statement for the preceding accounting year exceeds INR55 billion (approx. USD730 million). The OECD CbCR Peer Review Report (Phase 2 issued in 2019) noted that the annual consolidated group revenue threshold calculation rule applies in a manner that is inconsistent with the OECD guidance on currency fluctuations in respect of an MNE group whose ultimate parent entity (UPE) is located in a jurisdiction other than India. This is an exception to the OECD guidance.

- **Economic analysis**

Fresh economic analysis should be undertaken every year.

c) Specific requirements

- **Treatment of domestic transactions**

The Indian transfer pricing regulations apply to domestic related-party transactions where one of the entities involved enjoys tax holiday. However, the aggregate value of such

[2]Finance Act 2020 advanced the due date for maintenance of transfer pricing documentation by one month (i.e., 31 October in place of 30 November).

transactions should exceed INR200 million (approx. USD3 million).

- **Local language documentation requirement**

No, it should be maintained in English.

- **Safe harbor availability, including financial transactions if applicable**

The income tax law already incorporates some administrative safe harbors, such as alleviation of documentation requirements and examination or scrutiny procedures for small taxpayers. To further provide administrative simplicity for small taxpayers and allocate more resources to the examination of larger transactions and taxpayers, safe-harbor rules were introduced to provide for circumstances under which the income tax authorities will accept the transfer pricing declared by the taxpayer.

The Central Board of Direct Taxes (CBDT) issued transfer pricing safe-harbor rules on 18 September 2013, applicable for five years beginning from FY2012–13 to FY2016–17. The safe-harbor rules were amended with effect from 1 April 2017 and were made applicable for three fiscal years from FY2016–17 through FY2018–19. Further, CBDT extended the safe harbor rules for FY 2019–20[3] and FY 2020–21.[4]

The safe-harbor rules covered the following international transactions:

- **Provision of software development services other than contract R&D services, information technology-enabled services and knowledge process outsourcing services all with insignificant risks**
- **Advancing of intragroup loan to a non resident wholly owned subsidiary**
- **Provision of corporate guarantee to wholly owned subsidiary**
- **Provision of specified contract R&D services wholly or partly relating to software development with insignificant risks**
- **Provision of specified contract R&D services wholly or partly relating to generic pharmaceutical drugs with insignificant risks**
- **Manufacture and export of core auto components**
- **Receipt of low-value-adding intragroup services**

The Finance Act 2020 has expanded the scope of safe harbor rules to specifically cover determination of profit/income attributable to a business connection (i.e. a concept under the Indian domestic tax law, which is perceived to be much wider than the permanent establishment (PE) rule under applicable tax treaty) or a PE (under the tax treaty) of a non resident company in India. Taxpayers that formally concede a business connection or PE in India can opt for safe harbor rules for obtaining certainty on profit attribution to PE in India. The amended scope of safe harbor is effective from financial years starting from 1 April 2019. However, no specific safe harbor rate/margin is yet prescribed by the Indian Tax Administration for profit attribution cases.

Any taxpayer that has entered into an eligible international transaction and that wishes to exercise the option to be governed by the safe-harbor rules is required to file a Form 3CEFA and furnish it before the due date for filing the tax return for either:

- The relevant financial year (1 April to 31 March), in case the option is exercised only for that financial year
- The first of the financial years, in case the option is exercised for more than one financial year

The form is in the nature of a self-declaration and needs to be signed by the person who is authorized to sign the tax return.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not applicable.

- **Any other disclosure or compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers should obtain a certificate from an accountant in the prescribed form (i.e., Form 3CEB) in respect of the international transactions or SDTs. Form 3CEB contains list of AEs, nature and value of international transactions, most appropriate method, voluntary transfer pricing adjustment, if any, etc. The form needs to be filed online.

Form 3CEFA is provided in the safe-harbor section, if the taxpayer wishes to opt for safe harbor.

[3]Notification No. 25/2020/ F. No. 370142/14/2020-TPL dated 20 May 2020

[4]Notification No. 117/2021/F. No. 370142/44/2021-TPL

- **Related-party disclosures along with corporate income tax return**

The contemporaneous local documentation contains all the disclosures and transfer pricing-related appendices.

- **Related-party disclosures in financial statement/annual report**

Disclosure as per the Indian GAAP.

- **CbCR notification included in the statutory tax return**

No, separate form prescribed for CbCR notification (Form 3CEAC).

- **Other information/documents to be filed**

The filing of the Master File is done in Form 3CEAA. Where there is more than one designated entity resident in India, the notification by a designated constituent entity of an international group with respect to single filing of Master File should be done in Form 3CEAB.

CbCR filing is to be done in Form 3CEAD where the parent entity or ARE is resident in India or in case where a secondary CbCR filing obligation is triggered in India. Designation of a constituent entity for single filing of CbCR shall be done through Form 3CEAE.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 30 November following the relevant financial year for taxpayers where transfer pricing provisions are applicable.

- **Other transfer pricing disclosures and return**

Taxpayers should obtain a certificate from an accountant in the prescribed form (i.e., Form 3CEB) in respect of the international transactions or SDTs and furnish such certificate on or before 31 October[5] of the following financial year in which such international transactions or SDTs take place.

- **Master File**

Master File in Form 3CEAA should be filed on or before 30 November following the relevant financial year.

Notification for designation of constituent entity for single filing of Master File in Form 3CEAB should be filed on or before 31 October following the relevant financial year.

- **CbCR preparation and submission**

Primary filing requirement:

- Where the UPE or the ARE is resident in India.

Secondary filing requirement or trigger for local filing (one or more of the below):

- The UPE is not obligated to file a CbCR.
- India does not have an arrangement for the exchange of CbCR.
- The jurisdiction or tax jurisdiction is not exchanging information with India even though there is an agreement for exchange and this fact has been communicated to the constituent entity by the Indian Tax Administration (systemic failure).

[5]Finance Act 2020 advanced the due date for maintenance of transfer pricing documentation by one month (i.e., 31 October in place of 30 November).

Scenario	Entity responsible	Filing obligation	Accounting period	Due date
UPE or ARE resident in India	UPE or ARE resident in India	CbCR in Form 3CEAD	April to March	12 months from end of reporting accounting year[6] (31 March 2020 for accounting year ending 31 March 2019)
UPE or ARE not resident in India and no trigger for secondary filing	Constituent entity	Notification in Form 3CEAC	Accounting period followed by the UPE	At least two months prior to the due date for furnishing CbCR in UPE or ARE jurisdiction
Secondary filing trigger in case A and B	Indian constituent entity	CbCR in Form 3CEAD	Accounting period followed by the UPE	12 months from the end of the reporting accounting year followed by the MNE
Secondary filing trigger in case C (systemic failure)	Indian constituent entity	CbCR in Form 3CEAD	Accounting period followed by the UPE	Within six months from the end of the month in which constituent entity is intimated of such systemic failure by the Income Tax Department

CbCR notification

CbCR notification in Form 3CEAC should be filed at least two months prior to the due date for furnishing CbCR in the UPE or ARE jurisdiction.

b) Transfer pricing documentation/Local File preparation deadline

Please refer to the section below.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Contemporaneous local transfer pricing documentation should be maintained and finalized by the taxpayer by 31 October[7] of the following fiscal year in which such international transactions or SDTs take place.

- **Time period or deadline for submission upon tax authority request**

Under the Act, the prescribed documentation or information maintained by the taxpayer in respect of its transfer pricing arrangements would have to be produced before the tax authorities during the course of audit proceedings within 30 days after such request has been made. The period of 30 days can be extended based on the discretion of the tax officer.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

The CBDT Circular No. 1/2022 dated 11 January 2022 has extended the due dates for various compliances in India for the year ending 31 March 2021. Accordingly, the deadline for India transfer pricing compliances for the year ending 31 March 2021 now stands as follows:

- **Filing of accountant's report and maintenance of transfer pricing documentation**

  Statutory due date: 31 October 2021.

  Revised due date as per the circular: 15 February 2022.

- **Filing of Master File**

  Statutory due date: 30 November 2021.

  Revised due date as per the circular: 15 March 2022.

[6]Defined as period from 1 April to 31 March of next year in case of UPE resident in India.

[7]Finance Act 2020 advanced the due date for maintenance of transfer pricing documentation by one month (i.e., 31 October in place of 30 November).

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: yes

b) Priority and preference of methods

In addition to five methods provided in the OECD Transfer Pricing Guidelines, the Indian transfer pricing legislation has prescribed the sixth method as "other method" in determination of arm's-length price. There is no hierarchy for selection of methods. The most appropriate method for a transaction will be adopted.

8. Benchmarking requirements

- **Local vs. regional comparables**

Where tested party is India, preference is given to Indian comparables only. Also, it has been held in a few notable tax court rulings that selecting an overseas entity as the tested party may not be appropriate because it is difficult to obtain all relevant facts and data required for undertaking a proper analysis of functions, assets and risks, as well as to make the requisite adjustments.

In case there are no local Indian comparables, foreign comparables may be used. However, generally, acceptance of foreign comparables are highly litigative in India.

Use of foreign comparables is generally not acceptable, unless the tested party is located overseas. Based on experience, tax authorities have a tendency to take Indian entity as tested party and accordingly use Indian comparable companies.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year testing specifically, three years (including the current year).

- **Use of interquartile range**

Where there is a minimum of six comparables, the range concept, i.e., 35th percentile to 65th percentile is applied. In other cases, arithmetic mean is applicable. Interquartile range is not recognized under the existing regulations.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Requires fresh benchmarking every year.

- **Simple, weighted or pooled results**

Weighted average.

- **Other specific benchmarking criteria, if any**

It is not specifically provided in the law. However certain qualitative and quantitative filters for selection of comparables are followed at the time of preparation of transfer pricing documentation as well as during transfer pricing audits.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Two percent of the value of the international transaction or specified domestic transaction entered into.

- **Consequences of failure to submit, late submission or incorrect disclosures are as follows:**

Default	Nature of penalty
In case of a post-inquiry adjustment deemed to have been underreporting or misreporting of income	▸ **No penalty, where transfer pricing documentation maintained, transactions declared and material facts disclosed** ▸ **50% of tax on transfer pricing adjustment, where transfer pricing documentation has not been maintained** ▸ **200% of tax on transfer pricing adjustment, where the same is in consequence of not reporting an international transaction**
Failure to maintain transfer pricing documentation, and failure to report the transaction, maintenance or furnishing of incorrect information or document	2% of the value of each international transaction or SDT
Failure to furnish accountant's report	INR100,000
Failure to furnish documents or report transaction	2% of the value of the international transaction or SDT
Failure to furnish the Master File by prescribed date	INR500,000
Furnishing inaccurate particulars in the CbCR (subject to certain conditions)	INR500,000
Failure to submit CbCR by the reporting entity: ▸ **Where period of failure is less than or equal to one month** ▸ **Where the period of failure greater than one month** ▸ **Continuing default after service of penalty order**	▸ **INR5,000 per day** ▸ **INR15,000 per day** ▸ **INR50,000 per day**
Failure to respond within 30 days to CbCR-related queries (extendable by maximum 30 days)	▸ **INR5,000 per day up to service of penalty order** ▸ **INR50,000 per day for default beyond date of service of penalty order**

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes; however, penalty proceedings are separate from regular audit and assessment proceedings. Accordingly, the taxpayer has a separate right to appeal for penalty cases.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not applicable.

- **Is interest charged on penalties or payable on a refund?**

No, interest is not charged on penalties. Further interest is payable on refunds.

b) Penalty relief

In the case of underreporting or misreporting of income, the taxpayer may make an application to the assessing officer to grant immunity from imposition of penalty upon satisfaction of certain conditions and within specified time limit.

10. Statute of limitations on transfer pricing assessments

Period	Time limit for completion of assessment by TPO	Time limit for completion of assessment by Assessing Officer
Up to FY2016-17	43 months from the close of relevant financial year	45 months from the close of relevant financial year
For FY2017-18	40 months from the close of relevant financial year	42 months from the close of relevant financial year
From FY2018-19 onward	34 months from the close of relevant financial year	36 months from the close of relevant financial year

In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliance requirements due to

the outbreak of COVID-19, where the completion of any proceedings or passing of any order or issuance of any notice/intimation/notification/sanction/approval or such other action by any authority or commission or tribunal under the ITL falls due between 20 March 2020 and 31 December 2020, in such cases the date for completion of such compliances is extended to 31 March 2021 (Notification No.35 /2020/ F. No. 370142/23/2020-TPL dated 24 June 2020).

Further, the tax authorities may reopen the case if they determine that the income has escaped assessment. Such assessment may be reopened within the following time limit.

Situations	Time limit for reopening the case
If the escaped income is less than INR0.1 million	Five years from the end relevant financial year
If the escaped is or likely to exceed INR0.1 million	Seven years from the end of relevant financial year
If the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment	17 years from the end of relevant financial year

With effect from 1 April 2021, a new period of limitation for reassessment proceedings has been introduced in the Income-tax Act, 1961 which provides a time limit of four years or 11 years from the relevant financial year for the purpose of issuing the reassessment notice to the taxpayer. To apply the extended time limit of 11 years, the following conditions need to be satisfied:

- **The assessing officer should have evidence or a document to reveal that the income chargeable to tax, which is represented in the form of asset, has escaped assessment.**
- **The value of escapement amounts or is likely to amount to INR50 lakhs (~$67k) or more for that year.**

Where both the above conditions are satisfied, an extended period of 11 years is applicable for issuing the reassessment notice. Also, the new limitation provisions restrict the issue of notice in case a relevant financial year is time-barred as per the old limitation provisions (i.e., seven years from the end of relevant financial year).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

The Indian tax authorities have introduced a scheme to provide dispute resolution for pending income tax litigation that includes transfer pricing litigation as well. The deadline for availing relief under the scheme has been extended from 30 June 2020 to 31 December 2020.

With respect to routine transfer pricing audits, the time limit for completing the audit for the year ending 31 March 2017 has been extended from 31 October 2020 to 31 January 2021. (Support publication "The Taxation And Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020" dated 29 September 2020).

With respect to the transfer pricing audit for financial year 2017-18, the time limit for completion of assessment has been extended to 30 January 2022.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood is generally high. The CBDT provides internal instructions on selection of cases for transfer pricing audits. Earlier, the selection criteria was based on monetary threshold of the value of the international transactions entered into during a particular fiscal year. Currently, the selection is based on "transfer pricing risk parameters" under the computer-assisted scrutiny selection (CASS) system. It also indicates circumstances under which cases can be selected for audits manually.

While the "risk parameters" are not defined, the same is available internally with the tax authority. The primary responsibility for undertaking transfer pricing audits lies with specialized TPOs. The current selection of cases for transfer pricing audits can be expected to result in more targeted and more cost-effective use of limited resources from a tax administration's perspective.

Accordingly, disclosures or reporting in Form 3CEB would not only be relevant from a penalty perspective, but also from an audit risk perspective, in light of the current process for selection of cases.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of transfer pricing methodology being challenged by the tax authorities may be considered to be high. Among other things, the BEPS principles are being applied during the course of transfer pricing audits by the Indian tax authorities. Detailed information on the functional aspects of the Indian entity, the ability of Indian affiliate to

exercise control over operational and other risks, etc., are being asked for thorough evaluation. Therefore, deciding on appropriate characterization and accurate delineation of transaction for transfer pricing purpose is of paramount importance. Further, it is often noticed that the tax authorities, while undertaking a comparability analysis, apply varying quantitative criteria to re-determine the arm's-length price. Moreover, issues, such as location savings or location-specific advantages, credit period, treatment of foreign exchange gain or loss, appropriateness of cost base and allocation of common costs, are triggering specific attention of the tax authorities.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high, for the reasons specified above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Royalty and management fee:

- Payment for the use of intangible property, such as trademarks, know-how and brand names, by Indian taxpayers is being scrutinized in great detail by the TPOs. The underlying assumption is that these payments are base-eroding in nature. TPOs often issue detailed notices to taxpayers requiring them to demonstrate the benefit received from the intangible property in order to justify the payment of royalties.
- Detailed information is sought on the type of intangible, similar arrangements within the multinational group and the methodology adopted by the taxpayer to arrive at the arm's-length price. TPOs typically expect the intercompany agreements and transfer pricing documentation to provide a detailed description of the intangible.
- In most cases, the TPOs reject the taxpayer's analysis and disallow the payment of royalties on the grounds that the taxpayer has not substantiated the benefit received from the intangible. Another reason for disallowance of the royalty payments is the unavailability of organized information on intangible property arrangements in India. In the absence of good-quality comparables and due to the reluctance of TPOs to rely on foreign databases, TPOs tend to disallow the payments.
- Taxpayers face similar challenges for management fee allocations from their affiliates. TPOs tend to scrutinize such allocations in detail to assess whether they provide a benefit to the Indian entity, whether the benefit is remote or incidental and whether any of these charges relate to shareholder activities or are duplicative.
- Therefore, TPOs would examine the approach to allocation and whether the costs have been marked up. Detailed information is sought on the nature of the services, the organizational structure of the Indian entity, the value of the services, the determination of costs, the benefit received by the Indian affiliate, the allocation key adopted and the methodology chosen to defend the payment.
- Taxpayers are typically asked to describe the activities undertaken by the foreign affiliates and are also asked to quantify the time spent in India. In most cases, TPOs reject the taxpayer's analysis and disallow the deduction for payment of management fees on the grounds that the taxpayer has not substantiated the benefit received or that the services are duplicative in nature.

Marketing intangibles:

- Transfer pricing aspects of marketing intangibles have been a focus area for the Indian transfer pricing administration. The issue is particularly relevant to India due to its unique market-specific characteristics such as location advantages, market accessibility, large customer base, market premium and spending power of Indian customers.
- The Indian market has witnessed substantial marketing activities by the subsidiaries or related parties of MNE groups in the recent past, which have resulted in the creation of local marketing intangibles.
- The present approach of the Indian tax administration for carrying out transfer pricing reviews is in line with the judicial rulings as well as the recommendations contained in the BEPS Action Plans 8–10.
- The approach of the Indian tax authorities is to carry out a detailed functional analysis to identify all the functions of the taxpayer and the AEs pertaining to the international transactions as well as to determine the development, enhancement, maintenance, protection and enhancement (DEMPE) functions.
- The issue on whether advertisement, marketing and promotion expense is an international transaction or not is currently pending before the Apex Court of India.

Contract R&D centers:

- Generally, the Indian affiliates providing services operate as "captive service providers" and are insulated

from business risks. Audit experience indicates that tax authorities expect the service providers to earn a margin in the range of 25% to 30% on operating costs, as compared with the margins determined by taxpayers, which are in the range of 10% to 15% on costs.

- While the approach adopted by the tax authorities to justify these margins is by adopting a different approach to accepting or rejecting comparable data as compared with that adopted by the taxpayer, the underlying rationale appears to be to try to shift some of the location savings generated from the multinational enterprise to India.
- Further, CBDT has issued Circular (6/2013) which lays down the guidelines for identifying a development center as a contract R&D service provider with insignificant risk.

Other key areas:

- Others key areas of focus include treatment of excess outstanding receivables as a loan to AE, treatment of notional cost and pass-through cost (free of cost assets or services), transfer pricing concerning financial transactions, remuneration model in case of procurement structures, aggregation vs. transaction by transaction approach, etc.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The Finance Act 2012 introduced provisions to enable APAs in the income tax law with effect from 1 July 2012. It empowered the board to enter into an APA with any person, determining the arm's-length price or specifying the manner in which the arm's-length price is to be determined, in relation to an international transaction to be entered into by that person. Indian APA program provides an option to seek a unilateral, bilateral or multilateral APA.

The Finance Act 2020 has expanded the scope of APA provisions to specifically cover determination of profit/income attributable to a business connection (i.e., a concept under the Indian domestic tax law, which is perceived to be much wider than the PE rule under applicable tax treaty) or a PE (under the tax treaty) of a non resident company in India. Taxpayers that formally concede a business connection or PE in India can opt for an APA (unilateral/bilateral) for obtaining certainty on profit attribution to PE in India. The manner of determination may include any methods as provided under the Indian domestic tax law including transfer pricing methods. The amendment is effective from the financial year starting from 1 April 2020. Formal APA application needs to be filed before the beginning of the financial year (i.e., on or before 31 March) for which the taxpayer intends to cover the profit attribution issue or before undertaking any transactions due to which there would exist a PE.

- **Tenure**

The APA can be opted for up to five years along with a rollback up to four consecutive years prior to the APA period, effectively covering nine years.

- **Rollback provisions**

A rollback would be available to taxpayers who have opted for an APA up to four consecutive years prior to the APA period. The income tax law also contains rules on rollback of APAs.

- **MAP opportunities**

It is available. The MAP Article contained in India's Double Taxation Avoidance Agreement (DTAA) – largely based on Article 25 of the OECD Model Tax Convention – provides a mechanism independent from the ordinary legal remedies available under the domestic tax law. While MAP is of fundamental importance to the proper application or interpretation of DTAAs, it has particularly emerged as a widely used mechanism for resolving transfer pricing disputes. The procedures for invoking MAP and giving effect to the MAP resolution for granting of relief in respect of double taxation or for avoidance of double taxation are contained in Rule 44G.

Most of the Indian DTAAs provide for invoking MAP within a period of three years from taxation not in accordance with the DTAA. Further, MAP may be invoked even in case where the DTAA does not contain a provision similar to Article 9(2) of the OECD Model Tax Convention providing for corelative relief.

The recent OECD Peer Review report relation to implementation of BEPS Action 14 noted that India met half of the elements of Action 14 minimum standard. To be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 minimum standard, India needs to amend and update a certain number of its tax treaties. This is expected to take place either through the multilateral instrument (MLI) or via bilateral negotiations.

Recently, the CBDT amended MAP rules, which provided additional guidance to taxpayers on MAP. Also, it provided that the Indian competent authorities will attempt to resolve the tax

disputes arising from the actions of the tax authorities, within an average time of 24 months.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

With respect to the APAs concluded between 20 March 2020 to 02 October 2020, the deadline for annual compliance has been extended to 31 March 2021.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There is no prescribed debt-to-equity ratio or thin-capitalization rule under the income tax law. While, historically, determination of arm's-length interest rate with respect to intercompany financing arrangement was the only challenge. The focus of current transfer pricing scrutiny has shifted to determination of "arm's-length" quantum, i.e., whether the extent of debt or capital structure of the borrower is itself "arm's length." Hence the benchmarking of intercompany financing transactions involves two aspects (i) determination of arm's-length capital structure and (ii) determination of arm's-length interest rate. This also finds support from the recent OECD Transfer Pricing Guidelines on financial transactions as well as the UN discussion.

Further, the need to assess the arm's-length debt level also arises on account of General Anti-Avoidance Rules (GAAR) in India which is applicable with effect from 1 April 2017. GAAR has introduced a concept of "arm's-length dealing test" (ALDT) as distinguished from determination of arm's-length price under the transfer pricing provisions. Where an arrangement creates rights or obligations which are not ordinarily created between people dealing at arm's length, the same would be regarded as an "impermissible avoidance arrangement (IAA)" and may be recharacterized as equity in case of a loan arrangement.

Also, in line with the recommendations of the BEPS Action 4 Final Report, the Finance Act 2017 introduced an interest limitation rule in the ITA, even though Action 4, dealing with limiting base erosion through interest and other financial payments, does not constitute a minimum standard. The said provisions are applicable to an Indian company or a PE of a foreign company in India (collectively referred to as "borrower") if the following conditions are met:

- The borrower is engaged in any business or profession other than banking or insurance
- The borrower incurs expenditure in the nature of interest or similar consideration exceeding INR10 million (approximately USD150,000) in a financial year

Such interest expense or similar consideration is deductible in computing the taxable income of the business or profession.

The debt is issued by a non-resident AE of the borrower or by a third-party lender but an AE either provides an implicit or explicit guarantee to such lender or deposits corresponding to and matching amount of funds with the lender.

The term "debt" has been defined to mean any loan, financial instrument, finance lease, financial derivative or any arrangement that gives rise to interest, discounts or other finance charges.

If the above conditions are satisfied, the "excess interest" shall not be deductible in computing the taxable income of the taxpayer. The "excess interest" is computed as the excess of 30% of the earnings before interest, tax, depreciation and amortization (EBITDA) of the borrower for the relevant financial year, or interest paid or payable to the AE, whichever is less. In other words, the interest deduction is limited to the lower of the borrower's 30% of EBITDA, or interest actually paid or payable to the AE. For any financial year, if the interest expenditure is disallowed for being in excess of the limitation prescribed, the provisions allow for carry forward of such excess interest expense. Accordingly, such portion of the interest expense can be carried forward up to the following eight FYs immediately succeeding the financial year for which such disallowance was first made. Further, the deduction for such carried forward excess interest would be allowed against the future taxable income as long as the interest expenditure is within the prescribed ceiling.

Relaxations in due dates for specific compliances under the ITL due to the outbreak of novel COVID-19[8]

[8]CBDT Circular No. 1/2022 dated 11 January 2022

Compliances	Existing due date as per the ITL	Is there an extension of timeline?
Filing of tax return for FY 2020-21 for cases involving transfer pricing	▸ 30 November 2021	▸ Yes, 15 March 2022
Filing of Form 3CEB for FY 2020-21	▸ 31 October 2021	▸ Yes, 15 February 2022
Maintenance of transfer pricing documentation for FY 2020-21	▸ 31 October 2021	▸ Yes, 15 February 2022
Filing of Form 3CEAA (master file) for FY 2020-21	▸ 30 November 2021	▸ Yes, 15 March 2022
Filing of Form 3CEAB (master file designation form) for FY 2020-21	▸ 31 October 2021	▸ Yes, 14 February 2022
Filing of Form 3CEAC (CbC report notification)	▸ At least 2 months prior to the due date for furnishing CbCR in UPE/ARE jurisdiction	▸ It depends on the due date for filing CbC report in respective local jurisdiction. It is suggested to file the India notification at the earliest.
Filing of Form 3CEAD (CbC report)		
▸ UPE is resident in India	▸ 12 months from end of reporting accounting year[9] (31 March 2022 for accounting year ending 31 March 2021)	▸ No
▸ ARE is resident in India	▸ 12 months from the end of the reporting accounting year followed by the MNE.	▸ No
▸ Secondary filing trigger where the UPE is not obligated to file a CbC report or India does not have an arrangement for the exchange of CbC report	▸ 12 months from the end of the reporting accounting year followed by the MNE.	▸ No
▸ Secondary filing trigger due to systemic failure	▸ Within six months from the end of the month in which constituent entity is intimated of such systemic failure by the Income Tax Department.	▸ No
Time limit to opt for safe harbor for FY 2020-21	▸ 30 November 2021	▸ Yes, 15 March 2022

[9]Defined as period from 1 April to 31 March of next year

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Directorate General of Taxes (DGT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Law Number 7 Year 1983 regarding Income Tax (as lastly amended by Law Number 7 Year 2021) (PPh Law)
  - Law Number 6 Year 1983 regarding General Taxation Provisions and Procedures (as lastly amended by Law Number 7 Year 2021) (KUP Law)
  - Law Number 8 Year 1983 regarding Value-Added Tax of Goods and Services and Sales Tax on Luxury Goods (as lastly amended by Law Number 7 Year 2021) (PPN Law)
  - Minister of Finance Regulation Number PMK 213/PMK.03/2016 dated 30 December 2016 (PMK-213), regarding guidance on types of additional documents or information that is required to be kept by taxpayers who conduct transactions with related parties, and its procedures

Indonesia's primary transfer pricing provisions are contained in Article 18 of the PPh Law and PMK-213.

Article 18(3) authorizes the DGT to redetermine the amount of taxable income and deductible expenditures for transactions between taxpayers where a "special relation" exists. Article 18(3) also allows a redetermination of debt as equity. The redetermination should be made in accordance with equity and the common practice of business for independent parties (i.e., in accordance with the arm's-length principle). Based on Article 18(4) of the PPh Law, a special relation is deemed to exist where:

- A taxpayer has direct or indirect ownership of 25% or more of another taxpayer or two or more other taxpayers.
- A taxpayer controls another taxpayer or two or more other taxpayers.
- There is a family relation, biologically or by marriage, in the first degree.

PMK-213 is a regulation issued by the Minister of Finance in response to the implementation of BEPS Action 13 in Indonesia. PMK-213 provides guidance that stipulates the type of additional documents or information that is required to be kept by taxpayers who conduct transactions with related parties, and its procedures.

Under PMK-213, taxpayers are required to prepare a three-tiered structure to transfer pricing documentation:

- **Master File**
- **Local File**
- **CbC report**

The issuance of PMK-213 marked the beginning of a new era for transparency in related-party transaction disclosures and contemporaneous transfer pricing documentation requirements in Indonesia. However, PMK-213 neither revoked nor replaced the current transfer pricing regulation issued by the DGT under PER 43/PJ/2010 (PER-43) as amended by PER-32/PJ/2011 (PER-32).

Regulation PER-43 is an implementation regulation of Article 18(3) as a basis for the DGT to assess the taxpayer's application of the arm's-length principle. In 2011, this regulation was amended by Regulation PER-32.

DGT Regulation PER-22/PJ/2013 (PER-22) and Circular Letter SE-50-PJ/2013 (SE-50) provide detailed guidance on transfer pricing audit processes and technical transfer pricing positions to be adopted by tax auditors.

DGT Regulation PER-29 provides further details on the implementation of the CbCR requirements.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/UN tax manual/EU Joint Transfer Pricing Forum

[1] https://www.pajak.go.id/en

Indonesia is not a member of the OECD, although it has been granted "enhanced participation" status.

The DGT broadly endorses the principles of the OECD Guidelines in its regulations. However, the DGT's practical application of the arm's-length principle in an audit context regularly diverges from the principles endorsed by the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Indonesia has adopted BEPS Action 13 for transfer pricing documentation by the issuance of PMK-213.

- Coverage in terms of Master File, Local File and CbCR

  This covers both the Master File and Local File.

- Effective or expected commencement date

  The commencement date was 30 December 2016.

- Material differences from OECD report template or format

  Yes, there are material differences between the OECD format and the Indonesian jurisdiction format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

No penalty protection is applied for the BEPS Action 13 report.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 26 January 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

The transfer pricing documentation guidelines and rules for Indonesia fall under PMK-213.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local transfer pricing rules if it has related-party transactions.

- **Does transfer pricing documentation have to be prepared annually?**

The documentation needs to be prepared annually under Indonesia's local jurisdiction regulations. At a minimum, the contents of the transfer pricing documentation must be contemporaneous for each year.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone transfer pricing reports if it has related-party transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Based on PMK-213, there is a materiality limit for preparing transfer pricing documentation. If the taxpayer conducts a related-party transaction and:

- Has gross revenues of more than IDR50 billion (approx. USD3.7 million) in the prior fiscal year
- Conducts related-party transactions in the prior fiscal year with a value of:
  - More than IDR20 billion (approx. USD1.4 million) for tangible goods transactions
  - More than IDR5 billion (approx. USD372,000) for each service, interest payment, utilization of intangible properties or other affiliated transactions
- Conducts transactions with related parties that are located in countries or jurisdictions with income tax rates lower than the Indonesian corporate income tax rate, as specified in Article 17 of Income Tax Law No. 7 of 1983 as last amended by Law No. 36 of year 2008

- **Master File**

There is no threshold applied for preparation of Master File once the taxpayer has met the requirements to prepare transfer pricing documentation.

- **Local File**

There is no threshold applied for preparation of Local File once the taxpayer has met the requirements to prepare transfer pricing documentation.

- **CbCR**

Foreign-parented groups would follow the turnover threshold in their jurisdiction or in the absence of CbCR rules in the parent jurisdiction, i.e., EUR750 million. The threshold for Indonesian-parented groups is IDR11 trillion.

- **Economic analysis**

There is no materiality limit for preparing economic analysis once the taxpayer has met the requirements to prepare transfer pricing documentation.

c) Specific requirements

- **Treatment of domestic transactions**

PMK-213 requirements are applicable for both domestic and overseas transactions.

- **Local language documentation requirement**

There is a requirement for the transfer pricing documentation to be in the local language. Article 11 paragraph 1 of PMK-213 states that the documentation as stipulated in Article 2 paragraph (1) should be prepared by the taxpayer in Bahasa Indonesia (Indonesian).

- **Safe harbor availability, including financial transactions if applicable**

There are no specific requirements for safe harbor availability.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not specifically regulated.

- **Any other disclosure/compliance requirement**

None.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing specific returns**

There are no transfer pricing-specific returns required in Indonesia.

- **Related-party disclosures along with corporate income tax return**

The disclosure of domestic and international related-party transactions with the corporate income tax return is required in Form 3A/3B. The information required includes the counterparty, the type of transaction, the value of the transaction, the transfer pricing method applied and the reason for the application of the method. Additionally, taxpayers are required to disclose whether they have transfer pricing documentation prepared. Taxpayers are also required to submit a summary form in a given format with the corporate income tax return (CITR) for the relevant fiscal year, which requires the taxpayer to indicate that the content of the Master File and Local File has conformed to the regulations as well as the exact date the files have been made available.

- **Related-party disclosures in financial statement/annual report**

Related-party disclosures are required to be disclosed in the financial statement as part of Indonesia GAAP requirements only.

- **CbCR notification included in the statutory tax return**

Notification is required to be included in income tax return.

- **Other information/documents to be filed**

None.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax return filing deadline is four months after the fiscal year-end.

- **Other transfer pricing disclosures and return**

Disclosures related to transfer pricing must be attached with the CITR (Form 3A/3B and Summary Form).

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The deadline is 12 months after the year-end.

The receipt from the CbCR filing must be attached to the CITR for the subsequent fiscal year.

- **CbCR notification**

The deadline is 12 months after the year-end.

The receipt from the notification filing must be attached to the CITR for the subsequent fiscal year.

b) Transfer pricing documentation/Local File preparation deadline

The Master and Local files must be available no later than four months after the taxpayer's fiscal year-end. The CbCR report must be available within 12 months after the year-end.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for submitting transfer pricing documentation.

- **Time period or deadline for submission on tax authority request**

The taxpayer has 7 days upon request by the tax office or 30 days if it is in the tax audit process.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**
- **Domestic transactions: yes**

b) Priority and preference of methods

PER-32 states that the most appropriate transfer pricing method should be selected. The decision for the most appropriate method should regard:

- The advantages and disadvantages of each method
- The suitability of the method based on the functional analysis
- The availability of reliable information to apply the method
- The level of comparability between the tested transaction and potential comparable data, including the reliability of potential adjustments

8. Benchmarking requirements

Local vs. regional comparables

Local and ASEAN region comparables are preferred; however, if not available, Asia-Pacific regional comparables may be accepted.

- **Single-year vs. multiyear analysis of benchmarking**

Single-year or three-year analyses are most commonly applied.

- **Use of interquartile range**

Interquartile range calculation spreadsheet using quartile formulas is acceptable and commonly used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is a need to perform fresh benchmarking every year. According to Article 3 paragraph 1 of PMK-213, transfer pricing documentation as stipulated in Article 2 paragraph (1) letters "a" and "b" must be organized based on data and information available at the time the related-party transaction is conducted.

- **Simple, weighted or pooled results**

A weighted average is preferred while testing an arm's-length analysis.

- **Other specific benchmarking criteria, if any**

Less than 25% equity ownership independence criteria is required; other criteria are also applied based on common practice.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

If the incorrect information results in incorrect calculation

of taxable income, it will subject the taxpayer to tax penalty based on interest rate per month according to referenced interest rate plus uplift factor of 20% (maximum 24 months) of the tax liability.

- **Consequences of failure to submit, late submission or incorrect disclosures**

If the incorrect information results in incorrect calculation of taxable income, it will subject the taxpayer to tax penalty based on interest rate per month according to referenced interest rate plus uplift factor of 20% (maximum 24 months) of the tax liability.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

There will be penalties based on interest rate per month according to referenced interest rate plus uplift factor of 20% (maximum 24 months) on any tax underpayment arising from adjustments to income and costs corresponding to related-party transactions as a result of the tax audit process as well as the abovementioned documentation-related penalties.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not specified.

- **Is interest charged on penalties or payable on a refund?**

As mentioned above, interest penalty will be applied on any tax underpayment arising from adjustment.

b) Penalty relief

There are no provisions for penalty relief in Indonesia.

10. Statute of limitations on transfer pricing assessments

There is no separate statute of limitations for transfer pricing. The statute of limitations for transfer pricing assessments will follow the statute of limitations for tax. Under Indonesian tax law, the DGT is permitted to conduct a tax audit, which includes assessments of the arm's-length nature of related-party transactions, within five years of the relevant fiscal year.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, the likelihood of an annual tax audit may be considered to be high. In addition, a taxpayer's application for a tax refund will trigger an automatic tax audit, which must be finished within one year after the submission of the tax return.

The likelihood that transfer pricing will be reviewed as part of a regular and special tax audit may be considered to be high.

Tax audit cases are typically commenced in the taxpayer's relevant tax office, with the exception of the special audit cases. A transfer pricing audit, unless it is a special audit, will occur as a part of an all-taxes audit. The DGT has a central transfer pricing team or a valuations team that is assigned to cases as needed. The central transfer pricing team or valuations team might also be involved in assisting a tax auditor team in their respective tax office in performing transfer pricing audits.

In practice, in addition to taxpayers that are subject to an automatic tax audit as a part of the tax overpayment process, taxpayers that exhibit the following characteristics are at a higher risk of a transfer pricing audit:

- A large number of related-party transactions with offshore entities
- A multinational company that has continuous operating losses or significant related-party transactions
- Lower net profit in comparison with other similar enterprises or with the industry average
- Increasing gross revenue and receipts but no change or decrease in net profit
- Related parties in tax havens

Each taxpayer is assigned an account representative (AR) to assist with its tax matters. The AR's role has increased this year with regard to confirming transfer pricing compliance. ARs have been actively risk-profiling taxpayers' transfer pricing audits by audit teams.

In undertaking transfer pricing audits, tax auditors will follow guidance contained in PER-22 and SE-50.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the tax authority will challenge the transfer pricing methodology is also high, as Indonesia takes a firm stand on transfer pricing audits. This audit environment is partially driven by the Indonesian Government's desire to increase Indonesia's tax collection as a percentage of the GDP.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high (on account of the reasons mentioned in prior sections).

- **Specific transactions, industries and situations, if any, more likely to be audited**

There are no specific transactions, industries and situations.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Under PER-43, APAs are available. The specific DGT guidance covering APAs is PER-69/PJ/2010 (PER-69), which states that APAs may be unilateral or bilateral. Subsequently, the Government issued Ministry of Finance Regulation No. 7/PMK.03/2015 (PMK-7) on 12 January 2015 regarding the formation and implementation of an APA. On 18 March 2020, PMK-7 was replaced by the issuance of Ministry of Finance Regulation No. 22/PMK.03/2020 (PMK-22) regarding implementation procedures in APA. This regulation came into force on the date of promulgation (i.e., 18 March 2020) and is applicable for all outstanding and future APA applications.

Under PER-43, MAPs are also available, in accordance with the provisions of an applicable tax treaty. The specific DGT guidance covering MAPs is PER-48/PJ/2010. Subsequently, the Government issued Ministry of Finance Regulation No. 240/PMK.03/2014 (PMK-240), regarding the implementation of the MAP, which provides a refinement to the guidelines that had been stipulated in previous regulations. On 26 April 2019, the PMK-240 was revoked by the issuance of Minister of Finance Regulation No. 49/PMK.03/2019 (PMK-49) regarding guidelines for implementation of MAP. This new regulation is effective from 26 April 2019 and applicable for all outstanding and future MAP implementations under tax treaties that are effective prior to, on or after this date.

- **Tenure**

The term could be as long as five years for both unilateral APA and bilateral APA.

- **Rollback provisions**

Based on PMK-22, rollback is allowed as long as 1) the facts and conditions of the related-party transaction does not differ materially; 2) the year is not yet expired for assessment (i.e., five years); 3) the Tax Assessment Letter of Corporate Income Tax has not been issued; and 4) there is no investigation of a criminal act or crime in the context of taxation.

- **MAP opportunities**

Yes, an MAP request must be within the scope of a double taxation treaty of which Indonesia is signatory, and can only cover the following:

- Transfer pricing issues
- PE issues
- Other income tax issues

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not specified.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under the tax law, the Minister of Finance may determine an acceptable debt-to-equity ratio. In September 2015, the Minister prescribed a maximum debt-to-equity ratio of 4:1, effective from the tax year 2016. This rule applies only to Indonesian-resident companies, which are companies that are established or incorporated in Indonesia or domiciled in Indonesia and that have their equity made up of shares. It does not apply to permanent establishments. Certain taxpayers are exempted from the rule.

Under the Minister of Finance Regulation regarding the debt-to-equity ratio, if a taxpayer breaches the ratio limit, the DGT is entitled to adjust the taxpayer's borrowing costs based on the debt-to-equity ratio limit. For a taxpayer that has nil or

negative equity, all costs related to the borrowing are treated as non deductible for corporate tax purposes. Foreign loans must be reported to the DGT. Non-reporting of foreign loans results in the forfeiting of the deductibility of the interest.

Interest rates on related-party loans must be at arm's length.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Irish Revenue Commissioners (IRC)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Reference to transfer pricing can be found in the following:

- Irish transfer pricing rules are contained in Part 35A, Section 835 of the Irish Taxes and Consolidation Act 1997. Section 835C sets out the primary transfer pricing regulations in Ireland.
- For accounting periods commencing on or after 1 January 2020, the relevant transfer pricing guidelines applicable under Irish law is the 2017 version of the OECD Transfer Pricing Guidelines.

- **Section reference from local regulation**

Part 35A

- 835A Interpretation
- 835B Meaning of associated
- 835C Basic rules on transfer pricing
- 835D Principles for construing rules in accordance with OECD Guidelines
- 835E Modification of basic rules on transfer pricing for arrangements between qualifying persons
- 835EA Small or medium-sized enterprise
- 835F Small or medium-sized enterprises
- 835G Documentation and enquiries
- 835H Elimination of double counting
- 835HA Interaction with capital allowances provisions
- 835HB Interaction with provisions dealing with chargeable gains

[1] **https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35a/35a-01-01.pdf**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Ireland is a member of the OECD. Irish regulations follow the arm's-length principle and adopts the 2017 OECD Guidelines into the domestic legislation for accounting periods beginning on or after 1 January 2020.

Additional guidance specific to financial transactions was released by the OECD on 11 February 2020, namely the "Transfer Pricing Guidance on Financial Transactions, Inclusive Framework on BEPS: Action 4, 8-10" (OECD FTTP Guidance or Chapter X).

Ireland's Minister for Finance on 8 December 2021 (S.I. No. 686 of 2021) singed a Ministerial order to formally adopt the Chapter X guidance into Irish legislation. Therefore, one should be mindful of this guidance when considering the transfer pricing specific considerations of a financial transaction.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

Master File and Local File

Section 835G of Taxes Consolidation Act (TCA) 1997, Part 35A, sets out the documentation requirements in Ireland.

For accounting periods beginning on or after 1 January 2020, Master File and Local File requirements are in scope.

- The requirement to prepare a Master File (in accordance with the 2017 OECD Transfer Pricing Guidelines) is for groups with annual consolidated revenues in excess of EUR250 million.
- The requirement to prepare a Local File (in accordance with the 2017 OECD Transfer Pricing Guidelines) is for groups with annual consolidated revenues in excess of

EUR50 million.

Please note that both Master File and Local File thresholds are based on the annual consolidated group revenue figure, and not the local Irish entity(s) financial results.

The statutory deadline for preparing the Master file and Local file reports are in line with the corporation tax return filing deadline (i.e. nine months after a companies accounting year-end). As an example, a company with an accounting year ending 31 December 2021, it is expected that transfer pricing documentation would be in place by 23 September 2022.

CbCR

An Irish resident ultimate parent entity of an MNE group (one with annual consolidated revenue in excess of EUR750 million in the immediately preceding accounting period) will be required to file a group CbC report with Irish Revenue. For foreign parented groups, Irish domestic constituent entities can file the CbCR notification.

The filing deadline for the CbC report or equivalent CbC report is 12 months after the last day of the accounting period (full-year estimate plus one year on 31 December).

- Coverage in terms of Master File, Local File and CbCR

  Refer to the response above.

- Effective or expected commencement date

  BEPS Action 13 Master File or Local File requirements have been legislated with effect for accounting periods beginning on or after 1 January 2020.

- Material differences from OECD report template or format

  Master File and Local File must be prepared in accordance with the 2017 OECD Guidelines, Annex I and II.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  BEPS Action 13 format will provide penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

The 2017 OECD Transfer Pricing Guidelines have been adopted into Irish legislation for accounting periods beginning on or after 1 January 2020.

Guidance on the Irish rules are contained in the Tax and Duty Manual, Transfer Pricing, Part 35A-01-01.

The transfer pricing rules contained in Section 835C are to also follow additional guidance published by the OECD after the date of publication of the 2017 OECD Guidelines:

- Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles: BEPS Action 8-10
- Revised Guidance on the Application of the Transactional Profit Split Method: Inclusive Framework on BEPS: Action 8-10
- Any additional guidance published by the OECD on or after the date of the passing of the Finance Act 2019

Documentation is to be prepared at the time the terms of the transaction are agreed upon. That documentation should exist no later than the time the tax return for the period is due to be made for the taxpayer to be in a position to make a correct and complete tax return.

In addition, the following has been introduced into Irish law:

- Introduction of a requirement to prepare master file and local file documentation, subject to an EUR250 million and EUR50 million annual group consolidated revenue threshold respectively
- Introduction of a deadline for preparing transfer pricing documentation in line with the Irish corporation tax return filing deadline
- A penalty protection regime has been established in the case of timely documentation and demonstration of reasonable efforts to comply with those regulations

- An important exemption for domestic non-trading transactions, subject to certain anti-avoidance rules. Please refer to the domestic transaction question in Section C
- Extension of transfer pricing rules to capital transactions; the application of transfer pricing rules to capital transactions and capital allowances to be on a prospective basis, applying to capital expenditure incurred on or after 1 January 2020:
- For assets where capital allowances are being claimed, transfer pricing is applicable where the amount of expenditure on acquisition exceeds EUR25 million, specifically including intangible assets
- Transfer pricing also to be applicable on disposal of assets where the value of the asset on disposal is more than EUR25 million
- Removal of the exemption for transactions that are grandfathered under existing legislation (i.e., outside the scope of Irish transfer pricing rules if entered into before 1 July 2010); it should be noted, however, that the new master file and local file documentation requirements not applicable to grandfathered arrangements

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

The Authorised OECD Approach (AOA), will extend transfer pricing principles to the taxation of branches in Ireland. The AOA will apply to tax years beginning on or after 1 January 2022.

The AOA seeks to attribute profits to a branch that would have been earned at arm's length as if it were a separate and independent legal enterprise performing the same or similar functions under the same or similar conditions (separate entity approach).

There are however, relieving provisions for companies that are small or medium enterprises where the income attributable to their Irish branch is less than EUR250,000. No documentation requirements are required in such cases.

- **Should transfer pricing documentation be prepared annually?**

Yes. The Master File and/or Local File should be prepared no later than the due date for the tax return for the taxable period in question.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

A taxpayer can either prepare individual Irish Local File reports or opt to prepare one consolidated "Irish jurisdiction file report."

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Transaction thresholds

Technically there is no de minimis transaction threshold in Ireland. Therefore all intercompany transactions would be considered in scope to Irish transfer pricing rules and as such documentation.

Small to medium-sized enterprises

Section 835EA outlines the rules with respect to SMEs.

SMEs are currently excluded from the scope of transfer pricing rules. Provision was made in Finance Act 2019 to bring SMEs within the scope of transfer pricing rules however this is subject to a commencement order by the Minister for Finance.

- **Master File**

There is a requirement to prepare master file documentation subject to an EUR250 million annual group consolidated revenue threshold.

- **Local File**

There is a requirement to prepare local file documentation subject to an EUR50 million annual group consolidated revenue threshold.

- **CbCR**

This applies if MNE annual consolidated revenues are equal to or exceed EUR750 million in the previous year.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions

subject to a certain exclusion provision.

Finance Act 2019 extended Ireland's transfer pricing rules to non-trading transactions. It was intended that the rules should not create deemed income taxable at 25% for which deductions were only available at the 12.5% rate, a risk for wholly domestic transactions. However, the relief was open to a wide range of interpretations as to its scope.

Finance Bill 2021 repeals the 2020 amendments and for chargeable periods commencing on or after 1 January 2022 rewrites the relief to deal with the unintended consequences of applying transfer pricing rules to certain domestic to domestic non-trading transactions. It excludes certain transactions between associated persons that are both chargeable to Irish tax on profits, gains or losses arising from the transaction, or who would be chargeable if there were any such profits. In the context of loans, relief will also be available to the extent that a borrower is chargeable to tax on profits, gains or losses arising directly or indirectly from its relevant activities or would be but for any Irish dividends being outside the scope of charge, provided the borrower is Irish tax resident.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language, meaning English or Irish.

- **Safe harbor availability, including financial transactions if applicable**

As the 2017 OECD Transfer Pricing Guidelines is adopted into Irish legislation. The pricing of low value-adding services is included therein (Section 7.43). The IRC released a Tax and Duty Manual (Revenue eBrief No. 37/18) in March 2018 providing guidance to taxpayers regarding the IRC's simplified approach to low-value intragroup services.

There are currently no safe harbors for financial transactions.

- **Is aggregation or individual testing of transactions preferred for an entity**

None specified.

- **Any other disclosure or compliance requirement**

See above.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

No transfer pricing-specific forms are required to be filed in Ireland.

- **Related-party disclosures along with corporate income tax return**

Tax returns in Ireland are generally due to be filed within nine months after the end of the taxpayer's accounting period.

The tax return contains the following three transfer pricing-related questions:

- Does the company qualify for the SME exemption under 835EA? Yes/No
- Is the company required to prepare a Local File? Yes/No
- Is the company required to prepare a Master File? Yes/No

- **Related-party disclosures in financial statement/annual report**

Yes, related-party disclosures are set out in financial statements outlining the related parties and intercompany transactions.

- **CbCR notification included in the statutory tax return**

No.

- **Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

A company generally must file its return and pay any tax due nine months after the end of the accounting period. The company must make this payment on or before the 23rd of the ninth month. Companies that fail to pay and file electronically must submit their return and pay any associated tax. These companies must pay this tax on or before the 23rd of the month.

- **Other transfer pricing disclosures and return**

The tax return contains the following three transfer pricing-related questions:

- Does the company qualify for the SME exemption under

835EA? Yes/No

- Is the company required to prepare a Local File? Yes/No
- Is the company required to prepare a Master File? Yes/No

- **Master File**

There is no requirement to submit the Master File to Irish Revenue unless such documentation is requested by them. Master File documentation requested by Irish Revenue must be delivered to them within 30 days of such request.

Where a Master File is requested by Irish Revenue and not provided within the 30-day statutory timeline, a penalty of EUR25,000 will apply, along with a further penalty of EUR100 per day until the documentation is provided.

- **CbCR preparation and submission**

The filing deadline for the CbC report or equivalent CbC report is 12 months after the last day of the accounting period (full-year estimate plus one year on 31 December).

As an example, for the report relating to the fiscal year ended 31 December 2021 report, this will be submitted on or before 31 December 2022.

- **CbCR notification**

All notifications must be made no later than the last day of the fiscal year to which the CbC report or equivalent CbC report relates. The notification deadline follows that of the ultimate parent entity year-end, and not the domestic constituent entity.

For example, for CbC reports or equivalent CbC reports relating to the fiscal year ended 31 December 2022, notifications must be made to Irish Revenue no later than 31 December 2022.

b) Transfer pricing documentation/Local File preparation deadline

The statutory deadline for preparing the Local File is in line with the corporation tax return filing deadline (i.e., nine months after the companies accounting year-end. As an example, a company with a fiscal year ending 31 December 2021, it is expected that transfer pricing documentation would be in place by 23 September 2022.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no requirement to submit the Local File to Irish Revenue unless such documentation is requested by them.

- **Time period or deadline for submission on tax authority request**

Master File and local File documentation must be made available upon request by Irish Revenue within 30 days.

Where a Master File and/or Local file is requested by Irish Revenue and not provided within the 30-day statutory timeline, a penalty of EUR25,000 will apply, along with a further penalty of EUR100 per day until the documentation is provided.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Nothing specific on TP issued in Ireland but Ireland will be guided by the OECD paper that was published in relation to the impact of Covid on TP.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**
- **Domestic transactions: Yes**

b) Priority and preference of methods

The Irish transfer pricing rules apply to both cross-border and domestic transactions.

To establish an arm's-length price, the 2017 OECD Guidelines will be referenced. The arm's-length principle asserts that intra-group transfer prices should be equivalent to those that would be charged between independent persons dealing at arm's length in otherwise similar circumstances.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local jurisdiction comparables; pan-European comparables are accepted.

- **Single-year vs. multiyear analysis**

Three-year testing is a common practice in Ireland for

benchmarking purposes; however, the tested party will be tested upon single-year results.

- **Use of interquartile range**

The full range may be potentially acceptable under specific circumstances.

There is no expressed preference on the part of the IRC; however, the use of the interquartile range is commonly used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

For a TNMM benchmarking, in general, Revenue will expect a full benchmarking study every three years and for the financials of the accepted comparables to be updated or refreshed on an annual basis.

- **Simple, weighted or pooled results**

Based on experience, there is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The usual pan-European criteria are accepted; companies with unknown ownership are generally not accepted.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Where a Master File and/or Local File is requested by Irish Revenue and not provided within the 30-day statutory timeline, a penalty of EUR25,000 will apply, along with a further penalty of EUR100 per day until the documentation is provided.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Where a transfer pricing adjustment results in additional tax due, a relevant person will be protected from a tax-geared penalty that may otherwise apply under Section 1077E(5): "Penalty for deliberately or carelessly making incorrect returns, etc.," which relates to careless but not deliberate behavior, where the relevant person:

- Has fulfilled the requirements of the section to prepare, and provide upon request, transfer pricing documentation within the specified time frame

And

- The records provided are accurate and demonstrate that notwithstanding the transfer pricing adjustment, the relevant person has made reasonable efforts to comply with the requirements of Part 35A in setting the actual consideration payable or receivable under an arrangement
- Protection from tax-geared penalties only applies to transfer pricing adjustments that fall within the careless behavior category of default. Where the additional tax due relates to deliberate behavior category of default, the relevant tax-geared penalty will apply even where transfer pricing documentation is provided within 30 days of a written request from a Revenue officer.

Where the conditions set out in Section 835G(7) are not satisfied, then penalties provided for in Section 1077E will apply in the normal manner.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Please refer to above.

- **Is interest charged on penalties or payable on a refund?**

Under the general corporate tax penalty provisions, (Section 1080, "Interest on overdue income tax, corporation tax and capital gains tax"), interest arises on underpaid tax at a daily rate of 0.0219%, which is 7.994% per year.

The interest is calculated by multiplying together the:

- Amount of tax a company has underpaid
- Number of days the tax is late
- Interest rate

b) Penalty relief

There is a penalty protection regime in place. Irish Revenue Guidance notes that "... Chapter V, D.7 of the 2017 OECD Guidelines recommends that where transfer pricing documentation requirements are satisfied and submitted on time, the relevant person may be exempt from penalties or subject to a lower penalty where a transfer pricing adjustment is made. In line with this approach, section 835G(7) provides

that a relevant person will be exempted or protected from a tax-geared penalty in certain circumstances ..."

10. Statute of limitations on transfer pricing assessments

The statute of limitations is currently four years after the end of the tax year or the accounting period in which the return is made.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

None specified.

12. Lkelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium. There has been a noted increase in IRC activity and staffing levels in recent times.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium. There are a number of transfer pricing audits ongoing in Ireland, and one of the IRC lines of inquiry is methodology selection, including whether a two-sided study was considered.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium. This will ultimately depend on the merits and economic circumstances of the transaction.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The IRC is interested in relatively low people substance and principal company structures. Modifying a tax return or requiring a tax refund may also trigger an IRC query. We are also seeing an increase in audits in a range of industries and sectors.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Ireland. The IRC has formally introduced a bilateral APA program (unilateral APAs are not available) with the publication of guidelines on 23 June 2016 – Revenue eBrief No. 60/16. Multilateral (or coordinated series of bilateral) APAs are also available.

The guidelines are effective for new APAs requested from 1 July 2016. The IRC are generally only open to APAs where there is a likelihood of double tax arising or where the transactions are significantly complex enough.

- **Tenure**

An Irish bilateral APA agreed upon under the new program will likely have a fixed term of three to five years.

- **Rollback provisions**

After the three to five years mentioned above, there is an opportunity to roll back the agreement to open tax periods in certain cases as well as to renew the agreement upon the expiration of the initial term. Therefore, a bilateral APA can provide in excess of five years of tax certainty and audit risk mitigation in the two relevant jurisdictions.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double tax treaty (DTT) to which Ireland is a signatory. Most of Ireland's DTTs permit taxpayers to present a case to the Irish Revenue within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit. Taxpayers have three years to present a case to the Irish Revenue under the EU Arbitration Convention (90/436/EEC).

The EU Arbitration Convention establishes a procedure to resolve disputes where double taxation occurs between enterprises of different Member States because of an upward adjustment of profits of an enterprise of one Member State. The Convention provides for the elimination of double taxation by agreement between the contracting states including, if necessary, by reference to the opinion of an independent advisory body.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Following the introduction of new transfer pricing legislation in Ireland (effective for accounting periods commencing on or after 1 January 2020), there is additional requirement under Irish transfer pricing rules to consider whether the legal form of a transaction (including its capital structure) is aligned with the substance of the transaction.

Where a taxpayer has obtained related party debt (and as a result is claiming interest deductions), they need to be able to demonstrate that those interest charges do not exceed those which it would have claimed had it been funded entirely by third party debt (at arm's length). Where a company is very highly leveraged, Irish Revenue may seek to disallow interest deductions.

The debt capacity of a borrower in relation to a related party loan arrangement should be considered at the time the arrangement was entered into. Hence, this includes any loan arrangements in place prior to 1 January 2020.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Israeli Tax Authority (ITA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Section 85a of the Israeli Tax Ordinance (ITO) and the provisions thereunder include a description of the documentation required; it applies to fiscal years starting January 2007.

- **Section reference from local regulation**

Section 76d of the ITO and the provisions thereunder include a description of the documentation.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Israel is an OECD member jurisdiction. The ITA considers its TP rules and regulations to be consistent with the OECD Guidelines.

However, usually, a local adaptation is necessary, mainly with respect to the interquartile range when the CUP method is used and the decision of whether to use local, European or US comparables.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Sections 85b and 85c include local reference to the BEPS Action Plan (*but they were in draft form at the time this was published*).

- Coverage in terms of Master File, Local File and CbCR

  The CbCR is expected to be in accordance with OECD TP Guidelines. *We note that at this time, the section relating to CbCR is still in draft, and is not yet known when this section will come into effect.*

- Effective or expected commencement date

  Section relating to CbCR is still in draft and is not yet known when this section will come into effect.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 12 May 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, Section 85a of the ITO and the provisions thereunder include a description of the documentation required. Contemporaneous documentation is not prescribed.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

The TP documentation does not have to be prepared annually under Israel's local jurisdiction regulations. However, the likelihood of an annual tax audit in general may be

considered to be high. Traditionally, taxpayers operating in the international arena or subsidiaries of foreign companies have a higher likelihood of being audited.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone TP reports for each entity?**

It is not obligatory.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

There is no threshold limit (no formal requirement under local regulations yet).

- **Local File**

There is no threshold limit (no formal requirement under local regulations yet).

- **CbCR**

It is required to submit a country-by-country (CbC) report if group revenue exceeds EUR750 million. *The section relating to CbCR is still in draft and is not yet known when this section will come into effect.*

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There are no specific requirements for the treatment of domestic transactions.

- **Local language documentation requirement**

There are no requirements for TP documentation to be submitted in the local language.

- **Safe harbor availability, including financial transactions if applicable**

On 5 September 2018, the ITA published a circular providing safe harbor provisions for certain intercompany transactions:

- Low-level services (following the OECD Guidelines definitions) with a markup on total costs of 5%
- Marketing services with a markup on total costs of between 10% and 12% (assuming it has been clarified that the activity is not classified as sales activity, as discussed under a separate ITA circular)
- Distribution activity under a low-risk profile with an operating margin between 3% and 4%

Taxpayers that exhibit these results are exempt from attaching a benchmarking exercise attesting the arm's-length range into their TP documentation.

- **Is aggregation or individual testing of transactions preferred for an entity**

Section 85A to the ITO does not specify the type of testing.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

Transfer pricing-specific returns

Commencing from the financial year 2007, taxpayers must attach to the annual tax returns a specific TP form (1385 new version as of 2019), in which the following should be disclosed:

- A short description of the intercompany transaction details of the other party and its residency
- Transaction volume and residency of the other party
- Signatures on all declarations (forms) that the international transactions were conducted at arm's length

According to the taxing authority, such declarations must be supported by documentation that meets the requirements.

Updated Form 1385

On 3 July 2019, the ITA published an updated 1385 Form, taking effect for 2019 tax returns and onward. For tax year 2018, companies may choose to file the updated or the original 1385 Form.

The updated form features additional details regarding intercompany transactions. New elements indicated on the form include:

- **The pricing method — to be accurately defined, specifying the PLI used and the amount of money transferred**

- **Information about the party with whom the transactions were conducted, possibly to cross-check with the tax authority in the jurisdiction of the related party**
- **Signature of an individual with a defined position in the company, whereas in the past it was possible to sign on behalf of the company**
- **Notification on whether "safe harbors" were used, as per Income Tax Circular 12/2018.1**

Form 1485

Form 1485 relates to intercompany capital notes that are provided under certain specific terms, as discussed in Section 85 a (6) of the ITO, thereby qualifying as interest-free loans for Israeli tax purposes. Taxpayers are required to provide details on such capital notes, including the identity and location of the related party, the denomination and amount of the loan, and its duration.

- **Related-party disclosures along with corporate income tax return**

Refer to the section below.

- **Related-party disclosures in financial statement/annual report**

None.

- **CbCR notification included in the statutory tax return**

The section relating to CbCR is still in draft and is not yet known when this section will come into effect.

- **Other information or documents to be filed**

None.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 31 May.

- **Other transfer pricing disclosures and return**

The deadline is 31 May as Form 1385 must be attached to the corporate income tax return. TP documentation is not required to be filed unless required under tax audit.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The section relating to CbCR is still in draft and is not yet known when this section will come into effect.

- **CbCR notification**

The section relating to CbCR is still in draft and is not yet known when this section will come into effect.

b) Transfer pricing documentation/Local File preparation deadline

The TP documentation only needs to be finalized by the time of submitting upon request. It does not need to be finalized by a specific time, and upon tax audit, it would be expected to be submitted within 60 days. However, Form 1385 is to be appended to the annual tax return, and the declaration of operating at arm's length included therein is required to be based on an economically valid and timely analysis.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of TP documentation.

- **Time period or deadline for submission on tax authority request**

Taxpayers in Israel must provide the documentation within 60 days of a tax-assessing officer's request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Yes, the CIT return, which includes the TP declarations form, is postponed by two months up to July.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

The Israeli TP regulations follow the OECD. Sections 85b and

85c include local reference to the BEPS Action Plan and are currently in draft form.

- **Domestic transactions**

This is not applicable.

b) Priority and preference of methods

To determine whether an international transaction is at arm's length, the Israeli TP regulations require the taxpayer to apply one of the following methods, in order of preference:

- CUP or comparable uncontrolled transaction (CUT)
- Comparable profitability
- Cost plus or resale price
- CPM or TNMM
- Profit split
- Other methods

An international transaction is at arm's length if, through the application of the selected method, the result falls within a defined interquartile range.

As an exception, the entire range of values will apply when the TP method applicable is CUP or CUT and no adjustments are performed. If the international transaction's result is outside the range, the median should be applied as the arm's-length price for the transaction.

Additionally, the Israeli TP regulations stipulate the use of several PLIs, depending on the particular industry and environment.

On 5 September 2018, the ITA finalized two draft circulars. One circular focuses on appropriate TP methods related to distribution, marketing and sales by MNEs in the Israeli market, while the other focuses on specific profitability ranges for certain transactions. The circulars provide the ITA's position regarding the methodology and profitability of various types of transactions, while facilitating documentation and reporting requirements.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is benchmarking requirement using local comparables, tax authorities expect an effort to find local Israeli comparables.

- **Single-year vs. multiyear analysis for benchmarking**

A single-year analysis is preferred.

- **Use of interquartile range**

Yes, interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking study vs. a financial update needs to be performed every year. This requirement is implicit given that an appendix to the annual tax return (Form 1385) needs to be completed for each international intercompany transaction, stating it has been performed at arm's length.

- **Simple, weighted or pooled results**

The weighted average is preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

No specific TP penalties are mentioned; the submission of TP documentation is upon request only, and should be done within 60 days of the request. Failure to submit in time may cause civil and criminal implications (as per Sections 131, 271 and 224a of the ITO).

- **Consequences of failure to submit, late submission or incorrect disclosures**

No specific TP penalties are mentioned; the submission of TP documentation is upon request only, and should be done within 60 days of the request. Failure to submit in time may cause civil and criminal implications (as per Sections 131, 271 and 224a of the ITO).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

General tax-related penalties under Section 191 of the ITO include a penalty of 15% (may be increased to 30% in certain cases) of the deficit when the taxable income under audit is higher by 50% or more than the reported taxable income. We note that the tax inspector has the discretion to avoid a

penalty when reaching a settlement.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

No.

- **Is interest charged on penalties or payable on a refund?**

Penalties are considered an addition to the taxpayer's tax debt. Therefore, they are linked to the index and carry 4% interest.

b) Penalty relief

There is no penalty relief regime applicable in Israel.

The company may dispute and begin the stage A process. Based on stage A, the sides may reach an agreement. If not, stage B will begin the same as under stage A. If the sides do not reach an agreement, the assessment will be filed as a dispute and the matter will move to court.

10. Statute of limitations on transfer pricing assessments

The Israeli Income Tax Ordinance has general rules for auditing a tax return. As such, the statute of limitations usually is three years (or four if the commissionaire extends the time period), beginning at the end of the fiscal year in which the tax return was filed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

As of the COVID-19, the ITA has increased its audits on companies. ITA may be more pragmatic in making compromises where this is applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit in general may be considered to be high. Traditionally, taxpayers operating in the international arena or subsidiaries of foreign companies have a higher likelihood of being audited.

The likelihood that TP will be reviewed as part of that audit may be considered to be high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

In the past, the likelihood that the TP methodology would be challenged in a TP review had been moderate, if supported by robust TP documentation. Recently, a growing trend of challenged TP methodology has been seen as well. When no documentation exists, the methodology is even more likely to be challenged.

Following the recent circulars on restructuring, stock option expenses and the digital economy, these issues are more likely to be challenged, as well as financial transactions. In addition, considering Israel's start-up ecosystem, another focus point of tax audits is intellectual property migrations and business restructurings. There are currently several such cases being debated in court.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high (refer to the section above).

- **Specific transactions, industries and situations, if any, more likely to be audited**

There are no specifications; the ITA challenges all TP transactions, industries and situations.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Section 85A of the Israeli Income Tax Ordinance, which governs the Israeli TP regulations, stipulates in Article 85A(d) the conditions under which an APA may be concluded and delineates the scope of an APA.

The process starts with a detailed application that includes all of the relevant details. Under the APA process, the ITA must respond to the taxpayer's application within 120 days (though the time can be extended up to 180 days); otherwise, the application will be approved automatically and the intercompany policy will be deemed as providing reasonable arm's-length prices. In practice, a complete APA procedure may take 12 months.

- **Tenure**

There is none specified.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty (DTT) to which Israel is a signatory. Most of Israel's DTTs permit taxpayers to present a case to the ITA within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

None.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Italian Revenue Agency (*Agenzia delle Entrate* – AdE).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 110(7) of the Italian Income Tax Code (IITC) is the historical Italian reference for the definition of the arm's-length principle for transfer pricing purposes. On 14 May 2018, the Italian Ministry of Economy and Finance (MEF) released the final version of a decree setting out the general guidance for the correct applica¬tion of the arm's-length principle (the Decree). Indeed, paragraph 7 of Article 110 of the IITC (Article 110(7)) was amended by Law Decree of 24 April 2017, No. 50 (the Law Decree) in order to explicitly incorporate into the law the arm's-length principle set forth by both the OECD Model Tax Convention (OECD Model) and the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines) in their most updated version. While the previous version of Article 110(7) established that the prices for intercompany cross-border transactions should be determined on the basis of the so-called "normal value," the new rule now generally refers to the "conditions and prices that would have been agreed upon between independent parties acting on an arm's-length basis and in comparable circumstances."

On 23 November 2020, the Italian Revenue Agency issued the Decision of the Commissioner of the Italian Revenue Agency prot. n. 0360494 (New Instructions) regarding the content and validity of the elective transfer pricing (TP) documentation available to Italian resident enterprises and Italian permanent establishments (PE) of foreign entities to provide administrative penalty protection in the case of a transfer pricing assessment.

The New Instructions introduce significant changes to the mandatory contents of the transfer pricing documentation as defined under the previous instructions (2010 Instructions), in order to adopt the Base Erosion and Profit Shifting (BEPS) Action 13 deliverable and the associated revisions to the OECD transfer pricing Guidelines on documentation. On 26 November 2021, the Italian Revenue Agency issued a Circular Letter (Circular Letter) providing clarifications to increase the level of certainty in the interpretation of the New Instructions.

- **Section reference from local regulation**

In Italy, there are several definitions of related parties. For transfer pricing, reference can be made to Circular Letter No. 32 (prot. 9/2267), dated 22 September 1980 (1980 Circular Letter), that defines the concept of "control" as "all instances of potential or effective economic influence." Therefore, it emerges from the above that the notion of "control" should be extended to cover all hypotheses of economic influence.

Following the Decree, the concept of "control" appears to be restricted now to the majority shareholding and the existence of contractual relationship although no definite guidance exists.

The Decree provides for the following notions:

- "Associated enterprises" means an enterprise resident in the Italian territory as well as non resident companies where either:
  - One of them participates directly or indirectly in the management, control or capital of the other
  - The same person participates directly or indirectly in the management, control or capital of both enterprises
- "Participation in the management, control or capital" means either:
  - A participation of more than 50% in the capital, voting rights or profits of another enterprise
  - The dominant influence over the management of another enterprise, based on equity or contractual constraints

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Italy is an OECD member. Italian transfer pricing rules are largely consistent with the OECD Transfer Pricing Guidelines. After the amendments by the Law Decree, Article 110(7) of the IITC and the related implementing regulations found in

[1] **https://www.agenziaentrate.gov.it/portale/**

the Ministerial Decree of 14 May 2018 now make reference to the arm's-length principle, with the declared purpose of aligning the domestic provision to the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Refer to the section below for details.

- Coverage in terms of Master File, Local File and CbCR

  Italian laws follow the three-tiered approach recommended by BEPS Action 13 and the OECD Transfer Pricing Guidelines (i.e., master file, local file and country-by-country report).

- Effective or expected commencement date

  The new measures are applicable from fiscal year 2020 onwards.

- Material differences from OECD report template or format

  Yes, Italy requires a specific format in terms of chapters, paragraphs and subparagraphs for both the master file and local file for penalty protection purposes. The structure, in terms of format and contents, is mandatory.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  No; for specific requirements, refer to the details mentioned above.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Italy is a part of the OECD/G20 Inclusive Framework on BEPS.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

The New Instructions, which repealed the 2010 regulation, requires transfer pricing documentation that consists of a master file and a local file. Therefore, Italian taxpayers (including permanent establishments of non-Italian resident entities) wishing to benefit from the penalty protection regime are obligated to prepare on a yearly basis both the master file and the local file.

With regard to the local file, the New Instructions provide that this file has to contain information regarding the local entity and its intragroup transactions and must be drafted following the structure set out in paragraph 2.3, which substantially mirrors BEPS Action 13 and the OECD Transfer Pricing Guidelines.

A simplification is provided for small and medium-sized enterprises (taxpayers with an annual turnover not exceeding EUR50 million for the fiscal year covered by the transfer pricing documentation that are not, directly or indirectly controlled by, or in control of, entities exceeding the mentioned annual turnover):

[T]hey are not required to update the benchmark analysis regarding the intercompany transactions in the local file during the following two fiscal years, provided that the comparability factors do not undergo significant changes in such two fiscal years and the comparability analysis is based on publicly available sources.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, branches are considered as individual entities and are subject to transfer pricing obligations and local transfer pricing rules.

The issue of attribution of profit to a local branch of a foreign company is explicitly addressed under domestic law effective from tax year 2016. Article 7 of Legislative Decree 147 of 14 September 2015 (*Decreto Internazionalizzazione*) in fact amended Articles 151–154 of the IITC and introduced a clear reference to OECD criteria.

- **Should transfer pricing documentation be prepared annually?**

If a taxpayer opts for the mentioned penalty protection regime, the complete transfer pricing documentation needs to be drafted annually under Italy's local jurisdiction regulations.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

All entities within a group are required to file transfer pricing documentation (both master file and local file) separately.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit or threshold for transfer pricing documentation.

- **Master File**

The New Instructions, which repealed the 2010 regulation, require transfer pricing documentation that consists of a master file and a local file.

Master file must also include a detailed recap of the amounts relating to the top five products and/or services in terms of the group's overall turnover.

- **Local File**

The New Instructions, which repealed the 2010 regulation, require transfer pricing documentation that consists of a master file and a local file.

All intercompany transactions need to be disclosed (but not necessarily documented) and reconciled with the data to be provided in the annual tax return. The New Instructions explicitly introduce the possibility of limiting the operations covered by the documentation to be prepared to achieve administrative penalty protection in the case of a transfer pricing assessment. In such case, the penalty protection will be granted exclusively with reference to the transactions described and for which the information provided is considered compliant with the requirements.

Marginal transactions are those for which the amount does not exceed 5% of the total in absolute value of the intercompany transactions indicated in the income tax return. These marginal transactions must be analyzed thoroughly to benefit from the penalty protection.

- **CbCR**

Tax year 2016 was the first year subject to CbCR requirements. According to qualification or situation, Italian taxpayers are required either to file the CbCR in Italy or to make the proper notification in the yearly tax return. Non-compliance with such requirements is subject to the payment of penalties from EUR10,000 to EUR50,000.

- **Economic analysis**

All intercompany transactions need to be disclosed (but not necessarily documented) and reconciled with the data to be provided in the annual tax return. The New Instructions explicitly introduce the possibility of limiting the operations covered by the documentation to be prepared to achieve administrative penalty protection in the case of a transfer pricing assessment. In such case, the penalty protection will be granted exclusively with reference to the transactions described and for which the information provided is considered compliant with the requirements. Marginal transactions are those for which the amount does not exceed 5% of the total in absolute value of the intercompany transactions indicated in the income tax return. These marginal transactions must be analyzed thoroughly to benefit from the penalty protection.

Any "omissions or partial inaccuracies" that are not likely to compromise the analysis of the tax auditors do not jeopardize the application of the penalty protection.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

According to the New Instructions, the transfer pricing documentation, for penalty protection purposes, needs to be submitted in the local language; however, the master file may still be drafted in English.

- **Safe harbor availability including financial transactions if applicable**

The Decree and the New Instructions embody the recent updates brought by BEPS Actions 8–10 (as reflected in the 2017 version of the OECD Transfer Pricing Guidelines) with reference to low value-adding inter¬company services. In particular, the Decree and the New Instructions provide that taxpayers, subject to the preparation of specific documentation, may evaluate such services by aggregating all the direct and indirect costs related to the provision of the same, adding a profit markup equal to 5%. Article 7 defines the "low value-adding services" as those that (i) are of a supportive nature, (ii) are not part of the core business of the multinational group, (iii) do not require the use of unique and valuable intangibles and do not contribute to the creation of the same, and (iv) do not involve the assumption or control of

any significant risks by the service provider. The description of such services can also be included in the same local file and described in line with the provisions of the New Instructions.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

With the implementation of Directive 2018/822 of 25 May 2018 (DAC6), cross-border arrangements within the EU, as well as between Member States and third countries (as of 1 July 2020), involving the use of unilateral safe harbor rules will be reportable and subject to automatic exchange of information. Italy has implemented the DAC6 rules through Legislative Decree 30 July 2020 no. 100, which was integrated with the publication of the Decree of the Ministry of Economy and Finance of 20 November 2020 and Ruling No. 364425 of 26 November 2020, containing guidelines on the procedures for the communication of reportable cross-border arrangements.

The domestic regulatory framework was completed by Circular Letter No. 2/E of 10 February 2021 issued by the Italian Revenue Agency.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

In Italy, there are no specific transfer pricing returns. As already mentioned, for the purposes of the optional penalty protection regime, taxpayers that intend to adhere to such regime shall communicate the availability of proper documentation on the annual income tax return (i.e., in a dedicated box, Section RS106 corporate income tax).

In details, Section RS106 corporate income tax also contains other sections related to cross-border transactions that must be completed:

- The kind of control relationship existing with non-resident related parties
- The amount of costs and revenues from cross-border intragroup transactions

Both the master file and the local file and relevant attachments must be signed by the Italian entity's legal representative or a delegated person by means of an electronic signature and a time stamp (*marca temporale*) no later than the date of filing of the relevant tax return.

- **Related-party disclosures along with corporate income tax return**

Italian companies must officially communicate (in documents, correspondence and register of companies) whether they are managed and controlled by another company, as well as the name of the related company (Article 2497-bis of the Italian Civil Code). Financial statements should include essential data from the managing or controlling company's financial statements and relations with related parties (Articles 2424, 2427, 2428 and 2497-bis of the Italian Civil Code). Disclosure is also applicable for taxpayers with reference to intercompany flows that are to be grouped in costs vs. revenues. This disclosure is required in the yearly tax return and applies irrespective of the fact that a taxpayer decides to opt for the transfer pricing penalty protection regime or not.

- **Related-party disclosures in financial statement/annual report**

Refer to the previous reply.

- **CbCR notification included in the statutory tax return**

Yes, the information is provided in Section RS268 of the annual income tax return.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The tax return is due by the end of the 11th month after the closing of the fiscal year (FY).

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

Submitted in an electronic format and delivered within 20 days from the tax auditors' request. Any additional documents

required by the tax authorities should generally be provided by seven days after the relevant request.

Both the master file and the local file and relevant attachments must be signed by the Italian entity's legal representative or a delegated person by means of an electronic signature and a time stamp (*marca temporale*) no later than the date of filing of the relevant tax return.

- **CbCR preparation and submission**

For FY2016, the deadline for submitting the CbCR for companies with the calendar year was set as 9 February 2018. For the following FYs, the deadline is in principle at the end of the following FY.

- **CbCR notification**

A notification disclosing the company name and general details of the reporting entity has to be made in the tax return.

b) Transfer pricing documentation/Local File preparation deadline

In the yearly tax return, taxpayers that want to apply for the optional penalty protection regime are expected to flag a dedicated box stating that transfer pricing documentation is already available, but it does not have to be submitted until a formal request comes from the tax inspector.

Both the master file and the local file and relevant attachments must be signed by the Italian entity's legal representative or a delegated person by means of an electronic signature and a time stamp (*marca temporale*) no later than the date of filing of the relevant tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

Submitted in an electronic format and delivered within 20 days from the tax auditors' request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Refer to sections above.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

No.

b) Priority and preference of methods

Reference is generally made to the transfer pricing methods as provided by the OECD Transfer Pricing Guidelines. Traditional methods, such as CUP, resale price and cost plus, are preferred over profits-based methods.

The selection of the transfer pricing method entails an explanation of the reasons for using a particular method that produces results consistent with the arm's-length standard. Should a profit method be selected, when a traditional transactional method could be applied in an equally reliable manner, the taxpayer should explain why the latter had been excluded. The same explanation applies when a method other than the CUP method is selected, in the event that it could have been applied to achieve equally reliable results.

An accurate description of the taxpayer's procedure for selecting comparable transactions will have to be provided (including a detailed comparability analysis), as well as a clear description of the underlying steps in arriving at an arm's-length range, if needed.

Article 4 of the Decree refers to the transfer pricing methods to be used to evaluate a controlled transaction on the basis of the arm's-length principle. The five methods identified by Article 4, which correspond to those listed by the OECD Guidelines, are the comparable uncontrolled price method (CUP), the resale price method (RPM), the cost-plus method (CPM), the transactional net margin method (TNMM) and the transactional profit-split method (PSM).

8. Benchmarking requirements

- **Local vs. regional comparables**

There are no benchmarking requirements for local comparables.

- **Single-year vs. multiyear analysis**

The use of multiple-year data for testing a single year of the taxpayer is the common standard used when testing an arm's-length analysis.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The Italian transfer pricing rules do not clarify whether the update of benchmark studies needs to be a new search or a simple financial update. Financial updates for a limited number of years (e.g., two) are generally accepted. For companies with an annual turnover lower than EUR50 million and are not, directly or indirectly, controlled by or in control of entities exceeding the mentioned annual turnover, the law provides for the possibility to update benchmarks on a three-year basis (rather than annually) if there are no changes in the relevant comparability factors.

- **Simple, weighted or pooled results**

The weighted average is preferred for testing arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The independence criterion is generally set at 50%.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

If and when the above-mentioned optional transfer pricing documentation regime for penalty protection purposes is deemed inapplicable (*with various degrees of judgment*), general penalties for underpayment apply.

In particular, standard administrative penalties apply in an amount equal to 90% to 180% of the additional taxes or the minor tax credit assessed by Italian tax authorities, both for Corporate Income Tax (*Imposta sul Reddito Sulle Società* – IRES) and Regional Production Tax (Imposta Regionale sulle Attività Produttive – IRAP) purposes. According to Circular Letter 58/E, higher penalties may be applicable, in principle, when the documentation is not deemed complete and appropriate

The New Instructions and the Circular Letter clarified that a late signature and/or time stamp is considered equivalent to the lack of signature/time stamp, with the consequence being the loss of the penalty protection regime.

Furthermore, in the event of a late return (i.e., filed within 90 days from the original deadline) or an amending return (i.e., filed within 90 days from the original deadline by replacing the previously filed one), penalty protection can be achieved provided that the master file and the local file are signed by an electronic signature with a time stamp prior to the date of the actual filing.

If the transfer pricing documentation has been timely prepared (i.e., with the electronic signature and time stamp affixed not later than 90 days from the ordinary filing deadline) but the taxpayer has failed to make the required flag in the return, an amending return may be filed before the deadline for the submission of the following year's tax return.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the section above.

- **Is interest charged on penalties or payable on a refund?**

Interest on penalties is not applicable. Interest for late payment (in case of additional taxes claimed) is due and amounts to 4%.

b) Penalty relief

As mentioned, in the case of a transfer pricing adjustment and non-applicability of the optional penalty protection regime, standard penalties apply. There are cases in which penalties can be reduced by the law (e.g., through a settlement procedure in case an agreement is reached, they are reduced to one-third of the minimum amount).

10. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations on an assessment for transfer pricing. The general statute-of-limitations period for tax purposes applies. Up to FY2015 included, taxpayers must receive a notice of tax assessments by 31 December of the fourth year following the year for which the tax return has been filed. If the tax return has been omitted or is treated as null and void, the assessment period for the relevant year is extended by an additional year.

In the case of criminal ramifications, terms for assessments can be doubled, but only if the criminal offense has been communicated by the tax authorities to the criminal authorities within the standard statute of limitations.

From FY2016 onwards, taxpayers may be subject to a tax assessment up to the end of the fifth year following the year of filing of the relevant tax return. In addition, the statute of limitations is extended to seven years for a failure to file any tax.

The 2016 Budget Law repealed the doubling of the statute of limitations in the case of criminal tax investigations. The 2015 ordinary deadline expired on 31 December 2020; however, due to COVID-19, 2015 tax assessments can be served until 28 February 2022.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The risk of a general tax audit may be considered to be high, as is the risk of being audited specifically for transfer pricing. Italy is also particularly active in challenging taxpayers on deemed permanent establishments; following the Italian Supreme Court's Philip Morris case, additional case law is available in this respect.

In addition, the Italian tax authorities generally pay particular attention and direct greater tax audit activity to large taxpayers, and they are devoting greater resources to intelligence and monitoring the activities of multinationals.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the transfer pricing methodology being challenged is also high, as tax officers often try to challenge all the various aspects of transfer pricing, i.e., not only the methodology, but also the functional analysis and comparable.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium to high. For details, refer to the reasons mentioned above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Generally, all intercompany relationships are deeply scrutinized. Recently, specific areas of attention can be identified in management fees, intellectual property-related transactions, financial transactions and service provider structures (especially in the IT industry and web companies).

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

Although formally introduced in the Italian law in 2003, the Italian APA discipline has been recently updated by Legislative Decree No. 147 of 2015, dated 22 September 2015 (Internationalization Decree).

The Internationalization Decree revises and expands the scope of a specific type of tax agreement available for companies with international operations. The International Ruling was already available to reach agreements with the tax authorities on:

- Transfer pricing issues by concluding APAs
- Cross-border flow matters
- Attribution of profits to domestic and foreign permanent establishments

- Existence of permanent establishments

Under the revised version, the procedure is renamed advance agreements for enterprises with international activities (Advance Tax Agreement), and its scope is extended to the following:

- Agreements on asset bases in the case of inbound and outbound migrations
- For companies that participate in the Cooperative Compliance Program (CCP), agreements on the fair market value of costs incurred with prohibited list entities (blacklist costs) for deduction purposes

The advance pricing agreement is, in principle, valid for five years (i.e., for the year in which it is signed and the following four), to the extent that the underlying factual and legal circumstances remain unchanged.

Through the validity of the agreement, the tax authorities may exercise their power of scrutiny only in relation to matters other than those agreed upon in the Advance Tax Agreement.

The Italian Budget Law for 2021 introduces an extension of the rollback of APAs available to international enterprises for managing in advance selected tax risks.

An APA may cover all the previous fiscal years for which the statute of limitations has not yet expired. However, the law requires that the circumstances under which the APA was reached are likewise applicable to the previous fiscal years and that no investigations were started, or tax assessments were noticed for the same fiscal years with respect to the issues subject to the APA.

In addition, in the context of a bilateral or multilateral APA, this "extended rollback" is allowed, provided that the foreign competent authorities agree to extend the APA to the previous fiscal years.

Moreover, for filing a bilateral and multilateral APA ruling request before the Italian tax authorities the enterprise shall pay a fee equal to:

- EUR10,000 where the overall turnover of the group is lower than EUR100 million
- EUR30,000 where the overall turnover of the group is higher than EUR100 million and lower than EUR750 million
- EUR 50,000 where the overall turnover of the group is higher than EUR750 million

The fees above are reduced by half if the agreement is renewed.

- **Tenure**

For details, refer to the section above.

- **Rollback provisions**

For details, refer to the section above.

- **MAP opportunities**

There are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under double taxation treaties or under the European Arbitration Convention (EAC) (90/436/EEC). In addition, a new procedure allows Italian taxpayers to obtain within 180 days a unilateral downward adjustment on their taxable income as a result of a transfer pricing adjustment (made by foreign tax authorities) after a negotiation phase with the Italian tax authorities. If the outcome of the procedure denies the corresponding unilateral adjustment, relief from double taxation may be in any case possible under MAP and EAC (in case the timing allows the filing of the request).

EU Directive 2017/1852 lays down innovative resolution mechanisms with the goal of tackling international double taxation issues between EU Member States. The EU Directive has been implemented in Italy through Legislative Decree No. 49 of 10 June 2020 (the Decree), which provides for the domestic rules to apply the new procedures. The provisions of the Decree apply to procedures submitted starting from 1 July 2019 on questions in dispute relating to fiscal year starting on or after 1 January 2018.

Further, the Italian Revenue Agency published the Act No. 381176 dated 16 December 2020 setting forth the operational rules to start, conduct and settle the international disputes governed by the Decree.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No, impacts (if any) on APAs negotiation need to be discussed on a case-by-case basis with the APA Office.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Italy does not have any specific regulations or rulings with respect to thin capitalization or debt capacity. It follows an arm's-length approach.

Legislative Decree No. 142 of 29 November 2018 replaced Article 96 of the IITC, bringing the already existing interest limitation rule in line with the Anti-Tax Avoidance Directive (ATAD).

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

National Tax Agency (*Kokuzei-chō* – NTA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Special Taxation Measures Law (STML) Article 66-4/66-4-2/66-4-3/66-4-4/66-4-5: Special provisions for taxation of transactions with foreign related persons and profits attributable to a permanent establishment (PE). Effective for the taxable year starting on 1 April 1986 and thereafter and as amended

STML Article 68-88/68-88-2: Special taxation measures of transactions between consolidated corporations and foreign related persons. Effective for the taxable year starting on 1 April 2002 and thereafter and as amended.

Special Taxation Measures Law Enforcement Order (STML Enforcement Order) Article 39-12, 39-12-2, 39-12-3, 39-12-4/39-112, 39-112-2: Special provisions for transaction with foreign related persons and profit attributable to a PE. Effective for the taxable year starting on 1 April 1986 and thereafter and as amended.

Special Taxation Measures Law Ministerial Order (STML Ministerial Order) Article 22-10, 22-10-2, 22-10-3, 22-10-4, 22-10-5/22-74, 22-75: Special provisions for transaction with foreign related persons and profit attributable to a PE. Effective for the taxable year starting on 1 April 1986 and thereafter and as amended.

STML Circulars 66-4 (1)-1 to 66-4 (12)-1, 66-4-3 (1)-1 to 66-4-3 (10)-2, 66-4-4-1 to 66-4-4-4, 67-18-1 to 67-18-3: Commissioner's Directive on the establishment of instructions for the administration of transfer pricing matters (Administrative Guidelines). Effective for the taxable year starting on 1 April 1986 and thereafter and as amended.

Commissioner's Directive on the administration of transfer pricing matters for consolidated corporations (administrative guidelines for consolidated corporations) and Commissioner's Directive on the mutual agreement procedure. Effective on 1 June 2001 and thereafter and as amended.

In March 2019, Japanese legislation on transfer pricing was amended. In June 2019, the administrative guidance on transfer pricing was also updated, and these revisions bring Japan's transfer pricing legislation further into alignment with the OECD Guidelines.

- **Section reference from local regulation**

Refer to above section.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Japan is an OECD member jurisdiction, and Japanese TP rules are generally consistent with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Japan has adopted BEPS Action 13 for TP documentation in the local laws and regulations.

- Coverage in terms of Master File, Local File and CbCR

  It covers the master file, local file and CbCR.

- Effective or expected commencement date

  CbCR and master file requirements are effective for fiscal years commencing on or after 1 April 2016. Contemporaneous local file requirements are effective for fiscal years commencing on or after 1 April 2017. For fiscal years beginning prior to 1 April 2017, companies are still required to maintain documents considered necessary to calculate arm's-length prices for controlled transactions (i.e., TP documentation).

- Material differences from OECD report template or format

  There are some differences between the OECD report template or format and Japan's local file regulations. Article 22-10-5(1) of STML Ministerial Order contains

[1] **https://www.nta.go.jp/english/index.htm**

the documentation requirements. Key additional points are the requirement for segmented profit and loss information for the tested party and the counterparty to the transaction (including the counterparty's profit and loss segmented for its transactions with Japan).

CbCR and master file requirements are materially the same.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

In Japan, there is no penalty protection by preparing a contemporaneous local file. Instead, being able to submit the local file by the requested deadline during an audit may po reduce the likelihood of presumptive taxation (see Section -9a below).

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Japan has TP documentation rules. Yes, TP reports are required to be prepared.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Does transfer pricing documentation have to be prepared annually?**

For fiscal years beginning on or after 1 April 2017, companies are required to prepare a contemporaneous local file by the time of filing the corporate income tax return (i.e., annually). Please find the materiality limit or thresholds to prepare a contemporaneous local file below. Companies that are not subject to a contemporaneous local file are encouraged to prepare a local file annually, but not required by the local laws and regulations. For fiscal years beginning prior to 1 April 2017, Japan has a de facto documentation requirement, as taxpayers are expected to maintain documents in support of any tax return (i.e., the results of the tested transactions need to be arm's length).

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has related-party transactions and to file a stand-alone corporate tax return.

b) Materiality limit or thresholds

- Transfer pricing documentation

There is none specified.

- Master File

Companies with global consolidated sales of less than JPY100 billion in the most recent financial year are exempt from the requirement to submit a master file.

- Local File

Companies with transactions with a single overseas entity of less than JPY5 billion (all transactions including intangible transactions) and intangible transactions less than JPY300 million (again with a single overseas counterparty) in the most recent financial year are exempt from the contemporaneous local file requirement.

Companies exempt from the contemporaneous rule are still required to submit, upon request by an examiner, documents considered necessary to calculate arm's-length prices for controlled transactions (which are usually contained in a local file).

- CbCR

MNE groups with a consolidated total revenue for the ultimate parent entity's preceding fiscal year of less than JPY100 billion are exempt from the CbCR filing requirement.

- Economic analysis

There is none specified.

c) Specific requirements

- Treatment of domestic transactions

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The local file need not be submitted in the local language. CbCR must be prepared in English, and the master file can be prepared in English or Japanese. However, for the master file and local file, the tax examiner may request translation of all or part of the documentation when not in Japanese.

- **Safe harbor availability including financial transactions if applicable**

No specific safe harbor is available in Japan.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Refer to the section below.

- **Related-party disclosures along with corporate income tax return**

Schedule 17-4 must be attached to the regular annual tax return when the taxpayer has foreign related-party transactions during the fiscal year.

This contains the following:

- The name and address of the foreign related party
- The description of the main business of the foreign related party
- The number of employees of the foreign related party
- The amount of capital of the foreign related party
- The legal ownership relationship
- The fiscal year of the foreign related party
- The revenue; cost of sales; selling, general and administrative expenses; operating profit; earnings before tax; and retained earnings of the foreign related party for the preceding year
- The amount of intercompany transactions by type (the inventory transaction, the provision of services, tangible fixed asset transaction, intangible transaction and interest, etc.) and the TP methodology applied to each type of intercompany transaction
- Whether an APA exists covering the transactions between the taxpayer and its foreign related party or parties

- **Related-party disclosures in financial statement/annual report**

Japan Accounting Standard Paragraph 6 provides that in the consolidated financial statements, transactions between consolidated companies and related parties are subject to disclosure, and transactions between consolidated subsidiaries and related parties are also subject to disclosure.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

This should be filed within three months after year-end including an extension if the taxpayer files a stand-alone corporate income tax return. If the taxpayer files a consolidated corporate income tax return, this should be filed within four months after year-end, including an extension.

- **Other transfer pricing disclosures and return**

This is the same as above.

- **Master File**

The master file should be submitted within one year of the day following the one when the ultimate parent's fiscal year ends.

- **CbCR preparation and submission**

The CbCR must be submitted within one year of the day following the one when the ultimate parent entity's

fiscal year ends.

- CbCR notification

Notification must be submitted by the end of the ultimate parent's fiscal year-end.

b) Transfer pricing documentation/Local File preparation deadline

The contemporaneous local file must be prepared by the time of lodging the tax return (e.g., where there is a contemporaneous requirement).

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submission of transfer pricing documentation or Local File?

There is no statutory deadline for submission of TP documentation (other than the master file, which is required to be submitted within one year of the year-end of the ultimate parent as mentioned above). The deadline for submission of a local file depends on whether transactions covered require contemporaneous documentation. If transactions require a contemporaneous local file, it should be submitted by the date designated by the tax examiner, which can be a maximum of 45 days from the date of the request during a corporate or TP examination. If transactions are exempt from the contemporaneous local file requirement, documents considered as important to calculate arm's-length prices (documents equivalent to the local file) should be submitted to an examiner by the day designated by the tax examiner, which can be a maximum of 60 days from the date of the request in the course of a corporate or TP examination.

- Time period or deadline for submission upon tax authority request

The time period or deadline is same as above.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

No.

b) Priority and preference of methods

Historically, the Japanese tax authorities have required that the CUP, resale-price and cost-plus methods be used whenever possible, allowing the use of other methods (e.g., profit-split method and TNMM) only after the first three have been discounted.

STML Articles 66-4 and 66-4-2 were amended to eliminate the hierarchy of methods in favor of the most-appropriate-method approach for tax years beginning on or after 1 October 2011.

8. Benchmarking requirements

- Local vs. regional comparables

There is a requirement for local jurisdiction comparables in practice for Japan benchmarks (unless the tested party is outside Japan). In practice, non-Japanese comparables are rejected by the Japanese tax authorities because of market differences when the examiner assesses a TP adjustment.

- Single-year vs. multiyear analysis for benchmarking

For a TP assessment, a single-year analysis is applied. For a local file or APAs, multiple-year analyses are common.

- Use of interquartile range

The Administrative Guidelines provide that a TP assessment using the median of an interquartile range can be made in instances where comparability adjustments are made, differences that are difficult to quantify remain, and it is recognized that the effect of the said differences in the adjusted ratio is insignificant. The Administrative Guidelines provide that an interquartile range can be used under the profit-split method, the residual profit-split method and the transactional net margin method.

The interquartile range is recognized in practice and commonly used in local files and APAs.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

TP examiners would match the year of the taxpayer to the same fiscal year of the comparable companies selected for the purpose of a TP assessment. Pragmatically, many taxpayers use the most up-to-date information, as it may not be possible

to match years when preparing the local file because up-to-date financial data of comparable companies is not available by the time of filing a corporate tax return (i.e., the due date to prepare a local file).

- **Simple, weighted or pooled results**

For a local file or APAs, there is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There is none specified.

- **Consequences of failure to submit, late submission or incorrect disclosures**

A fine of up to JPY300,000 will be imposed if corporations fail to submit a CbCR or a master file to the District Director by the deadline without good reason.

There is no separate penalty for failure to prepare and maintain a local file. However, preparation of sufficient documentation does not lead to penalty relief in the case of an assessment. The Japanese tax authority has the right to impose presumptive taxation if the taxpayer does not provide documents considered as necessary to calculate arm's-length prices or a local file in a timely manner. For the taxable year starting on 1 April 2017 or thereafter, a 45-day or 60-day due applies as described previously.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The underpayment penalty tax is computed as 10% of the additionally assessed tax (or 15% on the amount of additionally assessed tax that exceeds the larger of the tax originally paid or JPY500,000).

The first part of delinquency tax accrues for one year following the due date of the original tax return at a rate of 4% per year, plus the official discount rate as of 30 November of the prior fiscal year. However, for the time period commencing 1 January 2014, the rate is determined by adding 1% to the special reference ratio.

The second part of delinquency tax accrues from the date following the date of the assessment notice until the date the additional tax is paid. For the first three months following the date of the assessment notice (including the one-month period from the date of the notice until the payment deadline and two months following the deadline), the rate of delinquency tax is the special reference ratio plus 7.3% for the period after 1 January 2014. Specifically, these translate to delinquency tax rates as follows.

Term	First part	Second part
1 Jan 2014 through 31 Dec 2014	2.9%	9.2%
1 Jan 2015 through 31 Dec 2015	2.8%	9.1%
1 Jan 2016 through 31 Dec 2016	2.8%	9.1%
1 Jan 2017 through 31 Dec 2017	2.7%	9.0%
1 Jan 2018 through 31 Dec 2018	2.6%	8.9%
1 Jan 2019 through 31 Dec 2019	2.6%	8.9%
1 Jan 2020 through 31 Dec 2020	2.6%	8.9%
1 Jan 2021 through 31 Dec 2021	2.5%	8.8%
1 Jan 2022 through 31 Dec 2022	2.4%	8.7%

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is none specified.

- **Is interest charged on penalties or payable on a refund?**

In general, no interest is accrued on a refund as a result of a correlative adjustment.

b) Penalty relief

As mentioned in (a) above, there are no specific penalties for failure to prepare and submit TP documentation on time (only the possibility of presumptive taxation if a taxpayer fails to submit the local file by the requested deadline in an audit; see Section 9a). TP assessments by the tax authority are subject to the same penalties as any other corporate tax assessment, and there are no specific provisions for reductions of underpayment penalties.

Grace period of the payment of tax and penalty

The 2007 tax reforms allowed for the provision of a grace period for the payment of assessed taxes – including penalty taxes – for taxpayers submitting an application for an MAP. The taxpayer must submit a separate application to be entitled to the grace period. The grace period is the period starting on the initial payment due date of assessed taxes (if the application submission date is later than the initial payment due date, the submission date is applicable) and ending one month after the day on which the "correction," based on

the mutual agreement, has been made (or the day on which a notification was issued that an agreement could not be reached). Any delinquency taxes accrued during the grace period will be exempted. However, under STML Article 66-4-2 (2), which grants a postponement of tax payment, the tax authority requires the taxpayer to provide security equivalent to the amount of the tax payment (i.e., collateral). This new TP rule applies to applications for a grace period made on or after 1 April 2007:

- After receiving an assessment notice, the taxpayer can take domestic measures to be relieved from economic double taxation.
- After receiving assessment notices, the taxpayer can file a request for reinvestigation with the Regional Commissioner or District Director within three months.
- After the decision by the Regional Commissioner, the taxpayer can file a request for a reconsideration with the President of the National Tax Tribunal within one month, or no decision is made within three months.
- After receiving assessment notices, blue tax return taxpayers can directly file a request for reconsideration with the President of the National Tax Tribunal within three months.
- After the decision or when no decision is made by the National Tax Tribunal, the taxpayer can file a litigation. There are three court instances for litigation against tax assessments in Japan:
  - District court
  - Courts of appeal
  - Supreme court

10. Statute of limitations on transfer pricing assessments

The statute of limitations in Japan on TP assessments is six years from the deadline for filing tax returns for a fiscal year (STML Article 66-4(21)) until 31 March 2020. As a result of the tax reform effective from 1 April 2020, the statute of limitations in Japan on TP assessment is seven years from the deadline for filing tax returns for a fiscal year (STML Article 66-4(26)).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium to high, as tax examinations usually include a review of TP issues, even if the examination team lacks specialized TP expertise. A tax examiner may challenge TP directly or may refer the file to a specialized TP team for follow-up.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high, if the taxpayer appears unprepared to defend its TP policies and methods and if any of the factors listed below are present.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high (same reason as above).

- **Specific transactions, industries and situations, if any, more likely to be audited**

Scrutiny may be increased for taxpayers that meet any of the following criteria:

- The local entity has incurred losses or posts low profit levels.
- The profits of foreign related parties are high.
- Changing the structure of transactions by transferring or otherwise shifting functions to foreign related parties resulted in inappropriate compensation, or the posting of high retained earnings by foreign related parties in low-tax jurisdictions leads to the presumption that income is being shifted to those parties.
- Tax planning is conducted with the objective of shifting income to foreign related parties.
- There may be compliance issues such as the lack of any change in profit levels despite the fact that TP adjustments were imposed in the past.
- Multilevel transactions are being conducted between the local entity and multiple foreign related parties, and the

profit allocation and foreign related-party functions, etc., are not able to be clarified in the tax return or verification is required.

- Inappropriate TP having caused the local entity's higher profit than arm's length was corrected to reflect the arm's-length principle without sufficient TP analysis.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Japan. Unilateral, bilateral and multilateral APAs are available and very common; however, the NTA prefers bilateral APAs.

- **Tenure**

In general, the tenure could be up to five years.

- **Rollback provisions**

A rollback of up to six years is possible in the case of a bilateral APA, but a rollback for three years is common; however, a rollback is not permitted in unilateral cases.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty (DTT) to which Japan is signatory. Most of Japan's DTTs permit taxpayers to present a case to the tax authorities within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Japanese thin-capitalization rules restrict the deductibility of interest expense on foreign related loans exceeding the 3:1 foreign related loans-to-equity ratio. Interest disallowed under thin-capitalization rules cannot be carried forward.

Japanese earnings stripping rules also restrict the deductibility of interest expense on foreign related loans if net foreign interest expense exceeds 20% of adjusted taxable income (EBITDA with adjustments). Interest disallowed under earnings stripping rules can be carried forward for seven years.

The Japanese taxpayer must apply both sets of rules outlined above. The taxpayer must to disallow the higher amount in the corporate tax return. More details can be found in:

- **STML Article 66-5(1) and related provisions stipulate the thin-capitalization rules.**
- **STML Article 66-5(2) and related provisions stipulate the earnings stripping rules.**

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Income and Sales Tax Department (ISTD).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Regulation No. (40) of 2021 (the Regulations) published in the Official Gazette on 7 June 2021 and its Executive Instructions No. (3) of 2021 (the Executive Instructions) published in the Official Gazette on 16 September 2021.

The Regulations and Executive Instructions apply to any reporting period ending after 7 July 2021.

- **Section reference from local regulation**

Income Tax Law No. (34) of 2014 (as amended)

Article 20(d) defines arm's-length principle (language similar to Article (9)(1) of the Organisation for Economic Co-operation and Development (OECD)).

Regulations No. (40) of 2021

Articles 5, 6 and 11(b) provide definitions for related party and permanent establishment for TP purposes.

Articles 8, 9, 10, and 11 adopt the three-tiered TP documentations and introduce additional local TP compliance requirements.

Articles 3 and 4 emphasize the burden of proof (taxpayer vs. ISTD).

Article 17 levies non-compliance penalties in line with the Income Tax Law No. (34) of 2014 (as amended).

Executive Instructions No. (3) of 2021

Articles 3, 4, 5, 6, 7, and 8 detail the components of the transfer pricing documentations and filing deadlines and prescribes the forms (where applicable).

Article 10 provides the approved transfer pricing methods (apply one of the five prescribed OECD transfer pricing methods or an alternative approach if it provides a satisfactory outcome) and requires affected taxpayers to submit a disclosure from a chartered accountant explaining the taxpayer's compliance with the group's transfer pricing policy and its impact on the final financial statements. However, the Regulations and Executive Instructions remain unclear on the specific nature of the disclosure from the chartered accountant and the applicable statutory deadline.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Jordan is not a member of the OECD. As of October 2019, Jordan is a member of the OECD/G20 Inclusive Framework. Jordan's Regulations and Executive Instructions are based on the OECD's BEPS Action 13. However, there are some inconsistencies in the Regulations and Executive Instructions. In general, the inconsistencies do not raise significant concerns, and applying international transfer pricing principles will help address Jordanian requirements.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  Master file, local file and CbCR requirements are covered under Jordan's Regulations and Executive Instructions.

- Effective or expected commencement date

  The Regulations and Executive Instructions apply to any reporting period ending after 7 July 2021.

- Material differences from OECD report template or format

  No.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

[1] www.istd.gov.jo/

The BEPS Action 13 format should be sufficient.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, on 7 June 2021, Jordan introduced transfer pricing rules that adopt the arm's-length principle reflected in the Associated Enterprise Article of Jordan's tax treaties and in the OECD TP Guidelines for multinational enterprises (MNEs). The rules also introduce new compliance requirements for Jordanian entities that engage in related-party transactions with an annual value exceeding JOD500,000 (approximately USD705,000) for any reporting period ending after 7 July 2021. The specific requirements are:

- A transfer pricing disclosure form to be submitted with the annual income tax return (i.e., within four months after the end of the fiscal year of the taxpayer)
- A master file on the global business operations and transfer pricing policies of the taxpayer's MNE group to be submitted within a period not exceeding 12 months following the tax period
- A local file containing information on all transactions with related parties to be submitted within a period not exceeding 12 months following the tax period

The taxpayer would also need to present a signed disclosure from the taxpayer's appointed chartered accountant confirming the taxpayer's compliance with the group's transfer pricing policy and detailing the impact of said policy on its financial statements.

Members of an MNE group also need to submit a country-by-country (CbC) report and notification within 12 months following the end of the group's tax period if the total consolidated revenue in the group financial statements exceeds JOD600 million (approximately USD846 million).

Does a local branch of a foreign company need to comply with the local transfer pricing rules?

Yes (subject to meeting the thresholds specified under Section 4a above).

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes (subject to meeting the thresholds specified under Section 4a above).

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Refer to Section 4a above.

- **Master File**

Refer to Section 4a above.

- **Local File**

Refer to Section 4a above.

- **CbCR**

Refer to Section 4a above.

- **Economic analysis**

Not specified; however, we understand that the economic analysis is a required component of the local file in Jordan.

c) Specific requirements

- **Treatment of domestic transactions**

Not specified.

- **Local language documentation requirement**

Not specified. Clarification is being sought from the ISTD on the accepted language of the TP documents.

Safe harbor availability including financial transactions if applicable

Not specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not specified.

- **Any other disclosure or compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

Transfer pricing-specific returns

Jordan entities that engage in related-party transactions (including notional transactions between a branch and its head office) for 2021 with an annual value exceeding JOD500,000 (approximately USD705,000) must submit a TP disclosure form together with the annual income tax return due within four months from the end of the taxpayer's year-end.

- **Related-party disclosures along with corporate income tax return**

Please refer to our response to the first bullet-point of Section 4c above.

- **Related-party disclosures in financial statement/annual report**

Jordan follows International Financial Reporting Standards (IFRS) for financial statement preparation. Under IFRS, related parties' disclosure is required. However, definition of related parties varies between standard accounting principles and tax. The final audited stand-alone financial statements also form part of the corporate income tax filing package due within four months after the end of the fiscal year of the taxpayer.

- **CbCR notification included in the statutory tax return**

A CbCR notification should be submitted along with the corporate income tax return. The CbCR notification must include the following information:

  - Name of the ultimate parent entity (UPE) or surrogate parent entity (SPE)
  - Name of UPE's/SPE's authorized representative
  - Jurisdiction where the original CbCR is filed

- **Other information/documents to be filed**

Refer to Section 4c above.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Four months after the end of the fiscal year of the taxpayer.

- **Other transfer pricing disclosures and return**

Prepare and submit the TP disclosure form along with the corporate income tax return, i.e., within four months after the end of the fiscal year of the taxpayer.

- **Master File**

Prepare and submit the TP master file within 12 months following the end of the tax reporting period.

- **CbCR preparation and submission**

The compliance requirements associated with CbCR require the report and notifications to be submitted within 12 months of the annual reporting period for the group.

- **CbCR notification**

The CbCR notification is to be submitted within 12 months of the annual reporting period for the group. However, there is a lack of clarity in the Regulations and Executive Instructions around whether local entities are required to file a report or a notification in absence of an activated CbCR exchange mechanism by Jordan.

Additionally, along with the corporate income tax return submission date, affected taxpayers should provide the information detailed under Section 4c above.

b) Transfer pricing documentation/Local File preparation deadline

Prepare and submit TP local file within 12 months following the end of the tax reporting period.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Refer to above.

- **Time period or deadline for submission upon tax authority request**

Refer to above.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There are no COVID-19-specific measures.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Taxpayers should perform a functional analysis and apply one of the five prescribed OECD transfer pricing methods (or an alternative approach if it provides a satisfactory outcome) to assess whether the pricing of transactions with related parties is at arm's length.

- **Domestic transactions**

Taxpayers should perform a functional analysis and apply one of the five prescribed OECD transfer pricing methods (or an alternative approach if it provides a satisfactory outcome) to assess whether the pricing of transactions with related parties is at arm's length.

b) Priority and preference of methods

Not specified.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are preferred over regional comparables. The ISTD should accept regional comparables, provided no local comparables are available and the burden of proof is transferred from the ISTD to the taxpayer.

- **Single-year vs. multiyear analysis for benchmarking**

Single year.

- **Use of interquartile range**

Not specified.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Not specified.

- **Simple, weighted or pooled results**

Not specified.

- **Other specific benchmarking criteria, if any**

Not specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not specified. In practice, however, the ISTD would most likely consider an incomplete documentation as a failure to submit, therefore, attracting a penalty of JOD300 to JOD1,000 (approximately USD423–USD1,410).

- **Consequences of failure to submit, late submission or incorrect disclosures**

Non-compliance with TP documentation submission may result in a late filing penalty being imposed at JOD300 to JOD1,000 (approximately USD423–USD1,410).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The underpayment penalty tax is computed at 0.4% of the additional assessed tax resulting from the TP assessment, which is applied on each late week or part thereof.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes; same as the above.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

Not specified.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

- **12. Likelihood of transfer pricing scrutiny and related audit by the local authority**
- **Likelihood of transfer pricing-related audits (high/medium/low)**

Not specified.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Not specified.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Not specified.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Not specified.

- **Tenure**

Not specified.

- **Rollback provisions**

Not specified.

- **MAP opportunities**

Not specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

The thin-capitalization rule in Jordan is 3:1 (debt-to-equity ratio), which will apply to related-party debt. Interest paid on related-party debt exceeding this ratio will not be deductible for tax purposes.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority [1]

State Revenue Committee of the Ministry of Finance.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The Law of the Republic of Kazakhstan No. 67-IV on Transfer Pricing, dated 5 July 2008 (the Transfer Pricing Law). Additionally, transfer pricing matters are regulated by the following subordinate legal acts:

- Rules for monitoring transactions (No. 176 of 16 March 2015)
- Rules for concluding agreements on the application of transfer pricing (No. 1197 of 24 October 2011)
- List of officially recognized sources of information on market prices (No. 292 of 12 March 2009)
- List of exchange-quoted goods (No. 638 of 6 May 2009)
- List of international business transactions involving goods (works, services) subject to transaction monitoring (No. 194 of 19 March 2015)
- Rules on the procedure of the authorized bodies' interaction in exercising control of transfer pricing matters (No. 129 of 26 March 2009)
- Forms of local file, master file and country-by-country reporting on transfer pricing and rules for their completion (No. 1104 of 24 December 2018)
- Forms of country-by-country reporting and notification on participation in a multinational group and rules for their completion (No. 178 of 14 February 2018)

- **Section reference from local regulation**

Per the Transfer Pricing Law, individuals and legal entities having specific relations affecting economic results of transactions between them shall be recognized as related parties. Criteria for defining related parties are provided in Article 11 of the Transfer Pricing Law.

[1] **http://kgd.gov.kz/en**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Kazakhstan is not a member of the OECD. However, the Transfer Pricing Law has some features in common with OECD Guidelines. At the same time, there are also many differences: the key one of them is that the Transfer Pricing Law applies to all international transactions, regardless of whether the parties are related or not.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The following three-tier reporting is implemented in Kazakhstan: CbCR, master file and local file. In addition, subject to certain conditions, Kazakhstan taxpayers are also obliged to submit a notification on participation in an MNE group.

- Coverage in terms of Master File, Local File and CbCR

  Master file, local file and CbCR are covered.

- Effective or expected commencement date

  1 January 2016 for CbCR and 1 January 2019 for master file and local file (2019 is the first reporting period).

- Material differences from OECD report template or format

  No significant differences from the OECD report template or format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

Availability of BEPS format reports does not protect from penalties.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, signed on 12 June 2018.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Subject to certain conditions, Kazakhstan taxpayers may be obligated to submit the following documents:

- Notification on participation in an MNE group: to be submitted on annual basis
- CbCR: to be submitted on an annual basis or upon request
- Master file: to be submitted on an annual basis or upon request
- Local file: to be submitted on annual basis
- Transfer pricing monitoring reporting: to be submitted on annual basis
- Transfer pricing documentation (including information and documents supporting applied prices and economic justification supporting price differential and transfer pricing method): to be submitted upon request

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

No materiality limit.

- **Master File**

Consolidated group revenue for the year preceding the reporting financial year for which the master file is filed is EUR750 million or more (or the threshold established for master file filing in the jurisdiction of a non resident parent company or surrogate parent).

- **Local File**

Company's revenue for the fiscal year preceding the reporting year is greater than EUR5 million monthly calculation index (approximately USD30 million).

- **CbCR**

Consolidated group revenue for the year preceding the reporting financial year for which CbCR is filed is EUR750 million or more (or the threshold established for CbCR filing for the jurisdiction of a non resident parent company or surrogate parent).

- **Economic analysis**

Not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

If a domestic transaction falls under transfer pricing control, general transfer pricing documentation requirements apply.

- **Local language documentation requirement**

Documentation should be submitted in either Kazakh or Russian language.

- **Safe harbor availability including financial transactions if applicable**

There are no safe harbors, except for transactions with agricultural goods to which a 10% price deviation safe harbor applies.

- **Is aggregation or individual testing of transactions preferred for an entity**

Testing of individual transactions is preferred.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Corporate income tax return should be filed by 31 March of the year following the reporting period (may be extended to 30 April).

- **Other transfer pricing disclosures and return**

Transfer pricing monitoring reporting has to be filed annually by 15 May of the year following the reporting period.

- **Master File**

Master file has to be filed within 12 months following the reporting period or within 12 months upon request of the tax authorities.

- **CbCR preparation and submission**

CbCR has to be filed annually within 12 months following the reporting period or within 12 months upon request of the tax authorities (depending on the type of taxpayer), if applicable.

- **CbCR notification**

Notification on participation in an MNE group should be submitted annually by 1 September of the year following the reporting period. If there are multiple constituent entities in Kazakhstan, the CbCR notification applies to all the countries.

b) Transfer pricing documentation/Local File preparation deadline

Local file has to be prepared annually within 12 months following the reporting period.

Transfer pricing documentation has to be prepared upon request of the tax authorities within 90 calendar days (or within 30 business days in case it was requested during a tax audit).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Local file has to be filed annually within 12 months following the reporting period. The deadline is 31 December of the year following the reporting year.

Transfer pricing documentation has to be provided upon request of the tax authorities within 90 calendar days (or within 30 business days in case it was requested during a tax audit).

- **Time period or deadline for submission on tax authority request**

Transfer pricing documentation has to be filed within 90 calendar days upon request of the tax authorities (or within 30 business days in case it was requested during a tax audit).

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The Transfer Pricing Law provides for five transfer pricing methods that should be applied in the following order: (1) comparable uncontrolled price method, (2) cost plus method, (3) resale price method, (4) profit split method and (5) transactional net margin method.

8. Benchmarking requirements

- **Local vs. regional comparables**

No specific provisions.

- **Single-year vs. multiyear analysis for benchmarking**

Single-year analysis is preferable.

- **Use of interquartile range**

The full range from maximum to minimum is allowed.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

No specific provisions.

- **Simple, weighted or pooled results**

No specific provisions.

- **Other specific benchmarking criteria, if any**

A 10% independence threshold.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Special penalties are in place for failure to comply with the transfer pricing monitoring reporting requirements and failure to provide documents required to perform transfer pricing control. The maximum penalty is set at KZT1,020,950 (approximately USD2,330).

Non-submission of CbCR, a master file or a local file is subject to penalties with a maximum penalty of KZT1,458,500 (approximately USD3,320).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The penalty resulting from a transfer pricing adjustment is up to 80% of unpaid tax amount.

In case of understatement of taxes as a result of a tax audit, Kazakhstan state authorities automatically initiate a criminal investigation in case the amount of assessed and unpaid taxes or other obligatory payments exceeds KZT50,000 (large harm cases) or KZT75,000 (extra-large harm cases) monthly calculated index (approximately USD332,000 and USD498,000, respectively).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

No specific information available for penalty. Refer to the above section.

- **Is interest charged on penalties or payable on a refund?**

Interest for late payment of tax resulting from a transfer pricing adjustment is calculated as 1.25 times the Kazakhstan National Bank refinancing rate (approximately 9.5%).

b) Penalty relief

The legislation in Kazakhstan considers cases for penalty relief when an entity may be exempt from administrative liability. These cases, among others, include expiration of the statute of limitations, exemption on the basis of an act of amnesty and reconciliation of the parties. Despite legal provisions allowing for exemption, implementation is quite rare in practice.

10. Statute of limitations on transfer pricing assessments

The general statute of limitation period for tax purposes is three years after the end of a respective tax period (but it may be extended to seven years in certain cases for transfer pricing).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

It depends on the industry (high for export of commodities).

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high based on practice.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high based on prevailing audit practice.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Export of commodities is under higher scrutiny.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Bilateral and unilateral APAs are available for all types of transactions

Transaction participants have the right to conclude a unilateral APA. The procedure for requesting such an agreement is included in the rules for concluding agreements on the application of transfer pricing.

- **Tenure**

An APA may be concluded for a three-year period.

- **Rollback provisions**

This is not available.

- **MAP opportunities**

MAP opportunities are available under double tax treaties.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The deduction of interest is generally limited by a specific debt-to-equity formula set by the tax legislation (the thin-capitalization rule).

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Kenya Revenue Authority (KRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Section 18 (3) of the Income Tax Act (ITA).
  - Section 18A of the ITA, effective from 3 April 2017.
  - Section 18B of the ITA effective 1 January 2022.
  - Income Tax (Transfer Pricing) Rules, 2006.
  - Section reference from local regulation

Section 18 (3) and 18A of the ITA and the Income Tax (Transfer Pricing) Rules, 2006, (amended rules 2012) articulate the arm's-length principle. Section 18(6) of the ITA provides guidance on the definition of related persons.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Kenya is not a member of the OECD. In practice, the OECD Guidelines are referred to by the KRA for guidance as best practice.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, CbCR was introduced under Section 18B of the Income Tax Act with 1 January 2022 as the effective date. However, regulations to operationalize CbCR are yet to be enacted. The regulations have been issued in draft for public participation.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable. However, a taxpayer is required to prepare a transfer pricing documentation where related-party transactions are entered.

- Effective or expected commencement date

  1 January 2022.

- Material differences from OECD report template or format

  From the draft guidelines, the CbCR requirement seems to be consistent with OECD CbCR guidance.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No; however, in February 2016, Kenya signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which aims at facilitating exchange of information, assistance in tax recovery, service of documents and joint tax audits by parties to the convention.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes; however, there is no contemporaneous documentation requirements. Submission is upon request by the tax authority.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

No.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There's no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

We expect CbCR guidelines to be issued by the government to stipulate the threshold.

- **Economic analysis**

There's no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There are documentation obligations for specific domestic transactions. This is required when an entity operating in a preferential tax regime (such as special economic zones or export processing zone) enters into transactions with a related party under the normal tax regime.

- **Local language documentation requirement**

Transfer pricing documentation needs to be prepared in the English language.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing is preferred.

- **Any other disclosure or compliance requirement**

There are no additional disclosure or compliance requirements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no transfer pricing-specific returns for taxpayers in Kenya.

- **Related-party disclosures along with corporate income tax return**

According to the corporate tax return format, the taxpayer is required to declare the names and addresses of related parties outside of Kenya.

- **Related-party disclosures in financial statement/annual report**

A taxpayer is required to declare all related-party transactions in the audited financial statements, which then feed into the corporate income tax return.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

There is no other transfer pricing information to be filed.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The return should be filed at the end of the sixth month following the company's financial year-end.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

Twelve months from fiscal year-end.

- **CbCR notification**

We expect CbCR guidelines to be issued by the government to stipulate the threshold.

b) Transfer pricing documentation/Local File preparation deadline

There are no deadlines, but a transfer pricing policy document must be prepared and submitted upon request by the tax authority.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

There is no prescribed duration by law. This is at the discretion of the tax authorities upon application. However, tax authorities normally give between two and four weeks.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

Rule 4 of the transfer pricing rules states that a taxpayer may choose the most appropriate from among six methods when determining the arm's-length price: CUP, resale price, cost plus, profit split, TNMM and any other method that the Commissioner for Domestic Taxes may prescribe.

In 2012, the transfer pricing rules were amended to give the Commissioner for Domestic Taxes power to prescribe the application of the above-mentioned methods. However, the KRA has yet to issue any practice notes regarding the application of the methods. In practice, the most appropriate method, based on the facts and circumstances of the transaction, is applied.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local jurisdiction comparable. In practice, there is a preference for the Asia-Pacific and Pan-European regions.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis: three years.

- **Use of interquartile range**

Interquartile range is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no legal requirement to conduct a fresh benchmarking search every year. However, in practice, an update is considered after a three-year period.

- **Simple, weighted or pooled results**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

When searching for comparables, 75% independence is applied.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The Commissioner for Domestic Taxes may adjust the taxable profits and demand additional corporate tax and the resultant penalties and interest.

Additional taxable income or reduced assessed loss because of

adjustments relating to transaction with shareholder or related person is deemed as dividend distribution. This could have withholding tax (WHT) implications.

Failure to keep a document attracts penalty equal to 10% of tax payable under the tax law to which the document relates for the reporting period to which the failure relates to a minimum of KES100,000 (USD1,000).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Transfer pricing adjustments resulting to additional taxable corporate income attracts late payment penalty at the rate of 5% of the tax due and interest at the rate of 1% per month for the period under default.

Transfer pricing adjustments resulting in an increase in customs value of goods will have an impact on customs duty payable.

Tax avoidance penalty applies at an amount equal to double the amount of tax that would have been avoided, save for the application of the tax avoidance provision.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

No specific information available for penalty. Refer to the above section.

- **Is interest charged on penalties or payable on a refund?**

No, interest is charged on the principal tax liability due, subject to in duplum rule.

b) Penalty relief

Taxpayer may apply in writing to the Commissioner for Domestic Taxes for remission of penalty (excluding tax avoidance penalty) and interest payable citing relevant grounds.

The Commissioner for Domestic Taxes may remit in whole or part penalty and interest not exceeding KES1.5 million (USD15,000) and seek approval from the Cabinet Secretary of National Treasury & Planning Ministry, where the penalty and interest exceed KES1.5 million (USD15,000).

If an adjustment is proposed by the tax authority, the following are the available dispute resolution options:

- **Alternative Dispute Resolution (ADR)**
- **Tax Appeals Tribunal**
- **The High Court, if the ruling from the Tax Appeals Tribunal is dissatisfactory**
- **The Court of Appeal, if the ruling from the High Court is dissatisfactory**

10. Statute of limitations on transfer pricing assessments

It is five years. However, there is no time limit in case of fraud, evasion, or gross or willful neglect by taxpayer.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Government has issued a social distancing order that limits meetings.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of tax audits may be considered to be high because the KRA has taken a firm stand toward audits and is now selecting multiple taxpayers across all sectors. Consequently, the likelihood of a transfer pricing review as part of a general tax audit is also high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high, given the recent trend mentioned above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If a transfer pricing methodology is challenged, then the likelihood of an adjustment may be considered to be high. This is based on our experience in handling transfer pricing controversy issues. In most cases, when the tax authorities are not in agreement with the methodology adopted by a taxpayer, this results in an additional assessment. The taxpayer has the option to challenge this.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Generally, all related-party transactions are viable for auditing; however, intragroup services and intangibles have a higher likelihood.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No specific APA rules are applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Available through double taxation treaty agreements in force in Kenya.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Section 16 (j) of the ITA prescribes restriction on interest expenses in cases where a company is thinly capitalized. However, the Income Tax Act was amended by the Finance Act, 2021 to repeal the thin-capitalization provisions effective 1 January 2022. In its place, interest deductibility will be capped at 30% of a company's earnings before interest, taxes, depreciation and amortization (EBITDA).

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Tax Administration of Kosovo (*Administrata Tatimore e Kosovës* – TAK).

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and effective date of applicability

Law No. 06/L-105, on corporate income tax (CIT), dated 27 June 2019:

- Section VI, Article 28: transfer pricing
- Section VI, Article 29: avoidance of double taxation

The Ministry of Finance issued Administrative Instruction No. 02/2017, dated 27 July 2017, for the implementation of transfer pricing, providing further guidance on the application of the arm's-length principle and the preparation of the transfer pricing documentation.

- Section reference from local regulation
  - Law No. 03/222, dated 12 July 2010, on tax procedures – Article 1, Paragraph 1.27 – definition of related persons.
  - Law No. 06/L-105, dated 27 June 2019, on CIT – Article 3, Paragraph 1.18 – definition of related persons for CIT purposes.
  - Administrative Instruction No. 02/2017, dated 20 July 2017, on transfer pricing – Article 3, Paragraph 1.5 – definition of related persons for transfer pricing purposes.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Kosovo is not a member of the OECD; however, the Kosovar legislation on transfer pricing makes reference to the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

No.

- Coverage in terms of Master File, Local File and CbCR

This is not applicable.

- Effective or expected commencement date

This is not applicable.

- Material differences from OECD report template or format

This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

The BEPS Action 13 format report is generally in line with the local transfer pricing documentation requirements. However, in order to ensure that it is considered as complete and to achieve protection from the penalty on incorrect or incomplete disclosure, it should contain also the local industry and market analysis, an overview of the local entity including any local strategies, and the organizational structure of the local entity.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?

[1] http://www.atk-ks.org/wp-content/uploads/2017/07/Udhëzimi-Administrativ-MF-Nr.-02-2017-për-Transferimin-e-Çmimit.pdf

Yes, it has. There are no explicit requirements to prepare the transfer pricing documentation contemporaneously. However, it is advisable to have it prepared by the CIT return date, i.e., 31 March of the following year.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch of a foreign company needs to comply with the local transfer pricing rules.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation has to be prepared annually.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in one of the official languages of Kosovo (Albanian or Serbian). Paragraph 29.11 of Administrative Instruction No. 02/2017 on transfer pricing mandates the use of local language in transfer pricing documentation. In consultation with the Kosovo tax authorities, the documentation may be submitted in English, as well; however, such cases are not specifically defined in the legislation.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is no preference between aggregation or individual testing and allows both.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers are required to report all controlled transactions annually by filing an Annual Controlled Transaction Notice if the aggregate value of their controlled transactions, including loan balances, exceeds EUR300,000. The Annual Controlled Transaction Notice should be submitted by 31 March of the following year. When determining the annual aggregate transaction value, taxpayers should take into account all intercompany transaction amounts (i.e., without offsetting credit and debit values).

- **Related-party disclosures along with corporate income tax returns**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

Related-party disclosures are included in the financial statements of the taxpayer pursuant to International Financial Reporting Standards (IFRS) requirements.

There are no other related-party disclosures or additional forms required by the legislation.

- **CbCR notification included in the statutory tax return**

This is not applicable

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The CIT return should be submitted by 31 March of the following year.

- Other transfer pricing disclosures and return

The Annual Controlled Transaction Notice should be submitted by 31 March of the following year. However, this deadline was extended to 30 April 2020 for the Annual Controlled Transaction Notice for 2019 exceptionally due to COVID-19.

- Master File

This is not applicable.

- CbCR preparation and submission

This is not applicable.

- CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

There is no statutory deadline for the preparation of the transfer pricing documentation. However, since the documentation must be submitted within 30 days upon tax authorities' request, it is recommended that it should be prepared by the CIT return deadline, i.e., 31 March of the following year.

- c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

There is no specific deadline for the submission of transfer pricing documentation.

- Time period or deadline for submission on tax authority request

Transfer pricing documentation must be submitted within 30 days once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability

- International transactions

Yes.

- Domestic transactions

No.

b) Priority and preference of methods

The CUP method must be firstly attempted pursuant to Kosovo's legislation, and if CUP cannot be applied, the other traditional methods of resale price and cost plus are favored. In certain circumstances, the taxpayer may apply traditional profit methods as follows: TNMM and profit-split method.

The taxpayer has the right to mix or support the implementation of the most appropriate method by implementing one or more of the other transfer pricing methods.

8. Benchmarking requirements

- Local vs. regional comparables

Article 15, Paragraph 5 of Administrative Instruction No. 02/2017 states that in the absence of domestic comparable uncontrolled transactions, Kosovo's tax authorities recognize the use of foreign comparable uncontrolled transactions, provided that the geographical and other influencing factors are analyzed and appropriate comparable adjustments are carried out, if necessary.

In practice, local comparables should be first attempted, and if not available, the search can be extended in the following order: Balkans, Eastern Europe and the EU.

- Single-year vs. multiyear analysis for benchmarking

Preference is given to uncontrolled comparables belonging to the same year as the controlled transaction. However, the

taxpayer can rely on immediate previous-year comparables, provided that the comparability criteria is met. It is an EY jurisdiction practice to use a multiyear analysis for testing arm's length.

- **Use of interquartile range**

Transfer pricing rules define the market range as a range that includes all the values of the financial indicators, such as price, markup or any other indicator used for the application of the most suitable transfer pricing method for a number of uncontrolled transactions in which each is almost equally comparable with the controlled transaction based on a comparability analysis. Transfer pricing rules do not specifically provide for the interquartile range. However, they stipulate that in the case of adjustments by the tax authorities, the financial indicator is adjusted to the median unless the tax authorities or the taxpayer proves that the circumstances of the case ensure adjustment to a different point in the market range. It is an EY jurisdiction practice to use the interquartile range (from Q1 to Q3) as the acceptable range.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no requirement to conduct a fresh benchmarking search every year. Provided that business operating conditions remain the same, database searches for comparable external transactions should be updated every three years.

Financial updates of the comparable searches should be performed annually.

- **Simple, weighted or pooled results**

Transfer pricing rules do not provide any specific provision regarding the use of a simple or a weighted average. In the examples provided in Administrative Instruction No. 02/2017, the simple average is used. However, it is an EY jurisdiction practice to use both the weighted average and the simple average.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to prepare and timely submit transfer pricing documentation or to fulfill the requirements provided in Administrative Instruction No. 02/2017 is subject to a penalty of EUR125 up to a maximum of EUR2,500. Failure to file the Annual Controlled Transaction Notice is subject to a penalty of EUR125, up to a maximum of EUR2,500.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The legislation does not provide for specific penalties in case of transfer pricing adjustments. Therefore, in case of an adjustment, the general tax penalties would apply as follows:

- Understatement of tax is subject to a penalty of 15% of the undeclared tax liability if such understatement is 10% or less of such tax or to a 25% penalty if the understatement is more than 10% of such tax.
- In case the adjustment is made by the taxpayer voluntarily before such taxpayer receives a tax audit notification, such penalty is capped at 25% of the penalty that would otherwise apply.
- In case the adjustment is made by the taxpayer after such taxpayer receives a tax audit notification but before the tax audit commences, such penalty is capped at 50% of the penalty that would otherwise apply.

Moreover, a penalty for late payment of the tax liability will apply at 1% thereof for each month of delay, capped at 12%.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There are no requirements for contemporaneous documentation.

- **Is interest charged on penalties or payable on a refund?**

There is no interest charged on penalties for erroneous completion of a tax filing.

b) Penalty relief

Currently, no penalty relief is applicable.

10. Statute of limitations on transfer pricing assessments

The statute of limitations on transfer pricing assessments is six years from the CIT return filing due date, i.e., 31 March of the following year.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a transfer pricing audit in Kosovo may be considered to be high.

In light of the transfer pricing rules entered into force on July 2017, the Kosovo tax authorities have initiated several transfer pricing audits, and transfer pricing is expected to continue to attract significant attention.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The tax administration is unlikely to challenge the methodology applied. In principle, in examining the arm's-length character of a transaction, the tax administration should use the same transfer pricing method applied by the taxpayer, to the extent that it is the most appropriate one for that transaction.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium; refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There are no differences among transactions, industries and situations.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Kosovo's current transfer pricing legislation does not express or have provisions for APA. However, this might be subject to change.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

MAPs are generally available under the double tax treaties that Kosovo has with its treaty partners.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no thin-capitalization rules in Kosovo.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Department of Inspections and Tax Claims (DIT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Executive Bylaws of Law No. 2/2008 and Executive Rules and Instructions of Kuwait Income Tax Decree No. 3 of 1955, as amended by Law No. 2/2008.

- **Section reference from local regulation**

Executive Rule No. 49 of Law No. 2/2008 specifically refers to the treatment of related companies.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Kuwait is not an OECD member and the domestic regulations do not explicitly refer to the OECD Guidelines. On 7 June 2017, Kuwait signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS although it is yet to be ratified.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Although not currently applicable, a BEPS Action 13 format report might be sufficient to achieve penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Kuwait does not have specific transfer pricing documentation rules.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

A local branch of a foreign company is required to comply with Executive Rule No. 49 of Law No. 2/2008, which specifically refers to the treatment of related companies.

- **Should transfer pricing documentation be prepared annually?**

Transfer pricing documentation should be prepared and updated annually to reduce the risk of controversy.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

There are no prescribed rules for preparing transfer pricing documentation in Kuwait. MNEs may prepare or maintain documentation in line with their wider group's policies and

standards.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There are no materiality limits.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There are no materiality limits.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation need not be submitted in the local language.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no specific transfer pricing returns in Kuwait.

A specific template covering selected related and non-related-party transactions must be disclosed, together with the annual tax return.

- **Related-party disclosures along with CIT return**

General disclosure obligations apply to the taxpayer's transactions, including related party transactions, and this relates to their tax retention obligations. Taxpayers are obliged to disclose certain related-party transactions as part of the annual corporate income tax return. These transactions include material costs, design and consultancy fees incurred, related-party leases, intragroup financing, intellectual property and other items.

- **Related-party disclosures in financial statement/annual report**

Related-party disclosures are included in the taxpayer's financial statements.

- **CbCR notification included in the statutory tax return**

This is not applicable

- **Other information/documents to be filed**

There is none specified.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

A specific template covering selected related and non-related-party transactions must be disclosed, together with the annual tax return. A tax declaration must be filed on or before the 15th day of the fourth month following the end of the tax period.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

There is no statutory deadline or recommendation for preparing transfer pricing documentation.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No, but in practice it is advisable to prepare and update the documentation before the annual inspection. This allows for the documentation to be submitted as evidence in proceedings in a timely manner.

- **Time period or deadline for submission on tax authority request**

Once transfer pricing documentation is requested by the tax authorities, taxpayers have approximately one to two weeks to submit it.

- **Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted**

Not Applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

This is not applicable.

- **Domestic transactions**

This is not applicable.

b) Priority and preference of methods

In practice, it may be useful for the taxpayer to explain the transfer pricing policy as it applies to their related party transactions when in discussions with the DIT, especially if the transfer pricing method used is based on internationally accepted principles and standards.

8. Benchmarking requirements

- **Local vs. regional comparables**

Even though they are not specifically mentioned in the regulations, local comparables are preferred over regional comparables. A regional search covering countries in the Gulf Cooperation Council or the Middle East and North Africa region could be accepted.

- **Single year vs. multiyear analysis**

There is none specified.

- **Use of interquartile range**

There is none specified.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement to conduct a fresh benchmarking search every year. However, it is recommended to conduct a fresh search once every three years and update financial data for the years in between.

- **Simple, weighted or pooled results**
- **There is none specified.**
- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There is none specified.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There is none specified.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

There is none specified.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is none specified.

- **Is interest charged on penalties or payable on a refund?**

Penalty interest (1% per month) is imposed in the case of transfer pricing adjustments resulting in an assessment of additional income.

b) Penalty relief

Kuwaiti tax regulations do not offer any penalty relief mechanisms.

10. Statute of limitations on transfer pricing assessments

General regulations apply. Law No. 2 of 2008 provides a statute-of-limitations period of five years. This is generally calculated from the date the annual tax return is filed, unless a tolling or discovery rule applies.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium, as the tax authority typically scrutinises intercompany transactions relating to material supply costs, design and consultancy fees incurred abroad, related-party leases, intragroup financing, and intellectual property transactions.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium; the tax authorities usually request substantial documentation to satisfy themselves that the related-party transactions were entered into at arm's length.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

See the above section.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There are no specific APA provisions in Kuwait's domestic regulations.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not Applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no such formal rules in Kuwait.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority[1]

State Revenue Service (*Valsts ieņēmumu Dienests* – SRS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The arm's-length principle is established in the Corporate Income Tax (CIT) law. Article 4 of the CIT law determines that the taxable income base shall be increased by the income that the taxpayer would have obtained, or the expense that the taxpayer would not have incurred while engaging in transactions with its related parties, if the related-party transactions were performed at arm's length. Transfer pricing documentation requirements are laid down in Article 15.2 of the Law on Taxes and Duties.

Cabinet Regulation No. 677, promulgated on 14 November 2017, set the transfer pricing methods applicable for determining arm's-length prices in related-party transactions. Additionally, Cabinet Regulation No. 802, promulgated on 18 December 2018, set requirements regarding the content of transfer pricing documentation and conclusion of APAs.

- **Section reference from local regulation**

"Related party" is defined in Section 1, paragraph 18 of the Law on Taxes and Duties.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD transfer pricing guidelines/UN tax manual/EU Joint Transfer Pricing Forum

Latvia has been a member jurisdiction of the OECD since 1 July 2016.

Latvian transfer pricing legislative acts contain a reference to the OECD Guidelines in applying the transfer pricing methods, as long as they do not contradict the local transfer pricing laws. In most cases, the State Revenue Service accepts the principles stipulated in the OECD Guidelines regarding the structure of transfer pricing documentation.

The principle of supremacy of law does not provide application of the OECD Guidelines directly; however, the State Revenue Service is following the recommendations of the Council of the OECD (C(95)126/Final), which was a base in the drafting of current legislation.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  Both the master file and local file are covered.

- Effective or expected commencement date

  It's in force for transactions carried out in financial years starting from 1 January 2018.

- Material differences from OECD report template or format

  There are no significant material differences.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  The BEPS Action 13 format report will typically be sufficient to achieve penalty protection with regard to penalty for non-compliance of the transfer pricing documentation (effective for related-party transactions carried out in 2018 and beyond). Penalty protection with regard to non-compliance of transfer prices applied with the arm's-length principle is not available.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, signed on 21 October 2016.

[1] **https://www.vid.gov.lv/en**

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

In accordance with part two of Article 15.2 of the Law on Taxes and Duties, the transfer pricing documentation requirements are applicable to local tax residents, as well as branches and permanent establishments (PEs) of foreign companies. However, it should be noted that, in accordance with the above-mentioned provisions, profit attribution between the foreign head office and its branch or PE in Latvia is not under the scope of transfer pricing documentation requirements. This is because branches and PEs are not considered separate legal entities from their head offices. Thus, only the transactions between a foreign company's branch or PE in Latvia and a foreign related party (separate legal entity, not the head office) are in the scope of transfer pricing documentation requirements.

Furthermore, regarding profit attribution to PEs and branches, it should be noted that Latvia applies the force of the attraction principle instead of the OECD 2010 authorized approach (the separate entity principle). Notwithstanding the above, even though it is not required by the head office to include profit attribution to its PEs and branches in the local file transfer pricing documentation, the profit attribution must be carried out at arm's length.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, annual documentation preparation requirement for cross-border related-party transactions exceeding a certain threshold in a financial year (a detailed description of the thresholds is indicated in "Materiality limit or thresholds" below) is set in local tax laws.

The minimum requirement for annual update of transfer pricing documentation entails reviewing the fact pattern and relevant conditions of the transactions indicated in the transfer pricing documentation. If the fact pattern of the transactions and other relevant conditions have remained unchanged, updating the relevant financial data of the local company and the comparable data used for verifying the arm's-length nature of transfer prices applied is sufficient.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone transfer pricing reports if it has engaged in cross-border related-party transactions and meets the transfer pricing documentation preparation thresholds indicated below.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

According to the Latvian statutory transfer pricing requirements applicable to transactions carried out in 2018 and beyond, the thresholds for master file and local file requirements are applicable. The master file and local file requirements effective for transactions carried out in financial years starting from 1 January 2018 and onward are indicated below.

- **Master File**

Preparation and submission to the tax authority within 12 months after the end of the financial year (without request):

- If the annual controlled transaction amount of the local entity with its related parties exceeds EUR15 million

  Or

- If the annual turnover of the local entity exceeds EUR50 million and the annual controlled transaction amount of the local entity with its related parties exceeds EUR5 million

Preparation within 12 months after the end of the financial year and submission to the tax authority within one month after request:

- If the annual controlled transaction amount of the local entity with its related parties exceeds EUR5 million, but does not exceed EUR15 million

- **Local File**

Preparation and submission to the tax authority within 12 months after the end of the financial year (without request):

- If the annual controlled transaction amount of the local entity with its related parties exceeds EUR5 million

Preparation within 12 months after the end of the financial year and submission to the tax authority within one month after request:

- If the annual controlled transaction amount of the local entity with its related parties exceeds EUR250,000, but does not exceed EUR5 million

- **CbCR**

Notification applies to all resident entities that are part of a qualifying group (the threshold is EUR750 million).

- **Economic analysis**

There is no materiality for economic analysis. If the threshold for preparing transfer pricing documentation is reached, economic analysis should be prepared for related-party transactions exceeding EUR20,000.

c) Specific requirements

- **Treatment of domestic transactions**

The arm's-length nature of domestic transactions has to be verified; however, the master file and local file documentation requirements apply only to domestic transactions closely linked to cross-border transactions in the supply chain.

- **Local language documentation requirement**

Section 8, paragraph 4 of the Official Language Law states that statistical summaries, annual accounts, accounting documents and other documents that are to be submitted to state or local government institutions on the basis of laws or other regulatory enactments shall be prepared in the official language, i.e., Latvian.

For related-party transactions carried out in 2018 and beyond, the master file can be submitted in English. However, the State Revenue Service has the right to require translation of the entire master file or relevant sections of the master file into Latvian. The translation has to be provided within 30 days following the request. Local file transfer pricing documentation has to be submitted to the tax authority in Latvian language.

- **Safe harbor availability including financial transactions if applicable**

It is available regarding low-value-adding intragroup services. The OECD-based approach for determining the arm's-length nature of transfer prices (applied for low-value-adding intragroup services) is established in Cabinet Regulation No. 677, paragraphs 18.1 to 18.9.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred.

- **Any other disclosure or compliance requirement**

There are no other specific local disclosure or compliance requirements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no transfer pricing-specific returns in Latvia; however, information regarding related-party transactions (specified above) must be disclosed in the annual CIT return.

- **Related-party disclosures along with corporate income tax return**

The taxpayer must identify all related-party transactions by disclosing the total sum of all related-party transactions (both cross-border and domestic) in the annual CIT return of the respective reporting year (Row 6.5.1 of CIT declaration).

In case the taxpayer has made transfer pricing adjustments, the taxpayer must disclose the income it would have received or the expenditure a taxpayer would have not incurred if commercial and financial relationships were created or established under valid conditions between two independent persons. It should also indicate the applied transfer pricing method in the annual CIT return of the respective reporting year (row 6.5 of CIT declaration).

- **Related-party disclosures in financial statement/annual report**

In accordance with the Law on the Annual Financial Statements and Consolidated Financial Statements, Section 53, a company must disclose its parent entity and its legal address, as well as the transaction amounts with related parties if such transactions are significant and do not conform to normal market conditions. This is for companies whose financials on the balance sheet date exceed at least two of the three values indicated below:

- Balance sheet total: EUR4 million
- Net turnover: EUR8 million
- Average number of employees during the reporting year: 50

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Transfer pricing adjustments must be disclosed in the last month's CIT return of the financial year, which should be filed within 20 days following the end of the financial year. CIT return may be adjusted without late interest penalties until the filing of the annual accounts for the respective financial year.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

It should be prepared within 12 months after the end of the financial year if the annual net turnover of the local entity does not exceed EUR50 million and the annual controlled cross-border transaction amount of the local entity exceeds EUR5 million, but does not exceed EUR15 million. Such taxpayer must submit the master file to the tax authority within one month after request.

It should be prepared and submitted to the tax authority (without a request) within 12 months after the end of the financial year if the annual controlled cross-border transaction amount exceeds EUR15 million or the annual net turnover exceeds EUR50 million and the controlled cross-border transaction amount of the local entity exceeds EUR5 million.

- **CbCR preparation and submission**

The CbCR should be prepared and submitted within 12 months after the last date of the respective financial year.

- **CbCR notification**

There is a CbCR notification requirement in Latvia. The date for the first notification period was 31 August 2017; for future years, it is the last date of the financial year. The notification requirement applies to any resident entity that is part of a qualifying group (the threshold is EUR750 million). It should inform the tax authority that it is a UPE or SPE or that the report will be filed by the UPE or SPE in another jurisdiction that will exchange the CbCR with Latvia. In the notification, that entity and its residence should be identified.

b) Transfer pricing documentation/Local File preparation deadline

For transactions carried out until 31 December 2017, the transfer pricing documentation has to be prepared upon request and submitted within one month after the request by the tax authority.

For transactions carried out starting 1 January 2018, transfer pricing documentation preparation deadlines indicated in the "Materiality limit or thresholds" subsection apply.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of transfer pricing documentation for transactions carried out until 31 December 2017.

For transactions carried out from 1 January 2018 onward, transfer pricing documentation submission deadlines indicated in the "Materiality limit or thresholds" subsection apply.

- **Time period or deadline for submission on tax authority request**

For transactions carried out until 31 December 2017, the taxpayer has to submit the transfer pricing documentation within one month, once requested by the tax authorities in an audit or inquiry.

For transactions carried out from 1 January 2018 onward, transfer pricing documentation submission deadlines on tax authority request indicated in the "Materiality limit or thresholds" subsection apply.

Additionally, transfer pricing documentation for domestic transactions closely linked to cross-border transactions in the supply chain must be prepared and submitted to the tax authority within 90 days after request. The submission deadline can be extended for an additional 30 days, if a deadline extension is requested to the tax authority.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes.

b) Priority and preference of methods

Five methods are accepted: CUP, resale price, cost plus, profit split and TNMM.

Domestic legislation indicates that the most appropriate method which provides the most reliable results should be used.

8. Benchmarking requirements

- **Local vs. regional comparables**

Domestic comparables, if appropriate to controlled transactions, more closely reflect the comparability factors and are more reliable. However, in practice, foreign comparables are used in combination with domestic comparables.

- **Single-year vs. multiyear analysis for benchmarking**

Though both acceptable, the choice of either single- or multiple-year analysis should be justified.

- **Use of interquartile range**

There is no specific legal requirement on the use of the interquartile range. The Latvian tax authority accepts application of the interquartile range; thus, the EY member firm in Latvia uses the interquartile range as a threshold for acceptable results.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A new benchmarking study has to be prepared every year if the total amount of cross-border controlled transactions in the fiscal year total over EUR 5 million.

Rollforward of financials is accepted if the total amount of cross-border controlled transactions in the fiscal year is between EUR 250,000 and EUR 5 million. The category of taxpayers eligible for this relief have to update the financial data of the comparable companies identified earlier, with a new benchmarking study required every three years.

- **Simple, weighted or pooled results**

The simple average is preferred.

- **Other specific benchmarking criteria, if any**

Regarding independence criteria, Latvian statutory rules stipulate that companies are considered to be related parties if the ownership share is equal to or greater than 20%, such companies should be excluded from the comparables search.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Submission of incomplete transfer pricing documentation or substantial breaches on preparation of transfer pricing documentation or the content of transfer pricing documentation may result in a fine of up to 1% of the total amount of controlled related-party transactions, capped at EUR100,000 per year.

- **Consequences of failure to submit, late submission or incorrect disclosures**

For transactions carried out until 31 December 2017, there is no specific penalty for not having transfer pricing documentation. When the prices applied in transactions between related parties are not at arm's length, the taxable income of the taxpayer may be adjusted upward, and a penalty of 20% to 30% plus a late-payment penalty (annual rate of 18%) on the additionally payable CIT may be applied. For recurring transfer pricing adjustments, the penalty rates are doubled (i.e., 40%–60%). The penalties indicated herein are applicable to taxable income adjustments done by the tax authority both before and after 31 December 2017.

For transactions carried out from 1 January 2018 onward, non-submission of transfer pricing documentation or substantial breaches on preparation of transfer pricing documentation or the content of transfer pricing documentation may result in a fine of up to 1% of the total amount of controlled related-party transactions, capped at EUR100,000 per year.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not applicable.

b) Penalty relief

There is no specific penalty relief with respect to transfer pricing adjustments. Per ordinary procedure, a penalty imposed as the result of a tax audit may be reduced by 50%. In practice, having proper transfer pricing documentation reduces the risk of transfer pricing adjustments.

10. Statute of limitations on transfer pricing assessments

The State Revenue Service has the right to assess the tax of local transactions, within three years, and cross-border transactions, within five years, after the tax becomes due.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Small taxpayers in Latvia have a medium risk that they will be subject to a general tax audit, while medium-sized and large multinational taxpayers have a high risk of audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

On the basis of tax audit practice, there is a medium risk for all taxpayers that if the transfer pricing is reviewed as a part of the audit, the transfer pricing methodology will be challenged.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

On the basis of tax audit practice, there is a medium to high risk for all taxpayers of an adjustment if the transfer pricing methodology is challenged.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

A taxpayer has an opportunity to conclude an APA with the State Revenue Service for cross-border transactions with a related foreign company when the transactions exceed EUR1.43 million during a period of 12 months.

There are specific Cabinet Regulations regarding an APA that specify the information to be included in an APA application, describe the procedure and time frame for concluding an APA, and set the fee for filing an APA.

The regulation provides the option of unilateral and bilateral APA only.

- **Tenure**

As of 21 December 2018, the regulation states that an APA may be concluded for a term that does not exceed five years from the date of conclusion.

- **Rollback provisions**

Five-year period rollback is available.

- **MAP opportunities**

Tax administration must engage in conducting MAP in accordance with international treaties that are binding to the Republic of Latvia, i.e., 90/436/EEC: Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

For CIT purposes, companies must include the following amounts in the taxable base:

- The amount of interest payments in proportion to the excess of the average liability over an amount equal to four times the shareholders' equity at the beginning of the tax year, minus any revaluation reserve
- If interest payments exceed EUR3 million in the accounting year, the amount of interest payments in excess of 30% of the profit stated in the income or loss statement prior to the calculation of the CIT, increased by interest payments and calculated depreciation

Further, there are restrictions on thin-capitalization rules for loans obtained from a specified set of institutions.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Ministry of Finance.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The Lebanese tax regulation regarding TP is still neither elaborated nor clear.

Article 15 of the Income Tax Law states that if it appears that establishments belonging to establishments located outside Lebanon transfer part of their profits abroad, either by increasing or decreasing purchase or sale prices, or otherwise, the profits so transferred shall, for taxation purposes, be added to the profits shown in the accounts. Without sufficient evidence to enable the real profits to be determined, the profits of a similar establishment shall be taken as a basis for comparing and determining the profit, in addition to the apparent indications and particulars gathered by the competent financial authorities.

- **Section reference from local regulation**

Article 10 of Tax Procedure Law No.44/2008 states that the tax authority has the right to reclassify certain transactions in the following instances:

- **Virtual transaction for the purpose of tax evasion**
- **Legal transaction in form but for the purpose of tax evasion**
- **Transactions between related parties if these transactions are not at arm's length**

According to Article 12 of the Decree No. 2488, dated 3 July 2009, which determines the application of Article 10, mentioned above, a transaction is considered virtual when its value differs by 20% from the arm's-length value of similar transaction occurring between two non-related parties with the same competing conditions.

Arm's-length value is defined by the tax authorities under Decision No. 453/1, dated 22 April 2009, as the value of a similar transaction that occurs between independent persons and under complete competitive conditions that took place on the day of the transaction.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Lebanon is not a member of the OECD. Lebanon follows the OECD Guidelines when it comes to double tax treaties and interpretations of certain concepts, but there is nothing formal in this regard.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

No.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

This is not applicable. However, a local branch should comply with local tax regulations.

- **Does transfer pricing documentation have to be prepared annually?**

No.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

There is none specified.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The return should be submitted five months following the end of the fiscal year. (In exceptional cases, the delay could be granted by raising a letter to the tax authorities for their approval.)

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission upon tax authority request**

There is none specified.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

There is none specified.

- **Domestic transactions**

There is none specified.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

- **Local vs. regional comparables**

Even though it is not specifically mentioned in the regulations, local comparables are preferred over regional comparables.

- **Single-year vs. multiyear analysis for benchmarking**

There is none specified.

- **Use of interquartile range**

There is none specified.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is none specified.

- **Simple, weighted and pooled results**

There is none specified.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There is none specified.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There is none specified.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

There is none specified.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is none specified.

- **Is interest charged on penalties or payable on a refund?**

There is none specified.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

There is none specified.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of being audited by the tax authority is considered medium. There is no clear definition or standards for the likelihood of audits. However, this is done on a random basis when the tax authorities choose certain clients for audit. The method for choosing clients for audit is not disclosed.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

None.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is none specified.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There is no thin-capitalization rule in Lebanon .

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ministry of Finance, State Tax Inspectorate (*Valstybinė Mokesčių Inspekcija* – VMI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The arm's-length principle is established in the Law on Corporate Income Tax of Lithuania and its implementation rules, introduced in 2004, the details of which are mentioned below:

- Article 40 of the Law on Corporate Income Tax of Lithuania
- Order of the Minister of Finance No. 1K-123 as of 9 April 2004 (1 January 2021 version) regarding rules for the implementation of Article 40 (2) of the law on corporate income tax (CIT) and Article 15 (2) of the law on personal income tax (PIT)
- Order of the Head of the State Tax Inspectorate No. VA-27 as of 22 March 2005 on the associated-party transaction disclosure in the annual CIT return

- **Section reference from local regulation**

Article 2, parts 8 and 33 of the Law on Corporate Income Tax of Lithuania define "associated persons" and "related persons" respectively.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No, local TP rules follow OECD recommendations.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Lithuania is a member of the OECD.

Lithuanian TP rules are generally consistent with the OECD Guidelines. In local legislation, there is direct reference to OECD Guidelines. Moreover, Lithuania is closely following BEPS developments.

Other OECD papers, such as those regarding business restructurings and profit allocation to permanent establishments, are not explicitly implemented in the Lithuanian legislation.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Lithuania has adopted or implemented BEPS Action 13 for TP documentation in the local regulations.

- Coverage in terms of Master File, Local File and CbCR

  All three, i.e., master file, local file and CbCR, are covered.

- Effective or expected commencement date

  Based on local regulations, the BEPS master and local files are required to document the transactions in fiscal years starting on or after 1 January 2019.

- Material differences from OECD report template or format

  There are material differences between the OECD report template and Lithuania's regulations.

  Master file: It is a description of the supply chain for the group's five largest products and service offerings by turnover plus any other products and services amounting to more than 5% of group turnover. The required description could take the form of a chart or a diagram.

  Local file: Additionally, in the local file, companies have to provide TP documentation preparation and update dates.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There are no provisions related to penalty protection with respect to compliance with the BEPS Action 13 format report.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

[1] **http://finmin.lrv.lt/; http://vmi.lt**

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 25 October 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, TP rules are in place. TP documentation must be submitted upon request. There is no contemporaneous requirement; however, annually, TP documentation should be updated regarding actual applied pricing in the respective year.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Based on local legislation, the information related to the transaction under review (transaction values and the transfer price actually applied) has to be updated in the TP documentation for each tax period. In addition, the benchmarking study has to be updated at least every three years.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

No, the local legislation has no such obligation.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is a materiality limit for TP documentation:

  - If sales revenues of a certain company exceeded EUR3 million in a previous year, then the company has to prepare a TP documentation local file.
  - If the sales revenue of a company that belongs to an international group exceeded EUR15 million in a previous year, then the company has to prepare a TP documentation master file.

However, regardless of sales revenues, the following companies have to prepare TP documentation local file:

  - Financial companies and credit institutions, the activities of which are regulated by the Law on Financial Institutions of the Republic of Lithuania.
  - Insurance companies, the activities of which are regulated by the Law on Insurance of the Republic of Lithuania. But it is not necessary to prepare a local file when controlled transactions are carried out between Lithuanian taxpayers and are related activities carried out in Lithuania.
  - Companies with foreign units operating in Lithuania through a permanent establishment where sales revenue exceeded EUR3 million in a previous year.

- **Master File**

A company has to prepare a master file for the following year if its turnover exceeded EUR15 million.

- **Local File**

A company has to prepare a local file for the following year if its turnover exceeded EUR3 million.

- **CbCR**

CbCR is mandatory for the following companies if:

  - The company belongs to an international group of companies
  - Consolidated income of such a group of companies exceeds EUR750 million

- **Economic analysis**

If the materiality of a single transaction (or several closely related ones) with the same associated party during the tax period exceeded EUR90,000, then economic analysis should be carried out for this transaction.

c) Specific requirements

- **Treatment of domestic transactions**

From 1 January 2020, the domestic transactions are exempt from documenting. However, the tax authorities could ask for justification of arm's-length transfer pricing in the domestic transactions.

- **Local language documentation requirement**

If the TP documentation is prepared in English language version, the Lithuanian tax authorities may request that translation be provided.

- **Safe harbor availability including financial transactions if applicable**

The safe harbor rules apply only for low-value-adding services as that term is described in the OECD Transfer Pricing Guidelines.

- **Is aggregation or individual testing of transactions preferred for an entity**

The individual testing is preferred for an entity. Otherwise, the reasoning for aggregation should be documented.

- **Any other disclosure/compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The rules for completing Form FR0528, *Report on Transactions or Economic operations Between Associated Parties,* are set forth in the Order of the Head of the State Tax Inspectorate No. VA-27 as of 22 March 2005. Form FR0528 must be submitted within six months at the end of each tax period. No other specific TP returns shall be provided to the Lithuanian tax authorities.

- **Related-party disclosures along with corporate income tax return**

An associated-party disclosure annex (Form FR0528) to the annual CIT return has to be submitted when the taxpayer's associated-party transactions exceed an annual value of approximately EUR90,000. On Form FR0528, taxpayers are required to provide information about the transactions between associated parties related to fixed tangible and intangible assets, stocks and goods, financial and other services, securities and derivatives, and rent of property and loans. The taxpayers are also required to inform the tax authorities whether any TP method prescribed in the TP rules has been used in the transactions disclosed.

- **Related-party disclosures in financial statement/annual report**

Names, activities and controlled part of the parent company or companies that may have a significant impact on the company must be disclosed in the company's annual financial statement explanatory notes. Irrespective of whether the entity has any transactions with related parties, it shall provide general information about subsidiaries, associates, joint ventures, and its shareholders or partners that may have a significant influence over the entity.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

Disclosures related to TP (Form FR0528 for declaring transactions with related parties) must be submitted to the tax authorities with the annual CIT return. The rules for completing this form are set forth in the Order of the Head of the State Tax Inspectorate No. V-27 as of 22 March 2005.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

CIT return must be submitted within six months and fifteen days after the end of each tax period.

- **Other transfer pricing disclosures and return**

Other FR0528 forms (transaction with associated entities) must be submitted within 6 months and 15 days after the end of each tax period.

- **Master File**

This applies for fiscal years beginning on or after 1 January 2019. It must be prepared within six months and 15 days after the end of each tax period if not advised otherwise. If the tax authorities require it, the master file would need to be submitted in 30 days.

- **CbCR preparation and submission**

The CbCR must be submitted within 12 months from the end of the reporting fiscal year of the MNE group.

- **CbCR notification**

CbCR notification should be submitted by the end of the reporting financial year of the MNE group.

b) Transfer pricing documentation/Local File preparation deadline

Based on new legislation for transactions carried out on 1 January 2019, the following deadlines to prepare the documentation apply:

- TP documentation should be prepared within six months and 15 days after the end of each tax period. However, taxpayers have to submit the TP documentation within 30 days from the corresponding notice by the tax authorities in an audit or an inquiry.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of TP documentation.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has to submit the TP documentation within 30 days from the corresponding notice by the tax authorities in an audit or an inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

Based on local legislation, preference is given to traditional TP methods (specifically the CUP method). However, the taxpayer must choose the most appropriate TP method, taking into account transaction characteristics, reliability of available data, etc. Taxpayers are encouraged to use profit-based methods only if transaction-based methods are not sufficient. Taxpayers are not required to use more than one method; however, a combination of methods may be used in all cases, provided the decision to apply any particular method is adequately supported.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local requirements follow the OECD Guidelines. There is a preference for domestic comparables over foreign comparables (if no local comparables are found, foreign may be used).

- **Single-year vs. multiyear analysis for benchmarking**

The preference is given to the multiyear analysis (based on jurisdiction practice).

- **Use of interquartile range**

The use of the interquartile range is preferred (based on jurisdiction practice).

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The benchmarking results have to be updated once every three years. Financial updates are performed annually.

- **Simple, weighted or pooled results**

There is a preference for a simple average (based on jurisdiction practice).

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Non-compliance with TP documentation regulations exposes a taxpayer to a penalty that may vary from EUR1,820 up to EUR5,590.

If the company fails to comply with the TP documentation regulations repeatedly, the penalty increases and may vary from EUR3,770 to EUR6,000.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Non-compliance with TP documentation regulations exposes a taxpayer to a penalty that may vary from EUR1,820 up to EUR5,590.

If the company fails to comply with the TP documentation regulations repeatedly, a penalty increases and may vary from EUR3,770 to EUR6,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

General tax penalties of 10% to 50% of the additional tax apply in the case of taxable income adjustments.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

General tax penalties of 10% to 50% of the additional tax apply in the case of taxable income adjustments.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

TP penalties are subject to general penalty relief rules. The penalties can be reduced by up to 10% of the outstanding CIT if the taxpayer properly communicates with the tax authorities and presents all requested documents and explanations.

10. Statute of limitations on transfer pricing assessments

TP assessments may apply to the five years prior to the year in which the assessment takes place.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium: The TP audit is part of the general tax audit, which is subject to internal risk identification procedures set by the tax authorities. Cross-border transactions with related parties should be treated as having increasing potential risk.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

High: The tax authorities make an independent analysis of a taxpayer's tax position and analyze both documentation and factual results.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

High: The tax authorities are qualified enough to assess and apply the correct TP methodology in case an incorrect one was applied by the taxpayer.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

As of 1 January 2012, taxpayers may conclude unilateral APAs with the Lithuanian tax authorities on prospective transactions. Bilateral or multilateral APAs may be concluded on the basis of existing tax treaties for avoiding double taxation.

- **Tenure**

Five years with rollover possibility.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Lithuanian tax authorities do enter into MAPs.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19 situation?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization restrictions apply to interest paid to controlling entities. A creditor qualifies as a controlling entity if it owns more than 50% of the shares in the company paying the interest (or more than 50% of the shares are owned together with associated persons and the creditor's "own" holding is 10% or more). A group company also qualifies as a controlling entity. A debt-to-equity ratio of 4:1 applies, and any interest attributable to the debt in excess of this ratio is non deductible.

In addition to the debt-to-equity ratio of 4:1, additional interest deduction limitation rules apply. These rules are not limited to interest expenses incurred due to loans received from related parties and, therefore, will be applied in respect of interest expenses incurred due to the acquisition of bank loans as well. Entities are allowed to fully deduct interest expenses that do not exceed interest income and to deduct any excess amount of interest expense that does not exceed 30% of earnings before interest, tax, depreciation and amortization (EBITDA) or up to EUR3 million. Entities also are allowed to fully deduct interest expenses if they are members of a consolidated group for financial accounting purposes and if they can demonstrate that the ratio of their equity over their total assets is not more than two percentage points lower than the equivalent ratio of the group and all assets and liabilities are valued using the same method as in the consolidated financial statements. EBITDA and the deductible amount of interest expenses are calculated on a group level. A group of entities includes entities in respect of which the controlling person holds directly or indirectly more than 25% of the shares (interests, member shares), voting rights or other rights to a portion of the distributable profits or exclusive rights to the acquisition thereof. Interest expenses that are non deductible in a year under the interest deduction limitation rules may be carried forward for an unlimited period of time.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Luxembourg Tax Authority (*Administration des Contributions Directes* – ACD).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The Luxembourg Income Tax Law (ITL) contains three articles related to transfer pricing: Articles 56 and 56bis are dedicated to the arm's-length principle and Article 164(3) is dedicated on hidden profit distribution. These articles provide for the application of the arm's-length standard for transactions between related parties.

Applicable from 1 January 2015, Article 56 of the ITL provides that profits of associated enterprises entering into transactions that do not meet the arm's-length principle will be determined according to normal market conditions and taxed accordingly. Based on this wording, both upward and downward adjustments are possible. Furthermore, this provision applies to domestic and cross-border transactions.

Article 56 of the ITL covers any "enterprise," which means any person carrying out a commercial activity. As such, under this article, company types, such as S.A.s, S.à.r.l.s and risk capital investment companies (*sociétés d'investissement en capital à risque* – SICARs), and individuals that have a commercial business are considered to be included in the definition of "enterprise." However, non-Luxembourg residents (unless they have a permanent establishment in Luxembourg) or transparent entities (such as FCP, SCS and SCSp, unless they exercise a commercial activity) would likely not be included under the scope of Article 56 of the ITL. Investment companies with variable capital (*sociétés d'investissement à capital variable* – SICAVs) in corporate form have a commercial business and are considered to be enterprises; however, they benefit from a subjective tax exemption.

The commentaries of the law specify that the arm's-length principle is applicable to any taxpayer, regardless of the legal form under which it exercises its activities in Luxembourg. Therefore, this provision will cover not only tax-opaque collective undertakings and tax-transparent partnerships but also individual and collective undertakings without legal form.

Since Article 56 of the ITL grants the possibility to adjust the profits declared by a taxpayer, it is necessary to determine whether the conditions of a controlled transaction (i.e., a transaction between associated enterprises) are consistent with the arm's-length principle and what quantum of adjustment has to be made to achieve the arm's-length principle. To assess this, a comprehensive economic comparability analysis or benchmark, which consists of comparing controlled transactions with uncontrolled transactions (i.e., transactions between independent parties), should in principle be realized in order to sustain the arm's-length character of the intragroup transaction.

Article 56bis of the ITL, applicable from 1 January 2017, contains the basic principles that must be respected in the context of a transfer pricing analysis, including the tool to be used and the methodology to be selected for implementing the arm's-length principle.

Article 56bis of the ITL first provides for definitions aiming to clarify some fundamental terms in the area of transfer pricing. The article then states that companies have to apply the arm's-length principle to all controlled transactions and specifies that the mere fact that a transaction may not be found between independent parties does not itself mean that it is not at arm's length.

As per the mechanism to be applied, this article particularly focuses on the comparability analysis, which is at the heart of the application of the arm's-length principle. This comparability analysis is based on the following two aspects:

- The identification of the commercial or financial relations between related entities and the determination of the conditions and economically relevant circumstances linked to those relations in order to accurately delineate the controlled transaction
- The comparison of the conditions and economically relevant circumstances of the accurately delineated controlled transaction with those of comparable transactions on the free market

Article 56bis of the ITL further states that the economically relevant conditions and circumstances or comparability factors that have to be identified broadly include the following:

- The contractual terms of the transaction
- The functions performed by each of the parties to the transaction, taking into account the assets used and the

[1] **http://www.impotsdirects.public.lu/content /dam/acd/fr/legislation/LIR/LIR2017.pdf**

risks assumed and managed

- The characteristics of the asset transferred, the service rendered or the engagement concluded
- The economic circumstances of the parties and the market on which the parties exercise their activities
- The business strategies pursued by the parties

Article 56bis of the ITL also specifies that the methods to be used for determining the appropriate arm's-length price must take into account the factors of comparability identified and be coherent with the nature of the accurately delineated transaction. The most suitable method for the transaction has to be used. The Luxembourg Tax Authority issued an administrative circular on 27 December 2016 (Circular LIR No. 56/1-56bis/1) regarding the tax treatment applicable to companies carrying out intragroup financing activities. This new circular replaces the administrative circulars No. 164/2 of 28 January 2011 and No. 164/2bis of 8 April 2011 and is effective as of 1 January 2017.

The circular provides substantial guidance on the comparability analysis, the functional analysis and the substance requirements. In line with Article 56bis of the ITL, the circular mentions that the comparability analysis should contain:

- An identification of the commercial or financial relations existing between related parties and determination of the conditions and significant economic circumstances attached to the controlled transaction in order to precisely delineate the controlled transaction
- A comparison of the conditions and significant economic circumstances of the controlled transaction, accurately delineated, with comparable transactions between independent parties

The circular provides substantial details on the approach to be taken in order to conduct a functional analysis, stressing the importance of identifying functions performed and assets used to determine the risk related to a financing transaction.

Furthermore, the circular requires the performance of a comprehensive risk analysis in order to determine the adequate level of equity. In that respect, it refers to the need to estimate – based on the facts and circumstances of each situation – the economically significant specific risks in relation to a financing transaction. The circular also explains the substance requirements to be met by a group financing entity.

The Law of 23 December 2016 in relation to CbCR rules was adopted by Luxembourg's Parliament on 27 December 2016. This law aims at transposing Directive 2016/881/EU of 25 May 2016, which amends Directive 2011/16/EU as it regards the mandatory automatic exchange of information in the field of taxation to include the CbCR rules for global MNEs.

- **Section reference from local regulation**

Related parties are defined by Article 56 of the ITL as follows: "When an enterprise participates, directly or indirectly, in the management, control or capital of another enterprise, or where the same persons participate, directly or indirectly, in the management, control or capital of two enterprises."

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No; since Luxembourg generally follows the OECD guidance, it can be anticipated that transfer pricing framework suggested by the OECD in relation to COVID-19 would be followed, i.e., guidance on the transfer pricing implications of the COVID-19 pandemic published in December 2020.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Luxembourg has been a member of the OECD since 7 December 1961.

The OECD Guidelines are not officially incorporated into Luxembourgian tax law. Nevertheless, the commentaries to the 2015 Budget Law modifying Article 56 of the ITL refer to the OECD Guidelines as being designed to be observed by multinationals. More importantly, Article 56bis, introduced into Luxembourgian law by the 2016 Budget Law, clearly aims to incorporate the concept of the arm's-length principle, based on the OECD principles as revised by Actions 8 to 10 of the OECD BEPS Action Plan, which is now also reflected in the last version of the OECD Transfer Pricing Guidelines released in July 2017. The commentaries to Article 56bis refer directly to chapters 1 to 3 of the OECD Guidelines.

Furthermore, Circular No. 56/1-56bis/1, issued by the tax authorities on 27 December 2016 and effective from 1 January 2017, provides substantial guidance on the comparability analysis and, more specifically, on how to

conduct it consistently with OECD principles. It also states that economic reality should prevail over the contractual terms of an agreement, thus reinforcing the application of the substance-over-form concept in the application of OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Luxembourg has adopted BEPS Action 13 for transfer pricing documentation in the local regulations only in terms of CbCR.

- **Coverage in terms of Master File, Local File and CbCR**

CbCR is covered. The Law of 23 December 2016 states that if the ultimate parent entity (UPE) of an MNE group that is required to prepare consolidated financial statements, or that would be required to do so if equity interests in any of its enterprises were listed, with a consolidated annual group turnover of at least EUR750 million is a Luxembourg tax resident, the entity must submit a CbCR to the Luxembourg tax authorities. Alternatively, a Luxembourg group entity that is not the UPE of the MNE group (the surrogate parent entity) should file a CbCR with the Luxembourg tax authorities in one of the following cases:

- The UPE is not obligated to file a CbCR in its jurisdiction of residence.
- The UPE is obligated to submit a CbCR, but there is no automatic exchange of CbC reports between Luxembourg and the jurisdiction of residence of the UPE.
- The UPE is obligated to submit a CbCR, and there is an automatic exchange of CbC reports, but because of systematic failure, no effective exchange of information takes place.

A Luxembourg group entity will need to notify the Luxembourg tax authorities by the end of the financial year as to whether it is the UPE or surrogate parent entity. If it is not, it will have to inform the Luxembourg tax authorities of the identity of the UPE or surrogate parent entity (including the identification of its tax residency). The CbCR should be filed annually, within 12 months of the last day of the financial year.

- Effective or expected commencement date

  The date is financial year 2016 for CbCR.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

Since Luxembourg legislation does not include specific documentation requirements, BEPS Action 13 format would be acceptable for local purposes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Luxembourgian tax law includes general documentation requirements but does not provide specific transfer pricing documentation regulations. The General Tax Law has been amended to extend the existing general obligation of taxpayers so they can justify the data contained in their tax returns with appropriate information and documentation (codified in Section 171 of the General Tax Law) for transfer pricing matters. This provision is reinforced by a third paragraph clarifying that the general documentation requirements set forth by this provision also apply to transactions between associated enterprises.

In the absence of further guidance, one could rely on the 2017 edition of the OECD Transfer Pricing Guidelines and the *Practical Manual on Transfer Pricing for Developing Countries* issued by the United Nations to get additional information on what types of documentation a taxpayer may be required to provide. Reference is also made to the European Council's Code of Conduct on transfer pricing documentation for associated enterprises in the EU, dated 2006, aimed at harmonizing the transfer pricing documentation that multinationals have to provide to tax authorities.

As a general rule, contemporaneous documentation should exist when transactions are carried out. The Luxembourg tax authorities may request such documentation upon review of

the tax return.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

As a general rule, contemporaneous documentation should exist when transactions are carried out.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

There is no specific requirement in this respect; however, stand-alone transfer pricing report is preferred in practice.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The threshold is set at EUR750 million (consolidated annual group turnover).

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation need not be submitted in the local language (English is acceptable).

- **Safe harbor availability including financial transactions if applicable**

For group companies exercising a purely intermediary financing activity and meeting substance requirements listed in Circular LIR No. 56/1-56bis/1, the transactions entered into by such group financing companies will be considered as compliant with the arm's-length principle if a minimum return on the assets financed of at least 2% after tax is achieved.

The percentage of 2% after tax could not be used for controlled transactions to be entered into by group financing companies exercising a purely intermediary financing activity and having limited functional profile. A specific transfer pricing analysis documenting the remuneration to be applied on those controlled transactions should be performed in such a case.

Reliance on the simplified measure needs to be disclosed (when applied) in the tax return of the company and could be subject to exchange of information. A deviation to the above 2% minimum return is acceptable on an exceptional basis when duly justified in a transfer pricing analysis.

Simplified measures are also introduced to determine the arm's-length return on equity for a company having a functional profile comparable to the one of certain regulated entities (reference is made to financial institutions). In such a case, a return on equity of 10% would be considered as compliant with the arm's-length principle.

- **Is aggregation or individual testing of transactions preferred for an entity**

The preferred approach is individual transaction testing.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Currently, there are no transfer pricing-specific returns to be filed separately or with the corporate income tax return.

- **Related-party disclosures along with corporate income tax return**

It is a common practice that transactions with related parties are detailed by nature and by related party in a schedule attached to the tax returns.

Moreover, a taxpayer is requested to disclose in the tax return, inter alia, whether it has engaged into any transactions with related parties during the year and whether it has opted for the simplification measure provided in the Circular LIR No

56/1 56bis/1 on intragroup financing.

- **Related-party disclosures in financial statement/annual report**

Yes, it is in line with local accounting requirements.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

No specific submission requirement, but the transfer pricing documentation should be available upon tax return submission, i.e., 31 May.

- Other transfer pricing disclosures and return

This is not applicable.

- Master File

This is not applicable.

- CbCR preparation and submission

The deadline is 12 months after the last day of the reporting fiscal year of the MNE group.

- CbCR notification

The deadline is by the end of the reporting fiscal year.

b) Transfer pricing documentation/Local File preparation deadline

There is no statutory deadline for the preparation of transfer pricing documentation, but transfer pricing documentation should be available to support the information in the tax return. As a general rule, contemporaneous documentation should exist when transactions are carried out.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Luxembourg's tax law does not include a deadline to produce transfer pricing documentation. However, taxpayers must be able to justify the data contained in their tax returns with appropriate information and transfer pricing documentation.

- **Time period or deadline for submission on tax authority request**

Luxembourg's tax law contains neither specific transfer pricing documentation regulations nor a deadline to produce transfer pricing documentation. Taxpayers must be able to justify the data contained in their tax returns with appropriate information and documentation. The tax authority may request, in the context of assessing the tax return or in the context of a tax audit, that transfer pricing documentation be provided within a certain time frame. This time frame may be as short as 14 days but may be extended upon request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

In case of request in a tax audit, the transfer pricing documentation has to be provided two weeks after the request, but may be extended to additional two weeks.

In addition, the deadline for the submission of the corporate income tax returns has been extended for FY 2019 and FY 2020.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

Although there are no specific pricing methods mentioned in the ITL, the draft law introduced on 12 October 2016 reinforces that the methods to be used in determining the appropriate arm's-length compensation must take into account the OECD comparability factors and be coherent with the

nature of the accurately delineated transactions. All methods advocated by the OECD are acceptable under the current administrative practice, such as the CUP, resale price, cost-plus, TNMM and profit-split methods. There are no priorities established among the different methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

OECD guidance should be followed.

- **Single-year vs. multiyear analysis**

OECD guidance should be followed.

- **Use of interquartile range**

OECD guidance should be followed.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

OECD guidance should be followed.

- **Simple, weighted or pooled results**

OECD guidance should be followed.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

As a general rule (not specific but also applicable to transfer pricing matters), any tax return that is intentionally incomplete or has inexact information, or any non-declaration, can result in a fine. Furthermore, administrative penalties may be applied to enforce a taxpayer's delivery of general documentation within the assessment.

Finally, to the extent that the arm's-length standard is not respected, the tax authority may reassess or adjust the taxable result.

- **Consequences of failure to submit, late submission or incorrect disclosures**

See above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

A tax return that is intentionally incomplete or has inexact information, or any non-declaration, can result in a fine not exceeding 25% of the taxes avoided or unduly reimbursed but not less than 5% of the taxes avoided or unduly reimbursed.

With regard to the CbCR rules, in the cases of failure on filing, late filing, inclusion of incomplete or inexact information, or in the case of not respecting any of the obligations included in the mentioned draft law, a penalty of up to EUR250,000 can be imposed on the declaring entity. This penalty is imposed at the discretion of the competent tax authority. The declaring entity can appeal the decision to the Administrative Court.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not specified.

- **Is interest charged on penalties and payable on a refund?**

There is none specified.

b) Penalty relief

An appeal before the Director of Direct Tax Administration can be lodged against penalties within three months.

The adjustment will be materialized within the tax assessment. Again, an appeal can be filed against this tax assessment (see below).

10. Statute of limitations on transfer pricing assessments

There are no specific limitations on transfer pricing adjustments; rather, the general rules apply. The statute of limitations is, in principle, five years starting from 1 January of the calendar year following the relevant tax year. In cases where no tax return or an incomplete tax return is filed, as well as in cases of fraud, the statute of limitations is extended to 10 years. Moreover, once a Luxembourgian company has been assessed for income and net wealth tax purposes for a particular year, the tax authorities may not reassess the relevant tax year unless they have obtained new information and the statute of limitations has not yet expired. As long as the tax authorities have issued a provisional tax assessment, the taxable base may still be adjusted after the provisional

assessment is issued, until the statute of limitations has expired.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No specific impact has been observed.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

There are no specific rules regarding transfer pricing audits in Luxembourg. Transfer pricing normally should be reviewed as part of a regular tax audit, when assessing the tax return for a specific year. The risk of transfer pricing being reviewed under a tax audit is characterized as medium.

The tax authority has the right to carry out an audit during the statute-of-limitations period until final income tax assessments are issued.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium for the same reason stated above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium for the same reason stated above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Financing activities transactions, attribution of profits to permanent establishments and management-related fees (within asset management structures) are more likely to be audited.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The General Tax Law (Abgabenordnung) includes a provision (Paragraph 29a) dedicated to the tax ruling practice (procedure des décisions anticipées). This provision, which has been further completed by a grand-ducal regulation, reflects and formalizes the administrative practice applied in the past, enabling taxpayers to obtain up-front legal certainty. The aim is also to provide a harmonized and uniform application of the tax laws across the various taxation offices and increased transparency toward foreign tax authorities. This provision also applies to APAs. Circular Letter LIR No. 164/2, dated 28 January 2011, further formalizes the issuance of APAs for intragroup financing transactions (i.e., activities consisting of granting loans or advances to associated enterprises funded through the issuance of public or private loans, advances or bank loans).

To further enhance tax transparency, the law on automatic exchange of information on tax rulings and APAs (transposing EU Council Directive 2015/2376 of 8 December 2015) was introduced into Luxembourgian legislation on 23 July 2016. The law foresees the mandatory and automatic exchange of information on cross-border tax rulings and APAs with all other EU members. The law is applicable from 1 January 2017. However, retroactive effect of up to 1 January 2012 is provided for certain rulings issued before 1 January 2017.

Furthermore, based on the final recommendations of the OECD in relation to Action 5 of the BEPS project, Luxembourg may also exchange information on certain types of tax rulings and APAs that were issued on or after 1 January 2010 and that were still in effect from 1 January 2014.

The transfer pricing rules provide for three types of APAs: unilateral, bilateral and multilateral agreements.

- **Tenure**

The tenure is five years.

- **Rollback provisions**

Rollback to prior years available on a case-by-case basis.

- **MAP opportunities**

On 11 March 2021, the Luxembourg Tax Authorities (LTA) issued the circular L.G. – conv. D. I. n° 60 (Circular) regarding the mutual agreement procedure provided by double tax treaties signed by Luxembourg. This Circular replaces the circular L.G. – conv. D. I. n°60 issued on 28 August 2017. The Circular details the mechanism of the MAP from the request to initiate the procedure to the termination of the MAP and explains the interaction with other procedures and legal remedies.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No specific changes have been observed for APAs or other transfer pricing-related certainty measures.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no specific local transfer pricing regulations at this stage, but further developments after the issuance of the OECD transfer pricing guidance on financial transactions are to be monitored. Certain changes in the approach are already observed, e.g., the debt-to-equity ratio and commercial rationale need to be supported by appropriate documentation.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General for Taxes (*Direction Générale des Impôts* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

General Tax Code (GTC): The provision regarding the arm's-length principle is applicable since 2014, and the provision regarding TP requirement has been introduced by the Amending Finance Law N° 2020-010 dated 14 July 2020.

Executive decision No. 4 – MFB/SG/DGI, dated 24 January 2014, on TP rules (TP tax audit, pricing methods and tax haven details).

Note No. 012-2021/MEF/SG/DGI/DLFC/SFI dated 1 June 2021 on TP reporting and documentation requirement in application of the article 01.01.13 IV of the GTC.

- **Section reference from local regulation**

Section reference from GTC: Articles 01.01.13-IV (arm's-length principle and TP documentation requirement), 01.01.10-1° (no deduction on abnormal or unreasonable expenses), 20.01.52 and 20.01.56.8.2° (penalties), 20.06.23 (on-site tax audit regime and deadlines).

Executive decision No. 4 – MFB/SG/DGI, dated 24 January 2014 and the Note No. 012-2021/MEF/SG/DGI/DLFC/SFI dated 1 June 2021 are specifically dedicated to TP.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

There is no change specific due to COVID-19. However, precision regarding the TP documentation form is expected. In fact, please note that the deadline for filing the TP documentation (master file and local file) related to FY20 (the first financial year concerned by the TP documentation requirement) was postponed to 31 March 2022 and is still awaiting for the issuance of the master file and local file forms from the tax authorities.

[1] **www.impots.mg**

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Madagascar is not a member of the OECD, but Note No. 012-2021/MEF/SG/DGI/DLFC/ SFI refers to the OECD Guidelines. It provides that the content of the master file and local file is based on the OECD Guidelines in order to comply with the minimum requirements for transfer pricing documentation.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Partially; as Madagascar is not member of OECD, the local regulations have neither adopted nor implemented all of BEPS Action 13. It has not implemented country-by-country reporting but only implemented the master file and local file requirement.

- Coverage in terms of Master File, Local File and CbCR

  TP documentation requirements in Madagascar only include master file about the multinational group as a whole and local file concerning the local entity and its controlled transactions.

  CbCR is not yet referred to the TP documentation requirements.

- Effective or expected commencement date

  2020 financial year (FY20) is the first financial year concerned by the TP documentation. The reporting of this FY20 TP documentation was postponed to no later than 31 March 2022.

- Material differences from OECD report template or format

  The local TP documentation (master file and local file) report format has not been issued yet. However, based on the minimum content of master file and local file listed in the Note No. 012-2021/MEF/SG/DGI/DLFC/SFI, the minimum content of the local TP documentation is quite similar to the OECD content. The local regulations include in its list of information required for local file an additional specific bullet point related to (i) the obligation to list transactions with associates and (ii) to insert in local file information on transactions with companies located in privileged tax regime states.

- Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The TP documentation (MF and LF) should comply with the local regulations' format template that will be issued by the DGI (which we assume will be based on OECD Template as Note No. 012-2021/MEF/SG/DGI/DLFC/SFI refers to OECD guidelines on mandatory information required). However, the DGI has the right to assess its content, and there is still a risk of penalty in the case where some mandatory information is missing or not provided on time upon request of tax authorities in case of tax audit.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, Madagascar has its TP documentation guidelines.

TP documentation should be prepared at the time of the transaction or at the time of reporting and submitted online at the same time as the tax returns.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

The local branch of a foreign company is considered as a permanent establishment.

The local branch must comply with the local TP rules if it is subject to local corporate income tax (CIT), i.e., its turnover is greater than or equal to MGA200 million (approximately USD50,000) or in the event of option for CIT whatever the amount of the turnover.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, TP documentation is prepared annually and must be available/kept for at least 10 years in case of a tax audit.

Therefore, TP documentation must be updated on a regular basis to reflect changes in the conditions of the transactions and the nature of the operations.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, the information and documents requested by the tax authorities relate to each specific company.

b) Materiality limit or thresholds

- Transfer pricing documentation

There are no limits or thresholds for intragroup transactions to be supported by TP documentation.

- Master File

No.

- Local File

No.

- CbCR

This is not applicable.

- Economic analysis

Yes, a detailed comparability and functional analysis of the taxpayer and relevant associated enterprises is made for each category of controlled transaction.

c) Specific requirements

- Treatment of domestic transactions

There are no specific TP requirements or provisions on domestic transactions.

- Local language documentation requirement

TP documentation reporting must be completed in a French version. However, in case of a tax audit, if the taxpayer submits TP documentation in another language, a certified translation of the documents along with the original documents must be submitted at the request of the tax authority within the time limit indicated in the request.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred**

for an entity

As it is a recent obligation, no specific preference method has been notified by the DGI.

- Any other disclosure/compliance requirement

Yes, when the conditions of the controlled transactions with an associated company located outside the territory or in a jurisdiction with a privileged tax regime do not comply with the arm's-length principle, the taxpayer must make an adjustment to the taxable base for corporate income tax purposes.

5. Transfer pricing return and related-party disclosures

- Transfer pricing-specific returns

TP regulations provide that there is a format to be respected. However, this format is not yet available from the tax authority. The TP documentation is reported online or in physical version.

- Related-party disclosures along with corporate income tax return

The transaction and the information about the entities are detailed in those files.

Identification of associated enterprises should be included in the master file and the local file.

The texts do not provide appendices, so it is variable depending on the transaction and the situation of the company.

- Related-party disclosures in financial statement/annual report

This is not applicable.

- CbCR notification included in the statutory tax return

This is not applicable.

- Other information/documents to be filed

Information on transactions with companies located in countries or territories with privileged tax regimes and on transactions with related companies without consideration or with a monetary consideration.

There is no other document to be filed.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

TP documentation is reported as a separate return but at the same time as the corporate income tax return as follows: Companies using the standard tax year must file financial statements and the corporate income tax return by 15 May of the year following the tax year.

For companies choosing a tax year-end other than the standard tax year-end, the filing must be made by the 15th day of the fourth month following the year-end.

For companies whose fiscal year ends on a date other than that defined in the above, must file financial statement and corporate income tax return no later than the 15th day of May of the following year.

- Other transfer pricing disclosures and return

Except for this first year of implementation for FY 2020, the timeline to report was extend to 31 March 2022 instead of the normal date of CIT return.

In case of tax audit, the timeline to provide TP documentation or additional information is one month with the possibility to apply for the extension of this to two months. In case the responses provided are not sufficient, the DGI can grant 30 additional days.

- CbCR preparation and submission

This is not applicable.

- CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

TP documentation should be prepared at the time of the transaction or at the time of reporting and submitted online at the same time as the tax returns.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

TP documentation is reported at the same time as the corporate income tax return. Please refer to 6.a) for CIT returns.

- **Time period or deadline for submission on tax authority request**

In case of tax audit, the timeline to provide TP documentation or additional information is one month, with the possibility to apply for the extension of this to two months. In case the responses provided are not sufficient, the DGI can grant 30 additional days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The aforementioned executive decision No. 4 – MFB/SG/DGI accepts the following methods:

- CUP
- Resale price
- Cost plus
- TNMM
- Transactional profit split method

It is up to the taxpayer to select and justify the most suitable approach.

8. Benchmarking requirements

- **Local vs. regional comparables**

Malagasy TP law and practice are still recent, and the tax authorities have not yet required or recommended specific benchmarking methods.

- **Single-year vs. multiyear analysis for benchmarking**

Malagasy TP law and practice are still recent and do not have a preference. However, in case of use of multiyear analysis, the taxpayer must explain the reason of this choice.

- **Use of interquartile range**

Malagasy TP law and practice are still recent, and the tax authorities have not yet required or recommended specific practical guidelines.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Malagasy TP law and practice are still recent, and the tax authorities have not yet required or recommended specific practical guidelines.

- **Simple, weighted or pooled results**

Malagasy TP law and practice are still recent, and the tax authorities have not yet required or recommended specific practical guidelines.

- **Other specific benchmarking criteria, if any**

Malagasy TP law and practice are still recent, and the tax authorities have not yet required or recommended specific practical guidelines.

9. Transfer pricing penalties and relief

a) Penalty exposure

Yes.

b) Consequences for incomplete documentation

- **Consequences of failure to submit, late submission or incorrect disclosures**

Penalty of MGA10 million (approximately USD2,500) if a company does not provide any documentation or provides insufficient information by the aforementioned deadlines (at the same time as CIT return or the first month of request, within the granted extension or by the 30-day additional-information period for additional documentation requested by the Tax authorities during a tax audit) In case of tax audit, an

automatic adjustment would be added to this penalty.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, in the case of an adjustment, the tax authorities would reclaim the benefits that should have been achieved if the transaction was made at arm's length and apply penalties of:

- 40% as standard penalties
- 80% in the case of fraudulent tactics
- 150% in the case of resistance during the tax audit

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

The same as the above.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

c) Penalty relief

There is no specific penalty relief applicable to TP.

The General Tax Code provides for the following dispute resolution options:

- Transaction with the tax authorities
- Referral to the Tax Appeal Committee, which offers its expertise, although its opinions do not bind the tax authorities
- The administrative litigation procedure with the tax authorities
- Referral to courts

10. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations on TP assessments.

It is the same as for all corporate tax assessments, i.e., three years following the year for which the tax is due.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be low. Tax audits and tax reassessments related to TP are not frequent yet. Malagasy TP law and practice are still recent; therefore, tax auditors are not quite familiar with transfer pricing principles or pricing methods.

- Likelihood of transfer pricing methodology being challenged (high/medium/low)

  The likelihood may be considered to be medium. It is up to the taxpayer to select and justify the most suitable method. However, the DGI can challenge the appropriateness of the method used by the taxpayer depending on the type of transaction concerned.

- Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)

  The likelihood may be considered to be high. The tax authorities tend to reassess as soon as they disagree with the taxpayer.

- Specific transactions, industries and situations, if any, more likely to be audited

  None.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Malagasy tax law does not provide a specific APA procedure. Rescripts, individual binding tax rulings or any kind of prior agreement with the tax authority are not common practices in Madagascar.

- **Tenure**

This is not applicable. Malagasy tax law does not provide a specific provision.

- **Rollback provisions**

This is not applicable. Malagasy tax law does not provide a specific provision.

- **MAP opportunities**

This is not applicable. Malagasy tax law does not provide a specific provision.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

- **Thin capitalization**

The General Tax Code provides for the deduction of interest generated from loans and is treated as follows:

- The interest on sums due to third parties is fully deductible.
- The interest of loans paid to shareholders is partially deductible. The deductible interest is limited to the interest calculated on twice the equity, at a rate that must not be higher than the rate at the Central Bank of Madagascar (*Banky Foiben'i Madagasikara*) plus 2%. Currently, the rate at the Central Bank of Madagascar is 7.2% (designed as "Interest rate corridor system"). Therefore, the deductible interest rate plus 2% at the Central Bank of Madagascar rate is 9.2%.

- **Debt capacity**

In the case of losses implying that the equity is less than the half of the share capital, shareholders should decide the anticipated closure of the company or to continue its activities but must reconstitute its equity to an amount equal to half the share capital within the period of two years.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Malawi Revenue Authority (MRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Effective from 1 July 2017, Malawi repealed the Taxation (Transfer Pricing) Regulations 2009 and enacted the Taxation (Transfer Pricing Documentation) Regulations, 2017, and the Taxation (Transfer Pricing) Regulations 2017. Section 127A of the Taxation Act dealing with transfer pricing, which was enacted in 2009, was amended with effect from 1 July 2017.

- **Section reference from local regulation**

Section 127A of the Taxation Act is the primary legislation, and the Taxation (Transfer Pricing) Regulations 2017 and Taxation (Transfer Pricing Documentation) Regulations 2017 are secondary legislations.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Malawi is not a member of the OECD.

The primary legislation does not refer to the OECD Guidelines. However, the Taxation (Transfer Pricing) Guidelines 2017 refer to the OECD Guidelines as applicable for the purposes of interpretation only.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No, Malawi has not adopted BEPS Action 13 for transfer pricing documentation in local regulations.

- Coverage in terms of Master File, Local File and CbCR

  The master file is not applicable in Malawi. However, the coverage for local file is the same as the coverage under OECD Guidelines, and the scope is provided under Taxation (Transfer Pricing Documentation) Regulations 2017.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  There is no material difference with OECD report template.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not yet adopted or applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes we do have the Transfer Pricing Documentation Guidelines in place. However, taxpayers are not required to prepare the contemporaneous Transfer Pricing Documentation, but, they are not required to submit unless the Commissioner General of Malawi Revenue Authority requests for submission.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

[1] **https://www.mra.mw/**

- **Does transfer pricing documentation have to be prepared annually?**

Under the 2017 Regulations, the documentation to support transfer pricing transactions in the financial statements has to be maintained contemporaneously. While there is no explicit obligation to submit the transfer pricing document with the annual income tax return, it is advisable for the taxpayer to do so. The Commissioner General of the MRA may demand transfer pricing-related information to be submitted within 45 days.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The limit applies to domestic transactions with a value of more than USD135,000.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Transfer pricing analysis and documentation for transactions between resident related parties are not required when the annual value of the concerned transactions is less than USD135,000.

- **Local language documentation requirement**

All transfer pricing documents should be maintained in English.

- **Safe harbor availability including financial transactions if applicable**

There is no safe harbor in Malawi.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

Effective from 1 July 2017, all related-party transactions need to be tested to show that they are at arm's length. Maintaining a transfer pricing document is a requirement.

- **Related-party disclosures in financial statement/annual report**

This is required.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed within 180 days after the end of the financial year.

- **Other transfer pricing disclosures and return**

There is none specified.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Documentation deadlines are not stipulated, but the Commissioner General may require a taxpayer to provide the necessary documentation within a period of 45 days of written request from the Commissioner General.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for submission of transfer pricing documentation.

- **Time period or deadline for submission on tax authority request**

Taxpayers are obliged to submit the documentation within 45 days of the request by the tax authority, i.e., the Commissioner General.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The following methods are applicable: CUP, resale price, cost plus, profit split, TNMM and any other such method as may be prescribed by the Commissioner General from time to time. However for transactions involving anything exported or imported source from the soil, the mandatory preferred method is commodity method.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are preferred, but comparables from different geographic markets with similar economic circumstances with the tested party could be accepted if information on uncontrolled transactions is not available locally (Transfer Pricing Regulation 9).

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis is preferred, but not required under the rules.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The regulations indicate that the taxpayer should have documentation in place that verifies that the conditions in related-party transactions for the year of assessment (YA) are consistent with the arm's-length principle. The regulation does not explicitly suggest a fresh benchmarking search every year, but because of the multiple-year analysis, a fresh benchmarking is preferred.

- **Simple, weighted or pooled results**

Weighted average is preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Penalty for failure to submit transfer pricing documentation

as demanded by the Commissioner General of the MRA is USD1,400 plus a further penalty of USD2,100 for each additional month the documents remain un-submitted. If the taxpayer fails to comply after initial penalty and subsequent penalties, the taxpayer shall be liable to additional penalties in an unlimited amount as determined by the Commissioner General.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

As for adjustments to income tax payable, including tax adjustments relating to transfer pricing, normally, 100% of the taxes is involved.If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

As for adjustments to income tax payable, including tax adjustments relating to transfer pricing, normally, 100% of the taxes is involved.Is interest charged on penalties or payable on a refund?

Interest is due on overdue taxes, including additional taxes assessed in terms of transfer pricing at the prevailing bank-lending rate plus 5%.

b) Penalty relief

Penalty relief is available at the Commissioner General's discretion. The taxpayer may appeal to the Commissioner General of the MRA and then to the special arbitrator. The final appeal can be made to the High Court.

10. Statute of limitations on transfer pricing assessments

The assessments can be raised going back six years, but in cases of fraud, the MRA can raise assessments going back indefinitely.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high; currently, there are frequent transfer pricing audits by the MRA.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium; if the methodology adopted by the taxpayer is well substantiated, there is a better likelihood that the MRA might agree with it.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high; from experience, when a methodology is challenged, then a adjustment is likely.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Under the Taxation Act, APA is only applicable to Mining Sector and there is no APA in the other sectors,, but a taxpayer may apply for APA.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not yet adopted, but it might be included in all double tax agreements (DTAs) to be entered post-BEPS report.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Malawi has enacted thin-capitalization rules, which are effective from 1 July 2015 for mining. The debt-to-equity ratio has been stipulated for the mining industry, for which the debt-to-equity ratio is set at 3:1 for the first five years, in which a mining permit applies to the project, and 1.5:1 thereafter.

The Malawi Government enacted thin-capitalization rules for other sectors other than mining with effect from 1 July 2018 and introduced 3:1 as the debt-to-equity ratio.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Board (IRB) of Malaysia (*Lembaga Hasil Dalam Negeri Malaysia* – IRBM).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer pricing is legislated under Section 140A of the Income Tax Act (ITA), 1967 (effective from 1 January 2009) and under Section 17D of the Labuan Business Activity Act 1990 (LABATA) (effective from the year of assessment 2020). The Malaysian Transfer Pricing Rules and Guidelines were introduced in 2012 (effective from 1 January 2009) and updated Malaysian Transfer Pricing Guidelines were released on 15 July 2017 (applicable where transfer pricing documentation is prepared after 15 July 2017 for any financial year (FY)).

- **Section reference from local regulation**
  - Section 140A of the ITA and Section 17D of the LABATA: Power to substitute the price and disallowance of interest on certain transactions.
  - Section 138C of the ITA: Advance pricing arrangement
  - Income Tax (Transfer Pricing) Rules 2012 (P.U. [A] 132).
  - Income Tax (Advance Pricing Arrangement) Rules 2012 (P.U. [A] 133).
  - Income Tax CbCR Rules 2016 [P.U. (A) 357] (CbCR Rules).
  - Income Tax (country-by-country Reporting) (Amendment) Rules 2017 (P.U. [A] 416).
  - Labuan Business Activity Tax (country-by-country Reporting) Regulations 2017 (P.U. [A] 409).
  - Income Tax (Multilateral Competent Authority Agreement on the Exchange of country-by-country Reports Order 2016) (P.U. [A] 358) (Malaysian MCAA).

[1] **http://www.hasil.gov.my/index1.php?bt_lgv=2**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The 2012 Malaysian Transfer Pricing Guidelines are largely based on the governing standard for transfer pricing, which is the arm's-length principle as established in the OECD Guidelines. The IRB respects the general principles of the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Malaysia adopted and implemented BEPS Action 13 effective from 1 January 2017 for transfer pricing documentation in its local regulations.

- Coverage in terms of Master File, Local File and CbCR

  It covers the master file.

- Effective or expected commencement date

  The effective commencement date is 1 January 2017.

- Material differences from OECD report template or format

  There are no material differences among the OECD report templates or formats in relation to CbCR, master file and local file, compared with Malaysia's transfer pricing documentation requirements.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Taxpayers should prepare master file and local file transfer pricing documentation that fulfills the requirements of the Malaysian Transfer Pricing Rules and Guidelines to achieve penalty protection. If a taxpayer fails to comply with the Malaysian CbCR Rules, penalties under ITA Sections 112A,

113A and 119B would be applied.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, Malaysia is a signatory to the MCAA as of 27 January 2016.

4. Transfer pricing documentation requirements

Contemporaneous documentation pertaining to transfer pricing need not be submitted with the tax return, but it should be made available to the IRB upon request.

- **Transfer pricing documentation is deemed contemporaneous if it is prepared under the following conditions:**
  - At the point when the taxpayer is developing or implementing any arrangement or transfer pricing policy with its associated person
  - If there are material changes, when reviewing these arrangements prior to, or at the time of, preparing the relevant tax return of the taxpayer's income for the basis year for a year of assessment (YA)
- **In preparing the documentation, the arm's-length transfer price must be determined before pricing is established based upon the most current reliable data that is reasonably available at the time of determination. However, taxpayers should review the price based on data available at the end of the relevant year of assessment and update the documentation accordingly.**

Based on the updated IRB guidelines, the IRB has given further guidance on defining material changes as below:

- **Material changes are significant changes that would impact the functional analysis or transfer pricing analysis of the tested party.**
- **Material changes include changes to the operational and economic conditions that will significantly affect the controlled transactions under consideration.**

Examples of changes in operational conditions include the following:

- **Changes in shareholding**
- **Changes in business model and structure**
- **Changes in business activities (e.g., changes in group business activities that give impact to local business activities)**
- **Changes in financial or financing structure**
- **Changes in transfer pricing policy**
- **Mergers and acquisitions**

Examples of changes in economic conditions include foreign exchange, economic downturn or natural disasters.

A contemporaneous transfer pricing documentation should include records and documents providing a description of:

- **Organizational structure, including an organization chart covering persons involved in a controlled transaction**
- **Nature of the business or industry and market conditions**
- **The controlled transaction**
- **Strategies, assumptions and information regarding factors that influenced the setting of any pricing policies**
- **Comparability, functional and risk analysis**
- **Selection of the transfer pricing method**
- **Application of the transfer pricing method**
- **Documents that provide the foundation for, or otherwise support or were referred to in, developing the transfer pricing analysis**
- **Index to documents**
- **Any other information, data or document considered relevant by the person to determine an arm's-length price**

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, Malaysia has transfer pricing documentation guidelines and rules. Taxpayers are required to prepare contemporaneous transfer pricing documentation and submit within 14 days upon request by the tax authorities.

- **Does a local branch of a foreign company need to comply**

with the local transfer pricing rules?

Yes, a local branch of a foreign company is required to comply with the Malaysian transfer pricing regulatory requirements.

- **Should transfer pricing documentation be prepared annually?**

Malaysia requires preparation of transfer pricing documentation annually under its local jurisdiction regulations. Preparation of contemporaneous transfer pricing documentation should be based on the most current reliable data that is reasonably available at the time of determination. However, taxpayers should review the price based on data available at the end of the relevant year of assessment and update the documentation accordingly.

As long as the operational conditions remain unchanged, the comparable searches in databases supporting part of the transfer pricing documentation should be updated every three years rather than annually. However, financial data and suitability of the existing comparable should be reviewed and updated every year in order to apply the arm's-length principle reliably.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare a stand-alone transfer pricing report if it has related-party transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The Malaysian Transfer Pricing Guidelines provides for de minimis rules and exceptions whereby taxpayers with the following threshold may opt for minimal transfer pricing documentation or maintain complete transfer pricing documentation as applicable to other taxpayers:

- Gross income (less than MYR25 million)
- Related-party transactions (less than MYR15 million)

Where a person provides financial assistance, the guidelines on financial assistance are only applicable if that financial assistance exceeds RM50 million. The IRB guidelines do not apply to transactions involving financial institutions.

The IRB guidelines state that any person who falls within the above threshold criteria may opt to fully apply all relevant guidance as well as fulfill all transfer pricing documentation requirements in the IRB guidelines. Alternatively, the person may opt to comply with maintaining the minimum transfer pricing documentation, which consists of the following three components:

- Organizational structure
- Controlled transactions
- Pricing policies

In this regard, the person is allowed to apply any method other than the five methods described in the IRB guidelines provided it results in, or best approximates, arm's-length outcomes.

The de minimis rules do not apply to transactions between permanent establishment and its head office or other related branches.

- **Master File**

Master file: The revenue threshold for preparation of master file is that the consolidated revenue of the MNE group is at least MYR3 billion in the financial year preceding the reporting financial year. Further, the taxpayers that are obligated under the income tax (CbCR) rules 2016 to prepare the CbCR shall prepare the master file and submit it together with the transfer pricing documentation upon request by the IRB. The master file is focused on providing a broader overview of the business group's operations and is very similar to the contents as prescribed by the OECD.

- **Local File**

Local file refers to the transfer pricing documentation prepared in accordance with the Malaysian Transfer Pricing Rules and Guidelines issued by the IRBM. Further, there is no revenue threshold applicable for preparation of local file apart from the de minimis rules.

- **CbCR**

Malaysia introduced CbCR rules effective from 1 January 2017. The CbCR applies to MNEs for which:

- The consolidated revenue of the MNE group is at least MYR3 billion in the fiscal year preceding the reporting fiscal year.
- Any of its CEs:
  - Is an ultimate holding entity that is incorporated, registered or established, or deemed to be incorporated, registered or established, under the Companies Act 2016 (Act 777) or under any written law and resident in Malaysia
  - Is incorporated, registered or established, or deemed

to be incorporated, registered or established, under the Companies Act 2016 or under written law or under the laws of a territory outside Malaysia and resident in Malaysia
  - Is a surrogate holding entity that is incorporated, registered or established, or deemed to be incorporated, registered or established, under the Companies Act 2016 or under any written law and resident in Malaysia
  - Is a permanent establishment in Malaysia

- **Economic analysis**

Under the de minimis rules, there is no materiality threshold for economic analysis. The person is allowed to apply any method other than the five methods described in the IRB guidelines provided it results in, or best approximates, arm's-length outcomes.

c) Specific requirements

- **Treatment of domestic transactions**

The Malaysian contemporaneous transfer pricing documentation obligation for domestic transactions where the arm's-length principle would apply and be covered in the transfer pricing documentation.

- **Local language documentation requirement**

The transfer pricing documentation can be submitted in either English or Bahasa Malaysia.

- **Safe harbor availability including financial transactions if applicable**

There are no safe harbor provisions in Malaysia.

- **Is aggregation or individual testing of transactions preferred for an entity**

No. Ideally, in arriving at the most precise approximation of fair market value, the arm's-length principle should be applied on a transaction-by-transaction basis. However, the Malaysian Transfer Pricing Rules recognize that a combination of controlled transactions are sometimes so closely linked or continuous that they cannot be evaluated adequately on a separate basis and that there may be instances for normal industry practices to set one transfer price for those transactions.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The IRB requires selected MNC taxpayers to complete a specific form (Form MNE (PIN 1/2017), Information on Cross Border Transactions) related to information on cross-border transactions. Taxpayers are required to disclose the following information in the Form MNE for a given year:

- **Names of ultimate holding company; holding companies; subsidiaries, both local and foreign; and affiliates in Malaysia**
- **A chart of the global corporate structure to which the taxpayer belongs, including ultimate holding companies, direct and indirect subsidiaries, associated companies and other related parties, indicating the companies with which the taxpayer conducts related-party transactions**
- **Information about cross-border intercompany transactions, such as:**
  - Sales and purchases of stock in trade, raw materials and other tangible assets
  - Royalties and license fees and other payments for the use of intangible assets
  - Management fees, including fees and charges for financial, administrative, marketing and training services
  - R&D
  - Rent and lease of assets
  - Interest
  - Guarantee fees
  - Other services not falling under any of the above categories
- **Particulars of financial assistance (showing balances during the year and the ending balance) with related companies outside Malaysia, such as:**
  - Interest-bearing loans
  - Interest-bearing trade credit
  - Interest-free loans
- **Description of the taxpayer's business activity:**
  - Manufacturing (toll, contract and full fledged)

- Distributor (commissionaire, limited risk and full fledged)
- Service provider
- Others (taxpayer to specify)
- Specification of the industry in which taxpayer operates and associated industry code
- Details on transactions with countries having lower tax rates than Malaysia

- **Confirmation of whether taxpayer has prepared transfer pricing documentation for the relevant year**

The issuance of Form MNE is an indication of the IRB's increasing attention to transfer pricing. The purpose of the form is to assess taxpayers' risk profiles as well as their level of compliance with the transfer pricing provisions. The taxpayers will be given 30 days to complete and return the form to the IRB.

- **Related-party disclosures along with corporate income tax return**

Taxpayers are required to disclose in a tax return if transfer pricing documentation has been prepared for the relevant year of assessment. This compliance requirement is effective from the year of assessment in 2014.

- **Related-party disclosures in financial statement/annual report**

Taxpayers are required to disclose all related-party transactions in their financial statements.

- **CbCR notification included in the statutory tax return**

Starting YA 2021, constituent entities can now furnish the CbCR notification using the Form-C. Constituent entities filing other forms should continue furnishing the notification using the existing method. Notification (except for constituent entities submitting other than Form C, Company Return Form) should be made on or before the due date to file the Form C.

- **Other information/documents to be filed**

CbCR notification filed as a reporting entity or non-reporting entity.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

It has to be filed within seven months from the end of the relevant fiscal year, e.g., 31 December 2021 year-ending companies would file the corporate tax return by 31 July 2022.

- **Other transfer pricing disclosures and return**

In 2014, the IRBM introduced a section in Form C asking taxpayers to declare if they have maintained a transfer pricing report for the year of assessment they are filing the tax returns. Therefore, for the year of assessment for which they are filing the tax returns, the taxpayer can select "Yes" if it has maintained a transfer pricing report. For taxpayers that do not have a transfer pricing report, they must select "No" and make a disclosure in the Form C.

Effective from year of assessment 2019, the taxpayers are required to disclose the details of their related-party transactions in the Form C.

- **Master File**

There is no statutory deadline for the submission of master file; however, it must be submitted within 14 days upon request of the tax authorities.

- **CbCR preparation and submission**

The CbCR must be filed no later than 12 months after the last day of the reporting fiscal year of the MNE group (e.g., MNE groups with fiscal year ending on 31 December 2021 will be required to file the CbCR by 31 December 2022 at the latest).

- **CbCR notification**

Starting YA 2021, constituent entities can now furnish the CbCR notification using the Form C. Constituent entities filing other forms should continue furnishing the notification using the existing method. Notification (except for constituent entities submitting other than Form C) should be made on or before the due date to file the Form C.

b) Transfer pricing documentation/Local File preparation deadline

Taxpayers are required to prepare contemporaneous transfer pricing documentation. Contemporaneous transfer pricing documentation means transfer pricing documentation that is brought into existence when a person is developing or implementing any controlled transaction. Furthermore, wherever in the basis period for a year of assessment the controlled transaction is reviewed and there are material changes, the documentation shall be updated prior to the due

date for furnishing the tax return for that basis period for that year of assessment.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of transfer pricing documentation.

- **Time period or deadline for submission on tax authority request**

Taxpayers are required to submit transfer pricing documentation within 14 days upon request of the tax authorities.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The IRB accepts CUP, resale price, cost plus, profit split and TNMM. However, the Malaysian Transfer Pricing Rules state that the traditional methods are preferred over the profit methods. The rules advise that the profit methods should be used only when the traditional methods cannot be reliably applied or be applied at all.

8. Benchmarking requirements

- **Local vs. regional comparables**

The IRB gives priority to the available sufficient and verifiable information on both tested party and comparables (paragraph 7.4 of the Malaysian Transfer Pricing Guidelines). The IRB has a preference for using a local benchmarking study (i.e., local Malaysian comparable companies).

If a foreign-tested party is used, it must be of simpler functions compared with the local entity and verifiable documents provided to IRB to include:

- Transfer pricing documentation of the foreign-tested party
- Financial statements and detailed accounts of the tested party
- Financial statements of comparables used in the transfer pricing documentation or screenshot of the financial and background information extracted from the database used
- Foreign comparables that can be similarly considered if annual reports, financial statements and background information of the comparables can be provided for verification by the IRB

- **Single-year vs. multiyear analysis**

The arm's-length price should be determined by comparing the results of a controlled transaction with the results of uncontrolled transactions that were undertaken or carried out during the same year as the year of the taxpayer's controlled transaction. Therefore, the IRB reviews the transfer price on a year-by-year basis and relies on the information of the comparable companies reasonably available at the time of preparation of the transfer pricing study.

- **Use of interquartile range**

The Malaysian Transfer Pricing Guidelines provides that the arm's-length range refers to a range of figures that are acceptable in establishing the arm's-length nature of a controlled transaction. In practice, the IRB uses the median as a reference point to ascertain the arm's-length price.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

As long as operational conditions remain unchanged, the comparable searches in databases supporting part of the transfer pricing documentation should be updated every three years rather than annually. However, financial data and suitability of the existing comparable should be reviewed and updated every year in order to apply the arm's-length principle reliably.

- **Simple, weighted or pooled results**

The Malaysian Transfer Pricing Guidelines do not advocate using simple or weighted average to ascertain the arm's-length price of the intercompany transactions.

- **Other specific benchmarking criteria, if any**

The IRB has a preference for using a local benchmarking study (i.e., local Malaysian comparable companies) and has not provided any specific criteria for selection of the comparable companies.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There are no specific penalties for transfer pricing. However, the existing legislation and penalty structure under Section 113(2) of the ITA (on penalty for incorrect return and incorrect information) are applied with penalties that are 100% of the undercharged tax.

In the event of a transfer pricing adjustment arising from audits, the following penalties will be applicable:

- **No contemporaneous documentation prepared — 50% of the undercharged tax**
- **Transfer pricing documentation prepared but not according to the requirement of the IRB Transfer Pricing Guidelines — 30% of the undercharged tax**

With reference to Section 113B of the ITA, failure to furnish contemporaneous transfer pricing documentation by the taxpayer within 14 days upon request by the MIRB in respect of any year of assessment shall be guilty of an offense and shall, on conviction, be liable to a fine ranging from RM20,000 to RM100,000 and/or imprisonment for a term not exceeding six months.

Surcharge up to 5% on TP adjustments: With reference to amended Section 140A (3C) of the ITA, the Director General of Inland Revenue may impose a surcharge of up to 5% of the amount of increase of any income or reduction of any deduction or loss arising from a transfer pricing adjustment. Any surcharge imposed shall be collected as if it were tax payable of the taxpayer.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are no specific penalties for transfer pricing. However, the existing legislation and penalty structure under Section 113(2) of the ITA (on penalty for incorrect return and incorrect information) are applied with penalties that are 100% of the undercharged tax.

In the event of a transfer pricing adjustment arising from audits, the following penalties will be applicable:

- **No contemporaneous documentation prepared — 50% of the undercharged tax**
- **Transfer pricing documentation prepared but not according to the requirement of the IRB Transfer Pricing Guidelines — 30% of the undercharged tax**

With reference to Section 113B of the ITA, failure to furnish contemporaneous transfer pricing documentation by the taxpayer within 14 days upon request by the MIRB in respect of any year of assessment shall be guilty of an offense and shall, on conviction, be liable to a fine ranging from RM20,000 to RM100,000 and/or imprisonment for a term not exceeding six months.

Surcharge up to 5% on TP adjustments: With reference to amended Section 140A (3C) of the ITA, the Director General of Inland Revenue may impose a surcharge of up to 5% of the amount of increase of any income or reduction of any deduction or loss arising from a transfer pricing adjustment. Any surcharge imposed shall be collected as if it were tax payable of the taxpayer.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Same as above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above.

- **Is interest charged on penalties or payable on a refund?**

None.

b) Penalty relief

If the tax authorities make an adjustment, the taxpayer would need to appeal against the tax assessment by lodging a Form Q, Notice of Appeal to the Special Commissioners of Income Tax, to seek any relief.

10. Statute of limitations on transfer pricing assessments

There is a seven-year statute of limitations for additional assessments issued pursuant to transfer pricing adjustments, and documentation must be kept for seven years. There is no statute of limitations in instances of fraud, willful default or negligence.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

For companies with significant related-party transactions, the likelihood is that transfer pricing audits will be characterized as high. Every MNE that was audited during the last 12 months had its transfer pricing policy scrutinized.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

As mentioned above, the IRB indicated via the transfer pricing rules and guidelines that the traditional methods are preferred over the profit methods. It advised that the profit methods should be used only when the traditional methods cannot be reliably applied or be applied at all. Accordingly, if a profits-based method is applied without substantiation, the risk of the methodology being challenged may be considered to be high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high (refer to "Likelihood of transfer pricing methodology being challenged" section above for details).

- **Specific transactions, industries and situations, if any, more likely to be audited**

The IRB during a transfer pricing audit would focus on the following:

- Companies with high value of related-party transactions
- Companies that are having significant intragroup transactions, e.g., royalties paid, management fee paid, technical services fee paid and commission paid
- Companies having related-party transactions and reporting losses
- Related-party transactions between two Malaysian entities, where one of the Malaysian entities is availing a tax incentive or is reporting losses

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APA: The introduction of Section 138C of the ITA effectively formalizes the availability of unilateral and bilateral APAs in Malaysia. Additionally, formal APA rules and guidelines in relation to APAs have been issued, and a specific unit has been established in the IRB to oversee the APA applications and negotiations.

MAP: As per Malaysian MAP guidelines, the purpose of the guidelines is to provide guidance on obtaining assistance from the Malaysian competent authority (CA) to persons that fall within the scope of an effective tax treaty that Malaysia has with its treaty partners. The assistance is provided to taxpayers in order to resolve international tax disputes involving double taxation and inconsistencies in the interpretation and application of a tax treaty.

- **Tenure**

APA: The Malaysian APA rules allow the APA for a minimum of three years and a maximum of five years. This comes with an option to roll back the outcome of the APA if it is demonstrated that the transfer pricing methodology applied is appropriate, provided that the facts and circumstances surrounding those years are substantially the same as that of the covered period under the APA.

MAP: The Malaysian MAP guidelines state that the time limit for presenting a case for CA assistance depends upon the specific terms of the particular tax treaty under which the MAP is invoked. Therefore, in every case, the relevant tax treaty should be consulted. Where the time limit for presenting a case to invoke MAP is not specified in the relevant tax treaty, the Malaysian CA will follow the time limit specified under the Article 25 (MAP) of the OECD Model Tax Convention on income and on capital (i.e., within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the convention).

- **Rollback provisions**

APA: Refer to "Tenure" section above.

MAP: This is not applicable.

- **Fee**

APA: The fee is MYR5,000 (nonrefundable application fee) and any other expenses incurred by the authorities. For renewal fees, the same applies.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

The Inland Revenue Board of Malaysia is currently not accepting any new APA applications from businesses affected by the COVID-19 pandemic until further notice since the outlook of the COVID-19 pandemic is still highly uncertain. For businesses that are not impacted by COVID-19, taxpayers may still proceed with APA applications. With respect to existing ongoing cases, the review process of an ongoing APA application request is based on the information previously submitted to the IRB of Malaysia. The proposed arm's-length range will be based on the benchmarking analysis of normal economic and market conditions, i.e., pre-COVID-19 period.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

With effect from 1 January 2019, Malaysia introduced earning stripping rules (ESR) to restrict the deductibility of interest expenses incurred in connection with or on any financial assistance in a controlled transaction in relation to cross-border transactions. The relevant regulations and guidelines are outlined as follows:

- Section 140C of the ITA: Restriction on the deductibility of interest (effective from 1 January 2019)
- Income tax (restriction on deductibility of interest) rules 2019 (effective from 1 July 2019)
- Restriction on deductibility of interest guidelines (effective from 1 July 2019)

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Maldives Inland Revenue Authority (MIRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Maldives Income Tax Act (Law No. 25/2019) contains transfer pricing provisions under its "Tax Avoidance" section.

In addition to the Income Tax Act, MIRA has published Transfer Pricing Regulations 2020/R-43, country-by-country Reporting Regulation 2021/R-9, transfer pricing documentation guidelines and a transfer pricing guide on application of the arm's-length principle.

- **Section reference from local regulation**

As per Section 68 of the Income Tax Act, every person liable to income tax under this act shall prepare and maintain documentation (transfer pricing documentation) in respect of transactions and arrangements entered into between associates subject to exemptions as per the Transfer Pricing Regulations 2020/R-43.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The Maldives is not a member of the OECD. However, transfer pricing regulations and transfer pricing guides are largely based on the governing standard for transfer pricing, which is the arm's-length principle as set out under the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2017).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The Maldives has adopted BEPS Action 13 for transfer pricing documentation in terms of master file, local file and CbCR.

- Coverage in terms of Master File, Local File and CbCR

  Yes.

- Effective or expected commencement date

  TPD takes effect from tax year 2020.

- Material differences from OECD report template or format

  There are no material differences in terms of format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

The Maldives became party to the Convention on Mutual Administrative Assistance in Tax Matters (MAAC), and the MCAA was signed on 11 August 2021.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the transfer pricing documentation (TPD) has to be prepared and finalized by the due date for the submission of tax returns (30 June of the following year to which the transaction relates) for the accounting period to which the transaction or arrangement relates.

[1] **https://www.mira.gov.mv/**

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation be prepared annually?**

Yes.

- For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?

Yes, each entity based in the Maldives is required to prepare stand-alone transfer pricing reports if it has related-party transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Transfer pricing documentation need not be prepared for a transaction or arrangement undertaken by an applicable entity with its associated party in the circumstances disclosed in the Section 7 of Transfer Pricing Regulations.

- **Master File**

The MIRA has not adopted the application of the BEPS master file and local file concepts as separate documents.

- **Local File**

The MIRA has not adopted the application of the BEPS master file and local file concepts as separate documents.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Other than loan transactions, domestic transactions are excluded from the TPD if both associate parties are taxed at the same rate.

- **Local language documentation requirement**

TPD must be in English or Dhivehi.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

Taxpayers are required to complete the Schedule-04, Reporting of International Transactions with Associates, if their total annual income is more than MVR20 million (USD1.2 million).

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Currently, there is no requirement to prepare a separate tax return for related-party transactions.

- **Related-party disclosures along with corporate income tax return**

Yes , Schedule-04 is a part of corporate income tax return.

- **Related-party disclosures in financial statement/annual report**

In addition to the above, related-party disclosures must be made in the notes to the audited financial statements, which are filed with the MIRA in support of the tax declaration.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

CIT return is required to be submitted to MIRA on 30 June of the immediately following tax year.

- **Other transfer pricing disclosures and return**

Taxpayers are required to complete Schedule-04, which is part of the income tax return.

- Master File

The master file shall be prepared and finalized by the due date for the submission of the tax return for the accounting period to which the transaction or arrangement relates and submitted to the MIRA upon a request from MIRA within 30 days.

- CbCR preparation and submission

The CbCR shall be filed with MIRA no later than 12 months after the last day of the reporting fiscal year of the MNE group.

- CbCR notification

Any constituent entity of an MNE group that is resident for tax purposes in the Maldives shall notify MIRA whether it is the ultimate parent entity or the surrogate parent entity, no later than the last day of the reporting fiscal year of such MNE group.

b) Transfer pricing documentation/Local File preparation deadline

TPD shall be prepared and finalized by the due date for the submission of the tax return for the accounting period to which the transaction or arrangement relates and submitted to the MIRA upon a request from MIRA within 30 days.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

Yes, per the Section 68 (C) of the Income Tax Act, TPD shall be prepared and finalized by the due date for the submission of the tax return. Time period or deadline for submission on tax authority request is within 30 days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is not any specific new submission deadline; however, the deadline for filing the income tax return (MIRA 604, MIRA 605 and MIRA 606) and making payment for the year 2020 under the Income Tax Act has been extended to 31 August 2021 due to the spread of COVID-19 and the challenges that may be faced by taxpayers.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

This is applicable for both domestic and international transactions.

- Domestic transactions

This is applicable for both domestic and international transactions.

b) Priority and preference of methods

The transfer pricing techniques do not have any priority. However, the taxpayer must determine the most appropriate transfer pricing. MNEs and tax authorities can use five basic transfer pricing methods, according to the OECD method.

8. Benchmarking requirements

- Local vs. regional comparables

Benchmarking analysis is required only to determine the arm's-length interest rate. Otherwise, benchmarking analysis is not specified in the transfer pricing guides or regulations.

- Single-year vs. multiyear analysis

This not specified.

- Use of interquartile range

This not specified.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

This not specified.

- Simple, weighted or pooled results

This not specified.

- Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

There is not any transfer pricing-specific fine or penalty in the Maldives. However, the MIRA shall impose general fines and penalties.

Noncommission of information:

- A fine of 0.5% (zero point five per cent) of the amount of tax payable for the taxable period
- A fine not exceeding MVR50 for each day of delay from the date required to file

The offense of non-payment of tax by deadline: A fine of 0.05% per day of the outstanding amount from the due date of payment.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

As specified above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

As specified above.

- **Is interest charged on penalties or payable on refund?**

As specified above.

b) Penalty relief

As specified above.

10. Statute of limitations on transfer pricing assessments

A tax audit notice by the MIRA can be initiated at any time during the year. The MIRA may serve the notice within two years from either:

- **Return filing deadline (in case return is filed ahead of deadline)**
- **Actual filing date (in case return is filed or amended after the deadline**

In case where a return is not filed, the MIRA may initiate an audit at any time.

Where an offense involving fraud in the payment of tax or involving tax evasion is committed, an investigation may be instigated within three years from the date on which that offense is believed to have been committed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high; the MIRA conducts a tax audit of tax returns as part of a regular audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be low to medium provided sufficient documentation is available.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high; the MIRA shall tax the relevant transaction on the basis of the OECD Guidelines.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is none specified.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

None has been specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin capitalization was introduced to the Maldives on 26 April 2018 and was further amended on 27 December 2018. The ruling shall be applicable from 2018 and thereafter. This tax ruling introduces thin-capitalization rules in relation to deduction of interest and payments economically equivalent to interest in the computation of taxable profits. Accordingly, interest deductible is limited to 30% of earnings before interest, tax and capital allowances.

The total amount of interest paid or payable must not exceed 30% of the sum of the profit or (loss) before loss relief, before interest deducted and before capital allowance claimed. A person shall carry forward the amount of interest disallowed to be deducted in subsequent periods up to a maximum of 10 years from the last day of the accounting period in which such amount was initially disallowed. Furthermore thin capitalization is not applicable to interest/finance cost paid/payable for the following organizations licensed by the Maldives Monetary Authority (MMA):

- Banks
- Housing finance businesses
- Leasing finance businesses
- Insurance businesse

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General of Taxes (*Direction Général des Impôts* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Procedure tax book: Articles 57-A to 57-E (the 2017 Finance Act).

Decree n°2017-266, decree n°2017-450: Articles 7 and 8.

- **Section reference from local regulation**

Subsection 3, Determination of taxable profit, and Subsection 4, RPIC and corporate tax, of Section 2, Reporting obligations, of Chapter 2, Tax returns, in the procedure tax book.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Mali is not a member of the OECD nor a member of the BEPS Inclusive Framework.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the TP documentation must be submitted and prepared annually.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, the documentation obligation concerns legal entities established in Mali regardless of their nationality.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Legal entities established in Mali that fulfill the following

conditions need to prepare the TP documentation and a TP return:

- Achieve a turnover greater than or equal to XOF3 billion
- Be placed under the dependence or control companies located outside Mali

Related parties are defined to include where one party has direct or indirect capital ownership of 50% or more or has effective decision-making power in the other or where multiple parties are controlled by a third party meeting the same conditions.

The TP rules apply regardless of two parties being related for transactions undertaken with a non resident party located in a low-tax jurisdiction (lower than Mali's rate by 10% or more) or a non-cooperative jurisdiction (lack of transparency or exchange of information with Mali).

- **Master File**

This is not applicable.

- **Local File**

TP documentation includes:

- Group-level information, including general description of legal structure, business activity, functions performed, risks assumed, intangible assets and TP policy
- Taxpayer-specific information, including details of business activities, related-party transactions, the TP methods used, the comparable analysis, and a list of cost-sharing agreements and advance pricing agreements (APAs) entered into

- **CbCR**

This is not applicable.

- **Economic analysis**

There are no materiality requirements regarding the amounts of transactions to be documented.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, it is expected for domestic transactions to follow arm's-length principles as they may be under scrutiny during tax audit.

TP documentation is required for transactions of any kind with related legal entities established or incorporated outside Mali.

- **Local language documentation requirement**

French.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is no specific requirement.

- **Any other disclosure/compliance requirement**

Taxpayers under tax audit are required to disclose the following information within one month of request by the tax authorities (possible extension up to three months):

- The nature of relationships with non resident companies
- A description of activities with non resident companies
- The TP method used to determine prices for transactions with non resident companies
- The foreign tax treatment of operations undertaken with non resident dependent companies

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

A TP return should be submitted along with the corporate tax return.

- **Related-party disclosures along with corporate income tax return**

The TP documentation must be submitted along with the corporate tax return.

- **Related-party disclosures in financial statement/annual report**

Taxpayers are required to furnish, at the same time as their declaration, the detailed list by category of their overheads, three copies of their financial statements bearing their Tax Identification Number and the harmonized bundles in

accordance with the standards of the uniform act relating to company accounting (SYSCOHADA).

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

Companies operating in Mali, as well as in one or more other states, must declare to the DGI in Bamako, each year or for each financial year within the time limits indicated above, the amount of the overall profit made in the said states. To this overall declaration shall be attached the declaration relating to their activity in Mali.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The deadline for the corporate income tax return is 30 April, with an exception for insurance companies having a deadline set at 31 May for each year.

- Other transfer pricing disclosures and return

The deadline for the TP return is 30 April, with an exception for insurance companies having a deadline of 31 May for each year.

- Master File

This is not applicable.

- CbCR preparation and submission

This is not applicable.

- CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The deadline for the TP documentation is 30 April, with an exception for insurance companies having a deadline of 31 May for each year.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or local File?

The deadline for the TP documentation is 30 April, with an exception for insurance companies having a deadline of 31 May for each year.

- Time period or deadline for submission on tax authority request

Taxpayers under audit are required to disclose the following information within one month of request by the tax authorities (possible extension up to three months).

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

No.

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost plus, profit split and TNMM.

8. Benchmarking requirements

- Local vs. regional comparables

There is no guidance provided.

- Single-year vs. multiyear analysis for benchmarking

There is no guidance provided.

- Use of interquartile range

There is no guidance provided.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

There is no guidance provided.

- Simple, weighted or pooled results

There is no guidance provided.

- **Other specific benchmarking criteria, if any**

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The penalty is stricto sensu applicable for lack of filing of the TP documentation.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to submit this documentation on time shall result in the imposition of a fine equal to 1% of the company's declared turnover for each month of delay, up to a maximum of 5%.

In the event of failure to reply to the written request made by the tax administration for information concerning the pricing arrangements for intercompany transactions or failure to produce or partial production of the documentation, the tax bases concerned by the request shall be assessed by the administration on the basis of the information available to it.

In the absence of precise elements to make the adjustments provided for above, the taxable income is determined by comparison with that of similar enterprises operating normally.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There is no requirement.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

It is subject to further negotiations with tax authorities.

10. Statute of limitations on transfer pricing assessments

The limitation period is set to three years (common tax regime).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Medium.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

TP legislation has introduced the possibility of an advance pricing agreement (APA). However, the negotiation of APAs is complex and requires significant expertise, which is not yet available in Mali.

The tax administration is required to give a reasoned written opinion within six months on any request for prior agreement. In the absence of a reply within this time limit, the taxpayer's request shall be deemed to be accepted.

- **Availability (unilateral, bilateral and multilateral)**

No specific guidance.

- **Tenure**

The APA may cover the year in which the request was done as well as the four subsequent years.

- **Rollback provisions**

No specific guidance.

- **MAP opportunities**

No specific guidance.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Mali has the following thin-capitalization rules regarding loans by shareholders and related parties to local entities:

- The share capital of the local entity should be entirely paid up.
- The sums made available by all shareholders should not exceed the amount of the share capital.
- The interest rate should not exceed the rate of the Central Bank of West African States advances, increased by three percentage points, or for companies benefiting from agreements of establishment governing their relationship with the state, the rate is LIBOR plus two percentage points.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Commissioner for Revenue (CfR).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are no detailed TP rules or guidelines in Malta, but a number of articles in the Income Tax Act (ITA) and Income Tax Management Act (ITMA), namely Articles 2(1), 12(1)(u)(2) and 51(1) of the ITA and Article 5(6) of the ITMA, put forward a concept analogous to the arm's-length principle.

- **Section reference from local regulation**

These are not defined separately.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Yes, on 22 December 2021, the Office of the Commissioner for Revenue published its draft Transfer Pricing Rules for public consultation.

The CfR's aim is to introduce these new rules with effect from 1 January 2024 or after, and if they are adopted in the current form, it appears that it will apply for companies that are not considered to be a micro, small or medium-size enterprise and whose aggregate arm's-length value of their cross-border arrangements in the relevant year exceeds a value that is yet to be determined. Companies falling within the purview of these transfer pricing rules would be required to verify that any cross-border arrangement entered into with an associate enterprise be at arm's length. Based on the draft rules, the arm's-length amount is to be determined on the basis of such methodologies to be prescribed via guidelines to be published by the CfR, and companies are expected to maintain transfer pricing documentation on a timely basis. Finally, the draft rules also provide for a formal framework pertaining to unilateral transfer pricing rulings and advance pricing agreements.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Malta is not a member of the OECD.

Notwithstanding that Malta does not have detailed TP rules, agreements between associated enterprises must still be in adherence to arm's length. In the absence of domestic detailed TP guidelines, reference is generally made to the OECD Transfer Pricing Guidelines.

In theory, however, these are not binding, but due consideration should be given to the fact that all double tax treaties entered into by Malta, except for the double tax treaty with the United States of America, are based on the OECD Model Tax Convention and hence (and with the exception of the treaty entered into with Bulgaria) provide for the arm's-length principle addressed in transactions involving associated enterprises. This is because, in applying the arm's-length principle for the purposes of any double tax treaty, reference is to be made to the OECD Transfer Pricing Guidelines.

Being a member of the EU, Malta is also a member of the EUJTPF (EU Joint Transfer Pricing Forum). In this respect, Malta has affirmed that should TP documentation requirements be adopted in the future, it will make reference to the code of conduct on TP documentation for associated enterprises in the EU.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, but only with respect to CbCR requirements

- Coverage in terms of Master File, Local File and CbCR

  Only CbCR is covered.

- Effective or expected commencement date

  CbCR requirements apply for fiscal years beginning on or after 1 January 2016.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, signed on 26 January 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Maltese tax law does not contemplate detailed TP documentation rules; it only applies high-level TP principles.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

This is not applicable.

- **Does transfer pricing documentation have to be prepared annually?**

Although the annual preparation of TP documentation is not statutory, the maintenance of such documentation is recommended.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Although the maintenance of stand-alone TP reports is not statutory, the maintenance of such documentation is recommended.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is applicable for constituent entities forming part of an MNE whose consolidated revenue is at least EUR750 million.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

This is not applicable.

- **Local language documentation requirement**

This is not applicable.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

This is not applicable.

- **Any other disclosure/compliance requirement**

Nothing in particular.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Malta does not require a separate return for related-party transactions.

- **Related-party disclosures along with corporate income tax return**

There are no specific statutory requirements. However:

- Any amounts due by or to a taxpayer to or by its shareholders as of the end of the relevant financial year are to be disclosed by the taxpayer separately in net for each shareholder in its annual corporate income tax return.
- Taxpayers are required to identify and specifically disclose items comprising revenue, expenditure and year-end balances due from or to, or arising from transactions entered into with, associated enterprises in the Tax Index of Financial Data, which basically reproduces the taxpayer's balance sheet and income statements in the same annual corporate income tax return.

- **Related-party disclosures in financial statement/annual report**

Related-party transactions are accounted for in accordance with the requirements of the International Financial Reporting Standard (IFRS) applicable to the transaction. On the other hand, the majority of the disclosures relating to related parties emanate from International Accounting Standard (IAS) 24, Related Party Disclosures. The standard contains the following main disclosures:

- Relationships between a parent and its subsidiaries shall be disclosed irrespective of whether there have been transactions between them. An entity shall disclose the name of its parent and, if different, the ultimate controlling party. If neither the entity's parent nor the ultimate controlling party produces consolidated financial statements available for public use, the name of the next most senior parent that does so shall also be disclosed (IAS 24.13).
- An entity shall also disclose key management personnel compensation in total and for each of the following categories: short-term employee benefits, post-employment benefits, other long-term benefits, termination benefits and share-based payment (IAS 24.17).
- If there have been transactions between related parties during the periods covered by the financial statements, it shall disclose the nature of the related-party relationship as well as information about those transactions and outstanding balances, including commitments, necessary for users to understand the potential effect of the relationship on the financial statements. This disclosure would have to be made separately for each category of related parties and, as a minimum, would include:
  - The amount of the transactions
  - The amount of outstanding balances, including commitments, their terms and conditions, details of any guarantees given or received, and the nature of the consideration to be provided in settlement
  - Provisions for doubtful debts related to the amount of outstanding balances
  - The expense recognized during the period in respect of bad or doubtful debts due from related parties (IAS 24.18)
- An entity shall also disclose that related-party transactions were made on terms equivalent to those that prevail in arm's-length transactions if such terms can be substantiated (IAS 24.23).

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed within nine months from the end of the constituent entity's financial year or the following 31 March, whichever is later. A two-month extension generally applies where the corporate income tax return is submitted electronically, which is generally the case.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The CbCR report is due to be submitted by 12 months following the end of the relevant financial year of the MNE group.

- **CbCR notification**

A CbCR notification form is due to be submitted by the tax return date, which is nine months from the end of the constituent entity's financial year or the following 31 March, whichever is later.

b) Transfer pricing documentation/Local File preparation deadline

There is no statutory deadline or recommendation for preparation of TP documentation.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No.

- Time period or deadline for submission upon tax authority request

There are no specific provisions that relate to such instances, and therefore, the general provisions will apply. Each case must be examined separately, so the time provided to reply is generally at the discretion of the Maltese tax authorities.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

This is not applicable.

- Domestic transactions

This is not applicable.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

- Local vs. regional comparables

This is not applicable.

- Single-year vs. multiyear analysis for benchmarking

This is not applicable.

- Use of interquartile range

This is not applicable.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

This is not applicable.

- Simple, weighted or pooled results

This is not applicable.

- Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences for incomplete documentation

This is not applicable.

- Consequences of failure to submit, late submission or incorrect disclosures

The lack of detailed TP rules means that there are no penalties that specifically relate to TP infringements. Generic penalties may, however, apply to incorrect disclosures made in income tax returns.

However, when a Maltese constituent entity fails to comply with any of the obligations in relation to CbCR, it shall be liable to the penalties for CbCR:

- When a Maltese constituent entity fails to retain the documentation and information it collected in the course of meeting its reporting obligations as provided in these regulations for a minimum period of five years starting from the end of the year in which the information relates, it is subject to a penalty of EUR2,500.
- When a Maltese constituent entity fails to report the information required to be reported within the time stipulated, it is subject to a onetime penalty of EUR200 and EUR100 for every day during which the default existed, provided that the total daily penalty shall not exceed EUR20,000.

When a Maltese constituent entity fails to report the information required to be reported in a complete and accurate manner, it is subject to:

- In the case of minor error, a onetime penalty of EUR200 and EUR50 for every day during which the default existed, provided that the total daily penalty shall not exceed EUR5,000
- In the case of significant non-compliance, a penalty of EUR50,000

When a Maltese constituent entity fails to comply with a request for information by the CfR, it shall be subject to a onetime penalty of EUR1,000 and EUR100 for every day during which the default existed, provided that the total daily penalty shall not exceed EUR30,000.

When a Maltese Constituent Entity that is neither the Ultimate Parent Entity nor the Surrogate Parent Entity nor the Constituent Entity subject to the secondary mechanism fails

to notify the Commissioner of the identity and tax residence of the Reporting Entity obliged to file a country-by-country report with respect to a Reporting Fiscal year by not later than the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year, it shall be liable to a onetime penalty of EUR200 and EUR50 for every day during which the default existed, provided that the total daily penalty shall not exceed EUR5,000.

When a Constituent Entity of a MNE Group that is resident for tax purposes in Malta, fails to notify the Commissioner of whether it is the Ultimate Parent Entity or the Surrogate Parent Entity or the Constituent entity subject to the secondary mechanism by not later than the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year, it shall be liable to a onetime penalty of EUR200 and EUR50 for every day during which the default existed, provided that the total daily penalty shall not exceed EUR5,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

This is not applicable.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

Yes, the relevant provisions allow the CfR to remit the whole of the said penalties or part thereof where the Commissioner is satisfied that the default leading to the imposition of penalties was not due to any fault or neglect on part of the relevant person.

10. Statute of limitations on transfer pricing assessments

This is not applicable. In general cases, however, the time limit on when the tax authority can assess tax and any applicable penalties for TP is six years. But in the cases of evasion or fraud, the time limit for raising an assessment is open-ended.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Given that there are no detailed TP rules in Malta, the likelihood of TP-related audits under the generic provisions may be considered to be low.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be low, for the same reason stated above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be low, for the same reason stated above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified; each case is examined on its own merits.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Maltese tax rules do not provide for a formal APA program. That said, an APA may be applied for under the auspices of Article 52 of the ITA, which provides companies that are party to a transaction with the opportunity to apply for an advance revenue ruling (ARR).

- **Tenure**

An ARR would remain binding on the CfR for a period of a few years unless there is a change in the understanding of statutory provisions, in which case it will continue to apply for two years.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Yes, the MAP is available in Malta. Indeed, guidelines addressing in detail the manner in which the MAP entered into in terms of a double tax treaty or the arbitration convention would apply in Malta have been published by the competent authority. Said guidelines provide a number of details pertinent to the whole process, including the additional information required in case of a TP MAP request.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Malta has transposed the provisions of the European Union Anti-Tax Avoidance Directive into domestic tax law to the effect that, starting from 1 January 2019, the amount of exceeding borrowing costs which may be claimed as a deduction by companies in Malta would be limited to the higher of:

- 30% of earnings before interest, tax, depreciation and amortization (EBITDA) as adjusted for income tax purposes, including the exclusion of tax-exempt income
- EUR3,000,000

Limitation above would not apply in certain instances, including:

- Where the taxpayer is a stand-alone entity
- Where the borrowing costs are incurred on loans that were concluded before 17 June 2016 and that have not been modified since then
- Where the borrowing costs are incurred on loans used to fund certain long-term public infrastructure projects
- Where the taxpayer is a member of a consolidated group for financial accounting purposes and, subject to the satisfaction of a number of conditions, it can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Directorate General of Taxes (*Direction Générale des Impôts* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are the General Tax Code (GTC) Articles 40 (arm's-length principle), 65 (annual declaration of foreign related-party transactions), 67 (CbCR), 66 (transfer pricing documentation obligation), 22-2 (thin-capitalization legislation, applied in the context of certain intragroup financing arrangements only, e.g., intragroup interest payments on intragroup debt), L.131-4 (annual transfer pricing return fines), L.131-5 (transfer pricing documentation fine) and L.131-6 (CbCR fine). The effective date of applicability is 1 January 2019, which corresponds to the entry into force of the newly adopted GTC.

- **Section reference from local regulation**

Direct taxes in the GTC.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Mauritania is neither a member of the OECD nor a member of the Inclusive Framework. However, Mauritania signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 12 February 2019. In addition, the transfer pricing regulations put in place in Mauritania are clearly inspired from the OECD Guidelines. Hence, we can expect the tax authorities to rely on OECD Transfer Pricing Guidelines to some extent.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  No clear guidance has been provided to date regarding the content of transfer pricing documentation. Although BEPS Action 13 is not officially applicable, the law makes reference to general information regarding the group and specific information regarding the documented entity to be provided within a transfer pricing documentation.

  CbCR is applicable.

- Effective or expected commencement date

  The effective date is 1 January 2019.

- Material differences from OECD report template or format

  The report template or format should be determined by a decree of the Minister of Finance. To the best of our knowledge, such decree has not yet been published. Given that the Mauritanian transfer pricing regulations are clearly inspired from those of the OECD, we believe that there should be no material differences from the OECD report template or format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  A BEPS Action 13 format report should be sufficient to achieve penalty protection, but financial data relating to the Mauritanian entity itself (including amounts of intragroup transactions) needs to be sourced from the Mauritanian statutory accounts.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No, but Mauritania has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, such documentation should be prepared and made available to the tax authorities on the date on which the on-site tax audit is initiated.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

The GTC does not provide any guidance on the applicability of the transfer pricing rules to foreign branches. But, in practice, transfer pricing rules are applied to foreign branches.

- **Should transfer pricing documentation be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Taxpayers that fulfill at least one of the following conditions need to prepare the transfer pricing documentation:

- Turnover, excluding taxes or gross assets, equal to MRU30 million at least
- Holding, at the end of the fiscal year, directly or indirectly more than half of the share capital or voting rights of a company located in Mauritania or abroad that generates a turnover excluding taxes or holds gross assets equal to MRU30 million at least
- Being directly or indirectly held at least for more than half of the share capital or voting rights by a company generating a turnover, excluding taxes, or holds gross assets equal to MRU30 million

- **Master File**

This is not applicable.

- **Local File**

As from financial years opened after 1 January 2019, in the absence of the decree of the Minister of Finance, the content of the documentation should provide general information regarding the group as well as specific information regarding the documented entity.

- **CbCR**

CbCR filing applies in line with the OECD Guidelines. The threshold for CbCR is MRU22 billion.

Taxpayers that fulfill at least one of the following conditions need to file the CbCR:

- The Mauritanian tax-resident company has been elected by the multinational group to file a CbCR and has informed the DGI.
- The Mauritanian tax-resident company fails to give evidence that another company of the multinational group (either based in Mauritania or in a jurisdiction that has implemented a similar CbCR requirement or in a jurisdiction that has concluded a qualified exchange of information instrument with Mauritania) has been designated for purposes of filing the CbCR.

- **Economic analysis**

The GTC does not provide for any materiality limit with regard to the intercompany transactions to be reported in the transfer pricing documentation. Indeed, there is no applicable notion of "important intercompany transactions," which consequently entails the reporting of all intercompany transactions to which a local company is a party.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, domestic transactions are expected to follow the arm's-length principles as they may be under scrutiny during tax audit.

- **Local language documentation requirement**

There is no guidance on the language for documentation. However, tax auditors are entitled to request a translation of the documentation if it is provided in English.

- **Safe harbor availability including financial transactions if applicable**

There is no specific guidance.

- **Any other disclosure/compliance requirement**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The transfer pricing return needs to be submitted in French as part of the taxpayer's annual corporate income tax (CIT) return.

- **Related-party disclosures along with corporate income tax return**

The transfer pricing documentation needs to be provided only upon request during an on-site tax audit (15 days after an official request).

- **Related-party disclosures in financial statement/annual report**

Article L.10 of the GTC provides for a legal obligation for Mauritanian companies to declare the sums effectively paid to third parties, which are not part of their salaried staff, during each ended fiscal year by January of the following fiscal year. This report also includes remunerations paid to foreign entities that can also be related entities.

- **CbCR notification included in the statutory tax return**

Yes, it should be included if the Mauritanian entity is not the ultimate parent entity (UPE) or surrogate parent entity (SPE).

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 31 March, following each fiscal year-end.

- **Other transfer pricing disclosures and return**

The annual transfer pricing return due date is 31 March of each year.

- **Master File**

There are no filing requirements.

- **CbCR preparation and submission**

CbCR submission is to be submitted within 12 months following the fiscal year-end.

- **CbCR notification**

The deadline is by the last day of the MNE's fiscal year (31 December).

b) Transfer pricing documentation/Local File preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No, there is no submission deadline.

- **Time period or deadline for submission upon tax authority request**

The deadline is 15 days following the tax auditor's request of the transfer pricing documentation.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost plus, profit split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific indication. However, local comparables would be preferred.

- **Single-year vs. multiyear analysis**

There is no guidance provided.

- **Use of interquartile range**

There is no guidance provided.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no guidance provided.

- **Simple, weighted or pooled results**

There is no guidance provided.

- **Other specific benchmarking criteria, if any**

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Same as below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

A fine of MRU2.5 million applies for the failure or delay to submit the transfer pricing return, and MRU4 million applies for the failure or delay to submit the CbCR.

For missing or incomplete documentation, the fine applies at the rate of 0.5% of the volume of transactions that were not documented or are missing. The amount of the fine may not be less than MRU500,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

After a transfer pricing reassessment is made, the profit indirectly transferred should be qualified as a deemed distribution of a benefit. Such "benefit" transfer should entail CIT and withholding tax (WHT) on the amounts deemed distributed, as well as the related penalties.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above.

- **Is interest charged on penalties or payable on a refund?**

No interest will apply on the penalties mentioned above.

b) Penalty relief

It is subject to further negotiations with tax authorities.

10. Statute of limitations on transfer pricing assessments

Three years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium as it will allow tax authorities to assess the effective profit that should be taxed locally.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium if the DGI assumes that the company chose this method to lower the taxable base.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium as we assume that challenging the transfer pricing method may entail for DGI an increase of the taxable base.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The industries are large companies: telecommunication, oil and gas, mining, and companies in the hospitality industry.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no guidance provided.

- **Tenure**

There is no guidance provided.

- **Rollback provisions**

There is no guidance provided.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty to which Mauritania is signatory.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Mauritania does not have specific thin-capitalization rules, but the following limitations are imposed on the interest paid to foreign parties in respect of funds provided to local companies:

- The rate of interest paid to shareholders, partners or other related third parties on loans may not exceed the advance rate of the Central Bank of Mauritania (*Banque Centrale de Mauritanie*) by more than two percentage points.
- The total amount of deductible annual interest in respect of all debts incurred by members of a group cannot exceed 15% of the group's consolidated profits from ordinary activities, plus interest, depreciation and provisions taken into account for the determination of those profits.

In addition, the interest paid by a branch to its head office in return for sums that the head office has drawn from its own funds and places at the disposal of the branch in any form whatsoever shall not be deductible.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration Service (*Servicio de Administración Tributaria* – SAT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The Central Transfer Pricing Administration department of the SAT's Large Taxpayers Administration is responsible for enforcing the transfer pricing rules that have been in force in Mexico since 1997. The Central Transfer Pricing Administration is in charge of transfer pricing audits as well as of transfer pricing rulings, such as unilateral, bilateral and multilateral transfer pricing procedures. Nevertheless, other administrations within the Large Taxpayers Administration can also review transfer pricing issues with the possibility to get support of the Central Transfer Pricing Administration.

Income Tax Law (ITL):

- **Transfer pricing regulations for corporations: Articles 76, first paragraph; Sections IX, X and XII, 76-A; Sections I, II and III, 179, 180, 181, 182, 183, 183-Bis and 184**
- **Transfer pricing regulations for individuals: Articles 90 and 110, Section X:**
  - ITL, Article 76 (Sections IX, X and XII): contemporaneous transfer pricing documentation (cross-border), transfer pricing disclosure (cross border), and taxpayer obligations for arm's-length pricing; (all transactions, i.e., local and foreign)
  - ITL, Article 76-A (Sections I, II and III): obligation for certain taxpayers to file master file, local file and annual transfer pricing CbCR informative returns, which has been in force since fiscal year 2016
  - ITL, Article 179: "related party" definition, comparability, business cycle approach, permanent establishments and transfer pricing, tax havens, and OECD Guidelines
  - ITL, Article 180: transfer pricing methods, ranges and selection of the most appropriate method
  - ITL, Article 181: permanent establishment and maquiladoras
  - ITL, Article 182: transfer pricing options for maquiladoras
  - ITL, Article 184: statement of the arm's-length principle, right of the tax authority to adjust to arm's-length result under International Tax Treaties on Income and Capital (ITTIC), and definition of "related party" (OECD)
  - ITL, Article 90, last two paragraphs: transfer pricing obligations for individuals
  - ITL, Article 110, Section X: transfer pricing disclosure (cross-border)

Federal Fiscal Code (FFC):

Transfer pricing rulings: Article 34-A

Fines related to transfer pricing: certain sections of Articles 81, 82, 83 and 84:

- FFC, Article 34-A: transfer pricing ruling (unilateral); bilateral or multilateral APA should be requested based on the correspondent double tax treaty
- FFC, Articles 81 (XVII and XL) and 82 (XVII and XXXVII): fines for failure to report foreign intercompany transactions (ITL, Article 76, Section X) and to file transfer pricing informative returns (ITL, Article 76-A)
- FFC, Articles 83 (XV) and 84 (XIII): fines for failure to properly reflect intercompany transactions conducted with foreign related parties as part of accounting records
- FFC, Articles 17-H BIS (IX) and 81 (XL): cancellation of the relevant certificates issued by the SAT for purposes of invoicing upon failure to file transfer pricing informative returns (ITL, Article 76-A)
- General Foreign Trade Regulations (Rule 1.3.3): suspension of the official importers' and exporters' registry upon failure to file transfer pricing informative returns (ITL, Article 76-A)
- FFC, Article 32-D (IV): negative compliance opinion that disqualifies taxpayers from entering contracts with the Mexican public sector upon failure to file transfer pricing informative returns (ITL, Article 76-A)

Miscellaneous Tax Resolution (*Resolución Miscelánea Fiscal* – MTR) for 2021 was published in the official Mexican Gazette:

[1] **http://www.diputados.gob.mx/LeyesBiblio/pdf/LISR_091219.pdf**

- MTR for 2022, Temporary Article Twenty Fourth: option for taxpayers to omit to file the appendices of the information of transactions with related parties of tax situation informative return (*Información Sobre Situación Fiscal* – ISSIF), as long as they file it by 30 September of the following fiscal year and comply with specific requirements
- MTR for 2022, Rule 2.9.8: functional analysis related to transfer pricing rulings
- MTR for 2022, Temporary Articles Thirty Fourth and Thirty Fifth: extension for taxpayers to comply with Article 76, Section X of ITL (transfer pricing disclosure) as of 15 July of the following fiscal year
- MTR for 2022, Rule 3.9.2: exception to obtain and keep transfer pricing supporting documentation for certain taxpayers (accruable income in the previous fiscal year below MXN13 million 00/100 MN); does not exempt taxpayers from conducting transactions at market value
- MTR for 2022, Rule 3.9.10: option to file one master file and CbCR for Mexican taxpayers of the same multinational group
- MTR for 2022, Rule 3.9.8: requirements to file annual transfer pricing CbCR, master file and local file
- MTR for 2022, Rule 3.9.9: information regarding transfer pricing return for taxpayers with the obligation to file a transfer pricing return but that do not have an active tax identification number, due to suspension of activities
- MTR for 2022, Rule 3.9.10: information regarding how to file master file and CbCR for several Mexican members of the multinational group
- MTR for 2022, Rule 3.9.11: timeline to file CbCR
- MTR for 2022, Rule 3.9.12 to 3.9.14: information that must be included as part of the master file, local file and CbCR
- MTR for 2022, Rule 3.9.1: rules related to transfer pricing adjustments (3.9.1.1. to 3.9.1.5.)
- MTR for 2022, Rule 3.20.2: income related to maquila nonbinding criteria:
  - 4/ISR/NV: royalties paid to foreign related parties for intangible assets originated in Mexico
  - 39/ISR/NV: recognition of unique and valuable contributions
  - 40/ISR/NV: modification of transfer prices when the results of the tested party are within the interquartile range

In addition, as a result of Mexico's energy reform, the Hydrocarbons Revenue Law (HRL) was created in 2014 to regulate the revenues to be generated as a result of hydrocarbon exploration and extraction activities. The regulation included in the HRL examines the relevant transfer pricing aspects that should be considered by every contractor in addition to specific transfer pricing regulations included in the contracts awarded by the National Hydrocarbons Commission (CNH):

- HRL, Article 30: applicability of the OECD Guidelines to analyze transactions performed with related parties
- HRL, Article 51: obligations for arm's-length pricing and method application

- **Section reference from local regulation**

The ITL, Article 179, states the "related party" definition as follows: two or more entities are considered to be related parties when one of them participates, directly or indirectly, in the administration, control or equity of the other or when an entity or group of entities participates, directly or indirectly, in the administration, control or equity of said entities. Members of partnerships are considered to be related, as are the persons who are considered related parties of said members.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No, there are no changes expected.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Mexico is a member of the OECD. The ITL, Article 180, states that the OECD Guidelines can be relied upon for interpretation of the rules as long as they do not contradict the ITL or international tax treaties.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS**

Action 13 for transfer pricing documentation in the local regulations?

Yes. Legislation was passed on 29 October 2015 and came intoeffect from 1 January 2016.

- Coverage in terms of Master File, Local File and CbCR

  Mexican regulations require the filing of both the master file and local file for certain taxpayers.

- Effective or expected commencement date

  BEPS Action 13 implementation is effective from FY2016, and the due date for compliance is 31 December of the following fiscal year from the fiscal year under analysis. Taxpayers required to submit the master file and local file informative returns should do it through the technological platform, as well as the digital formats for filing such informative returns, available on the SAT website for consultation and filing.

- Material differences from OECD report template or format

  On 15 May 2017, the SAT published the final transfer pricing regulations listing the specific requirements to comply with Article 76-A of the ITL. There are differences between the OECD report template or format and Mexico's regulations:

  - Master file: specific differences in the description of the requirements for the general description of the MNE's business activities, as well as on the information related to financial activities of the MNE

  - Local file: material differences with additional requirements, compared with the OECD report template, such as the requirement of a comprehensive description and taxpayer's participation on the MNE's value chain; detailed description of transfer pricing policies; development, enhancement, maintenance, protection and exploitation of intangibles (DEMPE) analysis and functional analysis per evaluated transaction and segmented financial information requirements; and, importantly, financial statements for the taxpayer and the tested parties as well as financial information of all the foreign related parties that are counterparties in the evaluated transactions

  These transfer pricing informative returns are an additional obligation to the contemporaneous transfer pricing documentation that must be maintained by the taxpayers in Mexico.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Not applicable.

  Prior FY2021 contemporaneous documentation might reduce tax penalties by 50%, if the taxpayer complies with the formal requirements established in Article 76 (IX) of the ITL. However, from FY2021 going forward, this reduction in penalties is no longer applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, Mexico has transfer pricing documentation rules. Although transfer pricing report should not be filed on a yearly basis, Article 76 of ITL, Sections IX and XII (it should be kept at taxpayers' office), the Exhibit 9 (transfer pricing informative return) of Multiple Informative Return (*Declaración Informativa Múltiple* – DIM), which disclose the information of the transfer pricing report, should be filed before tax authorities. Depending on the taxpayer, master file, local file and CbCR (Article 76-A, Sections I, II and III, respectively) must also be filed. Please note that even though some companies are not obligated to prepare and file a local file and master file, they are obligated to prepare and keep a transfer pricing report, as well as to file the Exhibit 9 previously mentioned.

- **Does a local branch of foreign company need to comply with the local transfer pricing rules?**

Local branches must comply with the same transfer pricing obligations for local entities mentioned above.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation must be prepared annually under Mexico's local regulations. Documentation must include

the name, address and tax residency of the non resident related parties with which transactions are carried out, as well as evidence of direct and indirect participation between related parties and correct application of a method as stated in Article 180 of the ITL, following the hierarchy established therein. It is necessary to include information regarding the functions performed, assets used, and risks borne by the taxpayer and its related parties involved in each transaction. Information and documentation of comparable transactions or companies by type of transaction must also be included. Therefore, this information must be updated, usually through a comprehensive annual update on the transfer pricing documentation.

- For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?

It is mandatory for each taxpayer to prepare and keep transfer pricing documentation, as well as for some taxpayers to prepare and file master file, local file and CbCR. Transfer pricing documentation is not an obligation as a multinational group in Mexico but as an individual taxpayer. Therefore, a stand-alone transfer pricing report and local file should be prepared. The master file is the only report that could be filed only by one member of the multinational group, specifying which entities are covered under such master file.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Mexican taxpayers conducting intercompany transactions with prior-year income exceeding MXN13 million in regular business activities or exceeding MXN3 million for the provision of professional services are required to prepare and maintain annual transfer pricing documentation. Taxpayers conducting transactions with residents in low-tax jurisdictions are not included in this exception, nor are the contractors or assignees according to the HRL.

- **Master File**

Starting fiscal year 2016, Mexican taxpayers with entities that conducted transactions with related parties that surpass a certain threshold in the previous fiscal year or that conducted transactions with related parties and were listed in a public stock market in the previous fiscal year are required to file the master file and local file. The threshold for FY2021's obligation is to have reported accruable income equal or above MXN842,149,170 (approximately USD40 million) in the previous fiscal year, i.e., FY 2020, while for FY2020's obligation was triggered with an accruable income equal or above MXN815,009,360 (approximately USD39 million) in the previous fiscal year, i.e., FY2019. In addition, public companies in the previous fiscal year are obligated to file the master and local files as well, even though they do not meet the applicable threshold. Other entities obligated to file the master and local file informative returns include legal entities within the optional tax regime (integration system), government-controlled corporations and residents abroad with permanent establishment in Mexico.

- **Local File**

The same thresholds as in the "Master File" section above should be considered.

- **CbCR**

The CbCR has to be filed by Mexican MNE-controlling entities with consolidated income equal to or greater than MXN12,000 million.

There are no specific CbCR notification requirements in Mexico regarding the CbCR filing process of the MNE's ultimate parent entity. However, in the ISSIF (along with the annual tax return) or in the Tax Report, it must be disclosed whether the local entity is aware of if the ultimate parent holding is obliged to file a CbCR. It is also relevant to consider that the Mexican regulations establish that the SAT may require the legal entities residing in Mexico to provide the CbCR filed by the ultimate parent entity, when the SAT could not obtain the information corresponding to such return through the information exchange methods set forth in the international treaties currently in force by Mexico. To such end, the taxpayers shall have a maximum of 120 business days from the date when the request is made to provide such CbCR.

- **Economic analysis**

The obligation to conduct transactions with related parties (foreign and domestic) at arm's-length values applies to all intercompany transactions with no minimum thresholds applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is a transfer pricing documentation obligation for domestic transactions. Intercompany transactions with local related parties must be documented (Article 76, Section XII, of the ITL).

- **Local language documentation requirement**

As mentioned before, transfer pricing documentation is prepared and kept in the taxpayers' facilities; however,

if it is requested by tax authorities, the transfer pricing documentation must be submitted in local language. That is, in the case of a review, all information that is intended to be presented to the tax authorities to clarify the tax position of the company, including the transfer pricing documentation, must be presented in Spanish. Taxpayers obligated to submit the master file informative return can file such information prepared by a foreign entity of the MNE as long as it is aligned with BEPS Action 13. This information (BEPS master file) can be filed by the taxpayer either in Spanish or English (Temporary Rule 3.9.12 of MTR for 2021) through the specific software tools provided by the SAT. BEPS local file must be filed in Spanish based on the Mexican regulations (Temporary Rule 3.9.13 of MTR for 2021).

- **Safe harbor availability including financial transactions if applicable**

Starting in 2014, the self-assessment option for maquiladoras is no longer available. As such, Mexican contract manufacturers with a maquiladora manufacturing and export services industry (*Industria Manufacturera, Maquiladora y de Servicios de Exportación* – IMMEX) program have to apply safe harbor rules (with taxable profit being the greater of applying a 6.5% return over total costs or a 6.9% return over total assets, including assets and inventories of consignment property of foreign parties, but used in the manufacturing activity).

Safe harbor for financial transactions is not covered by the Mexican regulations.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing should be performed. Since OECD Guidelines are applicable for interpretation purposes, based on OECD Guidelines, there might be some cases where an aggregated analysis is appropriate.

- **Any other disclosure/compliance requirement**

Reportable transactions

In line with Action 12 of the BEPS action plan, Tax Reform 2020, Article 197 of the FFC, requires tax advisors to disclose reportable transactions. Transactions are reportable to the extent there is a tax benefit in Mexico, regardless of the residence of the taxpayer receiving the benefit. The new FFC articles further provide that, in certain instances, the taxpayer is required to report the transaction. This requirement applies from 1 January 2021; transactions that would have to be disclosed are reportable transactions with effects in 2020, beginning in 2021. The primary responsibility to disclose a reportable transaction lies with the tax advisor and, at a secondary level, the taxpayers.

Reportable transactions include among others:

- Those that prevent foreign authorities from exchanging tax or financial information with Mexican tax authorities, including Common Reporting Standard reports
- Those that avoid the application of low-tax jurisdiction (*régimen fiscal preferente* – REFIPRE)
- Those that involve transactions with related parties, where:
  - Hard-to-value intangibles are transferred, in accordance with OECD Transfer Pricing Guidelines.
  - Involving entrepreneurial reorganizations where no consideration has been paid for the transfer of assets, functions and risks or where as a result of such reorganization, the taxpayers experience a reduction in operating profits of more than 20%.
  - Goods and rights are transmitted, or the temporary use and enjoyment thereof is granted for no consideration, or unremunerated services are rendered, or functions are performed.
  - There are no reliable comparables as the transactions involve unique and valuable functions or assets.
  - A unilateral protection regime afforded by foreign law is used, in accordance with OECD Transfer Pricing Guidelines.
- The transfer of tax losses
- Those that prevent the application of the permanent establishment provisions
- The use of hybrid mechanisms
- The grant or temporary enjoyment of goods and rights without consideration or the rendering of services without payment

The new reporting requirements include penalties for non-compliance. These penalties may apply to taxpayers and tax advisors. The penalties for not disclosing a reportable transaction or disclosing it incompletely or with errors could be as high as 50%–75% of the tax benefits that were obtained or expected to be obtained in all tax years plus the loss of the tax benefit itself, if the obligation remains on the taxpayer. On the other hand, the SAT also could impose penalties up to MXN20

million (approximately USD$877,000) for advisors missing to report.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Exhibit 9 of the Multiple Informative Return (DIM) (transfer pricing informative return) for transactions carried out with foreign related parties

- **Related-party disclosures along with corporate income tax return**

In addition to the above, related-party disclosures of information include the following:

- Manufacturing, Maquiladoras and Export Services' Informative Return (*Declaración Informativa de Empresas Manufactureras, Maquiladoras y de Servicios de Exportación – DIEMSE*) for transactions carried out under the maquiladora regime
- Transfer pricing exhibits and questionnaires as part of the Tax Report or the ISSIF – as part of these exhibits, the tax ID of the individual (not the firm tax ID) that prepared the transfer pricing documentation or BEPS local file to be disclosed
- Relevant Operations Disclosure Return (Formato 76)
- BEPS transfer pricing informative returns: CbCR, master file and local file informative returns

- **Related-party disclosures in financial statement/annual report**

Usually, information of type of intercompany transactions, amount and name of the related party is included in the audited financial statements. This information must be consistent with the information disclosed in the rest of the TP disclosures of information.

CbCR notification included in the statutory tax return

Yes, either in the tax situation informative return (ISSIF, due date 31 March of the following fiscal year) that must be filed along with the annual tax return or in the statutory tax audit report (Tax Report, due date 15 July), taxpayers must disclose whether the Mexican taxpayer has knowledge of the ultimate parent entity to which the taxpayer belongs is obligated to file, directly or through any surrogate entity, the master file as well as the CbCR.

- **Other information/documents to be filed**

As part of the ISSIF and the Tax Report, both of which are filed before tax authorities on an annual basis, the tax ID of the individual (not the firm tax ID) that prepared the transfer pricing documentation or BEPS local file must be disclosed. Please also refer to Reportable Transactions section.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 March of the following year

- **Other transfer pricing disclosures and return**

Exhibit 9 of the DIM along with the corporate income tax return, i.e., 31 March of the following year: if the taxpayer files a Tax Report, Exhibit 9 could be filed along with the Tax Report, i.e., by 15 July of the following year. If Tax Report is not filed, Exhibit 9 of DIM could be filed by 15 July of the following fiscal year, as long as it is consistent with the BEPS local file and this local file is submitted in the same date (Temporary Rule of MTR for 2021, Articles Thirty Fourth and Thirty Fifth).

DIEMSE by 30 June of the following year.

Transfer pricing exhibits and questionnaires as part of the ISSIF along with the corporate income tax return, i.e., 31 March of the following year. For FY2021 there is an option to submit them by 30 September 2022.

Transfer pricing exhibits and questionnaires as part of the Tax Report by 15 July of the following year.

Formato 76 within the following three months after the relevant transaction took place.

Master file and local file by 31 December of the following year.

For those companies that chose to have a Tax Report (Dictamen Fiscal) based on their financial statements prepared by an external auditor, the taxpayer's external auditor is required to disclose the company's compliance with all tax obligations, including those related to transfer pricing. This disclosure is made through the Tax Report, which must be completed by 15 July every year. As of 2014, taxpayers are obligated to file the ISSIF or may choose to have a Tax Report conducted by an external auditor if they do not want to file the ISSIF themselves. According to the FFC, the Tax Report

is due no later than 15 July of the following year of the fiscal year reported, while the ISSIF must be submitted together with the annual tax return by 31 March of the following year. These deadlines have a direct impact on the taxpayer's transfer pricing obligations because the contemporary transfer pricing documentation must be prepared by no later than the corresponding due date of the Tax Report or ISSIF as applicable.

- **Master File**

Master file must be filed by 31 December of the following year.

- **CbCR preparation and submission**

The report has to be filed on 31 December of the following year, except for certain cases in which the MNE has a fiscal year closing date (up to May) different than 31 December (only applicable to the CbCR and master file deadline).

- **CbCR notification**

No later than 31 December of the following fiscal year after the last day of the reporting fiscal year of the MNE group (for surrogate Mexican parent entities whose holding company's or reporting entity's fiscal year ends between June and November).

Even though there is not a separate notification related to the CbCR, in the Tax Report (Dictamen Fiscal) / ISSIF must be disclosed whether the Ultimate Parent Entity is obliged to prepare and file a CbCR.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation must be in place when the company files its annual income tax return (by the end of March of the following year) and must be kept, along with the company's accounting records, for at least five years after the filing of the last tax return for each year. If the taxpayer opts to file a Tax Report, transfer pricing documentation could be prepared by 15 July of the following year. If the taxpayer does not file a Tax Report, the obligation is to have prepared the transfer pricing documentation by 31 March of the following fiscal year. For FY2021, if an ISSIF is filed, deadline is also 31 March of the following fiscal year, with potential extension to 30 September 2022.

c) Transfer pricing documentation/local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no formal statutory deadline for the submission of contemporaneous transfer pricing documentation, since it is not filed before the tax authorities; however, either in the ISSIF (31 March of the following fiscal year) or in the Tax Report (15 July of the following fiscal year), the taxpayer must disclose if transfer pricing contemporaneous documentation was prepared, as well as if transfer pricing adjustments were suggested in such documentation, among others. Moreover, in the Exhibit 9 (formal deadline 31 March of the following fiscal year), the information of the transfer pricing documentation must be included.

In addition, taxpayers obligated to file a BEPS local file usually file the corresponding fiscal year's transfer pricing documentation as part of the BEPS local file informative return by 31 December of the following year (deadline to file local file).

- **Time period or deadline for submission on tax authority request**

Visita Domiciliaria: The time could vary from an immediate request (for documents that are part of the taxpayer's accounting records) to six working days (other information that is in possession of the taxpayer).

Gabinete: The time is 15 working days, plus an extension of 10 working days if requested in writing by the taxpayer.

In both cases (*Visita Domiciliaria* and *Gabinete*), if the company filed a Tax Report, the audit would initiate through a first request to the tax auditor. In this case, the auditor deadline goes from 6 working days (when it is related to the workpapers developed during the audit procedure) to 15 working days if it is other documentation or information related to the annual Tax Report, but it is in possession of the taxpayer.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No specific information available.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The transfer pricing methods in Mexico, established in Article 180 of the ITL, are the CUP, resale price, cost plus, profit split, residual profit split and TNMM. Effective since 2006, the ITL specifically requires a hierarchical consideration of transfer pricing methods, with a particular preference for the CUP method, and then the traditional transactional methods over the transactional profit methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

In principle, there is a preference for regional comparables. There is no legal requirement for local jurisdiction comparables. Regional comparable companies (i.e., Canadian, US and Latin-American companies) can be accepted in the benchmarking analysis as long as the circumstances of the comparable companies are similar to those of the tested party or specific comparability adjustments are applied.

- **Single-year vs. multiyear analysis for benchmarking**

Although a common approach in Mexican practice is to estimate the arm's-length range based on the last three years of available financial information of comparable companies (i.e., multiyear analysis), based on audits performed by the SAT, further arguments are required in order to support the multiyear analysis. Hence, further support for the multiyear analysis is recommended, and single-year analysis should also be evaluated.

- **Use of interquartile range**

Interquartile range is calculated according to Article 302 of the ITL.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

In practice, the SAT preference is for fresh benchmarking searches to be conducted each year.

- **Simple, weighted or pooled results**

In practice, there is a preference for the weighted average for transfer pricing analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

A penalty of MXN86,050 to MXN172,100 can be imposed if the information return for foreign related-party transactions is not filed or is incomplete or incorrect.

Also, failure to comply entirely with the CbCR, master file and local file informative returns triggers penalties ranging from MXN172,480 to MXN245,570, disqualification from entering into contracts with the Mexican public sector, and cancellation on the importers' and exporters' registry.

There are no penalties if the taxpayer self-corrects its tax results before an audit, and reduced penalties apply if self-correction is made during the audit but before the tax assessment. Waivers and abatements are possible under limited circumstances.

Effective from FY2017, specific definitions for transfer pricing adjustments and rules to follow as to the effects and deductibility of such adjustments when self-applied by taxpayers were incorporated in temporary Rules 3.9.1.1, 3.9.1.2, 3.9.1.3, 3.9.1.4 and 3.9.1.5 of the MTR. In particular, in case of ex-ante and ex-post transfer pricing adjustments that lead to higher deductions for the taxpayer or lower accruable income, several requirements must be met for deductibility purposes. These requirements include several tax compliance items such as filing the regular or amended returns to reflect the adjustment in the corresponding fiscal year, securing an invoice to support the adjustment, and verifying consistency between accounting and tax records. Furthermore, detailed transfer pricing support documentation must be prepared to demonstrate the requirement to implement the transfer pricing adjustment to facilitate arm's-length compliance.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The same consequences stated above would be applicable.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

If the SAT decides that a transfer pricing adjustment is needed, and unpaid contributions are determined as a consequence, penalties could vary from 55% to 75% of the omitted taxes, plus surcharges and inflation adjustments. Also, if a transfer pricing adjustment reduces the NOL, the

penalty ranges from 30% to 40% of the difference between the determined NOL and the NOL in the tax return, plus surcharges and inflation adjustments.

- **Is interest charged on penalties or payable on a refund?**

Penalties usually include a portion of the omitted taxes, plus surcharges and inflation adjustments. Surcharge rates from 2004 to 2017 vary from 0.75% to 1.13%, while the surcharge rates for 2018 going forward vary from 0.98% to 1.47%.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

The deduction of the adjustment could be totally denied if supporting information is not contemporaneous or if it is incomplete, based on transfer pricing adjustments rules priorly mentioned.

b) Penalty relief

Not applicable.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for an assessment in Mexico is five years from the date of filing the tax return. The term is affected by amended returns with respect to items changed, and it is suspended by an audit. The SAT has two years to complete a transfer pricing audit.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high, considering a broader transfer pricing team within the SAT and the transfer pricing controversy trends derived from BEPS in Mexico.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high, because there is usually a preliminary analysis already conducted by the SAT before an audit is initiated.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

When a transfer pricing audit is initiated, there is usually a preliminary analysis already conducted by the SAT. If the focus of such audit is on the stage of challenging the overall transfer pricing methodology, then the likelihood of an adjustment tends to be high.

- **Specific transactions, industries, and situations, if any, more likely to be audited**

There is a high audit risk focusing on business restructuring (limited risk structures, migration of intangible property, and centralization of functions and risks in favourable tax jurisdictions), highly leveraged structures, client segregated accounts (CSAs) and pro rata-based charges in general, including management fees, as well as on foreign payments such as royalties and interest expenses. Further scrutiny is expected from the SAT in terms of transfer pricing derived from the anti-BEPS environment moving toward transparency, substance, and increased compliance disclosure. It is relevant to note that Mexico signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS on 7 June 2017.

Industries, such as hydrocarbons, life science and automotive, are currently under special attention of transfer pricing authorities.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral and bilateral APAs are available under Article 34-A of the FFC and Mexico's tax treaties, respectively. Unilateral APAs can cover the fiscal year of the application, the three subsequent fiscal years and a one-year rollback.

Temporary Rule 2.9.8 of the MTR allowed the SAT to perform a functional analysis as part of the study and evaluation processes of the information, data and documentation for purposes of identifying and specifying performed functions, assets used and risks borne in transactions under consultation.

Specifically, in APA requests, there are measures aligned to the BEPS action plan that have been incorporated into domestic legislation. These include temporary Rule 2.9.8 of MTR, with a requirement of an extensive list of minimum

information that shall be included in transfer pricing inquiries made by the taxpayers, including a description of the relevant factors that generate profits for the MNE; transfer pricing policies; the MNE's consolidated financial statements; global funding schemes; description, financial and accounting information of intangibles; organizational chart; financial information projected in the filing of the transfer pricing methodology subject to analysis; and support transfer pricing documentation for the fiscal year at issue and the previous three fiscal years.

- **Tenure**

Unilateral APAs can cover the fiscal year of the application, the three subsequent fiscal years and a one-year rollback. A bilateral APA could include more than five years, depending on competent authorities' agreement.

- **Rollback provisions**

Unilateral APAs can cover the fiscal year of the application, the three subsequent fiscal years and a one-year rollback.

- **MAP opportunities**

There is no specific guidance related to provision. However, Mexico had a total of 22 active MAP applications as of 31 December 2019 related to transfer pricing. According to OECD MAP statistics, the average time needed to close MAP cases is 21.07 months for transfer pricing cases and 11.44 months for other cases.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin capitalization

Interest on a taxpayer's debts that exceed the equivalent of three times its shareholders' equity and that comes from debts entered with foreign-resident related parties, pursuant to Article 179 of the Law, are considered as a non-deductible expense.

Interest expense deduction limitation

Tax Reform 2020 applies to taxpayers with interest expense over MXN20 million to a net interest expense deduction up to 30% of "adjusted taxable income." Non-deductible interest expense for each year may be carried forward for 10 years. The exceptions to the limitation for financial institutions, as well as interest on debt used to finance, are (i) public infrastructure projects; (ii) construction in Mexican territory; and (iii) projects related to the exploration, extraction, transport, storage or distribution of hydrocarbons, electricity, or water.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Department of National Taxation (GDNT).

b) Relevant transfer pricing section reference

Under new Mongolian transfer pricing laws, there is a single, all-encompassing transfer pricing legislation that is governed mainly by the General Taxation Law and its associated guidelines. This replaces separate rules found in different tax laws, such as the Corporate Income Tax and Personal Income Tax Law. The new tax rules took effect on 1 January 2020.

▸ **Section reference from local regulation**

Articles 27 and 37-40 of General Taxation Law (GTL) and article 27 of Corporate Income Tax (CIT) law.

The entities listed below shall be considered to be related parties that are possible to influence each other on the conditions or economic outcome of a transaction by a way of direct or indirect participation, by a person in the other, or the same person in two or more persons, of the assets, control or managerial activities, including:

1. Taxpayer's parents, blood sisters and brothers, grandparents, children and grandchildren or taxpayer's spouse or partner (cohabitant), or their parents, or their blood sisters and brothers.
2. Members of the same group. A group is further defined in the law as the related persons that are related in their ownership or management and consolidated for financial reporting purposes.
3. If one person directly or indirectly holds 20% or more of the share, participation or voting rights in other entity.
4. If one person has a right to directly or indirectly participate 20% or more of the profits or liquidation proceeds in other entity.
4. Entities that are controlled by third same person who directly or indirectly holds 20% or more of the share, participation or voting rights in such entities.
6. Entities that are controlled by third same person who has a right to directly or indirectly participate 20% or more of the profits or liquidation proceeds in such entities.
7. Entities stipulated in items 3-6 above if controlled by individuals specified in item No.1, i.e., entities in separate groups that are under common control by same individuals.
8. Representatives, nominees or assignees of the parties stipulated in this section.
9. Branch office or other forms of permanent establishments of related parties.
10. An unrelated person with a main purpose of reducing taxable income or increase tax losses of Mongolian tax residents.
11. Other persons similar to preceding nature.

In addition, there may be circumstances for unrelated parties to be treated as related parties in case they have entered into an arrangement on which parties have agreed a common position or common interest with their decision for a particular transaction.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Mongolia is not a member of the OECD.

Under the transfer pricing regulations, taxpayers are required to maintain contemporaneous documentation to comply with the arm's-length standard. Part of that documentation must substantiate the most reliable measure of an arm's-length result, given the transfer pricing methods and data available.

Consistent with the OECD Transfer Pricing Guidelines, Mongolia requires taxpayers with related-party transactions to adopt the internationally standardized master file, local file and CbCR three-tiered approach to transfer pricing documentation. The main objectives of the updated transfer

[1] **http://en.mta.mn/**

pricing documentation requirements are to confirm that taxpayers give appropriate consideration to transfer pricing requirements in establishing prices between related parties, to provide tax administrations with the information necessary to conduct an informed transfer pricing risk assessment and to provide tax administrations with useful information to conduct an appropriately thorough audit of the transfer pricing practices of entities subject to tax in their jurisdiction. The GDNT further introduced detailed transfer pricing reporting forms on the above transfer pricing reports.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File, and CbCR

  It covers master file, local file and CbCR.

- Effective or expected commencement date

  1 January 2020 onward.

- Material differences from OECD report template or format

  No material differences.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is no penalty protection available. All transfer pricing documentation is required to be submitted by taxpayers to the tax authority within the specified time frame by law. The new rules have imposed severe administrative penalties for failure to comply with transfer pricing documentation requirements, i.e., if transfer pricing documentation is not filed with the tax authorities within the specified deadline, there will be automatic administrative penalties, which are equal to 2%–4% of transaction value, apart from penalties and fines resulting from transfer pricing adjustments (if any).

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, under the transfer pricing regulations, taxpayers are required to maintain contemporaneous documentation to comply with the arm's-length standard. Part of that documentation must substantiate the most reliable measure of an arm's-length result, given the transfer pricing methods and data available.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Small and medium enterprise group companies under MNT6 billion annual turnover are exempt from certain transfer pricing documentation requirements (i.e., local file and master file).

- **Master File**

A company or group with annual turnover of more than MNT6 billion for the preceding tax year, a foreign-invested company irrespective of size, or the permanent establishment of a foreign company is required to file master file.

- **Local File**

A company or group with annual turnover of more than MNT6 billion for the preceding tax year, a foreign-invested company irrespective of size, or the permanent establishment of a foreign company is required to file local file.

CbCR

The CbCR threshold is set at MNT1.7 trillion or approximately EUR630 million (while the OECD's recommendation was EUR750 million).

- **Economic analysis**

There is no materiality limit set out by law.

c) Specific requirements

- **Treatment of domestic transactions**

Transfer pricing documentation is required for domestic transactions in the same manner as for a cross-border transaction.

- **Local language documentation requirement**

The documentation should be submitted to tax authorities in Mongolian language only. If it is translated from English, then both versions are submitted for reference; however, the Mongolian version prevails in case of inconsistency.

- **Safe harbor availability including financial transactions if applicable**

There are no specific safe harbor rules in Mongolia.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

Taxpayers are required to provide a Transfer Pricing Transactional Report (an annual report) by 10 February following the year-end. This is an additional transfer pricing disclosure report required by the local regulation.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no specific transfer pricing returns.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

Taxpayers may be required to disclose related-party transactions in the financial statements if the applicable accounting standards require to do so.

- **CbCR notification included in the statutory tax return**

CbCR notification is required to be filed by 10 February following the year-end.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The annual corporate income tax return must be filed by 10 February following the year-end.

- **Other transfer pricing disclosures and return**

Taxpayers are required to provide Transfer Pricing Transactional Report by 10 February following the year-end.

- **Master File**

By 10 February following the year-end.

- **CbCR preparation and submission**

Within the 12-month period after the last day of group financial year closing.

- **CbCR notification**

By 10 February following the year-end.

b) Transfer pricing documentation/Local File preparation deadline

There is no specific preparation deadline.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

Deadline for the local file is 10 February following the year-end, i.e., local file is to be submitted within only 40 days after the year-end closing.

- **Time period or deadline for submission upon tax authority request**

No specific time period stated in the new regulations if the tax authority requests additional supporting documents or queries related to transfer pricing files submitted to tax authority. Therefore, it may vary on a case-by-case basis. In practice, it is usually between 5 to 10 working days. .

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The CUP method should override all other methods in case the CUP method is reliably applicable. In case the CUP method is not applicable, then the best method rule applies.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are preferable in the first instance. In absence of availability of local comparables, comparables of Pan-Asia-Pacific may be applied.

- **Single-year vs. multiyear analysis for benchmarking**

Single year and multi-year analyses are both acceptable.

- **Use of interquartile range**

Calculation using spreadsheet quartile is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Yes, a fresh benchmarking is required every year.

- **Simple, weighted or pooled results**

Weighted average is preferred.

- **Other specific benchmarking criteria, if any**

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There is a penalty of 2%–4% of related-party transaction value depending on type of transfer pricing documentations.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The Transfer Pricing Transactional Report: A penalty of 2% of respective related-party transaction value (per non-compliance instance).

Master file: A penalty of 3% of respective related-party transaction value (per non-compliance instance).

Local file: A penalty of 3% of respective related-party transaction value (per non-compliance instance).

CbCR: A penalty of 4% of respective related-party transaction value (per non-compliance instance).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Transfer pricing adjustments are subject to 30%–50% penalty of due tax.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Transfer pricing adjustments are subject to 30%–50% penalty of due tax.

- **Is interest charged on penalties or payable on a refund?**

Daily interest is charged on transfer pricing adjustments, based on a predetermined interest rate that is an average of commercial banking lending rates in Mongolia.

b) Penalty relief

There is no penalty relief available in Mongolia for transfer pricing adjustments made by the GDNT.

10. Statute of limitations on transfer pricing assessments

Statute of limitations is four years in Mongolia for tax purposes including transfer pricing.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high because comprehensive tax and transfer pricing audits occur depending on the GDNT's risk level profile of a taxpayer. Tax authorities are increasingly focusing on transfer pricing investigations.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

None.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APA regime is not available.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin capitalization arises when investor's debt-to-equity ratio exceeds 3:1. Any interest attributable to the debt exceeding the ratio debt is non deductible for tax purposes. Another restriction is that related-party loan interest shall not exceed 30% of EBITDA for any given year.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Tax Administration of Montenegro.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 38 of the Corporate Income Tax (CIT) Law (latest update effective as of 1 January 2017) is available on the official website of the Tax Administration of Montenegro.

- **Section reference from local regulation**

Paragraph 2 of Article 38 of the CIT Law defines "related party" and "associated enterprise" and Article 15 of the Law on Tax Administration.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Montenegro is not a member of the OECD.

Montenegrin transfer pricing provisions are only loosely based on the OECD Guidelines and do not refer to their application.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Montenegrin transfer pricing legislation does not include transfer pricing documentation guidelines or rules.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

The Montenegrin CIT Law does not prescribe any transfer pricing documentation requirements.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

[1] **http://www.poreskauprava.gov.me/**

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is none specified.

- **Local language documentation requirement**

This is not applicable.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no specific transfer pricing return in Montenegro.

- **Related-party disclosures along with corporate income tax return**

According to Article 38 of the CIT Law, taxpayers are obligated to disclose, in their annual CIT return, the revenues and expenses resulting from transactions with related parties. They must also present and compare these with the revenues and expenses that would have been realized in the same transactions if they were conducted with unrelated parties. Any difference between the two should be included in the taxable basis.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline for filing a CIT return in Montenegro is three months after the ending date for which CIT is calculated (e.g., 31 March 2019 for the fiscal year ending 31 December 2018).

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

This is not applicable. The Montenegrin CIT Law does not prescribe deadlines for the submission of transfer pricing documentation.

- **Time period or deadline for submission on tax authority request**

This is not applicable.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

This is not applicable. Montenegrin legislation does not contain detail provisions related to transfer pricing analysis.

- **Domestic transactions**

This is not applicable. Montenegrin legislation does not contain detail provisions related to transfer pricing analysis.

b) Priority and preference of methods

The Montenegrin CIT Law prescribes possible application of the CUP, resale price or cost plus methods for all related-party transactions.

The CUP method has priority in the selection of the transfer pricing method. If the CUP cannot be applied, the CIT Law allows for two other traditional transaction methods: the cost plus and resale price. Montenegrin transfer pricing regulations do not recognize transactional profit-based methods (i.e., the TNMM and profit split method).

8. Benchmarking requirements

- **Local vs. regional comparables**

This is not applicable. The Montenegrin CIT Law does not prescribe any benchmarking requirements.

- **Single-year vs. multiyear analysis**

This is not applicable.

- **Use of interquartile range**

This is not applicable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

This is not applicable.

- **Simple, weighted or pooled results**

This is not applicable.

- **Other specific benchmarking criteria, if any**

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not provided.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are no specific penalties if a taxpayer fails to disclose related-party transactions in the annual CIT return or in the transfer pricing documentation.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties ranging from EUR550 to EUR16,500 could be imposed if the taxpayer does not calculate the tax base in accordance with the CIT Law (i.e., the taxpayer does not include transfer pricing adjustments in its tax base).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not provided.

- **Is interest charged on penalties or payable on a refund?**

Montenegrin legislation prescribes that the interest is charged at a daily rate of 0.03%.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The general statute of limitations period of five years for taxes in Montenegro would also apply to transfer pricing assessments. The five-year period starts at the beginning of the year following the year in which the respective tax liability is to be assessed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

It's low, as Montenegrin tax authorities conduct random audits. Typically, audits take place not more often than once in three to five years. Value-added tax (VAT) audits are more frequently conducted.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

This is not applicable.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

This is not applicable.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Advance rulings and APAs are not available in Montenegro.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is applicable through double tax treaties; there is no elaborate practice in Montenegro regarding MAP.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction.

There are no thin-capitalization provisions in place in Montenegro.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

General Tax Administration (*Direction Générale des Impôts*).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

TP aspects are regulated by the Moroccan Tax Code (MTC).

- **Section reference from local regulation**

Article 213-II of MTC: shifting of profits abroad.

Article 214-III of MTC: TP documentation requirement.

Article 154 ter and 214 VII of MTC: country-by-country reporting.

Articles 234 bis and 234 ter of the MTC: advance pricing agreement (APA) program.

Administrative guidelines n°717 published in 2011: detailing the application of TP regulations.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Morocco is not a member of the OECD.

However, the General Tax Administration generally accepts references to the OECD Guidelines regarding TP.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

This is not applicable. Morocco has joined the OECD BEPS Inclusive Framework and is thus committed to implement the BEPS minimum standards.

- Coverage in terms of Master File, Local File and CbCR

  The detailed content of the documentation will be specified by a decree.

  Morocco has joined the OECD BEPS Inclusive Framework, which requires member countries to comply with certain minimum standards on transparency and information exchange, including BEPS Action 13, which covers transfer pricing documentation and CbCR.

  It is therefore likely that the content of the Moroccan transfer pricing documentation will be aligned with that of the documentation provided for in BEPS Action 13.

  Morocco has implemented the CbCR obligation, applicable for accounting years beginning on or after 1 January 2021.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it's intended for first information exchange by September 2021.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the TP documentation should be prepared

contemporaneously. However, no annual update requirement is provided by law.

The documentation must be provided on the first day of tax audit.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

No.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Morocco's Finance Law for 2021 introduced new transfer pricing documentation requirements, including that the documentation must be submitted during an audit (or within 30 days of request) by companies carrying out transactions with related companies outside Morocco, where either:

- **The company's turnover is greater than or equal to MAD50 million**
- **The company's total gross assets in the balance sheet at the end of the financial year concerned are greater than or equal to MAD50 million**
- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The CbCR obligation is applicable for accounting years beginning on or after 1 January 2021.

The CbCR obligation will apply to Moroccan companies that:

- Directly or indirectly hold a participation in one or more enterprises or establishments located outside Morocco and that are required to prepare consolidated accounts, in accordance with the applicable accounting standards.

  The new Moroccan CbCR will also apply to companies that would have been required to prepare consolidated accounts if their participations were listed in Morocco.

- Have an annual consolidated turnover above MAD8.1 billion (excluding VAT) in the financial year preceding the one during which the declaration is made.
- Are held neither directly nor indirectly by any other enterprise located in Morocco or outside Morocco.

This obligation is also applicable to any enterprise that fulfills any of the following conditions:

- It is directly or indirectly held by an enterprise located in a jurisdiction that is not required to submit a CbCR and that would have been subject to such obligation if it was located in Morocco.
- It is directly or indirectly held by an enterprise located in a jurisdiction with which Morocco has not signed an exchange of information agreement for tax purposes.
- It has been appointed for this obligation by the group of multinational companies it belongs to and has informed the Moroccan tax authorities accordingly. Indeed, where two or more enterprises subject to Moroccan CIT belonging to the same multinational group are subject to the Moroccan CbCR, one of them can be appointed by the group to submit the declaration on behalf of the others to the extent it informs the tax authorities beforehand.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are covered by the local TP provisions.

- **Local language documentation requirement**

In practice, the tax administration accepts TP documentation drafted in French.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

This is not applicable.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no TP-specific return to be filed before the tax authorities.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Within three months following the closing date.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The form should be submitted electronically within 12 months following the end of the reporting fiscal year. The first filing obligation is due as from 1 January 2022.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for the submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

According to Article 214-III of the MTC, companies are required to electronically communicate within 30 days to the tax authorities the TP documentation to support their price policy in case of tax audit.

Such documentation should include:

- Information relating to their activities with the group entities, global pricing policy practiced, as well as the breakdown of the worldwide profit and activities
- Specific information relating to the transactions performed by the Moroccan entities with group entities

Such provisions apply to tax audit open as from 1 January 2020. Practical modalities of these provisions are to be detailed in a decree still to be published.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

International transactions

Yes.

Domestic transactions

Yes, in case of a different taxation regime.

b) Priority and preference of methods

In Article 213-II of the MTC, reference is made to profit shifting done through an increase or decrease of purchase or sale prices or by any other means. As such, no particular method is provided by Moroccan tax law, but it should be relevant from an economic standpoint. In addition, the General Tax Administration favors profit-based methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are preferred. In the absence of existence of local comparables, regional comparables can be accepted.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis is acceptable.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Fresh benchmarking searches should be conducted regularly. Financial data should be updated annually.

- **Simple, weighted or pooled results**

Each is acceptable.

- **Other specific benchmarking criteria, if any**

There are no other specific benchmarking criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

This is not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

A penalty for failing to submit documentation, which is equal to 0.5% of the relevant controlled transactions for which documentation has not been submitted, with a minimum penalty of MAD200,000 per year.

Generally, penalties apply as a result of a TP reassessment (regardless of compliance with any TP documentation requirement), as follows:

- In terms of corporate income tax (CIT), the amounts reassessed are reinstated in the taxable income of the company and taxed at the applicable CIT rate. In addition, the following penalties apply:
  - 20% for reassessment of the taxable basis, and a 100% penalty applies in cases where bad faith is demonstrated
  - 10% for late payment
  - 5% for the first month of late payment and 0.5% for each month thereafter
- When reassessing TP, the General Tax Administration also reassesses the corresponding value-added tax (VAT) and withholding tax (WHT). In addition, penalties regarding VAT and WHT apply as follows:
  - 30% penalty for reassessment of the taxable basis, and a 100% penalty applies in cases where bad faith is demonstrated
  - 20% penalty for late payment
  - 5% penalty for the first month of late payment and 0.5% penalty for each month thereafter

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes – as detailed above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes – as detailed above.

- **Is interest charged on penalties or payable on a refund?**

Yes – as detailed above.

b) Penalty relief

In case of a reassessment regarding penalties, a reduction might be granted to taxpayers that introduce a tax claim before the General Tax Administration.

Having TP documentation does not grant taxpayers any penalty relief. However, it could help during a tax audit to support the company's pricing policy.

A penalty relief may be granted in the case of a settlement between the General Tax Administration and the taxpayer in the frame of a tax audit.

10. Statute of limitations on transfer pricing assessments

The statute of limitations for TP adjustments is the same as for all other tax assessments – generally, four years following the year for which the tax is due (it might be longer when the company has carryforward losses or VAT credit).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of TP issues being raised within a tax audit may be considered to be high. In fact, in most MNE tax audits, transfer prices are challenged.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It is the same as in the above section.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

It is the same as in the above section.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This is not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Morocco covering unilateral, bilateral and multilateral agreements for countries that have a double tax treaty with Morocco.

- **Tenure**

The APA application should be filed at least six months before the beginning of the fiscal year of the period covered by the APA.

The term is four years.

- **Rollback provisions**

The APA cannot be applied retroactively.

- **MAP opportunities**

Morocco is a signatory to tax treaties with many countries, including Italy, the Netherlands and Spain, all of which contain MAP provisions for the purposes of avoiding the double taxation.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

No specific thin-capitalization rules are applicable in Morocco.

Nevertheless, concerning shareholder loans, the interest to be deducted from the taxable basis is limited to interest calculated on the share capital of the company (funds in excess of the share capital loaned to the company do not generate deductible interest). Interest rate should not exceed the one published annually by the Ministry of Economy and Finance (set at 2.19% in 2019 and 2.23% for 2020). In addition, the capital stock should be fully paid in.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Authority of Mozambique (*Autoridade Tributária de Moçambique*).

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and the effective date of applicability

Transfer Pricing Regime (*Regime de Preços de Transferência*), effective from 1 January 2018.

- Section reference from local regulation

Decree no. 70/2017, dated 6 December.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

None has been specified.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Mozambique is not a member of the OECD.

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

This is not applicable.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?

Yes, the documentation needs to be prepared within six months after year-end.

- Does a local branch of a foreign company need to comply with the local transfer pricing rules?

Yes, all taxpayers established in Mozambique that undertake related-party transactions with resident or non-resident entities need to comply with the local transfer pricing rules.

- Does transfer pricing documentation have to be prepared annually?

Yes.

- For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?

Yes.

b) Materiality limit or thresholds

- Transfer pricing documentation

Transfer pricing legislation is only applicable to taxpayers whose annual net turnover and other income is equal to, or exceeds, MZN2.5 million in the previous year of assessment.

- Master File

This is not applicable.

- Local File

Mozambique is not a member of the OECD; hence, it has no local file requirement as per 2017 OCED Guidance. However, the requirement for local file is as provided by the local transfer pricing regulations.

- **CbCR**

This is not applicable.

- **Economic analysis**

There's no threshold specified.

c) Specific requirements

- **Treatment of domestic transactions**

Yes, transfer pricing rules also apply to domestic transactions.

- **Local language documentation requirement**

Portuguese.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing is preferred. Aggregation is allowed only if certain conditions are met.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers will have to include the following with the return on tax and accounting information (Privileged and Thin Capitalization Regime) – Form M/20 Appendix I, related to transactions with related parties:

  - Identification of the parties
  - Transaction value per product or service
  - Transfer pricing method selected per transaction

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Tax return is due by the last day of the fifth month subsequent to the respective year-end.

- **Other transfer pricing disclosures and return**

On the sixth month after year-end, along with the annual return on the tax and accounting information.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Sixth months after year-end.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

This is not applicable.

- **Time period or deadline for submission on tax authority request**

Generally 5 to 15 days, but nothing has been specified by law.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

CUP, resale price, CPM, profit split or TNMM applicable to both international and domestic transactions.

- **Domestic transactions**

CUP, resale price, CPM, profit split or TNMM applicable to both international and domestic transactions.

b) Priority and preference of methods

The best method rule applies.

8. Benchmarking requirements

- **Local vs. regional comparables**

This is not applicable.

- **Single-year vs. multiyear analysis**

Single-year.

- **Use of interquartile range**

Yes.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no clear requirement in the law; therefore, a financial update may potentially fulfill.

- **Simple, weighted or pooled results**

Weighted.

- **Other specific benchmarking criteria, if any**

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

None has been specified.

- **Consequences of failure to submit, late submission or incorrect disclosures**

No specific penalties are provided in the regulations – general from MZN6,000 to MZN600,000 (nonexistence of documentation) or MZN13,000 to MZN700,000 (omissions or inaccuracies).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes – penalties and interest.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Nothing has been specified.

- **Is interest charged on penalties or payable on a refund?**

It's charged on penalties and, in theory, payable on refund.

b) Penalty relief

With voluntary disclosure only.

10. Statute of limitations on transfer pricing assessments

Five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Unknown.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Only if available in the specific context of a convention to avoid double taxation.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules are generally applicable to credits and loans granted by a related non resident entity to a Mozambican taxpayer.

Thin-capitalization rules are established by Article 52 of the CIT code. Accordingly, thin capitalization occurs where there is a special relationship between a resident entity that is subject to CIT and a foreign entity to which it is excessively indebted, i.e., exceeds the debt-to-equity ratio of 2:1. In such a case, the interest charged on the excess portion is not allowed as a cost for tax purposes. Special relations between a resident entity and non resident entity exist when:

- **The non resident entity has, directly or indirectly, a shareholding of at least 25% of the share capital of the resident entity.**
- **The non resident entity, without reaching that share level, has, in fact, significant influence in the management.**
- **The non resident entity and the resident entity are under the control of the same entity, namely by virtue of both participating directly or indirectly.**

The above ratio would not apply if the resident entity can demonstrate that a high debt-to-equity ratio is normal in its activity and the same level of debt in similar conditions could have been obtained from non-related parties.

However, the resident entity must provide evidence that the high debt-to-equity ratio is normal, based on current market conditions (financial market in Mozambique). The evidence is required to be provided to the Tax Authority of Mozambique within 30 days after the end of the respective financial year.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Namibia Revenue Agency (NamRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Section 95A of the Income Tax Act 24 of 1981 (Income Tax Act) authorizes NamRA to adjust the consideration for goods or services to an arm's-length price for the purpose of calculating the Namibian taxable income of a person.

- **Section reference from local regulation**

While the Income Tax Act does not contain a definition of a "connected person," a definition is provided in Income Tax Practice Note 2/2006 on the "determination of the taxable income of certain persons from international transactions: transfer pricing."

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

This is not applicable.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Namibia is not a member of the OECD; however, NamRA accepts the OECD Guidelines and has largely based its practices on them.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Namibia joined the BEPS Inclusive Framework on 9 August 2019. BEPS Action 13 has, however, not been implemented in local regulations.

- **Coverage in terms of Master File, Local File and CbCR**

There is no guidance available yet.

- **Effective or expected commencement date**

There is no guidance available yet.

- **Material differences from OECD report template or format**

There is no guidance available yet.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

There is no guidance available yet.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Namibia does not have guidelines or rules in terms of which transfer pricing documentation is required to be submitted. That being said, Income Tax Practice Note 2/2006 states that it is in the taxpayers' interests to prepare transfer pricing documentation to demonstrate that they have developed sound transfer pricing policies. By such policies, the taxpayer should demonstrate that the transfer prices are determined in accordance with the arm's-length principle – policies and procedures for determining those prices must be documented.

Please refer to transfer pricing-specific questions included in the corporate income tax return below.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, Income Tax Practice Note 2/2006 specifically provides

[1] https://www.itas.mof.na/

that the contents of the practice note apply to branches, to transactions between a person's head office and branch, and between branches in accordance with the provisions of Article 7 of the OECD Model Tax Convention.

- **Does transfer pricing documentation have to be prepared annually?**

No.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone transfer pricing reports if it has related-party transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

Namibia joined the BEPS Inclusive Framework on 9 August 2019. No filing thresholds have been communicated to date.

- **Local File**

This is not applicable.

- **CbCR**

No filing thresholds have been communicated to date.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. Domestic transactions are not subject to transfer pricing legislation.

- **Local language documentation requirement**

The transfer pricing documentation must be in English.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

No established practice exists in Namibia.

- **Any other disclosure/compliance requirement**

Disclosure requirement in the corporate income tax return is as detailed below.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

The Integrated Tax Administration system (ITAS) launched the corporate income tax return in the electronic filing system in 2019, for the first time, containing certain transfer pricing-specific disclosures, particularly:

- ‣ The identity of related parties with which the taxpayer transacts
- ‣ The nature of the transactions
- ‣ The amounts involved
- ‣ The transfer pricing method used to determine the arm's-length nature of the transactions
- Related-party disclosures in financial statement/annual report

Disclosure in accordance with IAS 24, Related Party Disclosures, of the International Financial Reporting Standards to draw attention to the possibility that its financial position, and profit or loss, may have been affected by the existence of related parties and by transactions and outstanding balances, including commitments, with such parties.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The filing deadline is due within seven months from the year-end. The taxpayer may request an additional five months to file the income tax return.

- Other transfer pricing disclosures and return

This is not applicable.

- Master File

There is no guidance available yet.

- CbCR preparation and submission

There is no guidance available yet.

- CbCR notification

There is no guidance available yet.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

No.

- Time period or deadline for submission on tax authority request

Taxpayers must generally deliver the transfer pricing documentation within 30 days if requested by NamRA.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes

- Domestic transactions

No

b) Priority and preference of methods

NamRA accepts the methods prescribed by the OECD (i.e., CUP, resale price, cost plus, TNMM and profit split).

According to Practice Note 2/2006:

"The suitability and reliability of a method will depend on the facts and circumstances of each case. The most reliable method will be the one that requires fewer and more reliable adjustments."

Method selection should be based on the characteristics of the transaction under analysis. The selected method should be the one that best reflects the economic reality of the transaction, provides the best information and requires the fewest adjustments.

8. Benchmarking requirements

- Local vs. regional comparables

There is no legal requirement for local jurisdiction comparables, and global and regional comparables will be acceptable, subject to adjustments.

- Single-year vs. multiyear analysis for benchmarking

Generally, a three-year testing is applicable.

- Use of interquartile range

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

There is no need to conduct a fresh benchmarking search every year; financial updates should be acceptable.

- Simple, weighted or pooled results

Regionally, there is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

This is not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

No specific transfer pricing penalties are imposed by the Income Tax Act. With this said, taxpayers face the following possible penalties upon a transfer pricing adjustment being made:

  - Additional tax of up to 100% of the provisional tax amount underpaid
  - In the event of default, omission, incorrect disclosure or misrepresentation, 200% of the additional tax resulting from an adjustment

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

There are no specific penalties imposed with respect to documentation.

- **Is interest charged on penalties or payable on refund?**

An interest of 20% per year is charged on late payment of tax. No interest is paid on tax refunds.

b) Penalty relief

When a taxpayer has made conscientious efforts to establish transfer prices that comply with the arm's-length principle and has prepared documentation to provide evidence of such compliance, NamRA will likely take the view that the taxpayer's transfer pricing practices represent a lower tax risk. Such evidence may provide some mitigation against the 200% penalty.

No relief is available for interest imposed on the late payment of tax.

No formal dispute resolution mechanisms exist, but taxpayers that disagree with additional assessments may object to such assessments and, if unsuccessful, lodge an appeal in terms of the Income Tax Act.

10. Statute of limitations on transfer pricing assessments

Namibia does not have a statute of limitations. NamRA may indefinitely conduct reviews and audits. However, in terms of the Income Tax Act, records must be maintained for five years. It is therefore unlikely that periods older than five years will be reviewed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not covered in the COVID-19 tracker.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

This is not applicable. NamRA was not conducting transfer pricing reviews or audits at the time of this publication and did not have a dedicated transfer pricing team.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Refer to the above section.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the above section.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Namibia did not have an APA program at the time of this publication.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No information available in the COVID-19 tracker.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The tax law includes measures that counter thin capitalization by adjusting both the interest rate and the amount of the loan on the basis of the arm's-length principles. Although no guidelines have been published in this area, a debt-to-equity ratio of up to 3:1 is generally considered acceptable.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Dutch Tax and Customs Administration (*Belastingdienst*).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

TP documentation requirements are codified in Article 8b (3) of the Corporate Income Tax Act 1969. Pursuant to the publication of the OECD Action 13 guidance, supplementary TP documentation requirements have been introduced in Articles 29b to 29h of the Corporate Income Tax Act 1969. The supplementary documentation requirements are applicable for fiscal years (FYs) starting on or after 1 January 2016.

Further, the Dutch Secretary of Finance has published a TP decree outlining how the Dutch Tax and Customs Administration interprets the arm's-length principle in certain cases.

- **Section reference from local regulation**

The definitions of related party or associated party are codified in Article 8b (1) and (2) of the Corporate Income Tax Act 1969. Parties can be considered related for the purposes of Dutch transfer pricing rules through common management, control and/or ownership of capital.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Due to COVID-19, certain interest, such as tax interest and collection interest, and penalties have been temporarily reduced. For example, the collection interest rate has temporarily been reduced to 0.01% until July 1st, 2022 after which it will gradually increase back to 4% per January 1st, 2024. Tax interest has been temporary reduced to 4% for the period October 1, 2020 to December 31, 2021 but has been increased again to (at minimum) 8% for the period as of January 1st, 2022. Depending on the COVID-19 situation, it is recommended to monitor any reductions to interest and penalties still apply.

Refer to section 9 a) for a general outline of applicable penalties and interest.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Netherlands is member of the OECD.

The Dutch Tax and Customs Administration generally follows the OECD Guidelines.

The Dutch TP decree (as published by the Ministry of Finance in April 2018, no. 2018-6865) provides further guidance regarding how the arm's-length principle is interpreted and applied. According to this decree, the OECD Guidelines leave room for interpretation or require clarification on several issues. The goal of the decree is to provide insight into the position of the Dutch Tax and Customs Administration regarding these issues.

The TP decree provides specific guidance on transactions involving intangible fixed assets, including hard-to-value intangibles, purchase of shares in a non-related party followed by a business restructuring, intragroup services and shareholder activities, including low-value-add services, contract research, cost contribution arrangements (CCAs), financial transactions, captive insurance companies and centralized purchasing companies. With respect to business restructurings, no specific guidance has been issued to date except for the guidance referred to above. However, the Dutch Tax and Customs Administration generally follows the OECD guidance on business restructurings.

Effective 1 January 2022, new TP legislation has been introduced in the Netherlands that is intended to avoid double non-taxation resulting from the unilateral application of the arm's-length principle in the Netherlands. The Netherlands' transfer pricing rules require a unilateral upward or downward correction of the commercially applied transfer prices between related parties to ensure the recognition of an arm's-length profit for Dutch tax purposes. Under the new legislation, if a transaction between a Dutch corporate taxpayer and a foreign related party is not at arm's length, a downward adjustment of the taxable income of the Dutch taxpayer (either as a payor or payee) is denied to the extent a corresponding upward adjustment is not included in the taxable basis of a profit tax in the jurisdiction of the foreign counterparty. The burden of proof for such inclusion lies with the Dutch taxpayer.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, the Netherlands has adopted and implemented BEPS Action 13 for TP documentation in Articles 29b to 29h of the Corporate Income Tax Act 1969.

- **Coverage in terms of Master File, Local File, and CbCR**

The BEPS Action 13 TP documentation regulations that were implemented in the Netherlands cover master file, local file as well as CbCR.

- **Effective or expected commencement date**

The law is applicable for FYs starting on or after 1 January 2016.

- **Material differences from OECD report template or format**

There are no material differences between the OECD report template or format and the Netherlands' regulations. As a minor addition, the Dutch CbCR XML schema requires inclusion of a Tax Identification Number for all constituent entities included in the report.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

There is no specific penalty protection regime. However, a BEPS Action 13 format report with adequate content is sufficient to achieve penalty protection. No additional items are needed to achieve protection against penalties for having noncompliant TP documentation in place if the BEPS Action 13 or Article 8b (3) regulations are being complied with.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, EU Directive 2016/881/EU signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, TP documentation requirements are codified in Article 8b (3) of the Corporate Income Tax Act 1969. Pursuant to the publication of the OECD Action 13 guidance, supplementary TP documentation requirements have been introduced in Articles 29b to 29h of the Corporate Income Tax Act 1969. TP documentation has to be contemporaneous.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Article 8b (3) of the Corporate Income Tax Act 1969 is also applicable to Dutch branches of foreign companies. The supplementary TP documentation requirements are also applicable if the legal entity of which the permanent establishment (PE) is a part is preparing separate financial statements for the PE with a view to financial reporting, regulatory compliance, compliance with tax obligations or internal management control.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, taxpayers are obligated to prepare documentation that describes how the transfer prices have been established, and this must be included in the accounting records. Furthermore, the documentation needs to include sufficient information that would enable the Dutch Tax and Customs Administration to evaluate the arm's-length nature of the transfer prices applied between associated enterprises. The parliamentary explanations to Article 8b do not provide an exhaustive list of information that should be documented.

TP documentation could include:

- Information about the associated enterprises involved
- Information about the intercompany transactions between these associated enterprises
- A comparability analysis describing the five comparability factors as set forth in Chapter I of the OECD Guidelines
- A substantiation of the choice of the TP method applied
- A substantiation of the transfer price charged
- Other documents, such as management accounts, budgets and minutes of shareholder and board meetings

In the event that the supplementary documentation requirements are applicable (i.e., the taxpayer is part of an MNE with a global consolidated turnover of EUR50 million or more), specific content and format requirements have to be met. These requirements are specified in the Ministerial Regulations dated 30 December 2015, No. DB2015/462M, and are largely in line with the BEPS Action 13 requirements.

With respect to benchmarks, common practice is to update the financials yearly, whereas a new benchmark is conducted every three years.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

It is not required, but taxpayers may consider to have stand-alone or separate reports if activities of the various entities located in the Netherlands are not interrelated.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

Dutch tax resident entities of a multinational companies group having a consolidated group turnover equal to or exceeding EUR50 million in the FY preceding the year for which the tax return applies will have to prepare master and local files. If a taxpayer does not meet the consolidated group turnover threshold, then only the Dutch TP documentation requirements under Article 8b (3) of the Corporate Income Tax Act 1969 are applicable. Entities that comply with the documentation requirements set out in Article 29g of the Corporate Income Tax Act 1969 in terms of content also comply with the obligation set out in Article 8b (3) in so far as it concerns cross-border transactions.

- **Local File**

See Master File section above.

- **CbCR**

The requirement to prepare a CbCR is in line with BEPS Action 13. It is applicable to Dutch tax resident entities and PEs, being members of a multinational companies group, with a consolidated group turnover equal to or exceeding EUR750 million in the FY preceding the FY to which the CbCR applies.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. Domestic transactions are covered by the TP documentation obligations that are codified in Article 8b (3) of the Corporate Income Tax Act 1969. The supplementary TP documentation obligations of Article 29g of the Corporate Income Tax Act 1969 only apply to cross-border transactions.

- **Local language documentation requirement**

The TP documentation does not need to be prepared in the local language. In practice, a common language such as English will be accepted. The master file, local file and CbCR can be submitted in Dutch or in English.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

On the basis of the OECD guidelines, the arm's-length remuneration should in principle be determined on transaction-by-transaction basis. If a transaction-by-transaction assessment is not possible, for example because there are a large number of similar transactions, the transactions can be assessed jointly for the purpose of determining the arm's-length nature. In that situation, the taxpayer is expected to be in a position to substantiate that the transfer price taken into account in respect of the aggregated transactions as a whole complies with the arm's-length principle.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Dutch corporate income taxpayers are not required to file a specific TP return in addition to the regular corporate income tax return.

- **Related-party disclosures along with corporate income tax return**

Dutch corporate income taxpayers are required to confirm in the corporate income tax return (by checking a separate box) whether they have been involved in cross-border related-party transactions involving tangible and intangible fixed assets during the FY. Furthermore, Dutch corporate income taxpayers

are required to confirm in a separate appendix whether they have conducted financial services on a group level without having any substance in the Netherlands or without assuming any risks during the FY. It also needs to be confirmed if any downward adjustments have been applied.

In addition, entities need to file a report if one of the DAC6 TP hallmarks are met.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The return should be filed within five months after the end of the FY, but this can be extended. Taxpayers can request an extension either themselves (for an additional five months) or through their advisor (for an additional eleven months).

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

The master file and local file should be available in the records of the taxpayer by the end of the period within which the corporate income tax return for the FY has to be submitted.

- **CbCR preparation and submission**

The CbCR should be filed within 12 months after the end of the FY.

- **CbCR notification**

By the last day of the FY.

b) Transfer pricing documentation/Local File preparation deadline

TP documentation has to be contemporaneous. There is no specific penalty protection regime. However, a BEPS Action 13 format report with adequate content is sufficient to achieve penalty protection.

Documentation is generally expected to be complete when the taxpayer enters into a transaction. Dutch tax resident entities of a multinational companies group that will have to prepare a master file and a local file should have included these files in their records within the term set for submitting their respective corporate income tax returns. Dutch tax resident entities of a multinational companies group that do not qualify for the documentation rules under Articles 29b to 29h of the Corporate Income Tax Act 1969 are granted four weeks to prepare the TP documentation if such documentation is not available upon the request of the tax authority. This period may be extended up to three months, depending on the complexity of the intercompany transactions.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission upon tax authority request**

Documentation is generally expected to be complete when the taxpayer enters into a transaction. Dutch tax resident entities of a multinational companies group that will have to prepare a master file and a local file should have included these files in their records within the term set for submitting their respective corporate income tax returns. As such, documentation is expected to be available when an inquiry or audit is undertaken, and no grace period is available.

Dutch tax resident entities of a multinational companies group that do not qualify for the documentation rules under Articles 29b to 29h of the Corporate Income Tax Act 1969 are granted four weeks to prepare the TP documentation if such documentation is not available upon the request of the tax authority. This period may be extended up to three months, depending on the complexity of the intercompany transactions.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

There is no best method rule. Taxpayers are, in principle, free to choose any OECD TP method, as long as the method chosen results in arm's-length pricing for the transaction.

Since the 2010 revision of the OECD Guidelines, which establishes the "most-appropriate method" rule for selecting the TP method, there is no longer a hierarchy among the methods. Nevertheless, the OECD Guidelines do state that when the CUP method and another TP method can be applied in an equally reliable manner, the CUP method is preferred. Taxpayers are not obligated to test all of the methods, though they must substantiate the method chosen.

8. Benchmarking requirements

- **Local vs. regional comparables**

Pan-European benchmarks are accepted.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year analysis is preferred, as per common practice.

- **Use of interquartile range**

Interquartile range is preferred, as per common practice. Moreover, the Dutch TP decree describes full range can be applied if all the comparables are highly comparable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

In line with the OECD TP Guidelines, a new benchmarking search is to be conducted every three years, with a financial update in the other two years. This is not specifically codified in Dutch regulations but, instead, follows from the general principle to substantiate the arm's-length nature of the intercompany transaction. Further, the benchmarking practice is prescribed in the OECD Transfer Pricing Guidelines, which are generally followed in practice by the Dutch Tax and Customs Administration as well as taxpayers.

- **Simple, weighted or pooled results**

The weighted average is preferred, as per common practice.

- **Other specific benchmarking criteria, if any**

Independence* (not mandated but best practice).

Industry classification.

Financial data:

- Turnover criterion
- Availability operating profit or loss
- Rejection of company if consolidated data is available
- Active or inactive

* Companies with at least one shareholder that owns 25% or more of the company's shares and companies owning subsidiaries with a share of 25% or more are excluded.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**
- **Consequences of failure to submit, late submission or incorrect disclosures**

The Dutch general penalty regime is also applicable for TP.

Non-compliance with the master file / local file requirements cannot result in imposing tax penalties. However, non-compliance is a criminal offense, and those penalties can go up to detention for a maximum of six months or a fine up to currently EUR 9,000. The lack of or incomplete TP documentation will shift the burden of proof regarding the arm's-length nature of the transfer price used by the taxpayer.

Within scope of country by country Reporting the tax inspector, in case of intention or gross negligence, can impose an offense penalty for not, not timely, incorrectly or incompletely fulfilling the obligation to prepare and submit a country by country Report, or if the required notification is not filed in time. This penalty amounts to a maximum of currently EUR 900,000. In accordance with § 28h, paragraph 2, Dutch Tax Penalty Decree, the amount of the penalty will be determined in consultation with the technical coordinator of formal law.

In case of deliberate non-compliance criminal prosecution is also provided for. In that case more severe penalties can be either (1) imprisonment for a maximum of four years or (2) a fine of maximum EUR 22,500. In case of a felony (e.g., making documentation available in a false or falsified form), the sanctions can be either (1) imprisonment for maximum six years or (2) a fine of EUR 90,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

During Parliament's discussions regarding the introduction of the arm's-length principle and TP documentation requirements (i.e., Article 8b) into the Dutch Corporate Income Tax Act 1969, a question was raised regarding the Dutch policy in connection with the levy of administrative penalties in the case of a transfer price adjustment. The Dutch Ministry of Finance declared that penalties in such instances should be limited to cases in which it is plausible that the agreed-upon transfer price is not regarded as arm's length as a result of a purely intentional act. Therefore, an administrative penalty will not be imposed, even in the event of gross negligence or a conditional intentional act.

In the case of a purely intentional act, as set forth above, the tax may be increased with a maximum penalty of 100% of the (additional) tax due, plus interest.

In addition to the above-described penalties, so-called administrative fines might be applicable (e.g., for not filing within the deadline).

The lack of TP documentation will shift the burden of proof regarding the arm's-length nature of the transfer price used by the taxpayer.

The same general penalty regime would be applicable on BEPS Action 13-based requirements (master and local files and CbCR). Non-compliance with the CbCR requirements in principle will be regarded as a criminal offense for which a criminal penalty can be imposed. However, under certain circumstances, as an alternative, an administrative penalty can be imposed. During Parliament's discussion related to this proposal, it was mentioned that criminal charges will be reserved for the most severe cases.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

The same may apply as described for incomplete documentation under the previous bullet.

- **Is interest charged on penalties or payable on a refund?**

Collection interest may be due in case penalties are not paid in time.. Tax interest is typically due on the extra tax due resulting from TP adjustments. Tax interest has been temporary reduced to 4% for the period October 1, 2020 to December 31, 2021 but has been increased again to (at minimum) 8% for the period as of January 1st, 2022

In case of a refund, in principle, no tax interest is paid. If the refund by the tax administration is paid too late, collection interest will be paid. The collection interest rate in such case is 0.01% until July 1st, 2022 after which it will gradually increase back to 4% per January 1st, 2024.

b) Penalty relief

TP penalties are unlikely if the taxpayer prepares proper TP documentation that adequately substantiates the arm's-length nature of the taxpayer's intercompany transactions. If an adjustment is proposed by the tax authority, the following dispute resolution options are available:

- Domestic litigation
- MAP, under applicable bilateral tax treaty
- MAP with binding arbitration, under EU Arbitration Convention and applicable bilateral tax treaties
- MAP with binding arbitration under the Tax Arbitration Act (wet op fiscale arbitrage, implementation in Dutch legislation of EU Directive on tax dispute resolution mechanisms in the EU (PbEU 2017, L 265))

10. Statute of limitations on transfer pricing assessments

The statute of limitations on TP assessments is the same as the statute of limitations on tax assessments (as covered by the General Tax Act). The statute of limitations for imposing an assessment is three years from the end of the taxpayer's FY. If the tax inspector has granted an extension for filing the tax return, the assessment period is extended to the end of the extension period. Once a final assessment for a financial year is imposed, additional assessments relating to that financial year can still be issued for up to five years after the end of the financial year (12 years in the case of foreign-source income). Similarly, this period is extended with the extension of the filing period granted to file the Dutch corporate income tax return. However, an additional assessment can be imposed only if either:

- The Dutch tax authority discovers a new fact that it reasonably should not have known at the moment the final assessment was issued.
- The taxpayer acted in bad faith.

In addition, an additional assessment is possible only up to two years after the tax assessment has been issued in the case of a mistake, which is recognized if no tax assessment has been issued at all or the tax assessment is too low, while the taxpayer reasonably should have known that the final tax assessment was incorrect (if the difference amounts to at least 30% of the total taxes due, the taxpayer is deemed to have been aware of the mistake).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Potentially, the lead/response time from the Dutch tax authority team might increase due to COVID-19. However, no significant impact on tax audit discussions, as the Dutch Tax and Customs Administration is open to having calls, rather than in-person meetings (when needed).

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of being audited by the Dutch Tax and Customs Administration is considered medium. However, during an audit, the likelihood of TP issues being scrutinized may be considered to be high; consequently, the controversy risk may be considered to be high, as well.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It is highly likely that the TP methodology will be assessed relative to the specific facts and circumstances. TP is a key issue in any tax audit, and many companies are subject to separate TP audits. A functional analysis is incorporated into many of these audits and forms the basis of the TP risk analysis of taxpayers.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

In the event that the compensation falls outside the annual range, it is verified whether the average compensation would fall within a multiple-year range. In the event that the compensation would fall outside the annual range and the multiple-year range, an adjustment will be made.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The Dutch Tax and Customs Administration, among others, has shown interest in performing head-office audits (which include intragroup services and other activities performed by the head office) and in analyzing the economic substance of transactions, in terms of alignment of functions and risks. Next to head-office activities, intangible transactions are often evaluated, as well as business reorganizations, centralized purchasing companies, captive insurance companies and financial services transactions (including loans and guarantees). During these TP audits, the tax administration appears to have a particular interest in potential internal CUPs and the economic substance of a transaction.

The tax administration has also focused, as a natural result of the risk analysis, on transactions with entities in countries with low effective tax rates and on taxpayers with a routine TP characterization reporting recurring losses.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral, bilateral and multilateral APAs are available.

The APA process works very efficiently in the Netherlands.

Specific features enable an efficient and transparent process, including the option to hold pre-filing meetings, the opportunity to develop a case management plan with the APA team to agree upon timing and key steps, and even specific support regarding economic analysis that is available to small taxpayers.

There are specific (unilateral) APA options for Dutch financial services entities. Financial services entities consist of both financing (mere receipt and payment of intercompany interest) and licensing (mere receipt and payment of intercompany royalties) companies.

The Dutch Tax and Customs Authorities process many unilateral and bi- and multilateral APAs annually. The Dutch competent authority has bi-multilateral APA experience across all continents.

In 19 June 2019, a decree was published regarding certainty in advance for activities with an international character. This decree describes the new policy applicable per 1 July 2019.

Main changes relate to:

I. Transparency:

- A short anonymous summary of each tax ruling with an international character granted will be published.
- A short anonymous summary will be published for each case discussed that, in the end, did not lead to a tax ruling.

II. Process of granting tax rulings:

- A new body, the International Fiscal Security Board (College Internationale Fiscale Zekerheid), is introduced to verify operational consistency and quality. Every tax ruling with an international character will have to be approved by this body.

III. Content of the tax rulings:

- In order to obtain certainty in advance, the Dutch taxpayer must have sufficient relevant operational activities taking place in the Netherlands (at group level), which are performed for its own risk and account. The activities must match the function of the Dutch taxpayer within the group.
- Taxpayers will not be able to obtain a tax ruling for activities with an international character in case:
  - The sole or decisive reason for the structure or transactions is to avoid Dutch or foreign taxes (tax savings).
  - The transaction involves a non-cooperative or low-tax jurisdiction.

- Tenure

In general, the maximum term for an APA is five years. If facts and circumstances justify an exception (e.g., long-term contracts), the maximum term may be 10 years; in such a case, an evaluation will be made when 50% of the term has elapsed.

- Rollback provisions

Rollback features are available for unilateral, bilateral and multilateral APAs.

- MAP opportunities

Specific guidance on the Dutch interpretation and approach to MAPs has been outlined in a MAP Decree (decree of 11 June 2020, nr. 2020-0000101607). The Netherlands has concluded bilateral tax treaties with many countries to protect private individuals and enterprises from double taxation. If double taxation nonetheless occurs, countries can resolve the issue by means of an MAP.

If the MAP procedure is initiated under the EU Arbitration Convention, this may lead to mandatory binding arbitration. Furthermore, the Netherlands has made the commitment under BEPS Action 14 that it will adopt and implement mandatory binding arbitration.

The EU Directive on tax dispute resolution mechanisms in the EU (PbEU 2017, L 265) is implemented in the Dutch legislation (wet fiscale arbitrage) effective from 1 July 2019.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No specific changes to existing APAs, and existing APAs will in principle be retained. In cases where it can be explicitly demonstrated that the underlying fact pattern no longer applies, the APA team should be contacted, and with some caution, the extent to which customization is possible will be examined on a case-by-case basis. The tax authorities indicate that rulings can be discussed on individual cases within the current frameworks. Furthermore, it is possible to conclude new APAs taking into account the impact of COVID-19 (e.g., on margins, permanent establishments).

The lead/response time from the DTA/APA/MAP teams might increase due to COVID-19. However, there has been no significant impact on APAs or tax audit discussions, as the DTA is open to having calls, rather than in-person meeting (when needed).

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

The Dutch TP decree (as published by the Ministry of Finance in April 2018, no. 2018-6865) provides further guidance regarding how the arm's-length principle is interpreted and applied. According to this decree, the OECD Guidelines leave

room for interpretation or require clarification on several issues. The goal of the decree is to provide insight into the position of the Dutch Tax and Customs Administration regarding these issues.

Section 9 (guarantees in loan agreements) and Section 11 (loan transactions) focus more specifically on financial transactions. No further guidance has been published (yet) on the new Chapter X of the OECD Guidelines.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Department (*Te Tari Taake* – IRD).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Relevant guidance includes:

- Sections YD 5, GB 2 and GC 6 to GC 19 of the Income Tax Act 2007 (ITA)
- The Tax Administration Act 1994 (TAA)
- New Zealand's double tax agreements

New Zealand introduced new legislation addressing OECD's BEPS initiative, which is effective for the income years commencing on or after 1 July 2018.

- **Section reference from local regulation**

Subpart YB of the ITA.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

New Zealand is a member of the OECD.

New Zealand's transfer pricing rules are to be applied consistently with the OECD's Transfer Pricing Guidelines for multinational enterprises and tax administrations (July 2017), including the guidance on documentation contained in Chapter V.

However, the local transfer pricing legislation includes novel sections assessing the deductibility of expenses connected to inbound loans from associated parties, which can lead to non-arm's-length outcomes. These specific rules are unique to New Zealand.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

IRD endorses OECD's recommendations and believes that the master file and local file approach provides a platform through which taxpayers, subject to the local transfer pricing regime, can meaningfully describe their compliance with the arm's-length standard. IRD expects New Zealand taxpayers to maintain contemporaneous transfer pricing documentation in two forms:

- A master file, providing an overview of the multinational's global business operations and transfer pricing policies
- A local file, providing detailed information regarding the operations of the New Zealand taxpayers and main cross-border associated-party transactions, as well as transfer pricing analysis supporting the arm's-length nature of these transactions from a New Zealand perspective

Only New Zealand-based groups with revenues higher than EUR750 million are required to lodge CbCR.

- Coverage in terms of Master File, Local File and CbCR

  These are expected to comply with OECD recommendations.

- Effective or expected commencement date

  It is expected for income years commencing on or after 1 January 2016.

- Material differences from OECD report template or format

  There is no material difference.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  No explicit protection is given simply because a master file or local file prepared meets the requirements of BEPS Action 13. However, a BEPS Action 13 local file prepared with specific and appropriate application to the New Zealand business is more likely to afford penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, it is, as of 12 May 2016.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is, as of 12 May 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the IRD provides transfer pricing documentation guidelines. Transfer pricing documentation is expected to be prepared annually to support the annual income tax position.

While there is no statutory obligation to maintain documentation, New Zealand's tax system operates on a self-assessment basis, where the taxpayer is expected to keep sufficient contemporaneous records to support its tax position. Accurate and contemporaneous transfer pricing documentation supporting that the taxpayer's transfer prices are consistent with the arm's-length principle, in light of the relevant facts and circumstances, is a key element for addressing this requirement.

The IRD provides guidelines detailing the expectations while producing local transfer pricing documentation.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

In practice, the same transfer pricing rules apply to a local branch of a foreign company in conjunction with the branch attribution rules.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation should be prepared annually, as local taxpayers should be able to support their tax positions, which are lodged annually in their income tax returns.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

The transfer pricing reports should cover all the cross-border transactions that the MNE entities enter into. There are no hard-and-fast rules on having separate transfer pricing documents. Normally, MNEs prepare individual transfer pricing reports for each entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality for transfer pricing documentation. However, a cost-risk assessment when producing transfer pricing documentation is endorsed by the IRD and, hence, the level of requirements will be directly linked to the nature, value and complexity of the covered transactions.

- **Master File**

There is no materiality limit; the master file is expected to be made available to the IRD on request.

- **Local File**

There is no materiality limit; the local file is expected to be made available to the IRD on request.

- **CbCR**

Only New Zealand-based groups with revenues higher than EUR750 million (approximately NZD1.3 billion) are required to lodge CbCR in New Zealand.

- **Economic analysis**

There is no materiality limit in connection to economic analysis. Having said that, a cost-risk perspective should also be considered.

c) Specific requirements

- **Treatment of domestic transactions**

There is no local documentation obligation for domestic transactions.

- **Local language documentation requirement**

It is expected that local transfer pricing documentation is prepared in local language (English). The IRD could require that documents in other languages are translated.

- **Safe harbor availability including financial transactions if applicable**

According to IRD guidance, New Zealand taxpayers can apply administrative practices in connection to:

- Low value services (de minimis – total value below NZD1 million); note that the de minimis of NZD1 million no longer applies for income tax years beginning on/after 1 April 2021
- Small-value loans (i.e., cross-border associated-party loans by groups of companies for up to NZD10 million principal in total)

- **Is aggregation or individual testing of transactions preferred for an entity**

No preference; each case should be considered on its own merits for aggregated vs. individual testing. The IRD will typically perform a corroborative whole-of-entity test where transactions have been individually tested.

- **Any other disclosure/compliance requirement**

Taxpayers are required to complete a BEPS disclosure form when filing tax returns. There are three distinct parts to the BEPS disclosure:

- Hybrid and branch mismatches
- Thin-capitalization group information
- Restricted transfer pricing rules

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no separate transfer pricing return required to be filed in New Zealand (notwithstanding the disclosures outlined above). However, the IRD regularly requires that multinational companies and branches complete detailed transfer pricing questionnaires as part of their routine transfer pricing risk assessment activities (targeted questionnaires are typically sent quarterly).

- **Related-party disclosures along with corporate income tax return**

A company's income tax return requires disclosure of:

- Whether the taxpayer made payments to non-residents (such as dividends, interest, management fees, "know-how" payments, royalties or contract payments)
- Whether the taxpayer holds an interest in a CFC

More detailed disclosures of various financial information and other data are required for interests held in CFCs.

If a taxpayer is granted a tax return filing extension (which is being granted on request for COVID-19-related delays), this should also extend the due date for the BEPS disclosure. Taxpayers impacted by the "restricted transfer pricing rules" (New Zealand-specific measures targeting inbound debt) or hybrid mismatch rules are required to file a "BEPS disclosure."

- **Related-party disclosures in financial statement/annual report**

It is in accordance with the financial reporting disclosure standards.

- **CbCR notification included in the statutory tax return**

This is not applicable. No CbCR notification is required in New Zealand.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

For balance dates ending between 1 October to 31 March, the filing deadline is 7 July. For balance dates ending between 1 April to 30 September, the deadline is the seventh day of the fourth month following the balance date. Where the company is on a tax agency list, an extension to the following 31 March is granted.

- **Other transfer pricing disclosures and return**

The lodging of transfer pricing documentation and specific transfer pricing forms is not required in New Zealand.

- **Master File**

The Master file is to be submitted upon request.

- **CbCR preparation and submission**

A CbCR, if required, must be filed within 12 months after the relevant balance date. This applies to New Zealand headquartered groups only.

- **CbCR notification**

There are no notification requirements.

b) Transfer pricing documentation/Local File preparation deadline

Although there is no explicit legislative requirement for a taxpayer to document its transfer pricing policies and practices, transfer pricing documentation supporting the tax position should be prepared before the date the relevant income tax return is filed. Local taxpayers that prepare and maintain accurate and contemporaneous transfer pricing documentation are less likely to be exposed to penalties. The IRD will generally request a copy of a taxpayer's transfer pricing documentation as part of an income tax audit or transfer pricing risk assessment.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

This is not applicable. The local file is only submitted at the request of the IRD.

- **Time period or deadline for submission on tax authority request**

While each case is different, based on our experience, a taxpayer generally is given 20 working days to submit the documentation upon request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

This is not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

It is applicable only for international transactions.

b) Priority and preference of methods

New Zealand legislation presents five available transfer pricing methods to determine an arm's-length consideration for those cross-border associated-party transactions undertaken by a New Zealand taxpayer. The IRD accepts the most reliable method (or combination of methods) chosen from among these methods: comparable uncontrolled price, resale price, cost plus, profit split and transactional net margin method.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local benchmarking is preferred (Australian comparables are generally the best option if New Zealand benchmarks are not available); however, reliable benchmarks based on other jurisdictions are also acceptable.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear testing is acceptable and generally preferred.

- **Use of interquartile range**

Rather than requiring the use of an arm's-length range and statistical measure, the IRD focuses on the reliability of the benchmarks. When a range comprises results of relatively equal and highly reliable benchmarks, then any point in the range can be regarded as arm's length.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh search every year; however, the contemporaneousness of the financial information and comparability of the benchmarks should be assessed periodically.

- **Simple, weighted or pooled results**

Generally, weighted average results are used for constructing an arm's length range. Pooled results are typically not accepted by the IRD.

- **Other specific benchmarking criteria, if any**

Benchmarks should be independent. That said, there is no guidance related to specific independence criteria when completing benchmarking analysis. Comparability is a key aspect when completing benchmarking analysis, and the IRD endorses OECD guidance related to this.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Incomplete or inadequate documentation could result in shortfall penalties being applied if an adjustment is sustained.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Even though there are no specific submission requirements, any failure to provide information or documentation when requested can constitute an offense.

If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?

Under Sections 141A-141K of the TAA, the following penalties could potentially be imposed depending on the culpability of the taxpayer:

- 20% penalty for not taking reasonable care
- 20% penalty for an unacceptable tax position
- 40% penalty for gross carelessness
- 100% penalty for an inappropriate tax position
- 150% penalty for evasion or a similar act

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes, penalties are more likely to be assessed if documentation has not been prepared for the tax year under assessment.

- **Is interest charged on penalties or payable on a refund?**

Yes, use of money interest would be applicable for both penalties and refunds based on the IRD's interest rates for the applicable tax period.

b) Penalty relief

Tax disputes are usually initiated by the IRD following a lengthy period of review and audit activity by the IRD. In some cases, a taxpayer can initiate a dispute. The local tax dispute process is formal and complex, involving seven distinct steps. If, during this process, the IRD and taxpayers cannot resolve the dispute, they will likely resort to litigation.

Shortfall penalties may be reduced upon voluntary disclosure to the Commissioner of the details of the shortfall, as follows:

- If disclosure occurs before the notification of an investigation, the penalty may be reduced by 100% (only for lack of reasonable care or unacceptable tax position categories) or 75% for other shortfall penalties.
- If disclosure occurs after the notification of an investigation, but before the investigation commences, the penalty may be reduced by 40%.

Shortfall penalties may be reduced by a further 50% if a taxpayer has good compliance records.

10. Statute of limitations on transfer pricing assessments

The IRD generally has four years from the end of the tax year in which a taxpayer files an income tax return to investigate and amend the tax position taken by the taxpayer. However, the four-year time bar is extended to seven years for the purposes of the transfer pricing rules. This extension applies only in cases where an audit or investigation has commenced by the IRD within the standard four-year period.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

The IRD has informally stated that it will continue to apply the arm's-length principle to COVID-19-related impacts on multinational taxpayers in New Zealand. There will be a strong focus on risk allocation, particularly for purported limited risk structures.

Neither the IRD nor the government has made any official statement regarding the impact of COVID-19 on current tax audits. Meetings typically take place via video conferencing rather than in person in the current COVID-19 environment.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium to high: Tax reviews and audits are undertaken at the IRD's discretion. The IRD selects audit targets based on certain criteria, such as low profitability or losses, industry performance, transaction types (e.g., large, intercompany finance arrangements) and media reports. However, most large companies can typically expect to be audited every five years. The risk of transfer pricing scrutiny for multinationals

during a tax audit is characterized as high.

In addition to this, New Zealand taxpayers with annual revenues exceeding NZD30 million are subject to an annual basic compliance package review under which the taxpayer will be required to provide various tax-related information to the IRD, and this information usually covers transfer pricing matters. A review can lead to an audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the transfer pricing methodology being challenged depends on the complexity of the cross-border associated-party transaction. Transactions involving provision of intangibles, financing and intragroup services tend to receive higher scrutiny during a transfer pricing risk review. New Zealand subsidiaries that provide sales and marketing services to an offshore principal or carry on various marketing-related activities can expect a more detailed transfer pricing review. Once a review has been completed and an audit has commenced, there is usually a high risk that the methodology will be challenged. Financing transactions are also subject to a high level of challenge.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If a methodology has been challenged, there is a high risk that an adjustment will be proposed and a dispute process will commence. Disputes have typically been resolved through settlement before litigation.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The IRD states that it will maintain a special focus on:

- Unexplained tax losses returned by foreign-owned groups
- Loans in excess of NZD10 million principal and guarantee fees
- Cash-pooling arrangements
- Payment of unsustainable levels of royalties and service charges
- Material associated-party transactions with no- or low-tax jurisdictions, including the use of offshore hubs for marketing, logistics and procurement services
- Appropriate booking of income arising from e-commerce transactions
- Supply chain restructures involving the shifting of any major functions, assets or risks away from New Zealand
- Any unusual arrangements or outcomes that may be identified in controlled foreign company disclosures

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Section 91E of the TAA allows a unilateral APA to be issued in the form of a binding ruling. Bilateral or multilateral APAs may be entered into, pursuant to New Zealand's double tax agreements under the MAP provisions. The IRD has not established any formal process for APAs, as each case is considered to be different, depending on a taxpayer's specific facts and circumstances. The IRD encourages pre-application conferences to make the APA application process less time-consuming.

- **Tenure**

APAs are typically agreed upon for five-year periods.

- **Rollback provisions**

There are no rollback provisions in New Zealand for unilateral APAs, although it is possible for bilateral APAs. A unilateral APA can apply to a tax year in which a tax return has not yet been assessed.

- **MAP opportunities**

Yes, the taxpayers in New Zealand are allowed to request MAP assistance and at the same time seek to resolve the same dispute via domestically available judicial and administrative remedies. This is applicable only when the dispute involves a treaty partner.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Taxpayers are typically required to notify the IRD at the time they expect to breach the terms of an APA; this would apply to COVID-19-related breaches. The IRD is open to proactive engagement with impacted taxpayers that have APAs and those that don't. Immaterial breaches of APAs can be disclosed in the APA annual compliance report.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

New Zealand's thin-capitalization rules limit the amount of deductible debt a company can have, rather than directly limiting the amount of interest. The general thin-capitalization rules provide that an entity subject to the thin-capitalization regime has income equal to, broadly speaking, that portion of its interest deductions equal to the extent to which its New Zealand debt or assets percentage exceeds the greater of 60% and 110% of its worldwide debt or assets percentage for inbound investment (the respective percentages are 75% and 110% for outbound investment). New Zealand also has "restricted transfer pricing rules," which apply to intercompany financing transactions that meet certain conditions, and acts to restrict interest deductions to taxpayers where the restricted transfer pricing rules apply. These rules do not align with the current OECD Transfer Pricing Guidelines.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Directorate General of Revenue (*Dirección General de Ingresos* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

From Article 93 to Article 106 of Law No. 822, effective 30 June 2017.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Not specified.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

As it is not a member of the OECD, Nicaragua neither refers to nor follows OECD Guidelines in practice.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

TP documentation needs to be prepared annually by updating all the information that allows a correct TP analysis, including the use of the most recently available financial information for the comparables and the tested party.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each taxpayer must comply with TP obligations on documentation.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

[1] http://www.dgi.gob.ni/

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions under regular tax regimes. However, documentation obligation exists for related-party transactions between a tax resident under a regular tax regime and an entity operating under a free zone tax regime in Nicaragua.

- **Local language documentation requirement**

TP documentation needs to be submitted in the local language as per the Political Constitution and Civil Code of Nicaragua. If the documentation is prepared in a different language, it must be translated to Spanish in public deed.

- **Safe harbor availability including financial transactions if applicable**

There is no specific safe harbor available in Nicaragua.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred, if possible.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

To date, there are no TP-specific returns.

- **Related-party disclosures along with corporate income tax return**

To date, there are no related appendices or additional forms to disclose related-party transactions.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The tax return should be filed on or before 28 February for fiscal years that end in December; for special periods, two months after the fiscal year-ends.

- **Other TP disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The TP documentation report must be readily available by the time the tax return is filed.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

It should be submitted only upon request by the tax authorities.

- **Time period or deadline for submission on tax authority request**

The documentation should be filed within 10 days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Not specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes, for transactions conducted by an entity resident in Honduras with an entity under a free trade zone regime.

b) Priority and preference of methods

The provisions require the application of the most appropriate TP method. The specified methods are the CUP, resale price, cost plus, profit split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

Considering the lack of financial information available on local comparables, international comparables are accepted by the tax authorities.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year testing is applicable for the comparables only; in practice, the number of years is three.

- **Use of interquartile range**

There is no specific guidance on the use of interquartile range. However, the use of the spreadsheet interquartile range is common practice.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search vs. a financial update needs to be conducted every year. The TP report and return must be prepared annually, updating all the information that enables a correct TP analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

- **Simple, weighted or pooled results**

Weighted average is common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not specified.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Article 124 of the Nicaraguan Tax Code (NTC) states that failure to comply with the obligations described in the NTC could result in penalties that range from 70 to 90 fine units, closure of business and loss of tax benefits, among others. Article 8 of the NTC defines each fine unit as equivalent to NIO25.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, penalties include 25% of the omitted taxable income.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not specified.

- **Is interest charged on penalties or payable on a refund?**

Interest charges are applied to omitted taxable income.

b) Penalty relief

There is currently no penalty relief regime in place.

Administrative procedures are available if an adjustment is proposed by the tax authority.

10. Statute of limitations on transfer pricing assessments

The statute of limitations is currently four years. In the case of omitted information, the tax authority could extend it for two additional years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The DGI has recently initiated tax audits regarding TP because the regulations came into force as of tax year 2017. Thus, the frequency of TP-related audits may be considered to be low.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the TP methodology will be challenged is not yet known.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Nicaragua; however, the corresponding regulations have not yet been enacted.

- **Tenure**

The term of the program is four years.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no thin-capitalization provisions in place in Nicaragua.

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Federal Inland Revenue Service (FIRS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and effective date of applicability**

The Income Tax (Transfer Pricing) Regulations, 2018 (new Regulations), are effective from 12 March 2018 and will apply to financial years beginning after that date. The new Regulations repealed the Income Tax (Transfer Pricing) Regulations, 2012, which took effect on 2 August 2012.

- **Section reference from local regulation**

Regulation 12 of the Nigerian TP Regulations contains the definition of "connected persons," which is used to determine whether a Nigerian company or permanent establishment can be within the scope of the TP Regulations.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Nigeria is not a member of the OECD; however, the Nigerian TP regulations are to be applied in a manner consistent with the OECD Guidelines and the arm's-length principle in Article 9 of the UN and OECD model tax conventions. Although the OECD Guidelines do not have a force of law, they are persuasive. Based on the Nigerian TP Regulations, the provisions of the relevant domestic laws prevail if there are any inconsistencies with the OECD Guidelines or UN TP manual.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes. The new regulations incorporate the master file and local file as recommended under BEPS Action 13 on TP documentation. Also, there is CbCR Regulations enacted in 2018.

- Coverage in terms of Master File, Local File, and CbCR

  Yes, please see response above.

- Effective or expected commencement date

  The TP Regulations and CbCR Regulations are effective as of 12 March 2018 and 1 January 2018 respectively.

- Material differences from OECD report template or format

  The TP documentation requirements follow the OECD TP Guidelines. However, there are some notable deviations as reflected below:

1. Royalties/Use of intangibles

The tax deductibility of royalties/fees for rights to use intangibles is limited to 5% of the Nigerian company's Earnings Before Interest Tax, Depreciation and Amortisation (EBITDA), as per the Nigerian TP Regulations, and not necessarily in line with the arm's length principle as recommended by the OECD Guidelines.

2. Commodity Transactions

For commodity transactions, the Nigerian TP Regulations does not solely rely on the quoted price as recommended by the OECD TP Guidelines. In the case of export, the TP Regulations provides that where commodities are exported from Nigeria to a related party for resale to a third party, the transfer price will be deemed to be the price agreed with the third party if the price is higher than the quoted price.

3. Application of UN Documents

The local TP Regulations reference the application of UN documents (in addition to OECD documents) in the interpretation of arm's length principle. Accordingly, in certain circumstances where the UN approach preserves more profit for developing nations, the tax authorities show preference for the application of UN Model. As such, the approach in preparing the local file should not only consider the recommendation of the OECD but also UN particularly where

[1] **https://www.firs.gov.ng/sites/Authoring/contentLibrary/a7b75064-cd91-4135-ae14 b3b4b8662409Income%20Tax%20(Transfer%20 Pricing)%20Regulations%202018.pdf**

there are differences.

4. Local TP practices

Based on TP audit experience in Nigeria, the local file is tailored to manage the TP risks of transactions documented in the report rather than just reflecting information as recommended in the OECD Guidelines in order to avoid huge additional assessments and applicable penalties.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

A TP report that is compliant with the BEPS Action13 format and includes the points reflected in the paragraph above should meet the requirement of the FIRS.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, Nigeria became a signatory on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, Nigeria has a TP documentation guideline, and taxpayers need to prepare the TP documentation contemporaneously. The TP documentation is required to be put in place prior to the due date for filing the income tax return for the year in which the documented transactions occurred.

Nonetheless, the TP documentation is only submitted upon request by the FIRS. In addition, taxpayers with total amount of transactions below NGN300 million are exempted from maintaining contemporaneous documentation, provided that, when demanded by the FIRS, the relevant documentation shall be prepared and submitted to the FIRS not later than 90 days from the date of receipt of the notice.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a subsidiary and local branch or permanent establishment of a foreign company are required to comply with the local TP rules. Regulation 3(2) of the TP Regulations addresses this.

- **Does transfer pricing documentation have to be prepared annually?**

TP documentation must be prepared annually. The documentation should be prepared considering the volume and complexity of the transactions.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

The TP Regulations do not expressly state that an MNE with multiple entities in Nigeria should prepare stand-alone reports for each entity in cases such as this. In practice, some taxpayers with multiple entities operating in Nigeria prepare a consolidated TP local file for all entities and there are no issues raised by the FIRS on this yet as long as the consolidated TP local file addresses all relevant requirements. However, the FIRS may challenge this practice in the future.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Connected persons with total intercompany transactions of less than NGN300 million may choose not to maintain the contemporaneous TP documentation. However, they must prepare and submit the TP documentation within 90 days from the date of receipt of a notice from the FIRS.

- **Master File**

A master file is currently required. The TP Regulations introduced the obligation for connected persons to prepare a master file as part of their annual TP documentation. The TP Regulations also include a detailed list of information and analyses to be included in TP documentation. This is mostly consistent with the guidance provided in the OECD's 2017 Transfer Pricing Guidelines.

- **Local File**

A local File is currently required. The TP Regulations introduced the obligation for connected persons to prepare a local file as part of their annual TP documentation. The TP Regulations also include a detailed list of information and analyses to be included in TP documentation. This is mostly consistent with the guidance provided in the OECD's 2017 Transfer Pricing Guidelines.

- **CbCR**

The federal government of Nigeria released CbCR regulations with an effective date of 1 January 2018, which set out several key obligations for multinational enterprises (MNEs).

MNEs headquartered in Nigeria with consolidated revenues of NGN160 billion or more in the previous reporting period have an obligation to:[2]

- File a notification of their filing obligation with the FIRS no later than the last day of the MNE group's accounting year-end
- Prepare and file the annual CbCR based on the prescribed template, within 12 months after the last date of the group's accounting year-end

Subsidiaries of an MNE group resident in Nigeria for tax purposes and permanent establishments with financial statements will be required to notify the FIRS of the identity and tax residence of the entity within the group that has the responsibility to file the CbCR on behalf of the group.

Where there is more than one constituent entity (i.e., a subsidiary or permanent establishment) of the same MNE group that is resident for tax purposes in Nigeria, the MNE group may designate one of the constituent entities to file the CbCR andto notify the FIRS that the filing is intended to satisfy the filing requirement of all the constituent entities of such MNE group that are resident for tax purposes in Nigeria.

- **Economic analysis**

There is no materiality threshold.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. The Nigerian TP Regulations cover both domestic and cross-border transactions.

- **Local language documentation requirement**

Regulation 24 provides that English is the official language for submission of the TP documentation.

- **Safe harbor availability including financial transactions if applicable**

The FIRS may publish specific guidelines on safe harbors from time to time, and only prices of controlled transactions in line with such published guidelines will qualify as a safe harbor.

- **Is aggregation or individual testing of transactions preferred for an entity**

There are no specific provisions in this regard. However, preference depends on facts and circumstances surrounding the transactions.

- **Any other disclosure/compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers are required to complete the TP declaration and TP disclosure form, which are to be submitted as part of an annual TP return, due at the same time the income tax return is filed. The TP returns will be deemed incomplete without the income tax return. The TP specific returns should consist of the TP disclosure form and the TP declaration form (for the first annual filing only, unless there are material changes to the information disclosed on the first form submitted).

- **Related-party disclosures along with corporate income tax return**

Taxpayers are required to submit their related-party disclosures alongside their corporate income tax return prepared in a manner consistent with the audited financial statements for the related financial period.

- **Related-party disclosures in financial statement/annual report**

Taxpayers are required to complete and submit their related-party disclosures using annual financial statements prepared in accordance with the IFRS IAS 24, Related Party Disclosures, which requires the disclosure of all related-party transactions within the related financial period.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

Apart from the TP Disclosure form and TP Declaration form, the other document required is the corporate income tax return (which should consist of a copy of the audited financial

[2] **https://www.ey.com/Publication/vwLUAssets/Nigeria_releases_country-by-country_Reporting_regulations/$FILE/2018G_010021-18Gbl_TP_Nigeria%20releases%20CbCR%20regulations.pdf**

statements, a copy of the income tax computation, a copy of the E-self-assessment form and evidence of payment of income tax liability (Companies Income Tax and Tertiary Education Tax liabilities) for the related financial period.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The return should be filed no later than six months after the company's year-end (e.g., 30 June for companies with a year-end of 31 December) or 18 months after the date of incorporation, whichever is earlier.

- Other transfer pricing disclosures and return

Same as above.

- Master File

All taxpayers with related-party transactions are now required to maintain a master file and submit it within 21 days upon request. However, taxpayers with total amount of transactions below NGN300 million are exempted from contemporaneous documentation requirements and are given 90 days to provide the master file upon request.

- CbCR preparation and submission

The CbCR is required to be filed no later than 12 months after the last day of the MNE group's accounting year-end.

- CbCR notification

The notification should be made to the FIRS no later than the last day of the MNE's accounting year-end.

b) Transfer pricing documentation/Local File preparation deadline

The TP documentation is required to be prepared contemporaneously. It is required to be in place prior to the due date of filing the TP returns.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submission of transfer pricing documentation or Local File?

The TP documentation should be in place prior to the due date of filing the TP returns for the year in which the documented transactions occurred.

- Time period or deadline for submission upon tax authority request

The TP documentation is required to be submitted to the FIRS within 21 days upon request. Companies with total intercompany transactions of less than NGN300 million must prepare and submit the TP documentation within 90 days from the date of receipt of a notice of request from FIRS.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

The Nigerian TP Regulations do not differentiate between domestic and international transactions in their treatment of verifying compliance with the arm's-length principle. Thus, the five recommended TP methods by the OECD Transfer Pricing Guidelines apply to related-party transactions conducted by a Nigerian company. Also, the regulations provide for the application of any other method, provided that the taxpayer can prove that none of the recommended TP methods are appropriate for testing the arm's-length nature of the transaction and that the chosen method gives results consistent with what is obtained for comparable uncontrolled transactions.

- Domestic transactions

Refer to the paragraph above.

b) Priority and preference of methods

The Nigerian TP Regulations do not give preference to a method above others. However, the traditional methods are preferred to the transactional profit methods, as recommended by the OECD Transfer Pricing Guidelines, if there is reliable information to apply the methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

The FIRS prefers comparables from comparable economies to Nigeria, i.e., developing countries of Africa, the Middle East, Asia (excluding Japan, Hong Kong, China Mainland and Singapore) and Eastern Europe, as Nigeria is faced with a lack of data.

- **Single year vs. multiyear analysis for benchmarking**

There is no specific requirement in the law. However, single-year analysis for the tested party and multiple-year analysis for comparables are common in practice.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable. As provided in the new TP Regulations, the interquartile range will be considered the arm's-length range on a going-forward basis.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The common approach to benchmarking is to roll over the result of a study with financial updates for a period of two subsequent years, after which a fresh benchmarking analysis is done. Also, updates in the company, industry and functional analyses are expected to be documented annually, if applicable.

- **Simple, weighted or pooled results**

The weighted average is acceptable.

- **Other specific benchmarking criteria, if any**

The comparables are required to be independent entities, with no shareholder owning more than 25% of the share capital of the comparable companies.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for not submitting the TP Documentation on request by the FIRS**

Failure to submit TP documentation within 21 days of receiving a request from the FIRS shall attract an administrative penalty of NGN10 million or 1% of the total value of all controlled transaction, whichever is higher, and NGN10,000 for every day in which the failure continues, except where there is an extension date granted by the FIRS.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to submit TP declaration or notification to the FIRS shall attract an administrative penalty of NGN10 million in addition to NGN10,000 for every day in which the failure continues, except where there is an extension date granted by the FIRS.

Failure to make or submit an updated TP declaration form to the FIRS about a change in structure or appointment or retirement of directors shall attract an administrative penalty of NGN25,000 for each day in which the failure continues, except where there is an extension date granted by the FIRS.

Failure to make a TP disclosure of transactions subject to the Income Tax (Transfer Pricing) Regulations 2018, later than 6 months after the end of each accounting year or 18 months after the date of incorporation, whichever is earlier, shall attract an administrative penalty of NGN10 million or 1% of the value of controlled transactions not disclosed, whichever is higher, and NGN10,000 for every day in which the failure continues, except where there is an extension date granted by the FIRS.

Filing of incorrect disclosure of transactions shall attract an administrative penalty of NGN10 million or 1% of the value of controlled transactions incorrectly disclosed, whichever is higher, except where there is an extension date granted by the FIRS.

Failure to comply with a notice issued under the Income Tax (Transfer Pricing) Regulations 2018 shall attract an administrative penalty NGN10 million or to 1% of the total value of all controlled transaction, whichever is higher, and NGN10,000 for every day in which the failure continues, except where there is an extension date granted by the FIRS.

Failure to furnish the FIRS with any information or document required within the time specified in a notice shall attract an administrative penalty of a sum equal to 1% of the value of each controlled transaction for which the information or document was required in addition to NGN10,000 for each day in which the failure continues, except where there is an extension date granted by the FIRS.

The FIRS may accept an application for an extension to make a TP declaration, TP disclosures or TP documentation submission on reasonable grounds. However, failure to meet

the extended submission date granted shall attract penalties for TP disclosures, declarations and TP documentation, respectively.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, penalties should arise where taxes charged under the assessments are not paid within the prescribed period. The prescribed period for the assessments should be two months (60 days) from the receipt of the assessment notices. The 60-day period applies to assessments that have not been a subject of objection. In practice, the FIRS imposes penalty from the year the tax is due.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes, it is expected that penalties should arise if a documentation is deemed non-contemporaneous. However, no specific penalty is currently provided for this occurrence. Notwithstanding, it is expected that a taxable person who contravenes the contemporaneous requirement shall be liable to a penalty as prescribed by the FIRS in future.

- **Is interest charged on penalties or payable on a refund?**

No, the law imposes interest on unpaid taxes based on Central Bank of Nigeria monetary policy rate plus spread as determined by the Finance Minister.

b) Penalty relief

There is no specific penalty relief in the Nigerian TP regulations.

10. Statute of limitations on transfer pricing assessments

The statute of limitation is six years; thus, all supporting documentation for the taxpayer's returns must be retained for six years. In cases of criminal tendencies, such as fraud, negligence or willful default, there is no statute of limitations.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified yet. However, we expect practical issues in this regard under audits.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium. The FIRS is now very active on audits, especially given the authority's experience and the volume of information at its disposal, which enables the FIRS to perform risk assessment. The authority has also increased its team size recently, so we expect increased intensity on audit. This notwithstanding, the FIRS maximizes its resources on groups with more than one entity operating in Nigeria by extending its audit scope to cover all Nigerian entities within that group.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high. This is more likely when the FIRS requests certain information or documents required to fully test the appropriateness of the methodology adopted by the company and the company is unable to provide this – either because the information is not locally available or because the head office or foreign custodian of such information believes that the requested information is not relevant for Nigerian purposes.

In practice, the FIRS typically adopts a methodology that supports higher adjustments and guarantees more taxes in such instances.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high, because many taxpayers are unwilling to refer a matter to court, so they may agree to reasonable adjustments to close the audits.

- **Specific transactions, industries, and situations, if any, more likely to be audited**

All cross-border receipts of services, payments for use of intangibles or purchases of goods are highly challenged. Also, industries such as fast-moving consumer goods, shipping, manufacturing, oil servicing and commercial trading are highly analyzed now.

Key transactions of interest to the tax authority include:

- Procurement transactions
- Intercompany loans

- Royalty transactions
- Shared services and cost contribution arrangement
- Intragroup services

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The TP regulations indicate that a connected taxable person may request that the FIRS enter into an APA to establish an appropriate set of criteria for determining whether the taxpayer has complied with the arm's-length principle for certain future controlled transactions over a fixed period. The taxpayer may request a unilateral, bilateral or multilateral APA. The new TP Regulations incorporate a section to clarify that the provision on APA will be effective upon the publication of relevant notices and guidelines by the FIRS. As of now, it is not effective.

- **Tenure**

The tenure could be three years.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

The FIRS, pursuant to its powers under Section 8 (1) (t) of the FIRS Establishment Act No. 13 2007, issued detailed guidance (Guidelines) on the MAP in Nigeria and Certificate of Residency Forms for taxpayers who intend to take advantage of the MAP. The Guidelines provide guidance to taxpayers (Nigerian-resident companies or individuals) on procedures for obtaining assistance from Nigerian competent authorities (CA). Accordingly, taxpayers and permanent establishments that fall within the scope of the treaties can now apply for the MAP through the CA in Nigeria. However, due to the limited treaty network of Nigeria, its benefits are accessible to only a limited number of taxpayers.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings, or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

- **The Finance Act 2019 restricts the deductibility of interest incurred by a Nigerian company or a fixed base of a foreign company in Nigeria, in respect of debt issued by a foreign connected person or of similar nature, to 30% of earnings before interest, tax, depreciation and amortization (EBITDA). Any excess interest shall be a disallowable deduction and can be carried forward for only five years immediately succeeding the assessment year.**

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Public Revenue Office.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The amendments of the Corporate Income Tax (CIT) Law are effective from 1 January 2020.

The CIT Law stipulates an obligation for mandatory transfer pricing reporting for legal entities whose total annual income exceeds MKD300 million (approximately EUR4.8 million). Local taxpayers shall file the annual transfer pricing report until 30 September in the year following the reporting year.

The transfer pricing report shall be provided in an official form prescribed by the Ministry of Finance with a transfer pricing rulebook.

For facilitating transfer pricing reporting obligations, it is envisaged that taxpayers whose volume of related-party transactions do not exceed the amount of MKD10 million per annum (approximately EUR162,000) should submit a "short" transfer pricing report.

Taxpayers that have annual income below MKD300 million (approximately EUR4.8 million) or have transactions with related parties that are Macedonian companies do not fall under the criteria for mandatory transfer pricing reporting.

- **Section reference from local regulation**

Related parties and associated enterprises are defined in Article 16 of the local CIT Law. The relevant law is publicly available only in the Macedonian language.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

[1]http://www.ujp.gov.mk/en

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Macedonia is not a member of the OECD.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The BEPS standards are expecting to be implemented in the local regulation until the end of year 2019. However, to date, in this report, there are still no new developments in respect of the BEPS implementation.

- Coverage in terms of Master File, Local File and CbCR

  The transfer pricing rulebook prescribes the content of the master file for local purposes.

- Effective or expected commencement date

  There is none specified.

- Material differences from OECD report template or format

  There is no significant difference from the OECD report template.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is none specified.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

North Macedonia is a member of the Inclusive Framework on BEPS.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

The general transfer pricing rules are embodied in the CIT Law.

The transfer pricing rulebook prescribes the form and content of the transfer pricing report, the types of methods for determining the transaction price in accordance with the arm's-length principle, and the manner of their application.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, provided that the company meets the criteria for mandatory transfer pricing reporting.

- **Should transfer pricing documentation be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

The obligation for preparation of a transfer pricing report is prescribed for each local entity that fulfills the criteria prescribed under the CIT Law. The CIT Law does not prescribe preparation of a joint transfer pricing report if there are several local entities that are part of the same group; further to this, each of the entities is obligated to prepare a separate local file.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The materiality limit of an annual turnover of MKD300 million (approximately EUR4.8 million) for the entity obligates it to file a transfer pricing documentation. However, no materiality limits or thresholds per related-party transaction are provided.

Master File

As indicated above, the transfer pricing rulebook prescribes the content of the master file for local purposes.

- **Local File**

Macedonia is not an OECD member, and the local legislation has not yet been amended to reflect BEPS standards and recommendations.

- **CbCR**

No CbCR legislation is in force; refer to the section above.

- **Economic analysis**

Same as above.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. Please refer to section b.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language – Macedonian.

- **Safe harbor availability including financial transactions if applicable**

There is a specific requirement for safe harbor availability. Safe harbor rules exist only in case of intercompany financing arrangements. An interest rate that is higher or lower than the Euribor rate with the same maturity as the related-party loan increased by one percentage point is deemed an arm's-length rate for the domestic loan provider or debtor. For loans denominated in MKD, the reference rate used for the safe harbor rule is the Macedonian interbank rate.

However, the above is provided under the rulebook of the CIT Law and not the transfer pricing rulebook. Although it is not specifically mentioned, in our view, the transfer pricing provisions and the transfer pricing rulebook will prevail, further to which it is recommended that taxpayers perform a transfer pricing study on the intracompany financing arrangements, regardless of whether the same are compliant with the safe harbor rule described above.

- **Any other disclosure/compliance requirement**

There are no specific prescriptions in respect to the disclosure or compliance requirements other than the one prescribed in the transfer pricing rulebook.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no specific transfer pricing returns.

- **Related-party disclosures along with corporate income tax return**

Based on the provisions of the transfer pricing rulebook and CIT Law, the local transfer pricing report should contain an overview of the local taxpayer and an overview of all intercompany transactions and financial information. The overview of the local taxpayer includes:

- Management and organizational structure
- Main business activities and business strategies
- Local competitors

The overview of the intracompany transactions includes:

- Description of the controlled transactions
- The amount of payments and inflows for the controlled transactions, grouped by tax jurisdiction of the foreign payer or recipient
- Identification of related parties involved in each controlled transaction, as well as the connection between them
- Copies of all contracts concluded by the taxpayer in line with the transactions
- Detailed functional analysis and analysis of the comparability of the taxpayer's transactions with related parties, for each documented controlled transaction

In addition to the local file, the taxpayers should submit the master file prepared at the level of the group. The master file should encompass information on the organizational structure of the group, business activities of the group, intangible assets owned, intracompany financing arrangements, and financial and tax positions of the group. Unlike the local file, which should be submitted for the reporting year, the master file can be submitted for the year preceding the reporting year.

- **Related-party disclosures in financial statement/annual report**

The following documents should be enclosed to the transfer pricing report for the taxpayer:

- Annual consolidated financial statements for the group
- Annual financial statements for the local taxpayer
- Copies of all contracts concluded by the taxpayer in connection with the controlled transactions
- Copies of existing unilateral, bilateral and multilateral APAs and other tax decisions to which the tax authority is not one of the parties that are related to the controlled transaction
- Data, reports and documents that are relevant to the choice of method for determining the transfer price between related parties in accordance with the arm's-length principle
- Other data, reports and documents that the taxpayer considers relevant to the report

- **CbCR notification included in the statutory tax return**

There is none specified.

- **Other information/documents to be filed**

Please see above in section "Related-party disclosures in financial statement/annual report."

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed not later than 30 September in the year following the reporting year.

- **Other transfer pricing disclosures and return**

The transfer pricing report should be submitted not later than 30 September in the year following the reporting year.

- **Master File**

The master file should be submitted together with the local file not later than 30 September in the year following the reporting year.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation needs to be finalized not

later than 30 September in the year following the reporting year.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

The deadline for submission is not later than 30 September in the year following the reporting year.

- **Time period or deadline for submission on tax authority request**

The transfer pricing report should be filed with the specified deadlines above. Provided that the taxpayer fails to submit the report, in case of tax audit, it can either be requested to provide the transfer pricing report in a period ranging from 7 to 14 working days or the tax authorities will review the intracompany prices applied and make transfer pricing adjustments. In addition, please see section 8 regarding penalty exposure for failure of submission of the transfer pricing report.

- **Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted**

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions:**

Yes.

- **Domestic transactions:**

No.

b) Priority and preference of methods

The CIT Law specifies the methods that should be used while determining the price of transactions to be in accordance with the arm's-length principle. According to the law, the CUP method, the resale method, the cost-plus method, the TNMM and the profit-split method should be used. Additionally, any other method may be used if the previous methods are not appropriate.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are generally preferred, if available. The transfer pricing rulebook states that local comparables should be taken into consideration with the comparability search. Provided such comparables are not available, i.e., rejected, the taxpayer should justify the rejection with the transfer pricing report, and it is allowed to use regional comparables.

- **Single-year vs. multiyear analysis**

The analysis should be performed for the year that is subject to reporting. However, if such data is not available, the data available for last year's period may be used.

- **Use of interquartile range**

Acceptable interquartile range is the one between 25% and 75%.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search needs to be performed every year.

- **Simple, weighted or pooled results**

The local regulation prescribes that the taxpayer should explain why the benchmark has been performed for multiple years but does not mention anything about preference on the use of simple or weighted average while presenting the interquartile range of the comparables.

- **Other specific benchmarking criteria, if any**

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

This is not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

A penalty in the amount of EUR300-EUR1,000 for a micro company, EUR600-EUR2,000 for a small company, EUR1,800-EUR6,000 for a medium-size company, and

EUR3,000–EUR10,000 for a big company shall be imposed to the taxpayer, if it fails to submit the report to the tax authorities within the prescribed deadline (Article 12-a paragraphs (1) and (2) and Article 39).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Provided that the tax authorities challenge the transfer pricing report submissions by the taxpayer, they are entitled to make appropriate adjustments and to obligate the taxpayer to pay the amount of underestimated tax, including late-payment interest in the amount of 0.03% of the less-paid tax for each day of delay. In a worst-case scenario, the taxpayer may be penalized with a fine of 10 times the amount of the underestimated tax obligation. In practice, the tax authorities make the reassessment of the tax obligation and the intercompany charges based on locally available market data.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

A penalty in the amount of EUR600–EUR2,000 for a micro company, EUR1,200–EUR4,000 for a small company, EUR3,600–EUR12,000 for a medium-size company, and EUR6,000–EUR20,000 for a big company shall be imposed to the taxpayer, if it included incorrect information in the corporate income tax return that have led to a determination of a lower taxable base (e.g., declared less income). Further to this, in an event where the taxpayer would perform an adjustment for past periods, the tax authorities may issue penalties on the grounds that the tax returns in the past periods have been submitted with incorrect data that have led to determination of lower taxable base.

- **Is interest charged on penalties or payable on a refund?**

Default interest of 0.03% applies on the amount of the additional tax liability for each day of delay in settling such liability.

b) Penalty relief

No penalty relief was available at the time of this publication.

If it objects to the tax authorities' decision, the taxpayer is entitled to file a complaint with the tax authorities in the first instance. The decision reached by the tax authorities upon the complaint of the taxpayer is final. The taxpayer is entitled to initiate an administrative dispute with the Administrative Court against the tax authorities' final decision. Nevertheless, with the submission of the legal remedies, the enforcement of the decision is not postponed, and the taxpayer is obligated to pay the tax liability assessed by the tax authorities.

10. Statute of limitations on transfer pricing assessments

There is a five-year statute of limitations beginning with the year following the year of expiration of the statutory term granted for filing the CIT returns, after which the tax authorities may not audit the taxpayer's reported position and reassess tax liabilities. Audited tax periods can be reaudited further based on the decision of the tax authority, as long as the five-year time period has not elapsed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

There is no mandatory frequency for performing tax audits. The tax authority has the discretion to initiate a tax audit in accordance with the audit plans. In general, the likelihood of an annually recurring tax audit may be considered to be medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that controlled financial transactions may be reviewed as part of that audit is characterized as high, and the likelihood that the transfer pricing methodology may be challenged is characterized as medium. The chances for auditing the related-party transactions are high, as under the local CIT Law, transfer pricing adjustments represent permanent tax adjustments, included in the taxable income. As for the likelihood for challenging the transfer pricing methodology, the same may be considered to be medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If the transfer pricing methodology is challenged, the likelihood of an adjustment can be characterized as medium.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No binding ruling or APA opportunities were available at the time of this publication. Taxpayers may file a request for a written opinion with the Public Revenue Office or the Ministry of Finance for the interpretation and application of the tax law with regard to a specific tax issue. However, the value of the position of the tax authorities on a particular tax aspect is very limited because the tax authorities refuse to provide any opinion about transactions that have not yet been implemented.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest expense incurred on loans granted by shareholders holding at least 20% of the capital of the company is non deductible if the total amount of the loan exceeds three times the interest of the shareholder. The thin-capitalization rules do not apply to financial institutions.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Norwegian Tax Administration (Skatteetaten – NTA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The arm's-length principle is stated in the General Tax Act (1999) Section 13-1, and the transfer pricing filing and documentation requirements are stated in the Tax Assessment Act (2017) Sections 8-11 and 8-12, regulations 8-11-1 to 8-11-16.

- **Section reference from local regulation**

Taxation Act Section 13-1 and Tax Administration Act (2017) Sections 8-11 and 8-12 have the references.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Norway is an OECD member.

The NTA has a long history of following the OECD Guidelines. The Norwegian regulations follow OECD principles, and any documentation prepared in line with the OECD Guidelines will generally meet Norwegian requirements.

Taxation Act (1999) Section 13-1 gives the OECD Guidelines a strong and formal status under Norwegian tax law. However, OECD Guidelines Chapter IV, Administrative approaches to avoiding and resolving transfer pricing disputes, and Chapter V, Documentation, are not included. The status of the OECD Guidelines is limited to that of guidance, and they do not constitute binding rules.

The NTA seems to be applying the principles outlined in OECD Guidelines Chapter IX, Transfer pricing aspects of business restructurings. Recent tax audits and court cases have shown that the principles described in the chapter are applied in practice.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- **Coverage in terms of Master File, Local File and CbCR**

BEPS Action 13 has not been formally adopted, but an OECD master file and local file format is accepted as long as the information is also in line with current Norwegian regulations.

CbCR filing and CbCR notification requirements apply basically in line with the OECD Guidelines.

- **Effective or expected commencement date**

This is not applicable.

- **Material differences from OECD report template or format**

The fundamental elements of Norwegian transfer pricing documentation requirements align with those under BEPS Action 13. In addition, the following information needs to be provided by the Norwegian local entity (either as part of the master or the local file):

- A description of the group's operational model
- A brief historical description of the group and the local entity, its business activities, and any previously implemented reorganizations
- A description of the industry, with important competition parameters and description of local market conditions
- Financial information of the group and the local entity for the last three years and an explanation for any major reduction in the local entity's operating profits
- Explanation on the receiving entities' expected benefit of the service in the case of centralized services within the group and explanation on cost base, allocation ratio and any markup in the case of a cost-based allocation

[1]The General Tax Act: **https://lovdata.no/dokument/NL/lov/1999-03-26-14/KAPITTEL_14#KAPITTEL_14**

[2]The Tax Assessment Act: **https://lovdata.no/dokument/NL/lov/2016-05-27-14/KAPITTEL_8#KAPITTEL_8**

- Transaction analysis, including a two-sided function, asset and risk (FAR) analysis, and a description of the transfer pricing method (how the price is determined and how it is tested)
- Exemption for local entities for including a comparability analysis for transactions if no comparable transactions exist or it would be unreasonably difficult or costly to gather such information
- A list of immaterial transactions that the local entity engages in
- A description of material changes to the local entity during the income year, including an explanation of reorganizations and material changes to the functions, risks and assets of the local entity
- Agreements relevant for transfer pricing must be attached

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

This is not relevant as there are no direct penalties for noncompliant transfer pricing documentation. A surtax may apply if there is a tax adjustment and the taxpayer has provided incomplete or insufficient information.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, in principle, transfer pricing documentation should be prepared contemporaneously. However, transfer pricing documentation has to be submitted only upon request from the tax authorities.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

In principle, Norway requires the preparation of transfer pricing documentation annually. However, companies have 45 days to submit transfer pricing documentation upon request from the tax authorities. There is a requirement to retain transfer pricing documentation for 10 years.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Stand-alone transfer pricing report is not required. However, every local entity has to be documented in accordance with the transfer pricing documentation requirements.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is a materiality threshold for transfer pricing documentation. Documentation requirements do not apply to enterprises with controlled transactions totaling less than NOK10 million during the tax year and intergroup outstanding values below NOK25 million. Further, there is an exemption for smaller groups with less than 250 employees and either group revenue of NOK400 million or less or balance sheet total of NOK350 million or less.

- **Master File**

Currently, this has not been implemented in the Norwegian regulations yet.

- **Local File**

Currently, this has not been implemented in the Norwegian regulations yet.

- **CbCR**

The threshold for CbCR is NOK6.5 billion.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

The regulations apply to domestic transactions.

- **Local language documentation requirement**

Transfer pricing documentation can be prepared in Norwegian, Swedish, Danish or English.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is one transfer pricing-specific return to be submitted together with the tax return – RF-1123, Controlled transactions and accounts outstanding.

- **Related-party disclosures along with corporate income tax return**

The filing requirement is an attachment to the annual corporate income tax return (RF-1123), which includes a list of all intercompany transactions. The form serves as a basis for the NTA when targeting transfer pricing tax audits. The filing requirements apply to all transactions reported in the tax return.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

Yes, Norwegian entities have to fill in the required CbCR (notification) information about the fiscal year integrated with the tax return before May 31 of the year after the completion of the accounts.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 31 May.

- **Other transfer pricing disclosures and return**

The filing deadline is 31 May.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The filing deadline is 12 months after the close of the fiscal year.

- **CbCR notification**

CbCR notification is part of the tax return and is to be submitted by 31 May.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation must be submitted within 45 days of a request by the NTA. All documentation must be retained for 10 years. The NTA assumes that documentation is made contemporaneously and, accordingly, does not allow for extensions.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

The deadline is 45 days from the date of request by the Norwegian tax authority.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

The filing deadline for RF-1123 was extended to 20 August 2021 for FY2020 together with the FY2020 corporate income tax return for entities that filed for extension. It has not been announced whether the same extensions will apply for FY2021, which will normally have the filing deadline 31 May 2022.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

The NTA accepts the pricing methods contained in the OECD Guidelines. The traditional transactional methods (CUP, resale price and cost plus) are generally preferred over the profit-based methods (TNMM and profit split). However, support for applying the profit-based methods under certain circumstances is increasing. As a starting point, the NTA is reluctant to accept the use of pan-European searches, and Norwegian comparables are highly preferred.

There is no specified priority of methods under Norwegian tax law. As stated by the Norwegian Supreme Court, General Tax Act (1999) Section 13-1 allows for the use of several transfer pricing methods, including methods not described in the OECD Guidelines, if those methods provide arm's-length results.

8. Benchmarking requirements

- Local vs. regional comparables

The NTA tends to prefer local or Nordic comparables over foreign comparables. However, in the absence of local comparables, it is generally recommended to provide information on foreign comparables. Pan-European benchmarks are accepted; however, they are often challenged by the NTA.

There have been incidents in which the NTA has made use of secret comparables, although this is not deemed a common practice.

- Single-year vs. multiyear analysis

Multiyear testing, as per common practice, is applicable.

- Use of interquartile range

There is no specific requirement, but practice tends toward the acceptance of the interquartile range.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

There is no need to conduct a fresh search every year, although it can be requested. The normal practice currently is three years with financial update for the two years between.

- Simple, weighted or pooled results

Weighted average, as per common practice, is applicable.

- Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences for incomplete documentation

A 20% surtax of the tax that would have applied on the adjusted amount can be applied in case of incomplete documentation.

- Consequences of failure to submit, late submission or incorrect disclosures

There are no specific transfer pricing penalties. A surtax may apply in cases of tax adjustments if the taxpayer is deemed to have provided incomplete or insufficient information. The surtax is 20% of the tax that would have applied on the adjusted amount. In cases of gross negligence, an additional surtax of 20% or 40% may be applied.

Failure to comply with the filing requirement carries the same penalties as failure to complete the annual tax return. The same is applicable if the documentation is not submitted within the deadline.

If the taxpayer is not able to submit a compliant transfer pricing documentation within the deadline, the Norwegian tax authorities can impose an enforcement fine. The maximum amount is currently EUR6,170 (NOK59,950).

The same maximum amount can be imposed for not filing CbCR and CbCR notifications.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?

A surtax may apply in cases of tax adjustments if the taxpayer is deemed to have provided incomplete or insufficient

information. The surtax is 20% of the tax that would have applied on the adjusted amount. In cases of gross negligence, an additional surtax of 20% or 40% may be applied.

- **Is interest charged on penalties or payable on a refund?**

Non deductible interest is applied in certain circumstances.

b) Penalty relief

The risk of a penalty being imposed may be reduced if proper documentation is prepared. Disclosure in the tax return may, in principle, relieve penalties because the NTA technically will have been informed and may further investigate the transfer pricing case. The assessment of penalties is becoming increasingly common.

10. Statute of limitations on transfer pricing assessments

The general statute of limitations for tax assessments in Norway is five years. Transfer pricing documentation must be retained for at least 10 years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

To some extent. Due to the current situation in Norway with businesses and tax authorities working remotely and from home offices, delays in the tax authorities' progress and decisions in ongoing tax audits should be expected.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a transfer pricing tax audit is considered high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium; the NTA has increased its focus on substance and the reallocation of profits as it applies the BEPS concepts across a taxpayer's value chain.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium; taxpayers with foreign related-party transactions resulting in low or negative margins are more likely to face adjustment, but each case is objectively assessed on the facts.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Currently, any company with a low or negative margin transacting with a foreign related party has a high risk of a tax audit. The same goes for business restructurings or the transfer of intellectual property (IP) as well as management fees and financial transactions.

The NTA has a strong focus on intercompany transactions and has established a national transfer pricing project involving all the major tax offices to further its focus on transfer pricing. This focus continues to increase, in line with the rising number of dedicated transfer pricing tax inspectors within the NTA. The NTA selects companies for audit based on the submitted form RF-1123 and the tax return as well as CbCR.

Based on the initial review, the company is selected for audit if the documentation does not provide sufficient information and has answers about the internal transactions and the profitability of the company.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs are available. There are no domestic APA regulations, but APAs are concluded with reference to the relevant tax treaty. Only bilateral APAs are available. The procedure for APA follows the procedures for MAP.

Transactions involving the sale of gas may be covered by APAs in accordance with Petroleum Tax Act Section 6 (5) (1).

- **Tenure**

This is not applicable.

- **Rollback provisions**

In certain cases, an APA can also cover previous income years (rollback).

- **MAP opportunities**

Yes, a Norwegian enterprise can submit a transfer pricing MAP application to Norway regardless of whether the enterprise:

- Requests an income adjustment in Norway to be waived or reduced
- Requests a corresponding income adjustment for the associated enterprise in the other state
- Requests an income adjustment in the other state to be waived or reduced
- Requests a corresponding income adjustment in the Norwegian enterprise

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Norway does not have statutory thin-capitalization rules, hence there is no fixed debt-to-equity ratio requirement. Based on the arm's-length principle, the tax authorities may deny an interest deduction on a case-by-case basis if they find that the equity of the company is not sufficient (for example, the Norwegian debtor company is not able to meet its debt obligations). In this regard, please also note there are interest limitation rules in Norway.

According to Norwegian case law (Statoil Angola case – 2007 and Telecomputing case – 2010), a parent company may provide interest-free shareholder loans to subsidiaries when the subsidiary does not have further loan capacity to pay interest, if there are commercial sound reasons for establishing such a loan.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

During 2019, the Government issued a Royal Decree to establish the Tax Authority. As a replacement to the Secretariat General for Taxation, the Tax Authority has its own legal identity and will operate with autonomy in respect of its financial and administrative matters. The head of the Tax Authority is of ministerial rank and has a designation of "Chairman."

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Income Tax Law (ITL) issued by Royal Decree 28/2009 as amended on the basis of Royal Decree 9/2017 – Articles 126 to 128 of the ITL – contains the TP regulations.

On 27 September 2020, Oman's Tax Authority published TA Decision 79/2020, which introduces CbCR rules for MNE groups operating in Oman. Broadly, the rules are in line with the OECD model legislation set out in the BEPA Action 13.

Under the new CbCR rules, an entity or branch located in Oman is required to file a CbCR notification and/or CbC report in Oman if it is a member of an MNE group that had at least OMR300 million consolidated group revenue in the preceding fiscal year. The new reporting requirements apply to fiscal years beginning on or after 1 January 2020.

On 7 July 2021, the Oman Tax Authority announced the suspension of the local filing requirement which means that qualifying multinational enterprise (MNE) groups with an ultimate parent entity (UPE) resident outside of Oman will not be required to submit the CbCR in Oman.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Oman is not a member of the OECD. However, in the past, the Tax Authority has taken OECD Guidelines into account as a point of reference.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Oman has adopted BEPS Action 13 only to the extent of introducing CbCR compliance. However, Oman has not yet introduced other TP documentation requirements.

- Coverage in terms of Master File, Local File and CbCR

  As mentioned above.

- Effective or expected commencement date

  CbCR requirements apply to fiscal years beginning on or after 1 January 2020. The introduction of other TP documentation requirements is expected but the timing is not clear at this stage.

- Material differences from OECD report template or format

  No material differences in respect of the CbCR format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

No (except for CbCR). However, in practice, the Omani tax authorities expect that appropriate TP documentation will be made available under a TP audit or investigation.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

In practice, the tax authorities expect that an appropriate TP documentation is maintained and regularly updated so that it is available to support the reasonableness of related party transactions in the event of a TP audit.

- For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?

No formal requirement but separate reports for each entity is recommended.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable

- **Local File**

This is not applicable.

- **CbCR**

OMR300 million of consolidated group revenue in the preceding year.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

No formal guidance on this.

- **Local language documentation requirement**

Documentation in English is acceptable. However, an Arabic could be requested by the Tax Authority.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

No.

- **Any other disclosure/compliance requirement**

Tax returns include some disclosures around related party transactions.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The formats of the tax returns have been modified to collect information from the taxpayer about related party transactions.

- **Related-party disclosures along with corporate income tax return**

Tax returns include certain schedules which include information around related party transactions.

- **Related-party disclosures in financial statement/annual report**

Refer to above section.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 30 June.

- **Other transfer pricing disclosures and return**

They should be filed along with the corporate income tax return, to the extent explained above.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

No later than 12 months after the last day of the reporting fiscal year of the MNE group.

- **CbCR notification**

Last day of the reporting period.

b) Transfer pricing documentation/Local File preparation deadline

No statutory deadline. However, the TP file should be prepared and maintained contemporaneously so it can be submitted if requested.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

It should be submitted within 30 days or as discussed and agreed with the Tax Authority.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

No pricing methods have been specifically prescribed in the law.

8. Benchmarking requirements

- **Local vs. regional comparables**

Even though they are not specifically mentioned in the regulations, local comparables are preferred over regional comparables.

- **Single-year vs. multiyear analysis for benchmarking**

There is none specified.

- **Use of interquartile range**

There is none specified.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement to conduct a fresh benchmarking search every year. However, it is recommended that a fresh search is conducted once every three years and that financial data be updated for the rest of the years.

- **Simple, weighted or pooled results**

This is not specified. However, the weighted average could be preferred over the simple average for an arm's length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

No specific penalties have been prescribed in the CbCR issued by the Oman Tax Authority. General penalties for non-compliance as contained in the Oman tax law are likely to be applicable for non-submission of CbCR which carries a maximum penalty of OMR5,000 applicable as per the discretion of the Oman Tax Authority.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Currently, there are no specific TP penalty provisions prescribed in the law.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

See above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to above.

- **Is interest charged on penalties or payable on a refund?**

This is not specified.

b) Penalty relief

Not applicable.

10. Statute of limitations on transfer pricing assessments

There is no separate statute of limitations for TP assessments.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium to high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium to high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium to high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in Oman at this stage.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Limited at this stage.

14. Have there been any impacts or changes to Advanced Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

In accordance with the Executive Regulations, interest paid

on loans from related parties by Omani companies other than banks and insurance companies may be deductible, provided loans on which such interest is paid do not exceed twice the value of shareholder's equity.

Thus, interest paid to related parties could be subject to partial or complete disallowance if the debt-equity ratio in general exceeds 2:1.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Federal Board of Revenue (FBR).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

In 2016, the Pakistani Government approved new legislation to effectively implement CbCR and introduce formal transfer pricing documentation requirements in Pakistan through Finance Act 2016. On 16 November 2017, the FBR finalized the draft rules previously issued in June 2017 to provide details on the requirements for the CbCR and transfer pricing documentation.

On 9 February 2018, Pakistan's FBR issued Notification S.R.O. 144(I)/2018 on amendments to Chapter VIA of the Income Tax Rules, 2002, which prescribe Pakistan's Master File, Local File and CbCR requirements.

- **Section reference from local regulation**

Section 108 of the Income Tax Ordinance of 2001.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Pakistan is not a member of the OECD.

The legislation on transfer pricing documentation has implemented the OECD's model legislation into the Pakistan income tax law, including the three-tiered approach to transfer pricing documentation.

b) BEPS Action 13 implementation overview

Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

Yes.

- Coverage in terms of Master File, Local File and CbCR

  This covers both the Master File and Local File.

- Effective or expected commencement date

  For every financial year ending on or after 1 July 2016.

- Material differences from OECD report template or format

  There are no material differences between the OECD report template or format and Pakistan's regulations.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes, a BEPS Action 13 format report would typically be sufficient to achieve penalty protection.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, 21 June 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a branch or permanent establishment of a non resident entity is required to comply with local transfer pricing rules.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity must prepare a separate Local File.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

For Local File: PKR50 million (approx. USD475,000).

- **Master File**

Local entity turnover of more than PKR100 million (approx. USD950,000).

- **Local File**

Needs to be maintained if related-party transactions exceed PKR50 million (approx. USD475,000).

- **CbCR**

MNE group's turnover should be EUR750 million or equivalent in PKR.

- **Economic analysis**

Required.

c) Specific requirements

- **Treatment of domestic transactions**

There is none specified.

- **Local language documentation requirement**

The transfer pricing documentation need not be submitted in the local language.

- **Safe harbor availability, including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

No.

- **Any other disclosure/compliance requirement**

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

No specific transfer pricing returns.

- **Related-party disclosures along with corporate income tax return**

- **Related-party disclosures in financial statement/annual report**

Pakistan follows International Financial Reporting Standards (IFRS), adjusted for local GAAP. Therefore, the FBR expects taxpayers to disclose related-party transactions in their financial statements in accordance with IFRS or local GAAP.

- **CbCR notification included in the statutory tax return**

No. CbCR requirements do not apply for tax year 2017 if it began before 1 January 2016 (Note: Under Pakistan's tax rules, tax year 2017 would normally be the year beginning 1 July 2016 and ending 30 June 2017, but any year ending within that normal year is also considered tax year 2017).

- **Other information or documents to be filed**

No documents are required to be filed.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 December for companies with a financial year-end between 1 January and 30 June, and 30 September for companies with a financial year-end between 1 July and 31 December.

- **Other transfer pricing disclosures and return**

The transfer pricing documentation must be submitted to the tax authorities within one month after the receipt of the tax authority's written request.

- **Master File**

Within one month of request by the tax authorities.

- **CbCR preparation and submission**

Twelve months after the last day of the reporting fiscal year of the MNE group.

- **CbCR notification**

There are CbCR notification and report submission requirements in Pakistan. All MNE groups with annual consolidated group revenue equal to or exceeding EUR750

million, or an equivalent amount in PKR, in the previous reporting fiscal year would be required to prepare and file a CbC report. Every Pakistani constituent entity, ultimate parent entity or surrogate parent entity, as the case may be, will need to submit a notification to the tax authority about the identity and jurisdiction of residence of the reporting entity before the tax return filing deadline.

b) Transfer pricing documentation/Local File preparation deadline

There is no statutory deadline for preparation of transfer pricing documentation.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

The Master File and Local File should be available to the tax authority within 30 days from the date of the request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions – Yes
- Domestic transactions – Yes
- Priority and preference of methods

The Income Tax Rules of 2002 (the rules) state that the following methods may be applied by the Commissioner to determine the arm's-length result:

- CUP method: The price quoted in a transaction between uncontrolled parties on similar terms and conditions would be considered.
- Resale price method: The difference in the resale gross margin of the two transactions would be considered and compared for determining whether the transaction between controlled parties is on an arm's-length basis.
- Cost-plus method: The cost-plus markup realized in an uncontrolled transaction would be considered as a basis to determine whether a similar transaction between controlled parties is on an arm's-length basis.
- Profit-split method: Where a group of associates is formed and the transactions are so interrelated that a separate basis is not possible to identify the arm's-length results for a similar transaction between uncontrolled persons, the profit-sharing basis agreed to between independent persons forming an association would be considered.

Of the first three methods, the one that provides the most reliable measure of an arm's-length result with regard to all of the facts and circumstances, in the opinion of the Commissioner, will be applied. The fourth method will apply only if the other methods cannot be reliably applied.

8. Benchmarking requirements

- **Local vs. regional comparables**

Even though it is not specifically mentioned in the regulations, local comparables are preferred over regional comparables. A regional search covering countries in Asia-Pacific or the Middle East could be accepted.

- **Single-year vs. multiyear analysis**

There is none specified.

- **Use of interquartile range**

There is none specified.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement to conduct a fresh benchmarking search every year. However, it is recommended that a fresh search be conducted once every three years and that the financial data be updated for the rest of the years.

- **Simple, weighted or pooled results**

There is none specified.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Same as below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to furnish a CbCR is subject to penalties of PKR2,000 for each day of default, with a minimum penalty of PKR25,000. Failure to maintain the Master File or Local File is subject to penalties of 1% of the transaction value.

Failure to maintain or furnish documents by the taxpayer is also subject to penalties mentioned under Section 182.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above.

- **Is interest charged on penalties or payable on a refund?**

Yes, on penalties.

b) Penalty relief

Penalty relief was not applicable at the time of this publication.

10. Statute of limitations on transfer pricing assessments

The general statute of limitation, that is five years, shall apply.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Since the regulations are in place, the likelihood of transfer pricing audits may be high in the future.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium; there is no clear definition or standards for the likelihood of audits. However, this is done on a random basis in which the tax authorities would choose certain clients for audit.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no opportunity to conclude an APA. However, an advance ruling is possible.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

May be available depending on treaty provisions.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Confirmed as the tax authorities have not yet introduced Advance Pricing Agreements in Pakistan.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Under the thin-capitalization rules provided in the tax laws of Pakistan, if the foreign debt-to-equity ratio of a foreign-controlled company (other than a financial institution or a banking company) exceeds 3:1, interest paid on foreign debt in excess of the 3:1 ratio is not deductible.

In this context, please note that the local tax laws define "foreign equity" and "foreign debt" as reproduced hereunder.

"Foreign-controlled resident company" means a resident company in which 50% or more of the underlying ownership of the company is held by a non resident person (hereinafter referred to as the foreign controller) either alone or together with an associate or associates

"Foreign debt" in relation to a foreign-controlled resident company means the greatest amount, at any time in a tax year, of the sum of the following amounts, namely:

- The balance outstanding at that time on any debt obligation owed by the foreign-controlled resident company to a foreign controller or non resident associate of the foreign controller on which profit on debt is payable and is deductible to the foreign-controlled resident company and is not taxed under this ordinance or is taxable at a rate lower than the corporate rate of tax applicable on assessment to the foreign controller or associate
- The balance outstanding at that time on any debt obligation owed by the foreign-controlled resident company to a person other than the foreign controller or an associate of the foreign controller where that person has a balance outstanding of a similar amount on a debt obligation owed by the person to the foreign controller or a non resident associate of the foreign controller

"Foreign equity" in relation to a foreign-controlled resident company and for a tax year, means the sum of the following amounts, namely:

- The paid-up value of all shares in the company owned by the foreign controller or a non resident associate of the foreign controller at the beginning of the tax year
- The amount standing to the credit of the share premium account of the company at the beginning of the tax year as the foreign controller or a non resident associate would be entitled to if the company were wound up at that time
- The accumulated profits and asset revaluation reserves of the company at the beginning of the tax year as the foreign controller or a non resident associate of the foreign controller would be entitled to if the company were wound up at that time; reduced by the sum of the following amounts, namely:
  - The balance outstanding at the beginning of the tax year on any debt obligation owed to the foreign-controlled resident company by the foreign controller or a non resident associate of the foreign controller
  - Where the foreign-controlled resident company has accumulated losses at the beginning of the tax year, the amount by which the return of capital to the foreign controller or non resident associate of the foreign controller would be reduced by virtue of the losses if the company were wound up at that time

As per the amendments introduced via Finance Act 2020, a new section, Section 106A, is inserted that restricts the deduction for foreign profit on debt in excess of 15% of taxable income. This restriction was introduced to curb international tax planning and limit tax base erosion achieved by claiming excessive interest deductions.

As per the law, the deduction for foreign profit on debt claimed by foreign controlled resident company shall be disallowed as per the following formula:

[B] – [(A+B) x 0.15]

where A is the taxable income before depreciation and amortization

and B is the foreign profit on debt claimed as deduction

The provisions of this section shall not apply if the total foreign profit on debt claimed as a deduction is less than PKR10 million for a tax year.

Where the deduction on profit on debt is disallowed under both Section 106 and Section 106A, the disallowed amount shall be the higher of the two.

Where the foreign profit on debt cannot be fully adjusted against the taxable income for a tax year, the excess amount shall be added to the amount of foreign profit on debt for the following tax year and shall be treated to be part of that deduction, or if there is no such deduction for that tax year, be treated as the deduction for that tax year and so on for three tax years following the year in which the foreign profit on debt was claimed as an expense.

The ordinance defines "foreign-controlled resident company" as a resident company in which 50% or more of the underlying ownership of the company is held by a non resident person either alone or together with an associate or association.

Whereas, "foreign profit on debt" means interest paid or payable to a non resident person or an associate of a foreign-controlled resident company, and includes a wide variety of financial instruments, including instruments which in substance are in the nature of financial instruments, and also includes fees, expenses and exchange gains/losses related to such instruments.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration of Panama (*Dirección General de Ingresos*, or DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

They are the Articles 762-A to 762-K of the Tax Fiscal Code, and Articles 1 to 14 of the Transfer Pricing Regulation (Executive Decree 390) in force in Panama.

Law No. 33, enacted in 2010 and applicable as of fiscal year 2011, established the transfer pricing provisions in the Tax Code (Chapter IX of Title I of the Fourth Book) in Articles 762-A to 762-K.

Law No. 52, which modified Law No. 33 and related sections of the Tax Code, was enacted in August 2012 and is applicable to fiscal years ending after August 2012.

Executive Decree No. 390, enacted in October 2016, repealed Executive Decree No. 958, with its regulations on transfer pricing, and is in the related sections of the Tax Code (Chapter IX of Title I of the Fourth Book).

Law No. 52 of 17 October 2018 establishes that taxpayers with a concession for call center activities are subject to transfer pricing regulations starting with fiscal year 2019.

Law No. 57 of 24 October 2018 amends the multinational headquarters regime (MHQ regime) and contains provisions on applying transfer pricing regulations to transactions conducted by entities with an MHQ license starting from fiscal year 2019.

Law No. 69 of 26 December 2018 includes provisions on applying transfer pricing regulations to entities under preferential tax regimes. This law adds Article 762-L to the Tax Code, which establishes that, starting with fiscal year 2019, the transfer pricing rules will apply to any transaction that an individual or entity conducts with related parties that are established in the Colón Free Zone, and operate: (1) in the Oil Free Zone (*Zona Libre de Petróleo*) under Cabinet Decree 36 of 2003; (2) in the Special Economic Area of Panama-Pacifico; (3) under the MHQ regime; (5) under the City of Knowledge regime; or (6) in any other current or future free zones or special economic areas. Even though individuals or entities that operate in one of the listed zones, special economic areas and preferential tax regimes are exempt from or have a reduced rate of income tax, the transfer pricing rules also will apply to transactions conducted by those entities with related parties that are: (1) established in Panama, (2) tax residents of other jurisdictions, (3) established in any other free zones or special economic areas, or (4) operate under a preferential tax regime.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Panama is not a member of the OECD.

The OECD Guidelines can be relied upon for interpretation of the rules, as long as they do not contradict the Tax Code; however, local regulations prevail.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, regarding the Master File and CbC report and notification.

- Coverage in terms of Master File, Local File and CbCR

  Coverage exists only for the Master File.

- Effective or expected commencement date

  Taxpayers that file the transfer pricing return after 1 January 2017 must comply with the Master File provisions. Also, tax year 2018 was the first CbC report and notification required to be filed.

- Material differences from OECD report template or format

[1] **https://dgi.mef.gob.pa/**

There are significant differences between the OECD report template or format and documentation requirements under local jurisdiction regulations.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Not appliable. In addition, a transfer pricing study and return will also be required.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 24 January 2019.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the transfer pricing report and return must be prepared annually, updating all the information that allows a correct transfer pricing analysis. The local tax authorities require use of the most recent available financial information for the comparables and the tested party.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

Entities whose global and consolidated gross revenues are equal to or higher than EUR750 million or its equivalent in the local currency, at the exchange rate as of January 2015, during the reporting tax year must submit the information corresponding to the CbCR.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Transactions with local related parties are subject to transfer pricing rules in Panama, as long as one of the counterparties operates in a preferential tax regime, free zones or special economic areas in Panama (e.g., Sede de Empresas Multinacionales (SEM), Panamá Pacífico, Call Center, Colon Free Trade Zone, Fuel Free Zone).

Local language documentation requirement

The transfer pricing documentation needs to be submitted in Spanish, per Decree 390, Article 10.

- **Safe harbor availability, including financial transactions if applicable**

There are no prescribed safe harbor rules in Panama's transfer pricing regulations.

- **Is aggregation or individual testing of transactions preferred for an entity**

According to Article 1 of Decree 390, individual testing or analysis is preferred.

- **Any other disclosure/compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

An information return (Form 930) on the transactions conducted with related parties should be filed within six months of the close of the fiscal year.

- **Related-party disclosures along with corporate income tax return**

Taxpayers must report on the income tax return whether they conducted related-party transactions and disclose the total amount of such transactions, depending on their nature – that is, if they are income, costs or other expense items.

- **Related party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

- **This is not applicable .Other information or documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

This must be filed within three months of the close of the fiscal year; there is a possibility of a one-month extension.

- **Other transfer pricing disclosures and return**

The requirement is only for Form 930, mentioned above.

- **Master File**

This is filed upon request of the Panamanian Tax Administration.

- **CbCR preparation and submission**

The reporting entity must submit the CbCR annually within 12 months of the tax year-end.

On 27 May 2019, Panama's Government published, in the Official Gazette, Executive Decree No. 46, which addresses the disclosure of information in the CbCR by tax resident companies in Panama for purposes of the automatic exchange of information. Panama's tax authorities signed the Multilateral Competent Authority Agreement on the Exchange of country-by-country Reports, which covers the standards for the automatic exchange of information of related parties or CbCR, on 24 January 2019.

Any ultimate parent entity of a multinational group is required to file the CbCR on an annual basis if it: (1) has consolidated revenues that are higher than EUR750 million or its equivalent in Balboas, at the exchange rate as of January 2015, during a tax year; and (2) is tax resident in Panama.

An ultimate parent entity means an entity in a multinational group that meets the following criteria: (i) the entity owns directly or indirectly a sufficient interest in one or more group entities such that it is required to prepare consolidated financial statements under applicable local accounting standards, or would be required to do so if its share interest were listed on a stock exchange in its jurisdiction of tax residence; and (ii) there is no other entity of such multinational group that owns directly or indirectly an interest described in subsection (i) above in the first mentioned entity.

A reporting entity is any entity of a group or multinational group that is required to file the CbCR in its tax jurisdiction on behalf of the multinational group. The reporting entity is the ultimate parent entity.

Notification

A group or multinational group that is tax resident in Panama must notify the Panamanian Tax Administration of the identity and tax residence of the reporting entity, as well as the fiscal period used by the multinational group. The entity doing the reporting must submit the notification using the format and terms and conditions established by the Panamanian Tax Administration.

The CbCR notification is a one-time notification; however, the Panamanian entities are obliged to update the information provided (annually) if there are any changes on the constituent entity or ultimate parent entity information notified on the first CbCR notification.

Filing format and due date

The reporting entity must submit the CbCR annually in an "XML Schema" file within 12 months of the tax year-end. The

CbCR must meet the guidelines and regulations defined by the Panamanian Tax Administration.

Tax year 2018 is the first CbCR required to be filed.

Sanctions for non-compliance in the supply of information

Failure to comply with the notification of the CbCR will result in penalties in accordance with Article 756 of the Panamanian Tax Code. Penalties range from USD1,000 to USD5,000 and closure of the business for two days. However, failure to comply repeatedly could result in fines of USD5,000 to USD10,000 and closure of the business for 10 days. If failure to comply persists, a closure of business for 15 days will apply.

On 11 November, 2021, Panama's Government published, in the Official Gazette, Law 254, which modifies Article 756 of the Panamanian Tax Code. In this regard, the Panamanian entity that is obliged to annually file the CbCR (ultimate parent entity that is a tax resident in Panama) and does not comply with this obligation will be penalized with a fine of USD100,000. It would be applied an additional progressive fine of USD5,000 daily until the non-compliance is remedied. Moreover, if the information provided by the entity obliged to submit the CbCR in Panama is inconsistent or wrong, it will be penalized with a fine of USD25,000. If the competent authority proves that the information provided on the CbCR was maliciously altered, the Panamanian entity will be penalized with a fine up to USD500,000.

- **CbCR notification**

A group or multinational group that is tax resident in Panama must notify the Panamanian Tax Administration within 12 months of the tax year-end of the identity and tax residence of the reporting entity, as well as the fiscal period used by the multinational group.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation report must be available by the time the transfer pricing return is filed.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

This is not applicable.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has 45 days to submit the transfer pricing documentation report once requested by the tax authorities in an audit or inquiry. However, in case the tax authorities request the Master File under a separate request, the taxpayer has only 10 days, approximately, to submit it.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions – Yes**
- **Domestic transactions – Yes**

b) Priority and preference of methods

The transfer pricing methods in Panama are CUP, resale price, CPM, profit-split, residual profit-split and TNMM. The selection of the method should be on the basis of the characteristics of the transaction under analysis and the circumstances of the case, and should aim to be the one that best respects the arm's-length principle.

8. Benchmarking requirements

- **Local vs. regional comparables**

Under current regulations, local comparables prevail over international comparables. However, because of a lack of information on local comparables, international comparables are well accepted by the tax authorities.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year testing is accepted for the comparables only; in practice, the number of years is three.

- **Use of interquartile range**

Yes, the interquartile range calculation with spreadsheet quartile formulas is used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is fresh benchmarking search every year. A transfer pricing report must be prepared annually, updating all the information that allows a correct analysis. Additionally, in practice, local tax authorities expect to see the most recent comparable information and to use the most recent available financial information for the comparables and the tested party.

- **Simple, weighted or pooled results**

Weighted average is common in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Penalties for incomplete filing of the transfer pricing documentation report range from USD1,000 to USD5,000 and closure of the business for two days. However, failure to comply repeatedly could result in fines of USD5,000 to USD10,000 and closure of the business for 10 days. If failure to comply persists, a closure of business for 15 days will apply.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to file the transfer pricing return results in a penalty of 1% of the total amount of intercompany transactions. However, the penalty will not exceed USD1 million. For the penalty calculation, the gross amount of the transactions will be considered regardless of their nature (i.e., regardless of whether they are items of income, expense or deduction).

With regard to the transfer pricing documentation report, no express monetary penalties are specified in the transfer pricing rules when taxpayers fail to maintain contemporaneous transfer pricing documentation. Nevertheless, the monetary penalties for non-compliance set forth in the Tax Code should apply by default.

Failure to comply with the notification of the CbCR will result in penalties in accordance with Article 756 of the Panamanian Tax Code. Penalties range from USD1,000 to USD5,000 and closure of the business for two days. However, failure to comply repeatedly could result in fines of USD5,000 to USD10,000 and closure of the business for 10 days. If failure to comply persists, a closure of business for 15 days will apply.

On November 11, 2021, Panama's Government published, in the Official Gazette, Law 254, which in its Article 45 modifies Article 756 of the Panamanian Tax Code. In this regard, the Panamanian entity that is obliged to annually file the CbCR (ultimate parent entity that is a tax resident in Panama), and does not comply with report this obligation, will be penalized with a fine of USD100,000. It would be applied an additional progressive fine of USD5,000 daily until the non-compliance is remedied. Moreover, if the information provided by the entity obliged to submit the CbCR in Panama is inconsistent or wrong, it will be penalized with a fine of USD25,000. If the competent authority proves that the information provided on the CbCR was maliciously altered, the Panamanian entity will be penalized with a fine up to USD500,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Transfer pricing income adjustments imposed by the DGI can result in a penalty of 10% over the unpaid taxes, plus interest (currently, 0.8% monthly interest).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Transfer pricing income adjustments imposed by the DGI can result in a penalty of 10% over the unpaid taxes, plus interest (currently, 0.8% monthly interest).

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

b) Penalty relief

There is currently no penalty relief regime in place.

If an adjustment is proposed by the tax authority, dispute resolution options available are:

- Reconsideration request (first administrative instance)
- Administrative tax court (second administrative instance)
- Supreme Court (last instance)

10. Statute of limitations on transfer pricing assessments

The statute of limitations on assessments is three years from the date of filing the income tax return. The term is extended with the filing of an amended return.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general tax audit currently is categorized as high, and the likelihood of a transfer pricing assessment as part of a general tax audit may be considered to be high. As part of a general tax audit, the tax authorities usually review compliance with transfer pricing regulations. The DGI requests transfer pricing documentation from most taxpayers annually and has been performing tax audits regarding transfer pricing issues. The DGI has a specialized transfer pricing unit within the Tax Administration and is active in tax audits regarding transfer pricing issues.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

When transfer pricing is scrutinized, the likelihood that the methodology will be challenged may be considered to be high. In practice, the DGI has been questioning the use of the transfer pricing methods (i.e., the TNMM instead of resale price or cost-plus) and comparables with losses, mainly.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

It may be considered to be high, because in most audits, the DGI challenges either the methodology or the comparables.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Currently, no APA program has been established. However, the DGI is working on draft regulations to be published in the near future.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Internal Revenue Commission (IRC).[1]

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and the effective date of applicability

The following are two references:

- Division 15 of the Income Tax Act (ITA), "Transfer Pricing: Determination of the taxable income of certain persons from international transactions" and Papua New Guinea's double tax agreements (Division 15)
- IRC Taxation Circular No. 2011/2 – "Commissioner General's interpretation and application of the Taxation Laws on Division 15 of the ITA 1959" (the circular)

The circular was authorized by the Commissioner General on 21 December 2012 and applies to years commencing both before and after its date of issue (paragraph 251).

- Section reference from local regulation

Division 15 does not require any formal control or relationship between the parties to an international agreement for it to apply. Under Section 197, Division 15 applies when the Commissioner General, having regard to any connection between the parties, is satisfied that the parties to an international agreement were not dealing with each other at arm's length and the consideration was less than the arm's-length consideration in respect of that supply.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Papua New Guinea (PNG) is not a member of the OECD.

The circular states that the OECD Guidelines should be followed in the absence of guidance in terms of the circular, the provisions of Division 15 or the double tax agreements entered into by PNG.

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

PNG has adopted BEPS Action 13 for TP documentation in terms of CbCR to the extent of Articles 3 and 4.

- Coverage in terms of Master File, Local File and CbCR

Master File and Local File are not covered. CbCR has been adopted.

- Effective or expected commencement date

The first CbCR is due to be lodged by 31 December 2018 for MNEs with a 31 December year-end.

- Material differences from OECD report template or format

No.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?

[1] irc.gov.pg

Yes, the documentation does not need to be submitted but disclosure of the extent of documentation to support transfer pricing transactions is required in the annual income tax return.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

The general requirements of the ITA require taxpayers to keep proper records related to their income and expenses to enable the assessable income and allowable deductions to be ascertained. However, there is no specific statutory requirement to prepare and maintain transfer pricing documentation. The circular notes that it is in the taxpayer's best interest to document how transfer prices have been determined, since adequate documentation is the best way to demonstrate that transfer prices are consistent with the arm's-length principle.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

No.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There are no materiality limits specified in either Division 15 or the circular. The circular does note that preparation of documentation is time-consuming and expensive. It will, therefore, not be expected that taxpayers go to such lengths that the compliance costs are disproportionate to the nature, scope and complexity of the international agreements entered into.

- **Master File**

There is no requirement for Master File.

- **Local File**

There is no requirement for Local File.

- **CbCR**

The notification and reporting threshold is consolidated group revenue of PGK2 billion and above.

There is a CbCR notification and CbCR submission requirement in PNG. Each constituent entity resident in PNG is required to notify the Commissioner General whether it is the ultimate parent entity (UPE) or surrogate parent entity (SPE) by the last day of the reporting fiscal year of the MNE. If it is not a UPE or SPE, the constituent entity is required to notify the Commissioner General of the identity and tax residence of the reporting entity by the last day of the reporting fiscal year of the MNE.

The CbCR needs to be lodged no later than 12 months after the reporting fiscal year of the MNE group. The CbCR is required to be in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of Chapter V of the OECD Transfer Pricing Guidelines. The Commissioner General has issued a notice advising that until further notice PNG companies that are not the UPE of an MNE and foreign companies with a permanent establishment in PNG do not need to submit CbCRs for the years commencing on or after 1 January 2017 as required in instances where local filing is triggered.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

This is not applicable.

- **Local language documentation requirement**

The notifications and reports need to be filed in English.

- **Safe harbor availability, including financial transactions if applicable**

No.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is no guidance provided in the TP legislation or circular. The appropriate method would depend on the transaction being tested.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The company income tax return requires completion of an International Dealings Schedule (IDS) to be included as part of the company return when the international related-party dealings exceed PGK100,000 in value (excluding the capital value of any related-party loans) or when loans with related parties have an aggregate capital value exceeding PGK2 million at any time during the year.

- The IDS requires disclosure of:
- International related-party transaction types and quantum
- Countries with which the taxpayer has international related-party transactions
- Percentage of transactions covered by contemporaneous documentation
- TP methodologies selected and applied for each international related-party type
- Details of branch operations

- **Related-party disclosures along with corporate income tax return**

Refer to the section above.

- **Related-party disclosures in financial statement/annual report**

Disclosure required in accordance with International Accounting Standard (IAS) 24.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The statutory lodgement deadline is two months after the year-end (i.e., 28 February for 31 December balance dates). However, extensions are available if lodged under a tax agent's extension program. In this case, taxable company returns are required to be lodged by 30 June. All other returns are required to be lodged by 31 July. Further extensions may be granted on request.

- **Other transfer pricing disclosures and return**

The IDS, if required, is included as part of the company tax return.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

If the UPE is a PNG resident, the CbCR is required to be lodged within 12 months following the end of the reporting fiscal year of the MNE.

- **CbCR notification**

It is required by the end of the reporting fiscal year of the MNE.

b) Transfer pricing documentation/Local File preparation deadline

The disclosure of the methodology used and percentages of the related-party dealings, supported by documentation, must be disclosed in the IDS. It is, therefore, recommended that if the documentation has not been prepared at or before the time of the actual transaction, it should be available by the due date for lodging the company tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

Transfer pricing documentation is not required to be lodged unless a specific request is received from the Commissioner General. An exception applies for management fees in excess of the statutory limit of 2%, in which case the documentation must be filed with the annual income tax return.

- **Time period or deadline for submission upon tax authority request**

The normal time limit for responding to a request for information is 14 days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions — Yes
- Domestic transactions — Yes

b) Priority and preference of methods

Division 15 and the double tax agreements entered into by PNG do not prescribe any particular methodology for ascertaining an arm's-length consideration. Given that there is no prescribed legislative preference, the Commissioner General generally would seek to use the most appropriate method, per the OECD Guidelines.

8. Benchmarking requirements

- **Local vs. regional comparables**

Because limited local data is available, the use of regional data would be acceptable with appropriate adjustments for local conditions if relevant.

- **Single-year vs. multiyear analysis for benchmarking**

As per the circular, multiple-year data analysis should be used.

- **Use of interquartile range**

As per the circular, the interquartile range may be used to enhance reliability of the analysis.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific guidance provided. Per the OECD Guidelines, prior-year data may be used, provided it is reasonable to conclude that conditions have not changed.

- **Simple, weighted or pooled results**

There is none specified; it depends on the reliability of data.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

b) Consequences for incomplete documentation

If insufficient documentation is available to support transfer pricing amounts and the Commissioner General makes an adjustment there would be exposure to penalties per below. The availability of documentation may mitigate the amount of penalties imposed.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to furnish any return or information by the required date renders the taxpayer liable to a fine of not less than PGK500 and not exceeding PGK5,000 plus PGK50 for each day during which the failure continues. When there are adjustments to tax payable as a result of incorrect disclosures, the penalty exposure is noted below.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The ITA does not impose specific penalties in respect to non-arm's-length pricing practices, and the general additional tax and penalty provisions will apply to default, evasion or omission related to transfer pricing.

The penalty, additional tax and offense provisions applicable in the event of default or omission in the completion of the tax return or evasion of taxation contained in the act stipulate a liability for additional tax or penalty of double the difference between the tax properly payable and the tax that would be payable based on the return as lodged. The Commissioner General has the discretion to remit the additional tax either in whole or in part. If an incorrect return is lodged, the taxpayer may be prosecuted and liable for a fine not less than PGK1,000 and not exceeding PGK50,000. In addition, the court may order the taxpayer to pay to the Commissioner General a sum not exceeding double the amount of income tax or dividend (withholding) tax that would have been avoided if the statement in the return had been accepted as correct. When additional tax is imposed under prosecution, the amount of that additional tax will reduce the amount of additional tax imposed by the Commissioner General.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not applicable.

- **Is interest charged on penalties or payable on a refund?**

There is no provision for interest to be paid on refunds of overpaid tax or penalties.

c) Penalty relief

The Commissioner General has the discretion to remit the penalty amount for any reasons considered sufficient.

Taxpayers dissatisfied with an assessment may lodge an objection within 60 days of being served notice of the assessment. A taxpayer dissatisfied with a decision on the objection may, within 60 days after service of the notice, apply for a review of the decision by the Review Tribunal or file an appeal with the National Court.

10. Statute of limitations on transfer pricing assessments

There generally is no statute of limitations with respect to TP adjustments.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an audit may be considered to be low because limited resources are available to the IRC. But, if an audit is initiated, the likelihood of transfer pricing being reviewed as part of an audit is characterized as high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It depends on the supporting documentation available. If the IRC considers that a different methodology should be used and there is insufficient documentation to support the methodology adopted, there would be a high risk that the methodology would be challenged.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If the IRC applies a different methodology that results in increased tax liability and there is insufficient documentation to dispute that methodology, the risk of an adjustment may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The Commissioner General may pay closer attention to a transaction involving an associated entity resident in a jurisdiction with lower tax rates than PNG. The perception exists that transactions involving low-tax jurisdictions are often motivated by tax reasons, rather than strictly commercial reasons. This will be the case, particularly, when the PNG entity has ongoing tax losses as a result of its dealings with a related party in a lower-tax jurisdiction.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The Commissioner General supports having an APA program operating in PNG, but no current APA program exists.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

MAP opportunities are available under the relevant double tax agreements.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Where total debt exceeds twice the amount of equity, the interest on the excess debt to the extent it is paid to overseas lenders is non deductible. The allowable debt-to-equity ratio is 3:1 for resource companies that have fiscal stability agreements.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Undersecretary of State for Taxation (*Subsecretaría de Estado de Tributación*[1])

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
- **Section reference from local regulation**

Law No. 6380/19, Regulatory Decree No. 4644/20 and General Resolutions No. 86/21 and 96/21. It is reasonable to expect additional regulations to be issued by the Paraguayan tax authority during 2021–22 with respect to transfer pricing documentation framework.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Local law doesn't refer to the OECD Guidelines/UN tax manual/ EU Joint Transfer Pricing Forum; nevertheless, it follows some OECD general principles.

Since Paraguay became an associate member of the OECD Development Centre in February 2017, it is reasonable to expect the local tax authority to use and accept the OECD transfer pricing Guidelines as an ancillary source for interpretation purposes (but without binding effect).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  Transfer pricing documentation requirement in Paraguay consists of the preparation and submission of a local "Technical Study Report." Master File and CbCR are not required in Paraguay as of December 2021.

- Effective or expected commencement date

  The first transfer pricing documentation requirement must be fulfilled in 2022 for the fiscal year ending 31 December 2021.

- Material differences from OECD report template or format

  This is yet to be regulated by the tax authority as of December 2021.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is yet to be regulated by the tax authority as of December 2021.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Law No. 6380/19 and Decree No. 4644/20 contain very general provisions related to the content of the local transfer pricing Technical Study Report. More details about the specificities of such content are yet to be regulated by the tax authority as of December 2021.

The local transfer pricing Technical Study Report must be submitted to the tax authority annually, but the due dates are yet to be regulated as of December 2021.

[1] **www.set.gov.py**

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Revenues higher than PYG10 billion (approx. USD1.5 million) in a given fiscal year will trigger the transfer pricing Technical Study Report submission obligation.

- **Master File**

This is not applicable.

- **Local File**

Please see comments in Section 3. b) above.

- **CBCR**

This is not applicable.

- **Economic analysis**

There is no monetary limit.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are subject to transfer pricing rules when they are not levied/exempted from CIT for one of the parties.

- **Local language documentation requirement**

Spanish.

- **Safe harbor availability, including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing preferred.

- **Any other disclosure/compliance requirement**
  - General Resolution No. 96/21 establishes new rules taxpayers should consider when performing a transfer pricing analysis, such as rejecting comparables with operational losses.
  - The resolution also limits taxpayers to information that relates to a non-controlled operation (i.e., an operation between two unrelated parties that is comparable to the controlled operation under examination) and corresponds to several tax years when (1) they need to analyze business cycles, or (2) atypical circumstances affect the sector or industry in the tax year under analysis.
  - Additionally, the resolution clarifies the definition of "related parties" by highlighting cases in which the parties are considered related based on a functional influence (i.e., influence over commercial decisions, contracts or any other decision-making) between them.
  - For the exportation of certain agricultural commodities, a specific valuation method must be applied, and these transactions must be reported in a monthly informative declaration.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

CIT returns are due on the fourth month after fiscal year-end.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Deadlines are yet to be regulated by the tax authority as of December 2021.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

Deadlines are yet to be regulated by the tax authority as of December 2021.

- **Time period or deadline for submission upon tax authority request**

Deadlines are yet to be regulated by the tax authority as of December 2021.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

This is not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes, when the transaction is CIT not levied/exempted for one of the parties.

b) Priority and preference of methods

For the exportation of certain agricultural commodities, a specific method based on international prices must be applied. For other transactions, even though the rule of the best method applies, the taxpayer must justify the use of a method different from CUP.

8. Benchmarking requirements

- **Local vs. regional comparables**

This is yet to be regulated by the tax authority as of December 2021.

- **Single-year vs. multiyear analysis for benchmarking**

Single-year (the one under analysis). Using information related to a non-controlled operation corresponding to several fiscal years will only be justified when corresponding or related to the need to analyze business cycles, or the circumstances affecting the sector or industry were atypical in the fiscal year under analysis.

- **Use of interquartile range**

Yes.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

This is yet to be regulated as of December 2021.

- **Simple, weighted or pooled results**

This is yet to be regulated by the tax authority as of December 2021, for the exceptional cases in which multiple-year analyses are acceptable.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

General penalty regime is applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

General penalty regime is applicable.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

General penalty regime is applicable.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

General penalty regime is applicable.

- **Is interest charged on penalties or payable on a refund?**

Yes. Interest is charged in addition to penalties.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

General statute of limitations for tax matters in Paraguay is five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood is unknown since it is the first year of transfer pricing rules application in Paraguay.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be low since it is the first year of transfer pricing rules application in Paraguay.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be low since it is the first year of transfer pricing rules application in Paraguay.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Based on the tax authority behavior and audit trends, the agribusiness sector is more likely to be auditeds.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No APA program available as of December 2021. Binding consultations are available to taxpayers as per general tax law. It is reasonable to expect additional regulations to be issued by Paraguayan tax authority during 2021–22 and these might include APAs as a transfer pricing tool for taxpayers.

- **Tenure**

Not applicable yet.

- **Rollback provisions**

Not applicable yet.

- **MAP opportunities**

Paraguay has five double tax treaties in force (with Chile, Taiwan, Uruguay, Qatar, UAE). All of them include a MAP clause.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Superintendency of Customs and Tax Administration (*Superintendencia Nacional de Aduanas y Administración Tributaria*, or SUNAT)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are the Article 32 (Item 4) and Article 32-A of the Peruvian Income Tax Law (PITL) and Article 24 and Chapter XIX (Articles 108 to 119) of the PITL detail transfer pricing regulations in Peru.

Transfer pricing rules have been effective in Peru since 1 January 2001. Over the years, these rules have undergone several changes with amendments to the PITL and Tax Code. On 31 December 2016, Legislative Decree 1312 was published, amending the Peruvian transfer pricing reporting requirements by implementing the changes proposed by the OECD under the BEPS Action 13 final report, in force since 1 January 2017.

Peruvian transfer pricing rules apply both to cross-border and domestic transactions between related parties and all transactions with residents in tax havens, noncooperative jurisdictions or with entities subject to preferential tax regimes.

The transfer pricing adjustments are applicable solely when the value agreed upon by the related parties determines a lower taxable income than the one at arm's length, or in any other case, if the tax authority considers that the transfer pricing adjustment affects the tax determined in Peru for another related-party transaction.

The regulations consider that a lower amount of income tax is determined when, among other conditions:

- A deferral of income is evidenced
- Higher tax losses have been determined than those that would have accrued at arm's length

Penalties are described in Article 176 (numerals 2, 4 and 8) and Article 177 (numeral 27) of the Tax Code.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Peru is not an OECD member jurisdiction. The PITL refers to the OECD Guidelines as a source of interpretation for transfer pricing analysis, as long as they do not contradict the PITL.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

In December 2016, through Legislative Decree 1312, Peru introduced a three-tiered transfer pricing documentation structure, consisting of a local file, a master file and a CbCR, as set out in the final reports under Action 13 of the OECD BEPS Action Plan. Subsequently, on 17 November 2017, the Peruvian Government issued Supreme Decree 333-2007-EF, which approved the regulations with guidance for the preparation and submission of the Local File, Master File and CbCR.

- **Coverage in terms of Master File, Local File and CbCR**

Master File, Local File and CbCR are covered.

- **Effective or expected commencement date**

The law is effective for taxable years beginning on or after 1 January 2017.

- **Material differences from OECD report template or format**

The Local File must be prepared in accordance with the format detailed in Annexes I, II and III of the Superintendence Resolution No. 014 -2018/SUNAT, which specifies the content, formatting and cross-references with the Local File informative return that must be included. Although Peruvian legislation

[1]httransfer pricing:**//www.sunat.gob.pe/legislacion/renta/ley/capv.pdf**

follows the recommendations specified in BEPS Action 13, the Superintendence Resolution proposes a specific structure for the Local File (Appendix 3), which presents wide differences in form with the one proposed by the OECD.

The Master File must be prepared in accordance with the format detailed in Annex I of the Superintendence Resolution No. 163 -2018/SUNAT.

The CbCR must be prepared in accordance with the format detailed in Annex I of the Superintendence Resolution No. 163 -2018/SUNAT and Annex I of the Superintendence Resolution No. 188 -2018/SUNAT.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Refer to the section "Penalty relief."

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, although Peru is not part of the OECD, it is adhered and the member of the OECD/G20 Inclusive Framework on BEPS.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 9 November 2018.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Peru has transfer pricing documentation guidelines and rules.

The deadline schedule to submit the Local File informative returns is the same as the one approved for the submission and payment of monthly taxes due in June (tax period May) of the following fiscal year.

The deadline schedule to submit the Master File and CbCR informative returns is the same as the one approved for the submission and payment of monthly taxes due in October (tax period September) of the following fiscal year.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Peru requires transfer pricing documentation preparation annually under its local jurisdiction regulations. All taxpayers that exceed the threshold levels need to prepare and submit a full transfer pricing documentation report for each fiscal year.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each taxpayer is responsible to comply with the Local File and Master File if they meet the requirements.

With regards to the CbCR, in accordance with the dispositions included in the Superintendence Resolution No. 163 -2018/SUNAT, an entity can be selected as the representative for filling purposes among all other entities of the MNE within the jurisdiction. The filling form is detailed on Annex II of the previously mentioned resolution and must be filled by the last working day of the previous month of the filling deadline. This form must be signed by the legal representatives of the Peruvian entities of the MNE in Peru, including the legal representative of the selected company for filling purposes and the legal representatives of the entities nominating the filling entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

As of 2017, Peruvian transfer pricing formal obligations are aligned with the three-tiered proposal from BEPS, subject to the following conditions.

- **Master File**

Taxpayers that are constituents of a group of companies (both domestic and multinational) and have an annual revenue for the fiscal year of more than 20,000 tax units[2] (PEN88 million, approx. USD22 million) and that have carried out transactions with related parties, tax havens, noncooperative jurisdictions or with entities subject to preferential tax regimes for a total amount that is greater than 400 tax units (PEN1.76 million, approx. USD440,000) will be required to submit a Master File with high-level information of the group's business operations, its transfer pricing policies, and its global allocation of income and economic activity.

[2]The figures have been calculated based on the tax unit corresponding to the year 2021 (PEN4,400). For fiscal year 2022, the tax unit has increased to 4,600.

The Master File requirements in Peru are largely consistent with those under Action 13 of the BEPS Action Plan. The information required in the Master File provides a "blueprint" of the group and contains relevant information that has been grouped into five categories: (1) the group's organizational structure, (2) a description of its business or businesses, (3) the group's intangibles, (4) the group's intercompany financial activities, and (5) the group's financial and tax positions. The filling should be done in October of the following year.

- **Local File**

The Local File documentation requirement applies only to taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (PEN10.12 million, approx. USD2.53 million). The Local File provides detailed information relating to intercompany transactions (both domestic and cross-border) and transactions between local taxpayers and residents in tax haven jurisdictions.

The second threshold to be observed is the sum of intercompany transactions:

Annex I: The taxpayer has carried out transactions with related parties, tax havens, noncooperative jurisdictions or with entities subject to preferential tax regimes for a total amount that is greater than or equal to 100 tax units (PEN440,000, approx. USD110,000) but less than 400 tax units (PEN1.76 million, approx. USD440,000).

And

Annex II, III and IV: The taxpayer has carried out transactions with related parties, tax havens, noncooperative jurisdictions or with entities subject to preferential tax regimes for a total amount that is greater than 400 tax units (PEN1.76 million, approx. USD440,000).

Both conditions should be met.

- **CbCR**

In Peru, a CbCR should be filed annually by resident parent entities of MNE groups with annual revenue, as reflected in the consolidated financial statements for the immediately preceding fiscal year, equal to or greater than Peruvian sol (PEN)2.7 billion (approx. USD6.75 billion). For these purposes, an MNE has been defined to include two or more enterprises or entities that are resident of different countries or territories, where at least one of them is resident in Peru.

The CbC report requires aggregate tax jurisdiction-wide information relating to the global allocation of the revenue, profits (or losses), income taxes paid (and accrued) and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates. The report also requires a listing of all the constituent entities of the MNE group, including the tax jurisdiction of incorporation, where it is different from the tax jurisdiction of residence, as well as the nature of the main business activities carried out by that constituent entity.

Resident entities that are constituents of a foreign-based MNE group whose consolidated annual revenue exceeds the threshold will also be required to file the CbCR under the following circumstances:

- The ultimate parent of the MNE group is not required to file the CbCR in its jurisdiction of residence.
- The CbCR is submitted to the jurisdiction of residence of the ultimate parent company, but Peru has not established an information exchange mechanism with that jurisdiction.
- The parent company has submitted the CbCR, and even though Peru has an information exchange mechanism with that jurisdiction, there has been systematic failure to exchange information which has been communicated to the resident constituent entity by SUNAT.
- The resident constituent entity has been designated by the foreign-based MNE group as the alternate reporting entity (which files the CbCR instead of the ultimate parent company) and such designation is properly communicated to SUNAT.

- **Economic analysis**

The local file documentation requirement will apply only to taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (PEN10.12 million, approx. USD2.53 million). SUNAT's ruling has now stated that taxpayers that exceed the threshold will only be required to prepare and submit the Local File if, during the year concerned, either of the following conditions are met:

- Annual related-party transactions in aggregate are equal to or greater than 100 tax units (PEN440,000, approx. USD110,000) but less than 400 tax units (PEN1.76 million, approx. USD440,000). In this case, SUNAT only requests general information about the related parties involved and the transactions analyzed.
- Annual related-party transactions in aggregate are equal to or greater than 400 tax units (PEN1.76 million, approx. USD440,000). In this case, the Local File requirements are largely consistent with those under Action 13 of the BEPS Action Plan. A Local File with detailed information

will also be required when the taxpayer has intercompany transactions involving the transfer of goods that have a fair market value lower than their cost basis, regardless of the amount of the transaction.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in Spanish. According to Legislative Decree 1312, in general, the Master File, the Local File and the CbCR should be translated to Spanish and kept for five years or during the statute of limitations period established by the Tax Code, whichever is longer.

- **Safe harbor availability, including financial transactions if applicable**

There is no safe harbor availability.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

According to paragraph c) of Article 32-A of the PITL, taxpayers must comply with the following requirements in order to deduct the costs and expenses for services received from its related parties:

- **Comply with the "benefit test": This implies to examine whether the service provides an actual economic benefit (i.e., commercial or economic value) to the receiving entity. This can be determined by considering whether an independent company in comparable circumstances would have been willing to pay for the activity if performed for it by an independent company or would have performed the activity in-house for itself.**
- **Provide supporting documentation that the receiving entity needs in order to support that the services were actually rendered by the provider of the service, nature and real necessity of such service, cost and expenses incurred by the provider of the services, and the criteria for their allocation.**
- **In the case of low value-added services, such as routine activities that are not part of the core business, they are regulated such that the margin of profitability for the deduction of expenditure will not exceed 5%.**

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**
  - Local File: Taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (PEN10.12 million, approx. USD2.53 million) and transactions with related parties exceeds 400 tax units (PEN1.76 million, approx. USD440,000) must file a Local File informative return consisting of: (a) an informative return prepared under the format and configuration detailed by the Peruvian Tax Authority (Annex II), (b) a Local File in PDF format (Annex III) and (c) a spreadsheet file supporting the calculations detailed in Annex III.
  - Local File: Taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (PEN10.12 million, approx. USD2.53 million) and transactions with related parties between 100 tax units (PEN440,000, approx. USD110,000) and 400 tax units (PEN1.76 million, approx. USD440,000) must file a Local File informative return consisting of: (a) an informative return prepared under the format and configuration detailed by the Peruvian Tax Authority (Annex I).
  - Master File: Taxpayers that are constituents of a group of companies (both domestic and multinational) whose annual revenue for the fiscal year exceeds 20,000 tax units (PEN88 million, approx. USD22 million) and that has carried out transactions with related parties, tax havens, noncooperative jurisdictions or with entities subject to preferential tax regimes for a total amount that is greater than 400 tax units (PEN1.76 million, approx. USD440,000) must file a Master File informative return.
  - The CbCR is to be filed annually by resident parent entities of MNE groups with annual revenue, as reflected in the consolidated financial statements for the immediately preceding year, equal to or greater than PEN2.7 billion (approx. USD675 million).
- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

In accordance with Peruvian GAAP requirements.

- **CbCR notification included in the statutory tax return**

There is no requirement to file CbCR notification.

- Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

It should be submitted by the end of March or beginning of April based on a schedule.

- Other transfer pricing disclosures and return

The deadline schedule to submit the Local File informative returns is the same as the one approved for the submission and payment of monthly taxes due in June (tax period May) of the following fiscal year.

The deadline schedule to submit the Master File and CbCR informative returns is the same as the one approved for the submission and payment of monthly taxes due in October (tax period September) of the following fiscal year.

The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

- Master File

The deadline schedule to submit the Master File informative returns is the same as the one approved for the submission and payment of monthly taxes due in October (tax period September) of the following fiscal year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

- CbCR preparation and submission

The deadline schedule to submit the CbCR informative returns is the same as the one approved for the submission and payment of monthly taxes due in October (tax period September) of the following fiscal year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

- CbCR notification

Only in those cases in which the CbCR is filed through the Surrogate Parent Entity, the notification must be submitted via SUNAT's Virtual Reception Desk: https://www.sunat.gob.pe/ol-at-ittramitedoc/registro/iniciar. The deadline is the same as that of the CbCR.

b) Transfer pricing documentation/Local File preparation deadline

The deadline schedule to submit the Local File informative returns is the same as the one approved for the submission and payment of monthly taxes due in June (tax period May) of the following fiscal year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submission of transfer pricing documentation or Local File?

The deadline schedule to submit the Local File informative returns is the same as the one approved for the submission and payment of monthly taxes due in June (tax period May) of the following fiscal year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

- Time period or deadline for submission upon tax authority request

If the taxpayer did not file the transfer pricing documentation when it was due, the time given to submit it depends on each audit or inquiry. Usually, it needs to be submitted within five business days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There are no new submission deadlines per COVID-19-specific measures for fiscal years 2020 and 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions – Yes

- Domestic transactions – Yes

b) Priority and preference of methods

Peruvian law implicitly adopts a "best method" rule, unless the transaction being evaluated is a sale or purchase of commodities or their derivatives. Under Peruvian legislation, the transfer pricing methods identified are CUP, resale price,

cost-plus, profit-split, residual profit-split and TNMM.

The Legislative Decree states that the CUP method is the most appropriate transfer pricing method for cross-border transactions involving commodities and derivative financial instruments. These rules establish that the arm's-length price for Peruvian income tax purposes must be determined by reference to the quoted price. For the application of the CUP method, the actual pricing date or period of pricing dates should be used as a reference to determine the price for the transaction, as long as independent parties in comparable circumstances would have relied upon the same pricing date. The taxpayer needs to notify the SUNAT of the actual pricing date or period of pricing dates used to determine the price for the transaction.

The aforementioned notification to SUNAT is considered as a sworn statement and would have to be done within 15 working days of the shipment date or the date of disembarkation, detailing the main terms and conditions agreed by the parties. In the event the notification is not presented, it is incomplete or contains inconsistent information, the date to be used as a reference to determine the price is either: (i) the shipment date of the commodities exported or (ii) the disembarkation date of the commodities imported.

8. Benchmarking requirements

- **Local vs. regional comparables**

Use of local, regional and global comparable operations are accepted by the law.

- **Single-year vs. multiyear analysis for benchmarking**

In 2021, SUNAT published ruling No. 036-2021 clarifying the use of multiple years in the application of the Peruvian transfer pricing rules.

The ruling concludes that financial information from two or more years before or after the year under analysis can be used to determine whether the transactions are comparable, but that the Income Tax Law Regulations do not contemplate the use of multiple years for the determination of the interquartile range and do not have effect in the determination of the transfer pricing adjustment.

A ruling is an official interpretation by the SUNAT of PITL, related statutes, tax treaties and regulations.

- **Use of interquartile range**

Use of interquartile range is mandatory for the application of transfer pricing methods, as set forth by the PITL, whenever there are two or more comparable operations.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The regulations do not refer to this point. However, a good practice is to update the financials of the comparables for searches undertaken a year before and to conduct a full fresh benchmarking study for searches that have been undertaken two or more years previously.

- **Simple, weighted or pooled results**

The weighted average is preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Non-compliance with the above is penalized with a fine of 0.6% of the company's net income for the year preceding that which is under scrutiny. The penalty cannot be less than 10% of a tax unit or more than 25 tax units.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Non-compliance with the obligation to file a transfer pricing Local File informative return is penalized with a fine of 0.6% of the company's net income for the year preceding that which is under scrutiny. The penalty cannot be less than 10% of a tax unit or more than 25 tax units. Likewise, non-compliance with the obligation to file the transfer pricing return according to the dates established by SUNAT subjects the taxpayer to a fine of 0.6% of the company's net income for the year preceding that which is under scrutiny. The penalty cannot be less than 10% of a tax unit or more than 25 tax units.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

The adjustments to annual taxable income resulting from the tax authority's application of the transfer pricing provisions will be subject to additional penalties of up to 50% of the resulting tax deficiency (income misstatement penalties).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

The adjustments to annual taxable income resulting from the tax authority's application of the transfer pricing provisions will be subject to additional penalties of up to 50% of the resulting tax deficiency (income misstatement penalties).

- **Is interest charged on penalties or payable on a refund?**

The annual interest rate on any underpayment of tax on penalties is 10.8%, whereas the annual interest rate on any overpayment of tax on refund is 5.04%.

b) Penalty relief

The penalty reductions that a taxpayer can be subject to for not complying with the obligation to have a transfer pricing technical study or present the transfer pricing information return are:

- **A 100% penalty reduction if the taxpayer files the transfer pricing informative return after the due date but before it is detected and compelled to do so by SUNAT**
- **An 80% (with a transfer pricing study) or 90% (with a transfer pricing return) penalty reduction if the taxpayer rectifies the infraction and pays the corresponding fine within the time frame established by SUNAT**
- **A 50% (with a transfer pricing study) or 80% (with a transfer pricing return) penalty reduction if the taxpayer rectifies the infraction but does not pay the corresponding fine within the time frame established by SUNAT**

10. Statute of limitations on transfer pricing assessments

According to Articles 87-7 and 43 of the Peruvian Tax Code, the statute of limitations for income tax assessments is four years after 1 January of the year that follows the year the annual income tax return is due (generally, 31 March) and six years if returns were never filed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit may be characterized as medium, as is the likelihood of transfer pricing issues being reviewed as part of a general audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The Peruvian Tax Administration increasingly conducts transfer pricing audits. Also, it has issued letters requesting that taxpayers amend their tax returns based on the results of the transfer pricing studies previously presented or fill the local reports that have not been filed on time. The likelihood that the transfer pricing methodology will be challenged during a transfer pricing review may be considered to be high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high – refer to the section above for details.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The mining industry is more likely to be audited given that 60% of Peru's exports are minerals and approximately 30% are sold to related parties.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Since 2013, unilateral and multilateral APAs have been available for all transactions (cross-border and domestic transactions between related parties and with tax haven residents). Multilateral APAs will be available only for countries that have entered into double tax avoidance treaties with the Peruvian fiscal administration.

- **Tenure**

APAs would be agreed upon for a maximum term of four years.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

There are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under DTTs.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

PITL historically has limited the deduction of interests originated in loans and other credits granted by economically related entities. Such rules would apply whether the related party is a resident in Peru or not.

From 1 January 2020 onward, such rules were extended to include the deduction of interest originated in loans agreed with third parties, in accordance with the following:

- Up to 31 December 2020, interest paid is not deductible in the portion that exceeds the result of applying a coefficient 3:1 (debt-to-equity ratio) over the net equity. The borrower's net equity to be considered is the one resulting at the end of the preceding year. As of 1 January 2021, the new rule sets that interest that exceeds 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) of the preceding year will not be deductible. Interest that is not deducted may be carried forward for up to four years but will always be subject to the 30% of EBITDA limitation.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Bureau of Internal Revenue (*Kawanihan ng Rentas Internas* – BIR).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Section 50 of the National Internal Revenue Code of 1997, as amended (Tax Code), gives the Commissioner of the Bureau of Internal Revenue the power to allocate income and expenses between or among related parties and taxpayers or to make transfer pricing adjustments to reflect the true taxable income of taxpayers.

To implement Section 50, the BIR came out with several issuances expounding on the power of the Commissioner to allocate income and expenses among related taxpayers, prescribing the arm's-length standard for the pricing of transactions between or among related taxpayers. It also laid out the methods for determining the arm's-length price for related-party transactions.

On 29 March 2012, the BIR issued Revenue Memorandum Order (RMO) No. 5-2012, prescribing guidelines and policies under the performance benchmarking method. Under this RMO, benchmarking shall be done separately for individual and corporate taxpayers. The BIR will categorize taxpayers as high risk (more than 30% below the benchmark), medium risk (16%–30% below the benchmark) and low risk (15%, or less, below the benchmark). Taxpayers classified as high risk shall be the top priority for enforcement actions, such as an audit.

On 23 January 2013, the BIR released Revenue Regulations (RR) No. 2-2013, known as the Transfer Pricing Guidelines. The regulations provide guidelines for determining the appropriate revenues and taxable income of parties in the controlled transaction by prescribing the arm's-length principle as the standard to determine transfer prices of related parties. The transfer pricing regulations apply to cross-border transactions between associated enterprises and domestic transactions between associated enterprises.

The transfer pricing regulations took effect on 9 February 2013.

In August 2019, the BIR issued Revenue Audit Memorandum Order (RAMO) No. 1-2019 known as the Transfer Pricing Audit Guidelines, to provide for standardized procedures and techniques in auditing taxpayers with related party as well as intra-firm transactions. These guidelines apply to the examination of the following transactions:

- Controlled transactions between related or associated parties where at least one party is assessable or chargeable to tax in the Philippines, including:
  - Sale, purchase, transfer and utilization of tangible and intangible assets
  - Provision of intragroup services
  - Interest payments
  - Capitalization
- Transactions between permanent establishment (PE) and its head office or other related branches: Under the guidelines, the PE will be treated as a separate and distinct enterprise from its head office or other related branches or subsidiaries for tax purposes.

The Transfer Pricing Audit Guidelines were issued primarily to test the application of arm's-length principle on related-party transactions. Related-party transactions to be tested or audited cover cross-border and domestic ones, including intra-firm transactions. Intra-firm transactions apply to taxpayers with different tax regimes: income tax holiday (ITH), 5% gross income tax (GIT) and regular corporate tax.

To ensure proper disclosures of related-party transactions (RPTs) and that these transactions are conducted at arm's length, the BIR, then, issued on 8 July 2020, RR No. 19-2020, requiring the submission of a three-page BIR Form No. 1709, Information Return on Transactions with Related Party (Domestic and/or Foreign), to be attached, together with its supporting documents, to the Annual Income Tax Return (AITR).

Certain issues on the filing of the RPT Form and its attachments were later clarified by the BIR in Revenue Memorandum Circular (RMC) No. 76-2020.

On 21 December 2020, the BIR issued RR No. 34-2020, amending RR No. 19-2020 and RMC No. 76-2020 and prescribing further guidelines and procedures for the submission of the RPT Form. Under Section 2 of RR No. 34-2020, only the following taxpayers are required to file and submit the RPT Form, together with the AITR:

a) Large taxpayers

[1] **https://www.bir.gov.ph/**

b) Taxpayers enjoying tax incentives, i.e., Board of Investments (BOI)-registered and economic zone enterprise, those enjoying ITH or subject to preferential income tax rate

c) Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two consecutive taxable years

d) A related party, as defined under Section 3 of RR No. 19-2020, which has transactions with (a), (b), or (c)

The preparation and submission of transfer pricing documentation (TPD) under RR No. 2-2013 and all other relevant issuances shall be mandatory for taxpayers enumerated in Section 2 of RR No. 34-2020 who meet the following materiality thresholds:

a) Annual gross sales revenue for the subject taxable period exceeding PHP150 million and the total amount of related-party transactions with foreign and domestic related parties exceeds PHP90 million.

In computing the above threshold, the following items shall be included:

- Amounts received and/or receivable from related parties or paid and/or payable to related parties during the taxable year but excluding compensation paid to key management personnel, dividends and branch profit remittances
- Outstanding balances of loans and non-trade amounts due from/to all related parties

b) Related-party transactions meeting one of the following materiality thresholds:

- If involving sale of tangible goods in the aggregate amount exceeding PHP60 million within the taxable year
- If involving service transaction, payment of interest, utilization of intangible goods or other related-party transactions in the aggregate amount exceeding PHP15 million within the taxable year
- If transfer pricing documentation was required to be prepared during the immediately preceding taxable period for exceeding either (a) or (b) above

The transfer pricing documentation and other supporting documents as set out in Section 6 of RR No. 19-2020 shall no longer be attached to the RPT Form, but shall be submitted within 30 calendar days upon receipt of the request by the Commissioner or that person's duly authorized representatives pursuant to a duly-issued Letter of Authority.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Yes. In 2020, the BIR initially extended the deadlines for the submission of BIR Form No. 1709 due to the adverse impact of the COVID-19 pandemic.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The Philippines is not a member of the OECD.

The transfer pricing regulations are largely based on OECD Guidelines and refer to them for further guidance and examples.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The Philippines has not yet adopted BEPS Action 13 for transfer pricing documentation.

- Coverage in terms of Master File, Local File and CbCR

  While the Philippines has not yet adopted BEPS Action 13, a local transfer pricing documentation is required to be prepared contemporaneously pursuant to RR No. 2-2013, subject to materiality thresholds discussed below.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, a transfer pricing report has to be prepared contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local transfer pricing rules if it has related-party transactions.

- **Should transfer pricing documentation be prepared annually?**

Transfer pricing documentation has to be prepared annually under local jurisdiction regulations. RR 2-2013 is silent on the manner of preparation. However, being largely based on the OECD Transfer Pricing Guidelines, the preparation of transfer pricing documentation on year one and the benchmarking updates on years two and three should be sufficient.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

There is none specified, although a stand-alone transfer pricing report for each entity is done in practice.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The preparation and submission of TPDs under RR No. 2-2013 and all other relevant issuances shall be mandatory for taxpayers enumerated in Section 2 of RR No. 34-2020 who meet the following materiality thresholds:

a) Annual gross sales revenue for the subject taxable period exceeding PHP150 million and the total amount of related-party transactions with foreign and domestic related parties exceeds PHP90 million

In computing the above threshold, the following items shall be included:

- Amounts received and/or receivable from related parties or paid and/or payable to related parties during the taxable year but excluding compensation paid to key management personnel, dividends and branch profit remittances
- Outstanding balances of loans and non-trade amounts due from/to all related parties

b) Related-party transactions meeting one of the following materiality thresholds:

- If involving sale of tangible goods in the aggregate amount exceeding PHP60 million within the taxable year
- If involving service transaction, payment of interest, utilization of intangible goods or other related-party transactions in the aggregate amount exceeding PHP15 million within the taxable year
- If transfer pricing documentation was required to be prepared during the immediately preceding taxable period for exceeding either (a) or (b) above

However, the BIR still retains the right to conduct transfer pricing audits against taxpayers with related-party transactions, irrespective of whether or not they are required to file the RPT Form and prepare a TPD.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

There is none specified.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation is prepared in English, which is an official language in the Philippines.

- **Safe harbor availability including financial transactions if applicable**

Please see above materiality thresholds.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

BIR Form No. 1709, Information Return on Transactions with Related Party (Domestic and/or Foreign) (RPT Form).

- **Related-party disclosures along with corporate income tax return**

Please see above.

- **Related-party disclosures in financial statement/annual report**

Related-party disclosures are required in the notes to the audited financial statements, which are filed with the BIR together with the Annual Income Tax Return.

Moreover, taxpayers who are not required to file the RPT Form are required to disclose in the notes to the financial statements that they are not covered by the requirements and procedures for related-party transactions provided under RR No. 34-2020.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

The transfer pricing documentation and other supporting documents as set out in RR No. 19-2020 shall no longer be attached to the RPT Form but shall be submitted within 30 calendar days from receipt of the request to submit during a tax audit, subject to a non-extendible period of 30 calendar days.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is the 15th day of the fourth month, following the close of the taxable year.

- **Other transfer pricing disclosures and return**

For eFPS filers, the RPT Form shall be submitted within 15 days from the statutory due date or actual date of electronic filing of the ITR, whichever comes later.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing regulations require contemporaneous documentation to be maintained and retained. It is contemporaneous if it exists, or is brought into existence, at the time the associated enterprises develop or implement any arrangement that might raise transfer pricing issues. These arrangements should be reviewed when preparing tax returns.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Pursuant to RR No. 34-2020, the transfer pricing documentation is no longer required to be attached to the RPT Form upon filing. However, the transfer pricing documentation

and other documents have to be submitted to the BIR within 30 calendar days from receipt of the request to submit during a tax audit, subject to a non-extendible period of 30 calendar days.

- **Time period or deadline for submission on tax authority request**

The transfer pricing documentation and other documents have to be submitted to the BIR within 30 calendar days from receipt of the request to submit during a tax audit, subject to a non-extendible period of 30 calendar days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

The submission dates for the RPT Form have been extended as follows:

- For fiscal year ending 31 March 2020 and 30 April 2020: 29 December 2020
- For fiscal year ending 31 May 2020 and 30 June 2020: 31 January 2021
- For fiscal year ending 31 July 2020 and 31 August 2020: 1 March 2021
- For fiscal year ending 30 September 2020 and 31 October 2020: 31 March 2021
- For fiscal year ending 30 November 2020 and calendar year ending 31 December 2020: 30 April 2021

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The transfer pricing regulations adopt the methods to determine the arm's-length price under the OECD Guidelines (i.e., CUP, resale price, cost plus, profit split and TNMM).

There is no specific preference for any one method. In determining the arm's-length result, the most appropriate method for a particular case shall be used.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local jurisdiction comparables, but local comparable companies are used on the grounds that the BIR requires most reliable companies and uses local companies in determining the arm's-length price of intercompany transactions. Asia-Pacific comparables would be acceptable if it can be shown that no local comparables are available.

- **Single-year vs. multiyear analysis**

The regulations do not specify, but the Transfer Pricing Audit Guidelines provide the use of multiple-year data to increase comparability.

- **Use of interquartile range**

The Transfer Pricing Audit Guidelines suggest the use of an interquartile range to enhance the reliability of the analysis.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

RR 2-2013 is silent on the manner of preparation. However, being largely based on the OECD Transfer Pricing Guidelines, the preparation of transfer pricing documentation on year one and the update of the financials on years two and three should be sufficient as long as the operating conditions remain unchanged.

- **Simple, weighted or pooled results**

The regulations do not specify; either simple or weighted average may be used for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The Transfer Pricing Audit Guidelines provide selection criteria, which are commonly used in practice, including criteria on independence and level of revenue.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The transfer pricing regulations adopt the provisions of the Tax Code and other applicable laws in imposing penalties on any person who fails to comply with or who violates the regulations.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In the case of a deficiency assessment because of a transfer pricing adjustment, the general penalties apply – a 25% surcharge (50% in fraud cases) and 12% interest per annum.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Check above.

- **Is interest charged on penalties or payable on a refund?**

Delinquency interest at the rate of 12% per year may also be imposed.

b) Penalty relief

There is no penalty relief regime in the transfer pricing regulations. The regulations provide for a MAP mechanism, but this has not been implemented yet.

10. Statute of limitations on transfer pricing assessments

The general statute of limitations applies, which is three years after the last day prescribed by law for filing the return. In cases of fraud with the intent to evade tax, the statute of limitations is 10 years from the discovery of fraud.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No supplemental regulation or issuances on transfer pricing-specific audits as a result of COVID-19.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high. With the issuance of the Transfer Pricing Audit Guidelines, revenue officers are now mandated to include the examination of related-party transactions in the conduct of tax audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high. If transfer pricing is reviewed, then the transfer pricing methodology may be challenged.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high for the same reason as given above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The transfer pricing regulations give taxpayers the option to use an APA for their controlled transactions and MAP relief as prescribed under the Philippines' bilateral tax treaties. However, these have not been implemented as the BIR is yet to issue separate guidelines for the application of APA and MAP relief.

- **Tenure**

This is not applicable. APA guidelines have not been issued.

- **Rollback provisions**

This is not applicable. APA guidelines have not been issued.

- **MAP opportunities**

This is not applicable. MAP guidelines have not been issued.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

None has been specified.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no formal thin-capitalization rules in Philippines. However, the Transfer Pricing Audit Guidelines provide that the audit of intragroup loan transactions shall be conducted to test the arm's-length nature of the taxpayer's debt-to-equity ratio and to test the reasonableness of the interest rate and other expenses related to the intragroup loan transaction that are charged to the taxpayer.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Inspection Department in the Ministry of Finance, National Revenue Administration (*Krajowa Administracja Skarbowa* – KAS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Tax laws and decrees that govern transfer pricing in Poland are:

- Corporate Income Tax (CIT) Act, dated 15 February 1992: Art. 11a (Journal of Laws 2018, Item 1036, as amended)
- Personal Income Tax (PIT) Act, dated 26 July 1991: Article 23 (Journal of Laws 2012, Item 361, as amended)
- Tax Ordinance Act, dated 29 August 1997: Articles 20a–20r (Journal of Laws 2019, Item 900, as amended)
- Act on the settlement of disputes regarding double taxation and the conclusion of APAs, dated 16 October 2019: Articles 61-71 and 81-107 (Journal of Laws 2019, item 2200, as amended)
- Ministry of Finance Decree of 28 March 2019, regarding the countries and territories applying harmful tax competition rules for the purpose of CIT (Journal of Laws 2019, No. 600)
- Ministry of Finance Decree of 28 March 2019, regarding the countries and territories applying harmful tax competition rules for the purpose of PIT (Journal of Laws 2019, No. 599)
- Minister of Finance Decree from 21 December 2018 on the transfer pricing documentation with regard to CIT (Journal of Laws 2018, Item 2479, as amended)
- Minister of Finance Decree from 21 December 2018 on the manner and procedure for eliminating double taxation in case of adjustment of affiliated entities' profits with regard to CIT (Journal of Laws 2018, Item 2474, as amended) – repealed on 29 November 2019
- Minister of Finance Decree from 21 December 2018 regarding transfer pricing with regard to CIT (Journal of Laws 2018, Item 2491, as amended)
- Minister of Finance Decree from 21 December 2018 regarding the information about transfer pricing with regard to CIT (Journal of Laws 2018, Item 2487, as amended)

Article 11a of the CIT Act and Article 23m of the PIT Act introduce the arm's-length principle, providing a definition of "affiliation" and the criteria for determining the size of direct and indirect shares held in another entity. Documentation requirements can be found in Article 11k of the CIT Act and Article 23w of the PIT Act. Transfer pricing penalties are defined in Articles 58a, 58b and 58c of the Tax Ordinance Act.

According to Article 11o and Article 23za of the PIT Act, the documentation requirements also encompass transactions in which payment is made directly or indirectly to an entity considered to be in a tax haven. The list of these territories and countries is presented in the Ministry of Finance Decree of 28 March 2019 regarding the countries and territories applying harmful tax competition rules. The decree was issued separately for personal and corporate taxation purposes.

Since 1 January 2007, documentation requirements also apply to Poland-based permanent establishments of foreign companies.

Since January 2015, documentation requirements have also applied to partnerships, joint venture agreements and agreements establishing partnerships.

Transfer pricing regulations introducing BEPS Action 13 guidelines to Polish legislation came into force in January 2017 (requirements regarding CbCR are binding as of January 2016). The respective regulations result in increased transfer pricing requirements (as mentioned below). Additionally, since January 2019, new transfer pricing regulations came into force in Poland as outlined in this document.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Due to the pandemic, the deadline for filing the statement for FY2019 and FY2020 has been extended. In case of FY2019, to 31 December 2020 if the original deadline expired between 31 March and 30 September 2020 or by three months if the original deadline expired between 1 October 2020 and 31 January 2021. In case of FY2020, to 31 December 2021 if the original deadline expired between 31 March and 30

September 2021 or by three months if the original deadline expired between 1 October 2021 and 31 December 2021.

For FY2021 reporting, no deadline extension is provided so far (24 February 2022).

The deadline to attach the master file to local documentation will be prolonged till the end of the third month from the day following the date on which the extended deadline for the submission of the transfer pricing documentation possession statement expires.

No extensions to the deadline for submitting a CbCR notification have been granted in light of the COVID-19 situation.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Poland is a member of the OECD.

The Polish tax authorities sometimes refer to the OECD Guidelines when applying transfer pricing principles (e.g., during APA negotiations).

Also, reference to the OECD Guidelines is made with respect to tax havens. According to Articles 11j and 23v of the PIT Act, the list of countries recognized as tax havens is issued with regard to settlements made by the OECD. At the same time, the transfer pricing methods presented in the Polish rules are based on the authorized OECD approach.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, Poland has adopted and implemented Action 13. There are some specific elements incorporated in the Polish law. There are also some important differences in most cases, meaning that the local requirements are even more extensive.

- Coverage in terms of Master File, Local File, and CbCR

  Master file, local file and CbCR are covered.

- Effective or expected commencement date

  The law is effective for taxable years beginning on or after 1 January 2017.

- Material differences from OECD report template or format

  There are material differences between the OECD report template or format and Poland's regulations. The relevant sections from the regulations state that:

  - Local management needs to sign off for the local file in a written statement. Since 2019, such a statement also has to confirm the arm's-length character of the transactions.
  - A new form (TP-R) was introduced in 2019 that requires taxpayers to provide financials connected with the transactions and compare them with the results of the benchmarking studies.

The local file should cover:

- The market analysis
- The transaction values as well as the amounts actually transferred
- Detailed contact data of the counterparties
- The functional analysis with somewhat more details than the OECD standard, mainly reflected by the requirement to describe each risk also from the perspective of the "ability to bear it" by the parties
- Documents that are the legal basis for the transaction

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

There is none specified in the regulations. However, BEPS Action 13 does not fully cover explicit local file requirements (examples above).

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation**

guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?

Yes, transfer pricing regulations (binding from January 2017 and from January 2016 for CbCR) introduced fundamental changes to the scope of the mandatory transfer pricing documentation reflecting the guidelines of BEPS Action 13, as outlined below:

- Local file and master file (see next section for thresholds), requiring the presentation in the transfer pricing documentation
- Group transfer pricing policy and information about local transactions, but with the justification for the adopted methods of calculating remuneration and confirmation of the arm's-length character of prices, including benchmarking analyses, detailed financial data showing the impact of the transactions on the profits and losses and income of the company, organizational and reporting structures, and other information
- Benchmarking analyses mandatory for each entity that is obligated to prepare the documentation
- Parent company to prepare the CbCR for capital groups with consolidated revenues or costs of more than EUR750 million

Further, the local file needs to be contemporaneous and should be prepared and certified within nine months of the end of the respective financial year.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, branches need to comply with local transfer pricing rules in the same manner as regular companies.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the whole documentation needs to be updated with the financial data and facts being reviewed.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, according to Polish transfer pricing requirements, each taxpayer engaged in the transactions exceeding the thresholds described below is obligated to prepare a stand-alone transfer pricing report and benchmarking analysis.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The local file and master file (see below sections for thresholds) are applicable.

- **Master File**

From 2019, taxpayers are obliged to prepare a master file only if all of the following conditions are met:

- The entity is required to prepare local documentation
- The entity belongs to the group of related entities for which consolidated financial statements are prepared
- Consolidated revenues of the group exceeded PLN200 million (approximately USD50 million) in the previous financial year

- **Local File**

From 2019, the obligation to prepare local file documentation applies to related entities that conducted transactions meeting the thresholds presented below.

The materiality thresholds for particular transactions to include in the local file for 2020 and 2021 are:

- PLN100,000: transactions conducted with entities from tax havens
- PLN 500,000: transactions with contractor (related as well as unrelated) that makes direct settlements with entity based in a tax haven (from 2021)
- PLN2 million: service transactions, profit allocation to foreign branches and transactions involving immaterial values
- PLN10 million: commodity and financial transactions

- **CbCR**

The report is mandatory in case of consolidated revenues or costs of more than EUR750 million.

- **Economic analysis**

Since 2019, benchmarking is mandatory for every transaction that meets the local file threshold.

c) Specific requirements

- **Treatment of domestic transactions**

In 2019, domestic transactions are excluded as long as they fulfil the requirements listed in Article 11n of the CIT Act.

- **Local language documentation requirement**

The law mandates the use of the Polish language in local file documentation. There is no formal requirement for master file documentation to be in Polish; however, the tax authorities can request a Polish version of the document. Since 2019, a regulation exists stating that there will be 30 days to prepare such a translation upon request.

- **Safe harbor availability including financial transactions if applicable**

Since 2019, the regulations introduced safe harbor markup rates for low-value-added services at the minimum level of 5% for the provision of services and a maximum of 5% for the purchase of services.

Additionally, safe harbor rules were introduced for loans fulfilling the requirements listed in Article 11g of the CIT Act. The "safe" rate is annually published by the Ministry of Finance. At the time of creating this document, the acceptable base rate is Warsaw Interbank Offer Rate (WIBOR) 3M, Euro Interbank Offer Rate (EURIBOR) 3M and London Interbank Offered Rate (LIBOR) 3M (depending on the currency), while the safe margin is 2%. The margin is treated as the maximum value in case of Polish borrowers and as a minimum safe value in case of Polish lenders.

- **Is aggregation or individual testing of transactions preferred for an entity**

The regulations require individual testing. However, they also allow for compensation between transactions concluded with a particular related party. In this context, consolidated approach is possible.

- **Any other disclosure/compliance requirement**

Apart from the specific requirements described above, there are no additional disclosure or compliance requirements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Since 2019, a new TP-R form has been introduced. All taxpayers obligated to prepare a local file, and those exempted due to the fact that transactions were only conducted with domestic-related entities, have to file this new electronic report within nine months from the year-end. In the TP-R, the taxable person must include detailed information, including results of benchmarking analysis or transfer pricing adjustments if applicable, along with various profitability indicators.

In addition, Polish taxpayers are obligated to file within nine months from the year-end a statement confirming the preparation of local file documentation in line with the amended requirement. As indicated in the justification for the law, tax authorities expect that this document will be signed by a member of the management board. Since the beginning of 2019, this official statement must also confirm that all documented transactions were conducted at arm's-length value. Furthermore, the statement must be signed by the entity's managing director or by all board members empowered to representations. The statement must be submitted in the electronic form.

- **Related-party disclosures along with corporate income tax return**

Information about related-party transactions is one of the elements of the annual income tax return. Taxpayers are also required to indicate in the return whether they were required to prepare a transfer pricing documentation.

Taxpayers transacting with related entities are subject to the following reporting and information requirements:

- Disclosing in annual income tax returns whether the taxpayer was required to prepare statutory transfer pricing documentation of transactions with related entities
- Reporting agreements with non residents to the Polish tax authorities; such information to be submitted within three months of the end of a tax year (by filing the ORD-U form), and this reporting requirement applies to agreements in which:
  - A one-off amount of receivables or liabilities resulting from the agreement with a non resident exceeds EUR5,000 and the non resident owns an enterprise, branch or representative office in Poland.
  - The total amount of liabilities or receivables resulting from all agreements concluded with the same non resident in the tax year exceeds EUR300,000.
  - One party to the agreement participates directly or indirectly in the management or control of the other party to the agreement or has a share in its capital entitling it to at least 5% of all voting rights.
  - Another entity, not being party to an agreement, at the same time participates directly or indirectly in the management or control of each party to the agreement or has a share in their capital entitling it to at least 5% of

all voting rights in each of the parties to the agreement.

- Preparing information about payments to non residents from which withholding tax is collected and submitting it to the tax office responsible for taxation of foreign persons and to the beneficiary of the payment by the end of the third month of the year following the tax year in which withholding tax was paid (IFT-2/IFT-2 form); moreover, the taxpayer required to (at the related party's request) prepare and send information to the taxpayer and competent tax office within 7 (for LF prepared for FY21) or 14 days (for LF prepared for FY22 and following years) of the date when the request is submitted

Those taxpayers that have obtained an APA decision from the Polish Minister of Finance must submit, along with their annual CIT return, a progress report on the implementation of the method stipulated in the APA decision. The format of this report is detailed in the Ministry of Finance Decree of 23 December 2019, which contains the model report on the implementation of a selected transfer pricing method for CIT purposes (Journal of Laws No. 99, Item 687).

The obligation of preparing transfer pricing documentation would not apply to transactions for which a taxpayer obtains an APA.

Poland's CIT law tax deductibility restrictions of intangible intragroup charges would not apply to transactions for which a taxpayer obtains an APA with the Polish Ministry of Finance. The rules became effective from 1 January 2018.

Poland transposed a number of the measures set out in the European Union Anti-Tax Avoidance Directive (ATAD). As such, this includes, among other things, a PLN3 million or 30% earnings before interest, taxes, depreciation and amortization (EBITDA) interest limitation rule and changes to the controlled foreign company (CFC) legislation, which may broaden the scope of foreign subsidiaries that meet CFC criteria.

- **Related-party disclosures in financial statement/annual report**

According to the Polish Accounting Act, the information regarding the transactions with related entities must be presented in the financial statement in note 7.

- **CbCR notification included in the statutory tax return**

CbCR notification is not included in the statutory tax return.

- **Other information/documents to be filed**

There are no additional information or documents to be filed apart from those presented above.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline for the CIT return is three months from the fiscal year-end.

- **Other transfer pricing disclosures and return**

Taxpayers are also required to submit an electronic form (TP-R form), which must be submitted within nine months after the end of the financial year and should contain information on the transactions carried out with related entities.

- **Master File**

It is 12 months from the year-end for the master file.

- **CbCR preparation and submission**

The filing deadline for the CbCR is 12 months from the year-end.

- **CbCR notification**

The filing deadline for the CbCR notification is three months from the year-end.

b) Transfer pricing documentation/Local File preparation deadline

It is 9 months from the year-end for the local file and 12 months from the year-end for the master file.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No, but it must be provided within seven days upon the request of the tax authorities.

- **Time period or deadline for submission upon tax authority request**

The documentation should be submitted within seven days of the request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

See opening section for details.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

The local transfer pricing documentation does not have to include a description of domestic transactions conducted among Polish taxpayers who are not exempt from income tax, are not located in the special economic zone and do not incur losses. Certain other limitations from the transfer pricing documentation requirements are also provided.

b) Priority and preference of methods

Generally, the transfer pricing methods accepted by the tax authorities are based on the OECD Guidelines. These methods are the CUP, resale price, cost plus, profit split and TNMM. The most appropriate method for assessing income should be chosen.

Regulations binding from 1 January 2019 changed the approach of selecting transfer pricing method used for the purpose of assessing income in related-party transactions. Previously (also for 2018) the traditional methods (CUP, resale minus and cost plus) were indicated as first-choice methods. Currently, the division of methods into two groups has been terminated; taxpayers can choose independently the most appropriate method for them.

Also, if the use of these five methods is impossible, taxpayers can choose another, most appropriate one, including valuation methods. During the selection process, tax authorities will consider:

- The specifics of the transaction, including the parties' contribution to the transaction
- Access to reliable data about similar transactions and companies in the market
- Comparability of the respective transactions and companies

If a taxpayer has determined the arm's-length value of a transaction by applying one of the accepted methods and tax authorities wouldn't be able to find objective reasons that another method would fit better for economic situation of taxpayer, the method is also binding for them.

8. Benchmarking requirements

- **Local vs. regional comparables**

Since 1 January 2019, there is no indication that benchmarking analysis should cover local entities.

- **Single-year vs. multiyear analysis for benchmarking**

There is a preference for multiyear testing although not expressed in the regulations. EY Poland usually provides a three-year or five-year analysis.

- **Use of interquartile range**

There is no formal requirement to determine a particular point in the range, but generally, the interquartile range is a starting point to consider the arm's-length price (there is no particular regulation in this regard).

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Fresh benchmarking does not need to be conducted every year, but financial data for the final sample needs to be updated. A fresh benchmark is required every three years or in case of significant change in the economic environment.

- **Simple, weighted or pooled results**

There is a preference for the weighted average for arm's-length analysis (not mentioned in the regulations).

- **Other specific benchmarking criteria, if any**

Taxpayers should present financial indicators both accepted and rejected during the preparation of benchmarking analysis.

Taxpayers are obligated to present part of the information used for benchmarking analysis in electronic form, which enables editing, formatting and sorting data.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Yes; see below as in Polish legislation there is no difference between late, false or incomplete or late preparation of the documentation or submission of necessary statements.

- **Consequences of failure to submit, late submission or incorrect disclosures**

If the tax authorities mention that the tax loss has been overstated or the tax profit has been understated, they can levy an additional penalty tax rate of 10% (over the standard 19% rate) (Article 58b Section 1 Tax Ordinance Act).

The rate indicated in Article 58b is doubled if:

- The basis for determining additional tax liability exceeds PLN15 million – for the excess over this amount.
- It has not been 10 years since the end of the calendar year in which the taxpayer or payer obtained a final decision regarding additional taxation.
- The party did not submit to the tax authority the tax documentation. In the event that together the conditions mentioned in points 1 and 3 arise, the rate is tripled.

The above point 3 is not taken into consideration if the documentation in full scope is delivered to the tax authorities within the time frame specified by the tax authority, not longer than 14 days.

Moreover, the persons responsible for tax matters locally may be penalized based on the penal and fiscal code for non-compliance (with a fine or imprisonment, depending on materiality of the case). As a result, the magnitude of the risk may be measured by the exposure to personal penal responsibility of the company's representatives. Please find the summary of Fiscal Penal Code (KKS) regulations below:

- Missing or failure in the delivery of the required tax documentation: a fine of up to 120 daily rates (i.e., up to EUR1 million) (Article 80 Section 1 KKS)
- Unreliable preparation of documentation: a fine of up to 720 daily rates (i.e., up to EUR6 million), imprisonment or both (Article 54 Section 1 KKS)
- Submission of false information: a fine of up to 240 daily rates (i.e., EUR2 million) (Article 80 Section 3 KKS)
- Failure to monitor compliance of the business activities with the regulations (Article 84 Section 1 KKS)

Such KKS penalties might impact the board members and the person responsible for the tax settlements of the taxpayer.

Since 1 January 2019, addition regulation has entered:

- Failure in the submission or submission after the due date of the required statement concerning preparing transfer pricing documentation or TP-R: a fine of up to 720 daily rates (Article 56c Section 1 KKS)
- Missing or failure in the delivery submission or delivery after the due date or submitting false information about transfer prices to the Head of National Revenue Administration: a fine of up to 720 daily rates (Article 80e Section 1 KKS)

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes; see above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes; see above.

- **Is interest charged on penalties or payable on a refund?**

Yes, the current rate is 8%.

b) Penalty relief

It will be there if the taxpayer supplements the documentation in a full scope in time indicated by tax authorities, but not longer than 14 days. There will be no increase in the penalty rate for the lack of the documentation (Article 58c § 3 Tax Ordinance Act).

10. Statute of limitations on transfer pricing assessments

There are no special time limit provisions applicable to intercompany transactions. The general statute of limitations for tax assessment applies, in accordance with the Tax Ordinance Act. Under Article 70 Section 1 of the Tax Ordinance Act, tax liability shall expire after five years from the end of the calendar year in which the tax falls due.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual transfer pricing audit, in general,

has been high since the beginning of 2016. The deepest scrutiny is put on the biggest taxpayers with a given financial position (e.g., incurring losses, with significant revenues but low profitability, claiming an overpaid tax return, with very low profitability, or with fluctuating revenues or EBIT). Polish tax authorities in 2017 acquired access to the Orbis database, purchasing more licenses. This information will allow them to conduct more detailed screenings of entities before starting tax audits and help them make a more precise selection of entities for audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

There is a high likelihood that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit. The tax authorities usually engage in a dedicated transfer pricing audit if they notice irregularities in intercompany settlements or believe that the financial result is biased by transfer pricing. In such cases, they often challenge the transfer pricing methodology applied.

The 2019 rules introduced the possibility of recharacterization of a transaction or even declaring a transaction nonexistent (not influencing the tax result) if the tax authorities assess that unrelated parties would not partake in such a transaction.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. During transfer pricing audits, tax authorities are especially interested in substantial intercompany charges for intangibles, services or financing; changes in the business model; sudden reduction in profitability (e.g., due to business restructurings); and year-end adjustments (especially if they are one-off profit transfers).

- **Specific transactions, industries and situations, if any, more likely to be audited**

In practice, there is no focus on any particular industry. The authorities try to focus on an automated approach, e.g., using databases to find loss makers or limited risk companies with highly variable financial results or companies with high spending on intragroup services.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Under Polish rules, unilateral, bilateral and multilateral APAs are available. There are no transaction value limits to be covered by the APAs. To submit an application for an APA, the taxpayer must pay a fee, usually 1% of the transaction value. The Tax Ordinance Act sets the following fee limits:

- Unilateral APA: PLN5,000 to PLN50,000
- Unilateral APA concerning a foreign entity: PLN20,000 to PLN100,000
- Bilateral or multilateral APA: PLN50,000 to PLN200,000

The APA Act precisely defines the terms under which the APA procedure is to be completed:

- The unilateral APA must be issued without unnecessary delay within six months of the start of the APA application procedure.
- The bilateral APA must be issued without unnecessary delay within 12 months of the start of the APA application procedure.
- The multilateral APA must be issued without unnecessary delay within 18 months of the start of the APA application procedure.

- **Tenure**

The period for which the APA may be concluded is no longer than five years. The APA may be extended for another five years if the criteria applied in concluding the APA have not changed or the entity applies for an extension of the APA no later than six months before it expires. The decision is valid from the date of its delivery to all parties (including Polish and foreign, if applicable, tax authorities).

- **Rollback provisions**

An APA may cover the year the APA application is submitted.

- **MAP opportunities**

Yes, taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty (DTT) to which Poland is signatory.

The application should be submitted no later than three years from delivery to the taxpayer or an entity related to the taxpayer's control protocol or tax decision that leads or may lead to double taxation, unless the double taxation agreement, which forms the basis for submitting the application, specifies another term. The three-year period begins on the first of the following dates: the date of delivery of the control report or the date of delivery of the tax decision.

Application should be supplemented with:

- Transfer pricing documentation
- Financial statement
- Relevant agreements
- Benchmarking analysis
- Protocols from tax control or tax decisions regarding double taxation
- Correspondence with foreign tax authorities concerning adjustments

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

The deadline for issuing a tax ruling has been extended by three months to six months.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

From 2019, the taxpayer is obligated to sign a statement that "the prices have been set in accordance with arm's-length conditions." This means that interest rate is not the only characteristic that must be tested. In fact, the standard interest rate benchmarking study should be the last step of a robust arm's-length analysis. Although such a full analysis is not specifically defined in the Polish CIT Act, one must take into consideration that the new regulations also include a possibility to "recharacterize" any transaction, i.e., act as it did not happen or happened under different (arm's length) circumstances. According to Article 11c of the CIT Act, if the tax authority considers that in comparable circumstances, unrelated entities guided by economic viability would not conclude a given controlled transaction or would conclude another transaction, the income (loss) of the taxpayer might be determined without taking into account the controlled transaction, and where justified, the tax authorities shall determine the income (loss) of the taxpayer earned (incurred) by the taxpayer based on the "proper" transaction. For example, in case of an intercompany loan, if the tax authorities assess that the borrower is not able to carry and service some amount of debt, this part may be recharacterized as an equity, and the interests from that part of the financing will not be tax-deductible. The so-called "debt capacity" analysis will therefore become required more often.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Portuguese Tax and Customs Authority (*Autoridade Tributária e Aduaneira*).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 63 of the Corporate Income Tax (CIT) Code (CITC) articulates the arm's-length principle, and Article 130 introduces submission obligations of TP documentation for taxpayers under the authority of the Large Taxpayers Unit. These provisions were updated by Law No. 119/2019 on 18 September 2019.

Decree-Ruling 268/2021 of 26 November (TP Decree-Ruling), effective on 27 November 2021, sets the rules for the application of Article 63 and the TP documentation requirements for eligible taxpayers. The previous Decree-Ruling 1446-C/2001 of 21 December was repealed with the exception of Chapter IV, Of the ancillary obligations of taxable persons, that shall apply until the tax periods beginning on or after 1 January 2020. In addition, Chapter IV of TP Decree-Ruling takes effect during tax periods beginning on or after 1 January 2021.

Articles 121-A and 121-B of the CITC cover the obligation for multinational groups to submit CbCR and, for its constituent entities, to communicate the reporting entity.

A detailed APA procedure, setting out the APA submission requirements, process and fees, was updated by Decree-Ruling 267/2021 of 26 November (effective on 27 November 2021) and is currently foreseen in Article 138 of the CITC (updated by Law No. 119/2019 on 18 September 2019). The previous Decree-Ruling 620-A/2008 of 16 July was repealed.

- **Section reference from local regulation**

See details above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Portugal is a member of the OECD. The Portuguese regulations and tax practice follow the OECD Guidelines, and in cases of greater technical complexity, the TP Decree-Ruling indicates that it is advisable to consult the reports produced by the OECD in TP matters.

Business restructurings are specifically addressed in the Portuguese TP regulations as transactions that must rely on the arm's-length principle; however, the approaches stated in Chapter IX of the OECD Guidelines are likely to affect the TP interpretations in the context of audit procedures.

The part of Action 13 of the OECD BEPS Action Plan devoted to CbCR has been introduced in Portugal.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  A three-tier documentation format as per BEPS Action 13 (master file, local file and CbCR) has been formally prescribed in local legislation, as per the TP Decree-Ruling 268/2021 of 26 November. There are, however, specific requirements foreseen in the Portuguese legislation concerning the contents of the master file and local file.

- Effective or expected commencement date

  The new TP Decree-Ruling comes into force on 27 November of 2021. However, Chapter IV of Decree-Ruling 1446-C/2001 of 21 December shall apply until the tax periods beginning on or after 1 January 2020. In addition, Chapter IV of TP Decree-Ruling takes effect during tax periods beginning on or after 1 January 2021.

  CbCR rules apply to fiscal years starting on or after 1 January 2016.

- Material differences from OECD report template or format

  The documentation must follow the format prescribed in TP Decree-Ruling 268/2021 of 26 November. Please see above comment regarding the differences at level of

master file and local file.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is no penalty protection regime in Portugal. The documentation will only be accepted as complete if fully compliant with the format prescribed in TP Decree-Ruling 268/2021 of 26 November.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

According to the Decree-Ruling 268/2021 of 26 November, two new distinct documentation models have been created: the standard and the simplified.

The standard model consists of a master file and a local file, which must be delivered together, each containing a set of elements specified in detail in the annexes to the TP Decree-Ruling.

On the other hand, the simplified model must contain the following elements:

- **Identification of the related parties involved**
- **Description, characterization and quantification of transactions carried out with related parties**
- **Identification of the TP methods applied**
- **Identification of comparables and values or ranges of values resulting from the application of the methods**

The simplified model must also include the elements that demonstrate the arm's-length nature of the following transactions:

- **Related transactions of any nature carried out with non resident persons or enterprises subject to a clearly more favorable tax regime**
- **Transfer of businesses**
- **Transfer of securities, shares or equity not traded on regulated stock markets or traded on tax havens' regulated markets**
- **Business reorganizations or restructurings**
- **Transactions on real estate and intangible assets**

The new legislation explicitly provides that the documentation obligation is considered fulfilled only when the documentation file submitted contains all relevant information relating to the controlled transactions in which the taxable person has been involved.

Taxpayers who, in the period to which the obligation refers, have reached a total annual amount of income of less than EUR10 million shall be exempted from presenting this documentation. Even if this limit is exceeded, that exemption shall apply to controlled transactions whose value in the period has not exceeded EUR100,000 and, in total, EUR500,000, considering their market value. However, any taxpayer may be requested to submit documentation regarding the taxpayer's controlled transactions upon request from the Portuguese tax authority. The deadline for presentation of the documentation in this case should be 10 days.

The exemptions referred to in the preceding paragraph do not cover the controlled transactions carried out with natural or legal persons residing outside the territory of Portugal and are subject to a more favorable tax regime, following paragraphs 1 or 5 of Article 63-D of the General Tax Law nor, as stated above, when the taxable person is notified to prove that the terms and conditions practiced in the controlled transactions are in accordance with the arm's-length principle.

The simplified model will apply to taxpayers who, not being accompanied by the Large Taxpayers Unit and not covered by the exemptions already mentioned regarding the standard model, are qualified as a small or medium-sized enterprise, following the terms set out in the annex to Decree-Law No. 372/2007 of 6 November. However, and as provided in the TP Decree-Ruling, the preparation of the simplified model does not preclude the obligation to provide the Portuguese tax authority, whenever the taxpayer is notified to do so, all relevant information to prove that the terms and conditions practiced in the controlled operations comply with the arm's-length principle.

In addition, taxpayers under the authority of the Large Taxpayers Unit have to submit TP documentation prepared according to the format prescribed in TP Decree-Ruling 1446-C/2001 of 21 December, within the deadline for submission of the Annual Tax and Accounting Information Return (IES), on or before 15 July (7 months and 15 days after tax year-end).

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

All companies, irrespective of the materiality of their controlled transactions, may be requested to present documentation to support the arm's-length nature of such transactions if notified by the Portuguese tax authority to do so.

Entities with total annual income of EUR10 million will be required to prepare the documentation within the deadline foreseen in the law. If this threshold is exceeded, an exemption shall apply to controlled transactions whose value in the period has not exceeded EUR100,000 and, in total, EUR500,000, considering their market value.

- **Master File**

This is applicable (with local requirements).

- **Local File**

This is applicable (with local requirements).

- **CbCR**

The report should be consistent with OECD requirements (i.e., group consolidated revenue of EUR750 million).

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The law mandates the use of Portuguese in TP documentation. However, before submission to the Portuguese tax authority, it is possible to request the presentation in a foreign language.

- **Safe harbor availability including financial transactions if applicable**

Entities with total annual income of EUR10 million will be required to prepare the documentation within the deadline foreseen in the law. If this threshold is exceeded, an exemption shall apply to controlled transactions whose value in the period has not exceeded EUR100,000 and, in total, EUR500,000, considering their market value.

Is aggregation or individual testing of transactions preferred for an entity

Individual testing is preferred. Aggregation is allowed only if certain conditions are met.

- **Any other disclosure/compliance requirement**

For the first time, an obligation is established for third parties to issue a statement of responsibility regarding the information and techniques used in technical studies requested by the taxpayer in the preparation of the TP documentation.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The main disclosure requirements at this level are contained in annex A, B, C and H (TP annex) of the Annual Tax and Accounting Information Return (IES), which include (on a yearly basis) the following information:

- Identification of the related entities
- Transactions conducted with each of the related parties
- Confirmation that proper contemporaneous (annual) TP documentation is prepared on a timely basis and is currently retained

The deadline for the submission of such return corresponds to

the 15th day of the seventh month after the corresponding tax year-end.

Taxpayers must state in good faith in this annual return that they have complied with the contemporaneous documentation requirements. Misleading information may result in tax penalties and criminal proceedings.

- **Related-party disclosures along with corporate income tax return**

In the Corporate Income Tax Return the taxpayer is expected to adjust in favor of the Portuguese state the positive impact of any deviations from the arm's-length principle.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

No, but it should be submitted on the same date. The deadline for submission for the CbCR notification is the end of the fifth month following the fiscal year-end.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The CIT return should be filed on or before the last day of the fifth month following tax year-end or on 31 May, if the fiscal year coincides with the calendar year.

- **Other transfer pricing disclosures and return**

The IES, including the specific TP annexes, should be filed until the 15th day of the seventh month after the end of the fiscal year or on 15 July if the fiscal year coincides with the calendar year.

- **Master File**

The deadline for the submission of master file (and local file) is the 15th day of the seventh month following the fiscal year-end (applicable only to the taxpayers under the authority of the Large Taxpayers Unit).

- **CbCR preparation and submission**

The deadline for submission of the CbCR is the end of the 12th month following the fiscal year-end.

- **CbCR notification**

The deadline for the submission of the CbCR notification is the end of the fifth month following the fiscal year-end.

b) Transfer pricing documentation/Local File preparation deadline

The statutory deadline for the preparation of TP documentation is the 15th day of the seventh month following the fiscal year-end.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Yes, taxpayers followed by the Large Taxpayers Unit have to submit TP documentation prepared according to the format prescribed in TP Decree-Ruling 268/2021 of 26 November within the deadline for submission of the IES, i.e., until the 15th day of the seventh month after the end of the fiscal year or on 15 July if the fiscal year coincides with the calendar year.

- **Time period or deadline for submission on tax authority request**

The taxpayer is normally given 10 days' notice to submit the TP documentation once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The TP methods hierarchy was removed from the TP Decree-Ruling, aligning it with Article 63 of the CIT Code. Taxpayers are entitled to use any of the accepted TP methods (comparable uncontrolled price method, resale price method, cost-plus method, profit-split method and transactional net margin method).

If the controlled transaction is unique (real estate rights, unlisted companies' share capital, credit rights, intangible property) or if there is a lack of available data regarding potentially comparable transactions, the taxpayer may adopt other methods, techniques or models of economic assets valuation when the traditional methods are not viable. Nonetheless, when using other methods, techniques or models of economic assets valuation, the taxpayer needs to describe and explain the method and the rationale of its selection.

The TP Decree-Ruling adopts the principle of the prevalence of substance over form since the applicable regulations now determine that controlled transactions' terms and conditions to be considered are those in force, even if those terms and conditions are distinct from the ones contractually formalized.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is a preference for local comparables and if not so, Iberian comparables; if these prove scarce, European comparables may be accepted.

- **Single-year vs. multiyear analysis for benchmarking**

The tested party's single-year results are usually tested against multiple-year interquartile ranges.

- **Use of interquartile range**

Spreadsheet interquartile range calculations are used following general statistics rules for respective calculations.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The benchmarking search may remain valid for three years (with an update of the financials), provided that the facts and circumstances surrounding the transactions have not materially changed. One of the aspects to be confirmed annually is whether the 20% independence threshold specified in the Portuguese legislation is still met by all comparables included in the final set.

- **Simple, weighted or pooled results**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

Local independence threshold (20%) and criteria must be used in benchmarking studies.

9. Transfer pricing penalties and relief

a) Penalty exposure

Refer to the sections below.

b) Consequences for incomplete documentation

Refer to the sections below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to comply with documentation requirements may shift the burden of proof from the tax authorities to the taxpayer and the application of secret comparables.

Non-submission of the TP documentation and the lack of presentation of the CbCR are punishable with a fine ranging between EUR500 and EUR20,000, plus 5% of daily interest for each late day in delivering the relevant document.

In addition, the General Regime on Tax Infractions (Regime Geral das Infracções Tributárias – RGIT) addresses penalties for the following situations:

- The taxpayer stated in the IES that the TP documentation was prepared and, despite being notified by the tax authorities to submit it, it was late in its delivery. The penalty related to late delivery can reach EUR20,000 per year and per company.
- The taxpayer does not state in the IES that the TP documentation was prepared but was notified by the tax authorities to submit it. The penalty for non-compliance

related to an omission or lack of evidence in the IES can reach EUR45,000 per year and per company.

- The taxpayer stated in the IES that the TP documentation was prepared, and it was notified by the tax authorities to submit it, but the documentation was not prepared. The penalty for non-compliance related to improper fulfillment can reach EUR75,000 per year and per company.
- The taxpayer stated in the IES that the TP documentation was prepared but refused to submit it to the tax authorities (when duly requested). The penalty for non-compliance related to the refusal to submit TP documentation can reach EUR150,000 per year and per company.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

TP adjustments are subject to the general tax penalty regime. A late-payment interest penalty is also applicable for TP adjustments per year.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Please see above.

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

c) Penalty relief

The general tax penalty regime applies in Portugal. The determination of penalties will be made on a case-by-case basis.

Taxpayers can challenge adjustments and tax assessments at the administrative level and tax court.

10. Statute of limitations on transfer pricing assessments

In Portugal, an assessment is possible during the four years after the end of the assessment year. All Portugal-based companies have a statutory obligation to keep their TP documentation available (at the Portuguese establishment or premises) and in good order for the relevant year for 10 years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit, in general, may be considered to be medium, as is the likelihood that TP will be reviewed as part of that audit. When it comes to recurrent loss-making companies or business model conversions, especially those often involved in cross-border transactions, the risk becomes high. Companies followed by the Large Taxpayers Unit are more frequently audited.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high that the TP methodology will be challenged if TP is reviewed as part of the audit.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood of an adjustment, if TP methodology is challenged, may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Transactions more likely to be audited include:

- Recurrent loss-making companies that often perform significant cross-border transactions
- Contradictions disclosed in the IES also lead to audits
- Companies with low profitability and considerable public exposure
- Financial transactions including cash pooling arrangements and guarantees are also likely to be scrutinized
- Restructuring operations are becoming increasingly more

subject to audits

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Taxpayers are allowed to negotiate unilateral, bilateral and multilateral APAs.

A detailed APA procedure, setting out the APA submission requirements, process and fees, was updated by Decree-Ruling 267/2021 of 26 November (effective on 27 November 2021) and is currently foreseen in Article 138 of the CITC (updated by Law No. 119/2019 on 18 September 2019). The previous Decree-Ruling 620-A/2008 of 16 July was repealed.

- **Tenure**

APAs cannot exceed a four-year period, which may be renewable upon a written request to the tax authorities.

- **Rollback provisions**

Yes, up to a two-year period under certain conditions.

- **MAP opportunities**

Yes, taxpayers may request a MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double tax treaty to which Portugal is signatory under Article 1(1) of the EU Arbitration Convention (90/436/EEC). Taxpayers may also request a MAP when income included in the profits of an enterprise of a contracting state are or may be equally included in the profits of an enterprise from another contracting state.

In the case of negotiation of a unilateral APA, the taxpayer will be required to waive its right to apply to a MAP.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Debt/equity rules according to the new OECD Transfer Pricing Guidance on Financial Transactions should be observed.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

The Puerto Rico Department of the Treasury (*Departamento de Hacienda de Puerto Rico*) is the governmental authority that administers the Puerto Rico Internal Revenue Code of 2011 as amended (2011 Code). The tax authority that provides for transfer pricing matters is the 2011 Code.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are regulations to implement the provisions of Section 1047 of Act No. 120 of 31 October 1994, as amended, known as the Puerto Rico Internal Revenue Code of 1994 (1994 Code), promulgated under Section 6130 of the Code that authorizes the Secretary of the Treasury to adopt the necessary regulations to put into effect said Code (1994 Code Regulations).

This was effective 30 days after its publication on 22 December 2000.

Although the 1994 Code was repealed by the 2011 Code, regulations issued under the 1994 Code corresponding to their identical provisions in the 2011 Code shall continue in full force and will be effective until regulations under the 2011 Code are issued.

Furthermore, on May 11, 2021 the Puerto Rico Treasury Department issued Administrative Determination Letter 21-05 to among others, clarified that there is no need to issue a Transfer Pricing Report each year to the extent that the facts, circumstances and intercompany transactions have not changed substantially from the time the Transfer Pricing Report was issued.

- **Section reference from local regulation**

Articles 1047-1 through 1047-4 of the 1994 Code Regulations.

Such articles regulate the current provisions of Section 1040.09 of the 2011 Code which is equivalent to Section 1047 of the 1994 Code.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The regulations do not rely on OECD Transfer Pricing Guidelines, the UN tax manual or the EU Joint Transfer Pricing Forum.

The rules are modeled after Section 482 of the United States Internal Revenue Code of 1986, as amended, and its regulations (US Code).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If yes, does it need to be submitted or prepared contemporaneously?**

The 2011 Code disallows as a deduction for income tax purposes, 51% of certain intercompany expenses (51% disallowance) incurred by the taxpayer unless such taxpayer voluntarily provides, along with its income tax return, a transfer pricing study that includes an analysis of the operations taking place in Puerto Rico, prepared according to and in compliance with the requirements established in Section 482 of the US Code.

For tax years beginning after 31 December 2019, form AS 6175, Certification of Compliance with Sections 1033.17(a)(16) and (17) of the 2011 Codemust be completed and filed with the Puerto Rico Treasury Department's Unified System of Internal Revenue (Sistema Unificado de Rentas Internas – SURI). Form AS 6175 serves as a certification of compliance and certifies that a transfer pricing study has been issued and is available as of the income tax return filing due date. In the event the transfer pricing study is requested by the Puerto Rico Treasury Department, it must be provided within 30 calendar days after being requested. At the present time, the Puerto Rico Treasury Department has not issued regulations to further interpret these provisions.

Please note that apart from intercompany expenses limitation per above, the transfer pricing regulation provides the rules for transactions between related parties/controlled groups.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, local branches who wish to fully deduct the allocated expenses from their home office must submit, along with their income tax returns, the transfer pricing study under Section 482 of the US Code, which includes an analysis of the operations taking place in Puerto Rico as provided above.

- **Does transfer pricing documentation have to be prepared annually?**

Taxpayers can reasonably rely on a certified transfer pricing study prepared for previous years, provided the taxpayer's facts and circumstances and relevant transactions in the tax year have not substantially changed since the certification of the transfer pricing study. Despite this, taxpayers need to submit annually form AS 6175 together with their income tax return.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

The Puerto Rico Treasury Department has not issued regulations with respect to the impact of transfer pricing study provisions to MNEs with multiple entities in Puerto Rico. It is unclear whether MNEs with multiple entities may be able to submit consolidated transfer pricing studies to cover all the entities operating in Puerto Rico.

b) Materiality limit or thresholds – Rules and provisions previously noted are generally applicable regardless of the amount of expenses involved

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Even when not specifically required as to have written documentation but transactions between related parties/controlled group of entities are governed by the transfer pricing regulation and highly recommended to have the same documented accordingly.

- **Local language documentation requirement**

Documentation may be submitted in English or Spanish.

- **Safe harbor availability including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

This is not applicable.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

No.

- **Related-party disclosures along with corporate income tax return**

Entities in Puerto Rico that are part of a group of controlled corporations or related entities must obtain an identification number from the Puerto Rico Treasury Department for the group. Such number must be included in their income tax return.

- **Related-party disclosures in financial statement/annual report**

- **Audited Financial Statements (AFS) are required when the volume of business is equal to or greater than $10,000,000. In the case of members of a group of related entities, the combined volume of business of the group shall be taken into consideration to determine if the threshold has been met. Under these circumstances, every member of the group with volume of business of $1,000,000 or more is required to accompany its income tax return with AFS. Provided that every member of the group with volume of business of less than $1,000,000 is required to submit an Agreed Upon Procedure (AUP) or Compliance Attestation (CA) report.**

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

Corporate income tax return corporations with a calendar year must file their income tax return, or extension thereof, on or before 15 April following the close of the calendar year. Corporations with a fiscal year period of accounting must file their income tax returns, or extension thereof, on or before the 15th day of the fourth month following the close of the fiscal year. If duly extended by the due date, the taxpayer will have an additional six months to file its income tax return.

AS 6175, Certification of Compliance with Sections 1033.17(a)(16) and (17) to certify / confirm that a transfer pricing study has been prepared and is available by the time the return is due is required to be submitted with the income tax return.

- **Other transfer pricing disclosures and return**

No.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

No.

- **CbCR notification**

No.

b) Transfer pricing documentation/Local File preparation deadline

c) AS 6175, Certification of Compliance with Sections 1033.17(a)(16) and (17).Transfer pricing documentation/ Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

The transfer pricing study related to the 51% disallowance must be issued on or before the due date to file the income tax return, and Form AS 6175 must be filed along with the income tax return of the entity.

- **Time period or deadline for submission on tax authority request**

If requested by the Puerto Rico Treasury Department, the transfer pricing study must be submitted within 30 calendar days after its request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

The 1047 Regulation provides various methodologies to account for transaction between related parties/controlled group of entities (ie sale of personal property)

- Domestic transactions

The 1047 Regulation provides various methodologies to account for transaction between related parties/controlled group of entities (ie sale of personal property).

b) The 1047 Regulation provides various methodologies to account for transaction between related parties/controlled group of entities (ie sale of personal property). Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

- Local vs. regional comparables

Reference would be made to Section 482 of the US Code and customary benchmarking requirements used thereunder.

- Single-year vs. multiyear analysis for benchmarking

Reference would be made to Section 482 of the US Code and customary benchmarking requirements used thereunder.

- Use of interquartile range

Reference would be made to Section 482 of the US Code and customary benchmarking requirements used thereunder.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

Reference would be made to Section 482 of the US Code and customary benchmarking requirements used thereunder.

- Simple, weighted or pooled results

Reference would be made to Section 482 of the US Code and customary benchmarking requirements used thereunder.

- Other specific benchmarking criteria, if any

Reference would be made to Section 482 of the US Code and customary benchmarking requirements used thereunder.

9. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences for incomplete documentation

Intercompany Expenses not allowed as deduction. In addition penalties can be assessed from 20% or 40%, in the case of gross valuation misstatements, of the amount assessed as deficiency. In the case of fraud the penalty should be 100% of the amount assessed as deficiency.

- Consequences of failure to submit, late submission or incorrect disclosures

Intercompany Expenses not allowed as deduction. In addition penalties can be assessed from 20% or 40%, in the case of gross valuation misstatements, of the amount assessed as deficiency. In the case of fraud the penalty should be 100% of the amount assessed as deficiency.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?

Yes.

- Is interest charged on penalties or payable on a refund?

This is not applicable.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

Yes, as the Transfer Pricing Study needs to be available by the filing due date.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

Generally, the Puerto Rico Treasury Department may assess tax deficiencies up to four years after filing the income tax

return or six years if 25% of income or more is omitted from the income tax return. Since Form AS 6175 certifying that a transfer pricing study is available, must be filed together with the income tax return, it would appear, the Secretary of the Treasury may challenge a transfer pricing study within the four-year or six-year period for assessment of deficiencies, as applicable.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Low.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Low.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Low.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Entities that are considered large taxpayers may be subject to increased likeliness of a tax audit. However, the general audit risk is low.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

State tax regime: General Tax Authority (GTA)

Qatar Financial Centre (QFC) tax regime: QFC Authority (QFCA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

State tax regime: Income Tax Law No. 24 of 2018 (Qatar Income Tax Law), is effective from 13 December 2018, whilst Executive Regulations to Tax Law No. 24 were issued on 11 December 2019. The law and regulations apply to Qatari taxpayers, except for those registered in the QFC.

The "Related party" concept is defined under Article 52 of the Executive Regulations, and the definition aligns with the IFRS definition of "*related party*".

QFC tax regime: Law No. 7 of 2005 applies to taxpayers in the QFC regime and it is separate and distinct from the State tax regime. Law No. 7 introduced the QFCA Tax Manual (Transfer Pricing Manual), and it applies to QFC-registered entities only.

"Associated person" is defined under Section 56 of the QFC Regulations, and it is based on control.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Qatar is not an OECD member jurisdiction although in practice Qatar generally follows the OECD Guidelines.

On 4 December 2018, Qatar signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument or MLI).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  Master and local file requirements were recently introduced under the Executive Regulations of the Qatar Income Tax Law. In 2020 the GTA released President's Decision No. 4 of 2020 (Transfer Pricing Decision), requiring certain taxpayers with related-party transactions to submit a Transfer Pricing Declaration form with their FY2020 tax return.

  It is a requirement to submit master and local files by 30 June of the year following the reporting year, subject to certain statutory thresholds whilst the taxpayer should have at least one foreign related party. The Transfer Pricing Decision applies to financial years starting on or after 1 January 2020.

- Effective or expected commencement date

  Financial years beginning on or after 13 December 2018 and mandatory submission of the master and local file applies from FY2020 (financial years starting on or after 1 January 2020).

- Material differences from OECD report template or format

  No significant differences relative to the OECD format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There are no provisions in the law that provide for penalty protection regarding the submission of a report prepared according to the BEPS Action 13 format. That said, submission of a BEPS Action 13 format report should be sufficient to meet local documentation requirements.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, Qatar signed the MCAA on 19 December 2017 whilst on 9 September 2018, whilst it published new CbCR requirements that align to the OECD's BEPS Action 13 Final Report. These requirements also apply to entities that are registered under the QFC regime.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

State tax regime: recently, master and local file requirements were introduced through the new Executive Regulations of the Qatar Income Tax Law. Subject to certain conditions, the reports should be prepared contemporaneously and should be submitted to authorities by 30 June of the year following the reporting year.

QFC tax regime: the burden of proof is on the QFC-registered taxpayer to establish that the pricing, term and conditions attached to their related party transactions are consistent with the arm's-length standard.

The following records and evidence should be considered by the taxpayer in complying with the burden of proof:

- Primary accounting records
- Tax adjustment records; if any
- Records of transactions with related parties
- Evidence demonstrating an arm's-length result (including a description of the intercompany transactions and a functional analysis)

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

State tax regime: yes.

QFC tax regime: preparation of a transfer pricing report is recommended if the related party transactions do not produce an arm's length result for the taxpayer. Risk may materialize if the taxpayer returns losses or where its profits are lower than in previous years, or when compared to the profits earned by competitors in the taxpayer's industry.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

State tax regime: there is a requirement to submit the transfer pricing disclosure form if the taxpayer's total revenues or total assets are above QAR10 million. The requirement to prepare transfer pricing documentation is based on the taxpayer having total revenues or total assets above QAR50 million.

Transactions above QAR200,000 (by type of transaction) must be disclosed.

If the threshold is not met, documentation should still be prepared and made available, if requested by the GTA.

QFC tax regime: no amount is specified.

- **Master File**

State tax regime: please see the thresholds above.

QFC tax regime: please see above.

- **Local File**

State tax regime: please see above.

QFC tax regime: please see above.

- **CbCR**

The materiality limit is an annual consolidated group revenue of QAR3 billion (approximately EUR700 million or USD824 million) in the preceding fiscal year.

- **Economic analysis**

State tax regime: transactions above QAR200,000 (by type of transaction) require analysis.

QFC tax regime: no materiality specified.

c) Specific requirements

- **Treatment of domestic transactions**

There is no distinction between domestic and international transactions under the current transfer pricing regulations.

Therefore, it is expected that all related-party transactions should comply with the law and regulations, which are based on the arm's-length standard.

- **Local language documentation requirement**

State tax regime: transfer pricing documentation prepared in English is currently accepted by the GTA. However, in practice, and in the event of a preapproval application to use an OECD method other than the CUP method, a summary memorandum should be prepared in Arabic and submitted to the GTA for its approval.

It remains to be seen, however, whether an Arabic translation of the master and local file prepared in English will be requested by the GTA.

QFC tax regime: English language documents are accepted under the QFC regime.

- **Safe harbor availability including financial transactions if applicable**

State tax regime: while there is no explicit reference to safe harbor rules in the new regulations, a limit on the deductibility of interest on related-party loans applies. The limit is a maximum of three times the shareholders' equity, as recorded in the financial statements for the relevant accounting period.

QFC tax regime: under the Transfer Pricing Manual, the safe harbor debt and equity ratios are as follows:

- 2:1 for a nonfinancial institution.
- 4:1 for a financial institution.

The safe harbor debt and equity ratios only relate to the quantum of the loan and not the interest rate on the loan.

- **Is aggregation or individual testing of transactions preferred for an entity**

No specific distinction in the regulations.

- **Any other disclosure/compliance requirement**

A transfer pricing form was recently introduced by the Executive Regulations of the Qatar Income Tax Law. Taxpayers are required to submit the transfer pricing form with the corporate income tax return if the taxpayer has a foreign related entity and if revenue or total assets exceeds QAR10 million and where related-party transactions (either local or abroad) are above QAR200,000 (by type of transaction), for the relevant accounting period.

Taxpayers wishing to use an OECD transfer pricing method other than the CUP for determining an arm's-length price on their related-party transactions should apply to the GTA seeking its approval.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

State tax regime: per the above, there is a requirement to complete the transfer pricing form.

QFC tax regime: there is currently no requirement to prepare a transfer pricing specific return separately or with the corporate income tax return.

- **Related-party disclosures along with corporate income tax return**

State tax regime: related-party disclosures (transfer pricing form) are included as part of the income tax return. In addition, the notes to the audited financial statements, which are filed with the GTA, should support the figures in the annual tax declaration.

QFC tax regime: related-party transactions must be disclosed in the notes to the audited financial statements that are filed with the QFCA Tax Department, along with the income tax return. A QFC branch is not required to submit full financial statements.

Currently there are no related-party disclosures or transfer pricing-related appendices that need to be submitted under the QFC regime.

- **Related-party disclosures in financial statement/annual report**

Same as above.

- **Other information/documents to be filed**

State tax regime: an application should be made to the GTA to use an OECD transfer pricing method other than the CUP.

QFC tax regime: none.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

It should be filed within four months after the end of the accounting period.

- Other transfer pricing disclosures and return

It should be submitted by the corporate income tax return deadline.

- Master File

It should be submitted by 30 June of the year following the reporting year.

- CbCR preparation and submission

It should be submitted within 12 months from the end of the reporting fiscal year.

- CbCR notification

For the fiscal year beginning on or after 1 January 2018 (FY2018), the local authorities require MNE groups whose ultimate parent entities are tax residents in Qatar to file CbCR notifications with the authorities on or before 12 months from the end of reporting fiscal year. For subsequent fiscal years, the deadline is the last day of the reporting year.

b) Transfer Pricing documentation/Local File preparation deadline

It is recommended that the transfer pricing documentation is available on or before the date of the annual tax return filling.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

Yes, master and local files should be filed by 30 June of the year following the reporting year, subject to certain statutory thresholds, which includes the taxpayer having at least one foreign related party. This requirement applies to years starting on or after 1 January 2020.

- Time period or deadline for submission on tax authority request

In the event that Qatar entities do not meet the conditions or prescribed thresholds and hence are not required to submit the master and local files within the statutory deadline, the transfer pricing documentation should be readily available for submission within 30 days upon the GTA's request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

For FY2020, deadlines for submission of master file and local file were moved to 30 September 2021. For FY2021, it is expected that submissions will be by 30 June 2022. To date no extensions or new deadlines have been communicated by the authorities.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

There is no distinction between domestic and international transactions in the current transfer pricing legislation, and the authorities accept all OECD recognized transfer pricing methods, subject to the following.

State tax regime: under the Executive Regulations to the Qatar Income Tax Law, an arm's-length price should be determined using the CUP method. This price is determined by comparing the pricing, terms and conditions on the related party transaction with similar goods or services provided between third parties. The following considerations should be performed as part of the CUP analysis:

- Characteristics of the goods supplied, or services provided
- The pricing and contractual terms attached to the transactions
- Functions performed, assets utilized, and risks incurred and
- All relevant economic circumstances.

When the CUP method cannot be applied, the other OECD methods may be applied, subject to approval of the GTA.

The GTA expects comparables from Qatar or the Middle East and North Africa (MENA) region. However, if this is not possible, Asian comparables should also be acceptable.

QFC tax regime: when the CUP method is available as evidence, the QFCA Tax Department is likely to consider it as the preferred method. A discussion should be included in the documentation about the appropriateness of the selected method.

The QFCA Tax Department prefers comparables from the MENA region, or failing that, Asian or African comparables are preferred to European comparables.

8. Benchmarking requirements

- **Local vs. regional comparables**

Qatar tax authorities prefer local jurisdiction and MENA region comparables.

Geographic preference is given to MENA; however, if a MENA search cannot provide sufficient comparable companies, the search may be expanded to other regions (generally in the following order of preference: Asia, Africa and Europe).

- **Single year vs. multiyear analysis**

Multiyear analysis is performed.

- **Use of interquartile range**

The interquartile range is used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Roll forwards and updates of the financials of a prior study are used, provided the benchmarking search is not more than three years old.

- **Simple, weighted or pooled results**

The weighted average is adopted.

- **Other specific benchmarking criteria, if any**

Independence threshold of 50% and above is applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not specified in regulations so far.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are currently no specific transfer pricing penalties for failure to maintain transfer pricing documentation. In practice, general late filing penalties may apply. However, given the Transfer Pricing Declaration Form is to be filed with the tax return, and that tax returns cannot be filed without the form (where applicable), penalties for late filing of the tax return apply if delays are caused due to non-timely filing of the form. Penalties amount to QAR500 per day and penalties are capped at QAR180,000.

Although no specific penalty is mentioned in transfer pricing regulations for the late submission of the master and local file, in practice the GTA currently applies the same general penalties imposed on late submission of the income tax return (QAR 500 per day).

The transfer pricing assessment of the Qatar tax authorities may become final in the event of failure to provide transfer pricing documentation and supporting information upon request.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

State tax regime: financial penalties, in the form of interest imposed for non-compliance with income tax rules under the Qatar Income Tax Law may apply in the case of a deficiency assessment due to transfer pricing adjustments.

Interest on any additional income tax due as a result of a transfer pricing adjustment may be levied at a rate of 1.5% per month of delay (capped at the amount of income tax due).

QFC tax regime: if the QFC-registered taxpayer fraudulently or negligently files a tax return, the QFC-registered taxpayer may be exposed to a financial sanction of an amount not exceeding the understated tax. The late payment of tax is subject to a delay payment charge of 5% per year, calculated for the period from the due date of the tax to the actual payment date.

If a QFC-registered taxpayer fails to maintain adequate records to support the pricing of transactions with associates or claims in its return that no adjustment is required under the transfer pricing regulations without being able to substantiate that claim, then there may be a penalty liability for failure to maintain adequate records (not exceeding QAR20,000) or for filing an incorrect return (financial sanctions not exceeding the tax understated).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not clarified in the regulations, and there are currently no cases or precedent in this area.

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

b) Penalty relief

Currently there is no penalty relief.

A penalty exemption/reduction may be electronically requested as a first step before discussing late filing penalties with the authorities. If no response is received or the exemption/reduction is not granted, an appeal may be lodged to the Qatar tax authorities or to a body designated by the relevant local tax regulations.

10. Statute of limitations on transfer pricing assessments

State tax regime: a transfer pricing assessment is a part of the regular corporate income tax audit by the GTA. The statute of limitations to complete a regular tax audit is five years following the year in which the taxpayer submitted the tax return.

QFC tax regime: the time limit for the QFCA Tax Department to conduct a tax assessment is six years after the end of the accounting period to which it relates.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny or related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

State tax regime: the likelihood may be considered to be medium to high.

QFC tax regime: The likelihood may be considered to be high.

The QFCA Tax Department has a rigorous process in place compared to the GTA regarding transfer pricing reviews and audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

State tax regime: the likelihood of a challenge to the transfer pricing methodology is characterized as low to medium, provided that sufficient transfer pricing documentation is made available on request.

QFC tax regime: the likelihood of a challenge to the transfer pricing methodology is characterized as medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

State tax regime: the likelihood of an adjustment is characterized as low to medium, provided that sufficient transfer pricing documentation is available.

QFC tax regime: the likelihood of an adjustment is characterized as medium to high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

State tax regime: recently the GTA has challenged management fees and head office cost allocations.

QFC tax regime: the QFCA Tax Department is currently focusing on intragroup services, intercompany loans and thin capitalization issues.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

State tax regime: there is currently no formal APA program in place. APA regulations are expected to be issued by the GTA soon.

QFC tax regime: the QFCA Tax Department has an advance ruling regime and welcomes QFC-registered entities to apply for an APA to obtain certainty about their tax position.

- **Tenure**

There is none specified.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Refer to the sections above.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Tax Administration of Serbia.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Articles 59 through 62 of the Corporate Income Tax (CIT) Law define the arm's-length principle, the acceptable methods and the obligation to prepare and file transfer pricing documentation (effective from 1 January 2020).

The rulebook on transfer pricing and methods for the determination of arm's-length prices in intragroup transactions provides further details about these and prescribes obligatory content of the transfer pricing documentation (effective from 30 January 2014).

- **Section reference from local regulation**

Article 59 of the CIT Law defines related parties and associated enterprises.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Serbia is not an OECD member; however, Serbian transfer pricing provisions and documentation requirements are generally based on the OECD Guidelines.

Similarly, the EU Joint Transfer Pricing Forum and UN tax manual are not directly recognized by Serbian transfer pricing legislation.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  Only CbCR is covered.

- Effective or expected commencement date

  The obligation of filing the CbCR is effective as of fiscal year 2020.

- Material differences from OECD report template or format

  The template is mostly in line with OECD template.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  It is sufficient.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the rulebook on transfer pricing and methods for the determination of arm's-length prices in intragroup transactions provides rules for transfer pricing documentation in Serbia, which provides for a contemporaneous document preparation.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, every section of transfer pricing documentation should be updated with the latest available information.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

If a taxpayer did not realize intercompany transactions exceeding Serbian dinar (RSD)8 million with either of the related parties, its transfer pricing disclosure can be fulfilled in a summary form.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

There is a materiality threshold for preparation of the CbCR. For Serbian domestic ultimate parent companies, CbCR only has to be prepared where the consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

- **Economic analysis**

The threshold is RSD8 million.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

Local language documentation requirement

The transfer pricing documentation needs to be submitted in the local language.

Per Article 6 of the Law on Tax Procedure and Tax Administration, if a taxpayer submits a document in a language and letter not used officially by the tax authorities in accordance with the law governing the official use of language and letter, the tax authority will set a time limit that may not be shorter than five days for the taxpayer to deliver a certified translation into Serbian. If the taxpayer fails to deliver the certified translation within the provided time limit, the document shall be deemed not submitted.

- **Safe harbor availability, including financial transactions if applicable**

Serbia prescribes safe harbor interest rates for intercompany loans, which are updated every year.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

Serbian legislation does not explicitly prescribe the currency in which the transfer pricing documentation should be prepared; however, implicitly it may be concluded that the transfer pricing documentation should be prepared in local currency (RSD) and that the stated amounts should be consistent with the information from the official financial statements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no specific transfer pricing return in Serbia.

- **Related-party disclosures along with corporate income tax return**

Taxpayers are obligated to disclose their annual corporate income tax return revenues and expenses resulting from transactions with related parties, as well as disclose tax-based adjustments based on the transfer pricing analysis.

In addition, related-party disclosures and details of transactions are to be documented through obligatory transfer pricing documentation, which needs to be prepared and filed along with the corporate income tax return.

- **Related-party disclosures in financial statement/annual report**

There is none prescribed.

- **CbCR notification included in the statutory tax return**

Not yet introduced.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The deadline for submission of the corporate income tax return is set within 180 days from the date of expiration of the period for which the tax is assessed.

- Other transfer pricing disclosures and return

The prescribed deadline is the same as for corporate income tax return.

- Master File

This is not applicable.

- CbCR preparation and submission

The ultimate parent entity of an MNE group established in Serbia must submit the CbCR for each fiscal year to the competent authority within 12 months from the end of the MNE group's reporting financial year.

The template is prescribed by the local transfer pricing rulebook (mostly in line with the OECD template) and should be submitted in local (Serbian) language in paper form.

- CbCR notification

Not yet introduced.

b) Transfer pricing documentation/Local File preparation deadline

There is a statutory deadline and recommendation for the preparation of transfer pricing documentation – by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

Yes, transfer pricing documentation must be submitted with the corporate income tax return. The deadline for submission of the corporate income tax return and transfer pricing documentation is set within 180 days from the date of expiration of the period for which the tax is assessed.

- **Time period or deadline for submission upon tax authority request**

If transfer pricing documentation is not submitted, the CIT Law prescribes that the tax authorities could ask in writing for a taxpayer to submit transfer pricing documentation and are obligated to give a deadline of 30 to 90 days to act upon the request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

This is not applicable for fiscal year 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes
- Domestic transactions: Yes

b) Priority and preference of methods

The taxpayer is required to select the most appropriate method for determining that the transaction price is at arm's length. Selection of the most appropriate method is based on the following criteria:

- Nature of transactions that are subject to the analysis
- Availability and reliability of data for the analysis
- Level of comparability between transactions affected by transfer prices and transactions carried out with or between unrelated parties
- The appropriateness of using financial data of unrelated parties for the analysis of transfer pricing compliance by certain types of transactions
- The nature and reliability of assumptions

To determine the arm's-length price of a transaction, the regulations prescribe the following methods: CUP, resale-minus method, cost-plus method, TNMM and profit-split method.

The taxpayer is also allowed to use any other unspecified

method that is reasonable to apply in a given circumstance, assuming that the above-specified methods cannot be applied.

Foreign comparables are accepted for the purpose of a benchmark analysis if no local comparables can be identified.

There is no priority in the selection of methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

Foreign comparables are accepted for the purpose of a benchmark analysis if no local comparables can be identified.

- **Single-year vs. multiyear analysis for benchmarking**

Use of a multiyear analysis is mandatory.

- **Use of interquartile range**

Use of the interquartile range is mandatory.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year. Transfer pricing documentation has to be prepared and submitted annually, and there is no need to conduct a fresh benchmarking search every year – i.e., a rollforward (update of financials of comparable companies) of the previous year's benchmarking analysis could be acceptable, too. Furthermore, financials of a taxpayer should be updated every year in accordance with financial statements for that year.

- **Simple, weighted or pooled results**

Application of the weighted average for arm's-length analysis is mandatory.

- **Other specific benchmarking criteria, if any**

Independence of a company is evaluated by related-party rules stating that an entity shall be considered a related party if it has 25% of shares or votes of the taxpayer. Also, a related party is considered to be a person closely related to the taxpayer or an entity registered in a tax haven.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There are no immediate penalties imposed for incomplete documentation. If submitted documentation is not sufficient for review, the tax authority gives additional time to taxpayer to add complementary documentation (additional expenses and possibility of taxpayer to provide required documentation are taken into consideration by the tax authorities). Additional deadlines for adding complementary documentation and penalties for non-compliance are the same as for failure to submit transfer pricing documentation (please see below). The tax authority may complete or perform entire transfer pricing analysis independently, without sending the request to taxpayer to complete the documentation, if in the process of tax audit the tax authority determines that documentation is not prepared in accordance with the prescribed transfer pricing rules.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Generally, each taxpayer is obligated to file annual transfer pricing documentation together with the annual corporate profits tax return. However, penalties are prescribed only if the taxpayer fails to submit the transfer pricing documentation upon official written request by the tax authorities, subject to an additional filing deadline between 30 and 90 days. The range of penalties for eventual non-compliance is between RSD100,000 and RSD2 million for the legal entity and up to RSD100,000 for the responsible individual in the legal entity.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In addition, the possible adjustment of taxable income on a transfer pricing basis may result in a penalty of up to 30% of the understated tax liabilities and may further result in increased interest for late tax payments.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

In addition, the possible adjustment of taxable income on a transfer pricing basis may result in a penalty of up to 30% of the understated tax liabilities and may further result in increased interest for late tax payments.

- **Is interest charged on penalties or payable on a refund?**

Legislation in the Republic of Serbia prescribes that the interest is charged on penalties or payable on refund at a yearly rate set by the National Bank of Serbia and increased by 10%.

b) Penalty relief

Taxpayers may opt for 50% of imposed penalties (if imposed to tax offense) no later than eight days from the receipt of the transfer pricing order, whereas they would be exempt from payment of the remainder 50% of imposed penalties. Additionally, taxpayers may be approved for an additional period of up to 90 days to comply with the transfer pricing documentation requirements (i.e., to submit to the tax authorities the prescribed transfer pricing document).

10. Statute of limitations on transfer pricing assessments

The general statute-of-limitations period of five years for taxes in Serbia also applies to transfer pricing assessments. A five-year period starts from the beginning of the year following the year in which the respective tax liability arose.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium, although audits by the Serbian tax authorities are not conducted regularly, and audited periods are not considered irrevocably closed. Typically, audits take place only once every three to five years, and they cover all taxes. Transfer pricing is likely to be within the scope of most tax audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium; currently, tax authorities have a limited level of practice with transfer pricing methodology, but they have raised pertinent questions in certain previous situations.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium, for the same reasons given above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

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

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Advance rulings and APAs are not available in the Republic of Serbia.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is applicable through double tax treaties. There is no elaborate practice in Republic of Serbia regarding MAP.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules are prescribed in Article 62 of the CIT Law.

In general, to meet the thin-capitalization test, a debt-to-equity ratio of 4:1 needs to be met (10:1 for financial institutions). This ratio means that the interest and related expenses accrued on the basis of loan from related party are deductible to the extent being related to the part of the borrowed amount that equals 4 (10) times the value of taxpayer's average own capital. Any interest above that level is considered as non deductible expense for Serbian corporate income tax purposes.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority [1]

National Agency for Fiscal Administration (ANAF), part of the Ministry of Public Finance.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Law 227/2015 regarding the Fiscal Code, as subsequently completed and amended
  - Government Decision 1/2016, for the approval of the norms for the application of Law 227/2015 regarding the Fiscal Code, as subsequently completed and amended
  - ANAF Order 222/2008, on the content of the transfer pricing documentation file applicable for administrative procedures initiated before 1 January 2016
  - ANAF Order 442/2016, on the content of the transfer pricing documentation file applicable for administrative procedures initiated after 1 January 2016
  - ANAF Order 3737/2015, approving the form of the decision issued by the tax authority in application of the procedure for elimination of double taxation between Romanian related parties
  - ANAF Order 3735/2015, approving the procedure for the issuance or amendment of APAs and the content of the respective APA request
  - ANAF Order 3736/2015, approving the procedure for the issuance of advance individual rulings and the content of the respective request
  - Law 207/2015, regarding the Fiscal Procedure Code, as subsequently completed and amended
  - ANAF Order 3049/2017, approving the template and content of the CbC report, as subsequently completed and amended

[1] **https://www.anaf.ro/anaf/internet/ANAF/acasa/!ut/p/a1/hY7LCsIwFET_KPdaTeg2BWnsyrpJvBtJoS-ticRi_HxTcGud-3cAZ5gCBAXL2NfZ2Hr2z09JJXNRGCZXIWYWqRqx5cTjx8o-hY7hJwTgD-iMR_ew20iqD4AisXFVA_-Sbp6gJoxvewI4uYdM-0274FC27WhDWzwzxIMjJFZZzsWPDzuBq_8pj-AtqSt/dl5/d5/L2dBISEvZ0FBIS9nQSEh/**

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Romania is not a member of the OECD.

The Romanian Fiscal Code and the related norms provide that the tax authority should also consider the OECD Guidelines when analyzing the prices applied in related-party transactions. In addition, the legislation on transfer pricing documentation requirements in Romania refers to the EU Code of Conduct on transfer pricing documentation (C176/1 of 28 July 2006). No reference to the UN tax manual is made under the Romanian transfer pricing legislation.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Romanian transfer pricing regulations have been amended in view of implementing the changes introduced by BEPS Action 13 for transfer pricing documentation.

In 2016, the Romanian regulations regarding the required content of the transfer pricing documentation have been revised in consideration of the elements recommended by the Master File and Local File under the OECD Guidelines to BEPS Action 13; such revised transfer pricing documentation regulations are applicable for tax audits performed by the Romanian tax authorities from 2016 onward, which may also cover tax years prior to 2016.

- Coverage in terms of Master File, Local File and CbCR

Yes, although a three-tiered documentation format as per BEPS Action 13 (Master File, Local File and CbCR) has not been formally prescribed in the local legislation, the transfer pricing documentation regulations in Romania are, from an

overall content requirement perspective, aligned with the prescribed content requirements of the Master File and Local File under BEPS Action 13. Furthermore, the Romanian transfer pricing legislation refers to and is considered to be in line with the OECD Guidelines as amended or revised, and the EU Code of Conduct on transfer pricing documentation. No specific thresholds are applicable for differentiating between the types of elements to be included in the transfer pricing documentation or to be prepared in line with the Romanian transfer pricing documentation requirements.

Local filing of CbCR often required in Romania as automatic exchange relationships of non-EU parent CbCR filings to Romania have not been activated per the OECD webpage. Romania is a nonreciprocal jurisdiction. Local filing is required using Romanian specific XML schema as provided by the Romanian tax authorities.

- Effective or expected commencement date

  Revised transfer pricing documentation regulations are applicable for tax audits performed by the Romanian tax authorities from 2016 onward, which may also cover tax years prior to 2016.

- Material differences from OECD report template or format

  There are no material differences between the OECD report template or format and Romania's regulations. Romanian regulations do not prescribe the use of a specific format, whereas content-wise, the requirements are generally aligned.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  The Romanian regulations on the required content of the transfer pricing documentation are broadly aligned with the OECD standard from an overall content perspective (though no specific format is required). Additional specific items would, however, be required in the transfer pricing documentation prepared in accordance with the local regulations in Romania (e.g., actual payments made for related-party transactions).

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 19 December 2017. At this stage, Romania is a nonreciprocal jurisdiction.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, there are local transfer pricing documentation rules. Transfer pricing documentation compliant with the specific transfer pricing documentation regulations in Romania (i.e., ANAF Order 442/2016) must be provided to the Romanian tax authorities upon their request to demonstrate that the transactions performed with related parties were carried out at arm's length. Taxpayers that entered into APAs for related-party transactions are not required to prepare and submit a transfer pricing documentation file for the periods and transactions covered by the APA. Transfer pricing documentation may need to be prepared contemporaneously by Romanian large taxpayers, but no taxpayer is required to submit transfer pricing documentation in the absence of a specific request from the tax authorities.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, permanent establishments in Romania of foreign companies are subject to the same transfer pricing documentation requirements as any Romanian legal entities.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the requirement to prepare transfer pricing documentation annually is only applicable from 2016 onward for Romanian taxpayers that qualify as large taxpayers (per the specific criteria established annually by the Romanian tax authorities), with respect to the transaction types carried out with related parties exceeding the following thresholds (obtained by cumulating the value of all transactions of that specific type undertaken during the year with all related parties, excluding value-added tax): EUR200,000 in the case of interest for financial services, EUR250,000 in the case of services and EUR350,000 in the case of acquisitions or sales of tangible or intangible assets. The standard transfer pricing documentation content requirements are applicable also in the

case of reports that must be prepared annually (no specific minimum requirement is provided under the local regulations). The term for the preparation of the annual transfer pricing documentation is within the legal deadline for submission of the annual corporate income tax return (the 25th day of the third month after the tax year-end). For the period 2021–25, the legal deadline for submission of the annual corporate income tax return was prolonged by the 25th day of the sixth month after the tax year-end.

In all other cases, transfer pricing documentation has to be prepared upon specific request from the tax authority and within the required term specified by the authorities.

In case of a tax audit, transfer pricing documentation (comprising MF and LF information) may be requested for all IC transactions of the types exceeding any of the following cumulative thresholds (obtained by cumulating the value of transactions with all related parties, excluding VAT): EUR50,000 in case of interest for financial services, EUR50,000 in case of services and EUR100,000 in the case of acquisitions/sales of tangible/intangible assets.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

As transfer pricing documentation requirements are applicable at individual taxpayer level in Romania, each entity is in principle expected to be able to provide transfer pricing documentation that is fully compliant with the Romanian transfer pricing documentation requirements upon the request from the tax authorities issued at an individual entity or taxpayer level. While no provision under the Romanian transfer pricing regulations prohibits to cover the content requirements for more than one Romanian taxpayer in the same transfer pricing report, it may be rather recommendable from a practical perspective to prepare stand-alone transfer pricing reports for each entity.

b) Materiality limit or thresholds

- Transfer pricing documentation
  - EUR50,000 in the case of interest for financial services
  - EUR50,000 in the case of services
  - EUR100,000 in the case of acquisitions or sales of tangible or intangible assets
- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The CbCR requirements apply to MNE groups having consolidated income reported in the last fiscal year prior to the reporting period equal to or exceeding EUR750 million.

- **CbCR filing**

An entity with tax residence in Romania is required to file a CbCR with respect to its reporting fiscal year if one of the following is true:

- It is the ultimate parent entity of the MNE group.
- It is the surrogate parent entity, being appointed by the MNE group as a sole substitute for the ultimate parent entity.
- It is a constituent entity of the MNE group, having the obligation under certain conditions of filing the CbCR in Romania on behalf of such MNE group (e.g., the CbCR for the MNE group is submitted in a non-EU jurisdiction).

- **CbC notification**

Romanian constituent entities forming part of an MNE group that are subject to the aforementioned requirements must notify the Romanian tax authorities of the identity and tax residence of the reporting entity.

- **Economic analysis**

Taxpayers qualifying as subject to documentation requirements need to document all transactions that exceed the materiality thresholds.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. No distinction is made with respect to the content of transfer pricing documentation required for cross-border vs. domestic related-party transactions.

- **Local language documentation requirement**

The transfer pricing documentation (including all appendices attached, e.g., intercompany agreements) needs to be submitted in Romanian.

Per the provisions of Order 442/2016, "in case of documents in a foreign language, these shall be accompanied by Romanian translations, according to the law."

- **Safe harbor availability, including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not specified.

- **Any other disclosure/compliance requirement**

There is none in particular.

5. Transfer pricing return and related-party disclosures

Transfer pricing-specific returns

No specific transfer pricing returns for related-party transactions are currently in place under the transfer pricing rules.

- **Related-party disclosures along with corporate income tax return**

No specific related-party disclosures are required along with the corporate income tax return. Generally, information about related-party transactions undertaken by a Romanian entity is disclosed only upon the specific request of the Romanian tax authority.

- **Related-party disclosures in financial statement/annual report**

For statutory accounting reporting purposes, Romanian companies are required to disclose the transactions undertaken with related parties in financial statements.

- **CbCR notification included in the statutory tax return**

No, it is not included in the corporate income tax return. A dedicated CbCR notification form is required to be separately submitted not later than the legal deadline of filing the annual corporate income tax return.

- **Other information/documents to be filed**

The Romanian legislation provides for the following general disclosure requirements:

- Disclosure of transactions performed by Romanian entities with non resident companies for which the Romanian company has an obligation to withhold taxes
- Disclosure or registration of contracts concluded by Romanian entities with non resident companies and individuals performing services in Romania that may trigger Romanian permanent establishment exposure
- Disclosure of long-term financing contracted by a Romanian entity with non resident companies or individuals

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

25 March (in the case of taxpayers with calendar tax years) – the deadline for filing the annual corporate income tax return is generally the 25th day of the third month following the tax year-end. For the period 2021–25, the deadline for filing the annual corporate income tax return was prolonged by the 25th day of the sixth month following the tax year-end.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

31 December (applicable in the case of groups with reporting fiscal years ending 31 December) – generally, the deadline being within 12 months from the last day of the reporting fiscal year of the MNE group

- **CbCR notification**

Notification to the competent authority in Romania is required to be submitted until the last day of the reporting fiscal year of the MNE group, but no later than the last day of filing of the annual corporate income tax return by the constituent entity in Romania for the preceding year.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation subject to preparation annually by large taxpayers (for transactions that exceed the specific thresholds provided under the local regulations) has to be prepared within the statutory deadline of filing the annual corporate income tax return and submitted to the tax authorities upon request within maximum 10 calendar days from such request. In all other cases, transfer pricing documentation has to be prepared only upon request and within the term established by the tax authorities (between 30 and 60 days, with one possible extension upon request of up to 30 additional days).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No, submission is to be performed only upon request from the tax authorities.

- **Time period or deadline for submission upon tax authority request**

In cases in which the annual transfer pricing documentation is required to be prepared by large taxpayers by the legal deadline of filing the tax return, such transfer pricing documentation must be provided to the tax authorities upon their request during or outside an audit within a maximum of 10 days. In all other cases of transfer pricing documentation prepared upon receiving a formal request from the tax authorities during an audit, the Romanian tax authorities must establish a term for the preparation and submission of such transfer pricing documentation that can be of 30 to 60 days (one extension of up to 30 days can be obtained upon request).

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

For the period 2021-25, the deadline for filing the annual corporate income tax return is the 25th day of the sixth month following the tax year-end. Thus, the deadline for preparing the transfer pricing documentation for large taxpayers as well as the deadline for submission of the CbCR notification for 2021 were prolonged.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**
- **Domestic transactions: Yes**

b) Priority and preference of methods

The tax authority accepts transfer pricing methods provided by the OECD Guidelines. The traditional methods (CUP, resale price and cost plus) are generally preferred over the profit-based methods (TNMM and profit split) subject to the availability of data.

When selecting the most adequate method, the following must be taken into consideration:

- **The method that is the most appropriate given the circumstances in which the prices that are subject to free competition on the commercial comparable markets are established**
  - The method for which information resulting from the actual related parties involved in the transactions subject to free competition is available
  - The degree of accuracy to which adjustments can be made in order to achieve comparability
  - The circumstances of the individual case
  - The activities effectively conducted by various related parties
  - The documentation that can be made available by the taxpayer

In addition, the selected method should reflect the circumstances of the market and the taxpayer's activity.

8. Benchmarking requirements

- **Local vs. regional comparables**

According to the provisions of Order 442/2016, in the case of a benchmarking analysis performed to determine the arm's-length nature of the related-party transactions, the territorial criteria should be considered in the following sequence: local, EU, pan-European and international. In the absence of local comparables (aspect thoroughly investigated by the Romanian tax authorities), foreign comparables are accepted (e.g., within the EU as the next level in case local comparables cannot be found).

- **Single-year vs. multiyear analysis for benchmarking**

There is a preference for single-year testing; multiyear analysis might also be acceptable if properly justified.

- **Use of interquartile range**

The Romanian transfer pricing documentation regulations prescribe the use of the interquartile range for transfer pricing analyses.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is required to be performed periodically; a rollforward or update of financial results of a prior study might also be acceptable for a certain period, depending on the circumstances of the case. With respect to comparable searches required to be included in the transfer pricing documentation for supporting the appropriateness of the pricing for the related-party transactions, the local regulations provide that "justification of compliance with the arm's-length principle shall be based on the information reasonably available to the taxpayer at the moment of establishing or documenting the transfer prices, by presenting the supporting evidence in this respect."

- **Simple, weighted or pooled results**

No preference is indicated based on the Romanian transfer pricing regulations. Romanian tax authorities have been observed to conduct transfer pricing analyses on a year-on-year basis. Both simple-average and weighted-average methods have been accepted in case of multiyear analyses.

- **Other specific benchmarking criteria, if any**

The search strategy should incorporate the independence criteria as provided by the Romanian legislation currently in force. In this respect, the definition of related parties under the current Romanian Fiscal Code states that a person is considered related party if its relationship with another person is defined by at least one of the following cases:

- An individual is a related party of another individual, if such individuals are spouse or relatives up to the third degree, inclusive.
- An individual is related with a legal entity if the individual owns, directly or indirectly, including holdings of related parties, a minimum of 25% of the value/number of shares or voting rights in the legal entity, or if effectively controls that legal entity.
- A legal entity is related with another legal entity if it owns at least, directly or indirectly, including holdings of related parties, a minimum of 25% of the value/number of shares/units or voting rights in the other legal entity, or if effectively controls that legal entity.
- A legal entity is related with another legal entity if one person owns, directly or indirectly, including holdings of related parties, a minimum of 25% of the value/number of shares or voting rights in the other legal entity, or if effectively controls that legal entity.

Therefore, when performing a comparable search, it should be ensured that the accepted comparables have no known shareholder (including individual) controlling or owning directly/indirectly more than 25% interest both in the accepted company and in another company(ies) and hence, a check of the historic shareholdings of the accepted companies for the years under review should be done in order to eliminate such companies.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

See below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Large-, medium- and small-sized taxpayers failing to provide the transfer pricing documentation to the tax authority upon request are sanctioned as follows:

- In the case of non-submission of the transfer pricing documentation by large taxpayers (that have the obligation to prepare the transfer pricing documentation within the legal deadline for submission of the annual corporate income tax return) upon the request of the tax authority outside of a tax audit, a penalty ranging

from RON25,000 to RON27,000 (approx. EUR5,000 to EUR5,400) will be imposed.

- In the case of non-submission of the transfer pricing documentation upon the request of the tax authority during a tax audit, a penalty ranging from RON12,000 to RON14,000 (approx. EUR2,400 to EUR2,800) will be imposed on the large and medium-sized taxpayers, respectively, and ranging from RON2,000 to RON3,500 (approx. EUR400 to EUR700) on small taxpayers.
- There are no specific provisions on penalties for not filing CbCR notifications. General penalty provisions for not filing required information to the tax authorities may be imposed (e.g., penalties for failing to provide periodic information or fulfill reporting obligations (as provided for under the law) ranging from EUR110 to EUR3,100, depending on the taxpayer size (large/medium/small) and on how the infringement would be classified by the authorities).
- Penalty ranging from RON30,000 to RON50,000 (approx. EUR6,000 to EUR10,000) is applicable in case of late submission of the CbCR or incorrect or incomplete submission of information. However, a penalty ranging from RON 70,000 to RON 100,000 (approx. EUR 14,000 to EUR 20,000) is applicable in case of failure to submit the CbCR.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In the case of a transaction between related parties, the tax authority may adjust or estimate the amount of the respective income or expenses of either party as necessary to the level considered to reflect the central tendency of the market (i.e., median). This is done either in the case that the tax authority determines that the arm's-length principle is not observed for the respective transaction or that the taxpayer does not provide to the tax authority sufficient evidence to establish if the arm's-length principle was observed.

The resulting adjustments or estimation would trigger a profits tax liability of 16% (the standard profits tax rate) and late-payment interest and penalties according to the provisions of the legislation. Currently, the late-payment interest is 0.02% per day of delay. Late-payment penalties of 0.01% per day of delay can also be imposed.

In addition, a penalty for undeclared or incorrectly declared tax liabilities established by the tax authorities through tax decisions of 0.08% for each day of delayed payment can be imposed. If this type of penalty is applicable, then it is a substitute for the late-payment penalty (only one type of penalty can be applied). If the tax claims are paid within a specific term after the tax decision assessing the tax liabilities is issued, then this penalty is reduced by 75%; however, if the tax liabilities are the result of tax evasion, then this penalty is increased by 100%. This penalty is applicable for tax liabilities due starting from 2016 onward.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not specified.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

In case a transfer pricing adjustment is imposed by the tax authorities, the taxpayer may challenge the decision at an administrative level or in court. An MAP might also be initiated depending on the circumstances of the case, under the provisions of the EU Arbitration Convention or the EU Tax Dispute Resolution Directive or the double tax treaties entered into by Romania.

The interests, penalties and all tax accessories may be waved if it is applied for the tax amnesty. Such new legislative provision allows the cancellation of all interests, penalties and all tax accessories related to principal tax obligations outstanding at 31 March 2020, if certain conditions are cumulatively met. The possibility of benefiting from the tax amnesty is up to 31 January 2022.

10. Statute of limitations on transfer pricing assessments

No specific statute of limitations exists for transfer pricing assessments. However, general rules for statutes of limitations are applicable – i.e., the Romanian tax authority may normally review tax-related matters retroactively for 5 years (or 10 years in the case of fiscal evasion or fraud).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Considering the current transfer pricing environment in Romania and the declared focus of the Romanian tax authorities on transfer pricing matters, the likelihood of a transfer pricing-related audit, in general, can be characterized as high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Based on the observed practice of the tax authorities, the likelihood may be considered to be medium to high that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Based on the observed practice of the tax authorities, the likelihood of an adjustment in case the transfer pricing methodology is challenged is rather high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There are no such specific transactions and industries.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **APA availability (unilateral, bilateral and multilateral)**

Comprehensive APA procedures and requirements have been in effect in Romania since June 2007. An APA may be unilateral, bilateral or multilateral.

By means of an APA, the ANAF approves the specific transfer pricing method utilized by a multinational entity prior to the actual transaction. APAs are binding on the tax authority as long as taxpayers observe their terms and conditions. Unilateral APAs are issued for a term of 12 months, while bilateral and multilateral APAs are issued for a term of 18 months.

The fees payable to the ANAF for the issuance or amendment of an APA are:

- EUR20,000 (issuance), EUR15,000 (amendment) – in the case of large taxpayers or for agreements on transactions with a consolidated value exceeding EUR4 million
- EUR10,000 (issuance), EUR6,000 (amendment) – in all other cases

- **Tenure**

As a general rule, APAs are issued for a period of up to five years; however, this term may be extended in certain cases.

- **Rollback provisions**

None.

- **MAP opportunities**

The MAP program addressing cross-border double taxation issues is rather at incipient stages in Romania. The availability of the program is provided under the Romanian Tax Procedure Code, either based on a double tax treaty or the EU Arbitration Convention (90/436/EEC) or the EU Tax Dispute Resolution Directive (2017/1852 applicable since 2019) as transposed into the local regulations. So far, a Romanian-specific MAP application procedure based on a double tax treaty or the EU Arbitration Convention has not been released by the Romanian tax authorities. Romanian taxpayers must submit an application for the initiation of MAP before the deadline stipulated under the relevant double tax treaty, EU Arbitration Convention or the EU Tax Dispute Resolution Directive, from the date of the ANAF notification or action that leads or may lead to double taxation. Taxpayers have three years to present a case to ANAF under the EU Arbitration Convention or the EU Tax Dispute Resolution Directive.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

In principle no direct impacts or changes to the overall APA program – this has been available and running also during the state of emergency period in Romania. Depending on the circumstances of each case (e.g., critical assumptions), specific APA change requests could potentially be triggered on account of COVID-19 pandemic impact.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

A corporate income taxpayer's exceeding borrowing costs (i.e., the amount by which borrowing costs exceed interest revenues and other revenues of equivalent nature) in relation to various types of financing (including bank loans, intercompany loans and finance leasing) may be deducted for corporate income tax purposes in Romania by only up to 30% of the company's EBITDA, adjusted for tax purposes.

The above 30% EBITDA limitation is applied to those exceeding borrowing costs that are above an annual threshold of EUR1 million (i.e., the first EUR1 million would not be, in principle, subject to the interest deductibility limitation).

Non deductible borrowing costs would be available to carry forward for an unlimited period of time (i.e., until corporate income tax deduction would be available).

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Federal Tax Service of the Russian Federation (FTS).[1]

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Tax Code of the Russian Federation, Section V.1. interdependent persons and multinational groups of companies, general provisions concerning prices and taxation, tax control in connection with the conclusion of transactions between interdependent persons, pricing agreement, and documentation for multinational groups of companies, effective from 1 January 2012.

- **Section reference from local regulation**

The Russian Tax Code (Article 105.1) includes a list of criteria defining how companies and individuals might be declared related parties. The relationship is defined by presence of economic control. Formal criteria (positive list) also exist, and the main criterion is the ownership threshold, i.e., if one party directly or indirectly controls more than 25% of another party. There are a number of other formal criteria in the Tax Code.

In addition, courts will be able to deem companies and/or individuals related on any other reasonable grounds, if it is demonstrated that the relationship between the parties influenced the terms and the results of the transactions.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Russia is not a member of the OECD.

The Russian transfer pricing regulations are largely based on the principles stipulated by the OECD Guidelines, although the Guidelines do not have a force of law. In practice, the law prevails if there are any differences with the OECD Guidelines. Same applies to any other transfer pricing guidelines, including UN tax manual or EUJTPF – they do not have a force of law in Russia either.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, Russia adopted BEPS Action 13 documentation requirements in November 2017.

- Coverage in terms of Master File, Local File, and CbCR

  Yes, all the three files are covered.

- Effective or expected commencement date

  The BEPS Action 13 requirements apply to financial years starting on or after 1 January 2017, with optional CbCR for financial years starting in 2016.

- Material differences from OECD report template or format

  There are a few material differences between the OECD report template or format and Russian regulations. The relevant sections from the regulation are mentioned below:

  Master File

  - A brief functional analysis must be provided for members of an MNE that have influence on the financial performance of the group (vs. the OECD Guidelines referring to material influence).
  - A brief description of all transactions related to transfer of rights for intangible assets is required (vs. the OECD Guidelines referring only to material transactions).
  - Not only unilateral APAs, as recommended by the OECD BEPS Action 13, but all other APAs (i.e., bilateral and multilateral agreements) are to be disclosed if the FTS was not part of these APAs.

  CbCR

[1] https://www.nalog.gov.ru/eng/

- Additional requirements: Table 1 of the CbCR contains additional columns (indicators) such as capital surplus, and additional columns regarding information on employees (number of employees under employment agreements, number of employees under civil contracts, additional information on number of employees).
- Divergent requirements: Revenue received from related parties should exclude payments received from other constituent entities of the MNE group that are treated as dividends in the payer's tax jurisdiction. Language of the report should be Russian (or bilingual).

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  For a Master File, penalties may only apply for a late submission or non-submission of the file, and there is no penalty protection as such.

  For a Local File, penalty protection should be available, provided that all local documentation requirements are met, including Russian translation, local comparability analysis, financial analysis of a local tested party based on local GAAP, etc.

  Penalties will not apply for financial years starting in 2017, 2018 and 2019.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is as of 1 January 2018.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, transfer pricing documentation needs to be submitted only upon request.

As an exception, transfer pricing documentation is not required for third-party transactions, transactions where the prices conform to a regulated price or a price that is prescribed by the anti-monopoly authorities. It is also not required for transactions with securities and derivatives traded on an organized equity market, and for transactions covered by an APA.

There are two types of transfer pricing documentation under Russian law: traditional transfer pricing documentation and BEPS Action 13-compliant Local File. The Local File is also known as the national transfer pricing documentation, which has replaced, starting from 2018, the traditional transfer pricing documentation when it comes to cross-border transactions of the Russian constituent entities of the qualifying groups.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, if the local branch is involved in controlled transactions, it needs to comply with local transfer pricing rules. Additionally, a transfer pricing analysis is needed to justify the amount of taxable profits attributable to a permanent establishment.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the full-scope transfer pricing documentation should be prepared annually; a mere update will not be accepted by the tax authorities.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

It is required to have a stand-alone transfer pricing documentation for each legal entity in Russia.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Cross-border transactions between related parties: With respect to 2018 and previous reporting periods, no materiality limits existed for recognizing cross-border transactions between related parties as subject to transfer pricing rules. Starting from 1 January 2019, a threshold of RUB60 million applies for cross-border transactions to be classified as controlled for transfer pricing purposes.

Cross-border transactions between unrelated parties involving the sale of certain types of commodities or in case a party to transactions is located in a low-tax jurisdiction: There is a

threshold of RUB60 million.

Domestic transactions between related parties: Refer to the "Specific requirements" section below.

- **Master File**

There is a threshold of RUB50 billion for MNEs with an UPE in Russia, and the applicable CbCR threshold as established by the home jurisdiction of the UPE if outside Russia.

- **Local File**

Only from 2019: RUB60 million – total annual value of all transactions in each pair of counterparties (no threshold for prior years).

- **CbCR**

There is a threshold of RUB50 billion for MNEs with a UPE in Russia, or the applicable CbCR threshold as established by the home jurisdiction of the UPE if outside Russia.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

With respect to 2018 and previous reporting periods, there was a documentation obligation for domestic transactions. The local TP documentation requirements covered domestic related-party transactions exceeding RUB1 billion (or from RUB60 million to RUB100 million if a party to a transaction is, for instance, subject to certain tax incentives).

Starting from 1 January 2019, a significant number of domestic transactions were excluded from the transfer pricing rules in Russia. Related-party transactions remaining under transfer pricing rules are those exceeding RUB1 billion per year and meeting one of the following conditions:

- The parties to the transaction apply different tax rates on profits derived from that transaction.
- One of the parties pays mineral extraction tax at ad valorem rates.
- One party applies or both parties apply a special tax regime (for example, the unified tax on imputed income or the unified agricultural tax).
- One of the parties is exempt from profits tax.
- One of the parties is an operator or holder of a license to develop a new offshore deposit.
- One or both parties are residents of the Skolkovo research center.
- One or both parties apply an investment tax deduction for profits tax purposes.
- One of the parties pays tax on additional income from the hydrocarbons extraction with respect to income from the transaction.

For those domestic transactions that fall outside the transfer pricing rules, there is still a possibility for the local tax authorities to review those from the perspective of the unjustified tax benefit. When doing so, a pricing approach in those domestic transactions may be examined using the transfer pricing methods.

As an exception, certain domestic transactions are not subject to transfer pricing rules:

- Transactions between members of a domestic consolidated group of taxpayers.
- Transactions where both parties are registered within the same region of Russia, where none of the parties has economically autonomous subdivisions in other regions of Russia or pays income tax to the budgets of other regions, where none of the parties has tax losses and there are no other grounds for the transaction to be deemed controlled.
- Transactions where two of the parties are operators or license holders in relation to a project involving hydrocarbon extraction activities at the same field on Russia's continental shelf.
- Interbank credits (deposits) granted for up to seven days.
- Transactions relating to military and technical cooperation between Russia and foreign countries.
- Transactions involving the provision of guarantees if all parties to the transaction are Russian legal entities (RLEs) that are not banks.
- Transactions involving interest-free loans between Russian related parties.
- Assignment of rights (cession) by banks as part of the bankruptcy prevention measures and enforcement of banking regulations by Bank of Russia.

  For the purposes of the Tax Code, the main condition for two entities to be regarded as related parties is a

25% ownership threshold, i.e., if one party directly or indirectly controls more than 25% of the other party. There are numerous other conditions, and the courts can also declare companies and individuals to be related on any other grounds, if it is proved that the relationship between the parties influenced the terms and results of transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language, i.e., Russian. This comes from the general provisions of the Russian legislation, pursuant to which office work of the state authorities must be in Russian only.

- **Safe harbor availability, including financial transactions if applicable**

An interest rate is considered to be at arm's length if it is within the safe harbor intervals indicated in the Tax Code. The safe harbor intervals vary depending on the currency of the loan and whether it is a cross-border or a domestic transaction. Safe harbors are stipulated for financial transactions (minimum and maximum interest rates). In case the interest rate is outside the safe harbor, a taxpayer is still able to conduct an economic analysis to sustain the rate.

- **Is aggregation or individual testing of transactions preferred for an entity**

According to the local transfer pricing rules aggregation of transactions for the purposes of transfer pricing analysis (except for application of the comparable uncontrolled price (CUP) method) is allowed for a group of homogeneous transactions. Such group is defined by law as transactions with identical or homogenous products, works or services and that are undertaken under comparable commercial and (or) financial terms. Homogeneous products (works, services) are defined as those having similar characteristics that allow them to perform the same functions and/or be commercially interchangeable. At the same time, based on clarifications of the regulatory authorities transactions can be aggregated for transfer pricing analysis provided they meet the following criteria:

- Taxpayer performs same/similar functions under these transactions.
- Same profit-level indicator is or can be used for the activities performed by taxpayer in the analyzed transactions.
- Same transfer pricing method applies or can be applied for the transactions.
- Same set of independent comparable companies is used for testing the arm's-length result in these transactions.
- Any other disclosure/compliance requirement

Please refer to Section 4 below regarding the transfer pricing notification form.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no other specific transfer pricing returns in Russia.

- **Related-party disclosures along with corporate income tax return**

Disclosure of transactions with related parties and third-party transactions that are subject to transfer pricing rule is required by way of filing a transfer pricing notification. This notification is due for each year by 20 May of the following year (e.g., by 20 May 2022 for tax year 2021).

- **Related-party disclosures in financial statement/annual report**

Certain information regarding related parties should be disclosed in financial statement/annual reports to the extent required by the applicable accounting rules.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

28 March.

- **Other transfer pricing disclosures and return**

20 May.

- **Master File**

Master File is submitted only upon request. The request is possible not earlier than 12 months and not later than 36 months after the end of the reporting financial year, and should be provided within three months of request. The first Master File may be requested for financial years starting on or after 1 January 2017.

- **CbCR preparation and submission**

It's 12 months after the end of the reporting financial year, with the first mandatory filing period to be financial years starting on or after 1 January 2017. CbCR must be submitted by the ultimate parent entity (UPE) or a designated surrogate parent entity in its home location and then automatically exchanged with the FTS. If Russia has not activated automatic exchange with the UPE/surrogate entity's jurisdiction by the CbCR filing deadline, Russian members of the MNE group may be requested to submit a CbCR directly to the Russian tax authorities. In such case the CbCR should be submitted to the tax authorities within three months upon receipt of the request.

- **CbCR notification**

It's eight months after the end of the reporting financial year, with the first mandatory filing period to be financial years starting on or after 1 January 2017.

b) Transfer pricing documentation/Local File preparation deadline

There is no statutory deadline and recommendation for preparation of transfer pricing documentation (Local File). It only needs to be finalized by the time of submitting upon request.

- Both the transfer pricing documentation and BEPS Action 13-compliant Local File may be requested from 1 June of the calendar year following the reporting calendar year and should be provided within 30 days upon receipt of request. The BEPS Action 13-compliant Local File may be requested only in relation to calendar year 2018 and onward. For years 2018 and 2019, the BEPS-compliant Local File may be requested not earlier than 31 December of the year following the reporting calendar year.
- A BEPS Action 13-compliant Master File may be requested from a taxpayer not earlier than 12 months and not later than 36 months after the end of the reporting financial year and should be provided within three months upon request. The first Master File may be requested for financial years starting on or after 1 January 2017.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No, transfer pricing documentation should be provided to the tax authorities only upon request.

- **Time period or deadline for submission upon tax authority request**

30 days upon receipt of request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions — Yes
- Domestic transactions — Yes

b) Priority and preference of methods

The Tax Code includes five methods similar to those in the OECD Guidelines.

The resale-minus method has first priority for a routine distributor reselling goods to unrelated customers. In all other cases, the CUP method prevails, whereas the profit-split is a method of last resort.

It is also allowed to use the independent valuation report for one-off transactions where none of the five transfer pricing methods can be applied.

As part of implementing BEPS Action 8 requirements addressing transfer pricing implications related to intangible assets, there are new requirements to a transfer pricing analysis of transactions involving intangible assets. These apply from 1 January 2020. Specifically, the law establishes a list of functions and risks that must be taken into account when conducting a functional analysis with respect to intangibles. These relate to development, enhancement, maintenance, protection and exploitation of intangibles (also known as DEMPE functions and associated risks). The Tax Code

also establishes the characteristics of intangible assets that must be taken into account in assessing the comparability of related transactions involving such assets: type of intangible asset, exclusivity, conditions of legal protection (existence and duration), territory of the right to use the intangible asset, useful life, life cycle stage (development, enhancement, exploitation), the rights and functions of the parties associated with the intangibles, value increase as a result of their enhancement and the income-obtaining possibility from the use of the intangible assets.

8. Benchmarking requirements

- **Local vs. regional comparables**

Searching for local comparables is a must in the case of a Russian tested party. In case of a foreign tested party, foreign comparables are possible (it is recommended, however, to consider the applicable region).

- **Single-year vs. multiyear analysis for benchmarking**

Each year is to be tested on a stand-alone basis. A benchmarking analysis should cover three years preceding the reporting year.

- **Use of interquartile range**

The interquartile range is a must unless there is a CUP application based on exchange quotations or the recognized pricing agencies' data. In the latter case, the full range of pricing data is acceptable. There are specific requirements in relation to the formula to be used for the interquartile range calculation.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is to be conducted every year pursuant to the official clarifications of the FTS. Exceptions are made for long-term transactions (i.e., license agreements and loans), assuming that the terms and conditions have not changed.

- **Simple, weighted or pooled results**

The way the interquartile range is to be calculated mandates the use of a pooled range on the basis of the three-year period as opposed to simple and weighted averages.

- **Other specific benchmarking criteria, if any**

- Net assets criteria: Companies' net assets should not have a negative value as of 31 December of the last three years preceding the reporting period.
- Losses: Companies should not have reported losses in more than one year during the three-year period preceding the reporting year.
- Independence: Companies are eliminated as dependent if they have subsidiaries where direct, indirect or total participation exceeded 25%, or have a shareholder in the form of a legal entity that reported direct, indirect or total participation in excess of 25% in any year during the reviewed period.
- The independence threshold may be increased up to 50% if less than four comparable companies are found on the basis of the combination of the above criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Incomplete transfer pricing documentation (Local File) may result in losing of penalty protection in case a tax assessment is made by the tax authority as a result of a transfer pricing audit.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The Tax Code establishes the following penalties:

- Failure to submit/late submission of or submission of inaccurate information in a CbCR notification may result in a penalty of RUB50,000 (applies for financial years starting in 2020).
- Failure to submit/late submission of or submission of inaccurate information in a CbCR may result in a penalty of RUB100,000 (applies for financial years starting in 2020).
- Failure to submit/late submission of a Master File may result in a penalty of RUB100,000 (applies for financial years starting in 2020).
- Failure to submit/late submission of a Local File may result in a penalty of RUB100,000 (applies for financial years starting in 2018).

- Failure to submit/late submission or submission of incorrect information in a transfer pricing notification may result in a penalty of RUB5,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

If a tax assessment is made by the tax authority as a result of a transfer pricing adjustment, a penalty of 40% of the tax understatement (but not less than RUB30,000) may be assessed, plus a late-payment interest at a rate of 1/300th of the Central Bank of Russia key (refinancing) rate (up to 30 days of delay) and 1/150th of the Central Bank of Russia refinancing rate (starting from the 31st day of delay).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not applicable as there is no contemporaneous TP documentation (local file) preparation requirement in Russia

- **Is interest charged on penalties or payable on a refund?**

Interest is payable by the tax authorities on a tax refund starting from the day following the due date of the refund. The interest rate shall be the refinancing rate of the Central Bank of the Russian Federation that is effective on each day of the delayed refund.

b) Penalty relief

Penalties will be imposed if a taxpayer's taxable income is adjusted as a result of a transfer pricing audit, and if the taxpayer did not provide the transfer pricing documentation (Local File) supporting the arm's-length level of prices in a controlled transaction. Penalties cannot apply if prices were established in accordance with an applicable APA.

If an adjustment is made by the tax authority, the available dispute resolution mechanism is through litigation or Mutual Agreement Procedure (MAP), if available under a relevant double tax treaty.

10. Statute of limitations on transfer pricing assessments

The general rule is that the tax authority may audit the controlled transactions within two years from the moment of submission of a transfer pricing disclosure (notification) form (due by 20 May following the reporting year). A transfer pricing audit may cover only three preceding calendar years.

Any amendment of the transfer pricing notification form or the profits tax return resulting in a decrease of the profits tax liability (increase of a tax loss) because of a transfer pricing adjustment, if submitted, will renew the statute of limitation from the amendment date.

Additionally, a transfer pricing audit may be initiated as a result of a general tax audit if the latter reveals any controlled transactions which were not reported by a taxpayer as required by law.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Yes. Ongoing transfer pricing audits and decisions on initiating new transfer pricing audits were put on hold during the period from 6 April 2020 to 30 June 2020. This resulted in a corresponding extension of the statute of limitation on transfer pricing assessments, as described in Section 10 above, by two months and 25 days for the impacted reporting years.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Russian tax authorities use a risk-oriented approach to open a transfer pricing audit. As a result, the number of transfer pricing audits is limited in practice. Once a transfer pricing audit is launched, and if it results in a transfer pricing assessment, it would normally be expected to repeat annually until pricing in controlled transactions is confirmed to be at arm's length.

A transfer pricing audit may cover only three preceding calendar years. Controlled transactions may be audited only once for a specific calendar year.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Considering the risk-oriented approach of the Russian tax authorities, the likelihood that a transfer pricing methodology will be challenged may be considered to be high. If tax authorities are able to apply a comparable price method that is a priority method under Russian transfer pricing rules, the likelihood of an alternative methodology, if any, to be challenged would normally increase in practice.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

On the basis of the risk-oriented approach of the tax authorities, the likelihood of an adjustment is expected to be high in practice.

At the same time, for domestic transactions symmetrical adjustments are available. The right of other parties to a controlled transaction to make symmetrical adjustments arises: (1) where a decision of the FTS to charge additional tax has been complied with by a party to a controlled transaction that was subject to tax assessment, or (2) where a party to a controlled transaction has made a voluntary adjustment by recording it in the tax return and paid additional tax if applicable.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Transfer pricing matters in controlled transactions are subject to special transfer pricing audits, which are separate from general tax audits and should be performed by the FTS rather than local tax authorities. To date, most of the transfer pricing audits have been focused on cross-border commodity transactions and transactions involving low-tax jurisdictions. Additional high-risk factors include intercompany service fees, royalties and losses, as well as significant reductions in a tax base and deviations from the industry-wide benchmarks. Some domestic transactions may also be regarded as high risk if they involve entities resident in special economic zones, if they are subject to advantageous tax regimes or if they involve loss-making entities. Transactions that are viewed by the tax authorities as leading to a receipt of an unjustified tax benefit may also be scrutinized using the transfer pricing methods.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No limitations regarding type of transactions. APA program is available for all jurisdictions if there is a double tax treaty concluded between the Russian Federation and such jurisdiction. To date, the APA program in Russia is available only for companies that are classed as major taxpayers.

- **Tenure**

APAs are available for up to a three-year term.

- **Rollback provisions**

There is none specified, except for an option to extend the APA terms from 1 January of the year in which the APA application was filed by a taxpayer.

- **MAP opportunities**

MAPs are generally available under the double tax treaties that Russia has with its treaty partners. The competent authority that is responsible for MAP cases in Russia is the Russian Ministry of Finance. In January 2019, the Russian Ministry of Finance issued MAP guidelines for taxpayers.

From January 2020, the Tax Code provides a number of reference clauses to the effect that the conduct of MAP is governed by the provisions of the relevant double taxation treaty, while the procedure and time limits for the submission of a MAP request are prescribed by the Ministry of Finance (Articles 142.7–142.8 of the Tax Code). Detailed rules on the application of MAP are laid down in a Ministry of Finance order dated 11 June 2020 (entered into force in October 2020). According to that order, Russian taxpayers are allowed to submit a MAP request within three years from the date of receipt of a report on the results of a tax audit, or a reasoned opinion of a tax authority in the context of tax monitoring, or a report issued by the tax authority of a foreign state that is a party to the applicable double tax treaty, which, in the taxpayer's opinion, results in taxation not in accordance with the treaty. The Ministry of Finance must review the application within 90 days and make a formal decision on whether or not it agrees to initiating MAP.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalisation or debt capacity in the jurisdiction

The thin-capitalization test restricts deductibility of interest on loans to RLEs that are issued either by (i) a foreign company that owns (directly or indirectly) more than 25% of the Russian company's share capital or by (ii) a Russian company that is a related party to a foreign company mentioned above,

or in respect of which (iii) the foreign company itself or a Russian related party (mentioned above) acts as a guarantor or otherwise undertakes to guarantee the repayment of the loan by the RLE. The debt-to-equity ratio above which restrictions apply is generally 3:1, but is 12.5:1 for banks and leasing businesses. Excess interest, which is the amount of interest on loans in excess of the 3:1 or 12.5:1 ratio, is non deductible and is treated as a dividend paid to the organization in relation to which controlled indebtedness exists and is taxed accordingly.

1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Rwanda Revenue Authority (RRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 33 of the Rwanda Income Tax Act and the Rwanda Ministerial Order Establishing General Rules on Transfer Pricing (transfer pricing rules) enacted 14 December 2020.

- **Section reference from local regulation**

Related people are defined under Article 3 16 of the Rwanda Income Tax Act.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Rwanda is a member of the OECD. The transfer pricing rules significantly borrow from and rely on the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**
  - Coverage in terms of Master File, Local File and CbCR

    CbCR is applicable where the ultimate parent of the taxpayer is required to prepare such a report.
  - Effective or expected commencement date

    The transfer pricing rules became effective 14 December 2020 once they were assented to. They are used for guidance in complying with Article 33 of the Rwanda ITA.
  - Material differences from OECD report template or format

    No significant differences.
  - Sufficiency of BEPS Action 13 format report to achieve penalty protection

    Yes, this is applicable to a large extent. Additional information is, however, required based on the transfer pricing rules.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, there are transfer pricing rules. Ministerial Order on Transfer Pricing Rules, 2020, was published on 14 December 2020 and took effect on the publication date. Based on the transfer pricing rules, the document needs to be prepared contemporaneously and submitted upon requested within seven days.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the transfer pricing rules require documentation for a relevant tax period and must be in place prior to the deadline of income tax declaration.

- **For an MNE with multiple entities in the jurisdiction, is it**

[1] **https://www.rra.gov.rw/**

required to have stand-alone transfer pricing reports for each entity?

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Under the transfer pricing rules, taxpayers with a turnover below RWF600 million are not required to prepare the transfer pricing documentation. However, they must comply with the arm's-length principle.

- **Master File**

This is not applicable.

- **Local File**

Applicable.

- **CbCR**

Applicable where the ultimate parent of the taxpayer is required to prepare such a report.

- **Economic analysis**

This is required.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. The transfer pricing rules cover persons involved in the related-party transactions where one is located in Rwanda and subject to tax in Rwanda while the other person is located in or outside Rwanda.

- **Local language documentation requirement**

Documentation must be submitted in any of the official languages of the Republic of Rwanda (English, French and Kinyarwanda). However, in practice, transfer pricing documents are normally completed in English.

- **Safe harbor availability, including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual transaction testing

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

Yes, the taxpayer is required to disclose certain information on the related-party transactions in its tax return, e.g., the name of related parties, pricing methodology and value of the transaction.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

None.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is three months after the financial year-end of the company.

- **Other transfer pricing disclosures and return**

As noted above.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

As under Section 3 above

- **CbCR notification**

As under Section 3 above

b) Transfer pricing documentation/Local File preparation deadline

Yes, the documentation should be prepared by the deadline of submission of the annual return – by the time of lodging the tax return to achieve penalty protection.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

None.

- **Time period or deadline for submission upon tax authority request**

Upon request by the Tax Administration, the taxpayer should provide the documentation within seven days from the date of receipt of the written request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**
- **Domestic transactions: Yes**

b) Priority and preference of methods

The transfer pricing rules provide for the most appropriate method.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is a preference for local comparables; however, it is not mandatory.

- **Single-year vs. multiyear analysis for benchmarking There is a preference for multiple-year testing (preferably three years).**
- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is needed every year.

- **Simple, weighted or pooled results**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The transfer pricing rules stipulate that if the relevant financial indicator derived from a controlled transaction, or from a set of controlled transactions that are combined, falls outside the arm's-length range, the taxable profit is computed on the basis that the relevant financial indicator is the median of the arm's-length range.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are no specific penalties prescribed.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**

No.

b) Penalty relief

No.

10. Statute of limitations on transfer pricing assessments

A general rule of five years from the date of filing the tax return applies.

The tax authorities can ignore the five-year limitation when they suspect fraud or intention to evade the payment of tax.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium. The tax authority issued transfer pricing rules in late 2020. We have seen requests for transfer pricing documents for some companies. We expect to see more activity on transfer pricing audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood is moderate. Refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood is moderate. Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There have been no active transfer pricing audits in the market.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

None.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Yes; however, it is in the context of double tax treaties.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest arising from loans between related parties either paid or due on a total loan that is greater than four times the amount of equity is non deductible.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Zakat, Tax and Customs Authority (ZATCA)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Kingdom of Saudi Arabia (KSA) income tax law (ITL) has the following provisions:

Article 63(c) of the KSA ITL authorizes ZATCA to reallocate revenues and expenses in transactions between related parties or parties under the same body to reflect the returns that would have resulted if the parties were independent or unrelated.

Pursuant to Board Resolution No. [6-1-19] dated 25/05/1440H corresponding to 31/01/2019, ZATCA issued Transfer Pricing Bylaws (transfer pricing bylaws) that apply to all taxable persons (being persons subject to the income tax law). For persons covered by Article 2 of the Zakat Regulations (Ministerial Resolution No. 2082 dated 1/6/1438 H) the transfer pricing bylaws only apply insofar they are meeting the obligations of CbCR (Article 18) of the bylaws.

Article 15 of the transfer pricing bylaws requires taxable persons with controlled transactions to maintain requisite transfer pricing documentation (subject to certain threshold limits).

- **Section reference from local regulation**

Article 63 of the KSA ITL and the transfer pricing bylaws issued 15 February 2019.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Saudi Arabia is not a member of the OECD. However, Saudi Arabia has made a commitment to the BEPS minimum standards and the transfer pricing bylaws mostly follow the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The transfer pricing bylaws have introduced transfer pricing documentation (Master File, Local File) and CbCR requirements.

- Coverage in terms of Master File, Local File and CbCR

  The transfer pricing bylaws incorporate the Master File, Local File and CbCR concept as recommended under BEPS Action 13 on transfer pricing documentation.

- Effective or expected commencement date

  This is applicable for fiscal years ended on or after 31 December 2018.

- Material differences from OECD report template or format

  As per the transfer pricing bylaws, the following difference can be noticed:

  Local File: In addition to the OECD Local File template, the transfer pricing bylaws prescribe to include a comprehensive industry analysis, exclusion of loss-making comparables, with preference to local comparables.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is none specified. All penalties and fines under the ITL are applicable to all income tax matters.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes.

[1] **https://zatca.gov.sa/en/Pages/default.aspx**

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

The transfer pricing bylaws have introduced the three-tiered transfer pricing documentation, including Master File, Local File and CbCR broadly aligned with the OECD Transfer Pricing Guidelines.

Article 2 of the transfer pricing bylaws states that the transfer pricing provisions apply to all taxable persons under the ITL. Hence, entities or persons that are subject only to Zakat are not subject to the transfer pricing bylaws (with the exception of CbCR). Further, FAQs clarify that applicability extends to mixed-ownership entities whose income is subject to corporate income tax (CIT) to the extent attributed to shares owned by non-Saudis and those treated by Saudis.

At present, the taxpayer needs to maintain the transfer pricing documentation and indicate in its annual tax return whether such documentation has been maintained. Upon ZATCA's request, transfer pricing documentation needs to be submitted within 30 days.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local transfer pricing rules if it has related-party transactions and meets the threshold of such documentation (aggregate arm's-length value of related-party transaction is greater than SAR6 million).

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

As per the transfer pricing guidelines section 5.3.2, it might be acceptable to prepare one combined Local File for multiple taxpayers that belong to the same MNE group if the combined Local File includes a similar level of detail with respect to the individual taxpayers.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

It is advisable to maintain general documentation regarding the controlled transactions, the relationship between the related persons involved in the controlled transactions, and how the price of the controlled transactions is calculated for all taxpayers having related-party transactions.

- **Master File**

Master File needs to be prepared and maintained if arm's-length value of controlled transactions in a 12-month period exceeds SAR6 million.

- **Local File**

Local File needs to be prepared and maintained if arm's-length value of controlled transactions in a 12-month period exceeds SAR6 million.

- **CbCR**

The report should be submitted if the consolidated group revenue of an MNE group during the year immediately preceding the current reporting year, as reflected in its consolidated financial statement, exceeds SAR3.2 billion (approx. EUR750 million).

- **Economic analysis**

There is no material threshold for economic analysis.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are not excluded from the scope of transfer pricing provisions as per the transfer pricing bylaws.

- **Local language documentation requirement**

Regarding CbCR, the transfer pricing bylaws specify that the documentation needs to be submitted in the language and form that the authority may specify. Further, for Master File and Local File, the transfer pricing bylaws do not specify any language; however, the FAQs recommend the use of the official language (Arabic) to the extent reasonably possible.

- **Safe harbor availability, including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

If a taxable person carries out, under the same or similar circumstances, two or more controlled transactions that are economically closely linked to one another or that form a continuum such that they cannot reliably be analyzed separately, those controlled transactions may be combined to perform the comparability analysis to apply the transfer pricing methods.

- **Any other disclosure/compliance requirement**

  A dual CbCR notification is required to be filed using both methods as follows:

  - Along with the disclosure form
  - On a separate AEOI portal

  These notifications are to be filed within 120 days of the end of the financial year.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Disclosure form (as explained below).

- **Related-party disclosures along with corporate income tax return**

Pursuant to Article 14(B) of the transfer pricing bylaws, all income tax filers in KSA will be required to submit to ZATCA, together with their annual income tax declaration, a disclosure form containing information related to their controlled transactions. KSA taxpayers that have controlled transactions will have to submit the disclosure form within 120 days after the end of the fiscal year.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

Yes.

- **Other information/documents to be filed**

The transfer pricing bylaws also require an annual affidavit signed by a licensed auditor in the jurisdiction through which the auditor certifies that the transfer pricing policy of the MNE group is consistently applied by, and in relation to, the taxpayer.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

It should be filed within 120 days from the end of the fiscal year.

- **Other transfer pricing disclosures and return**

The annual tax return includes disclosure form and affidavit along with CITR.

- **Master File**

The Master File and Local File need to be maintained and filed on request.

- **CbCR preparation and submission**

The documentation should be submitted within 12 months from the end of the reporting year of the MNE group.

- **CbCR notification**

CbCR notification is an integral part of the disclosure form and has to be filed within 120 days of the fiscal year-end. Further, a separate notification must be filed on the AEOI portal within 120 days of the end of the fiscal year.

b) Transfer pricing documentation/Local File preparation deadline

The preparation of contemporaneous transfer pricing documentation in the form of Master File and Local File is recommended to be maintained within 120 days from the fiscal year-end since a confirmation to this effect has to be given in the disclosure form. The Master File and Local File have to be submitted within 30 days of request by the tax authorities. It is possible to apply for extensions on a case-by-case basis.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No, there is currently no statutory deadline for the submission of transfer pricing documentation. It needs to be submitted

within 30 days upon request.

- **Time period or deadline for submission upon tax authority request**

The transfer pricing documentation shall be provided to ZATCA upon request within the specified duration (which shall be not less than 30 days from the date of request). It is possible to apply for extensions on a case-by-case basis.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes, Article 7 of the transfer pricing bylaws provides the five approved methods to determine the arm's-length result of transactions, while Article 9 provides for the use of methods, other than the approved methods.

- **Domestic transactions**

Yes, Article 7 of the transfer pricing bylaws provides the five approved methods to determine the arm's-length result of transactions, while Article 9 provides for the use of methods, other than the approved methods.

b) Priority and preference of methods

No, Article 7 B of the transfer pricing bylaws provides that there is no order of preference for the five approved methods. However, the other methods provided under Article 9 can be applied only if the five approved methods cannot be applied.

8. Benchmarking requirements

- **Local vs. regional comparables**

Article 13 C of the transfer pricing bylaws provides that foreign comparable transactions can be used in the absence of domestic comparable transactions, provided difference in geographic and other factors are accounted for.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year analysis for comparable companies is acceptable (preferably three years). In case of multiple-year analysis for a tested party (especially for loss-making scenarios), in exceptional cases and depending on the situation, a multiple-year approach could be applied after providing sufficient reasons in the Local File.

- **Use of interquartile range**

The interquartile range is considered to be the appropriate approach for determining the arm's-length range. EY quartile is preferred.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Taxpayers are required to perform comparability analyses on a triennial basis if there is no change in conditions and circumstances of the taxpayer and its controlled transactions. However, it would be prudent to note that a financial update of the comparability analysis would have to be performed on an annual basis.

- **Simple, weighted or pooled results**

Weighted average is preferred.

- **Other specific benchmarking criteria, if any**

Article 13 provides that secret comparables cannot be used. Additionally, transfer pricing guidelines issued by ZATCA expect that comparable persons do not report any losses in the years under review. Full range is not acceptable under local transfer pricing regulations.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

There is none specified.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There is none prescribed. All penalties and fines under the ITL are applicable to all income tax matters.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Currently, there is no specific transfer pricing penalty prescribed under the ITL. However, all penalties and fines under the ITL are applicable to all income tax matters, including transfer pricing.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Currently, there is no specific transfer pricing penalty prescribed under the ITL. However, all penalties and fines under the ITL are applicable to all income tax matters, including transfer pricing.

- **Is interest charged on penalties or payable on a refund?**

There is none specified.

b) Penalty relief

There is none specified.

10. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations set out in KSA ITL regarding transfer pricing assessments. The general statute of limitations (Article 65) for ZATCA to make or amend a tax assessment is five years from the end of the deadline specified for filing the tax declaration for the taxable year. The ZATCA may, however, make or amend an assessment within 10 years of the deadline specified for filing the tax declaration for the taxable year in cases where the tax return was not filed or, if filed, was found to be incomplete or incorrect with the intent of tax evasion.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

High.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

High.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

High. The risk is increased in case of inadequate transfer pricing documentation.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Presently, the tax authority in KSA is conducting multiple audits specially for corporate taxpayers with high amounts of related-party transactions and loss-making scenarios.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Currently, there is no APA procedure in place. However, taxpayers can apply for advance rulings with the tax authorities on specific matters – however, these advance rulings are not binding on ZATCA.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There are detailed guidelines provided by ZATCA on the procedure to avail MAP opportunities subject to there being specific provisions for initiating MAP proceedings in the relevant double tax avoidance agreement.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalisation or debt capacity in the jurisdiction

There is an interest deduction ceiling rule in KSA corporate tax law. The Saudi tax law limits interest rate deductibility as follows:

The lower of the interest charged for the year and income from loan fees (interest income) plus 50% of (A-B), where A and B are defined as:

A: Income subject to tax less income from loan fee (interest income)

B: Expenses allowable for tax purposes less loan fee (interest expense)

Interest (or loan fees) in excess of the deductibility limit set out above is a permanent disallowance under the tax law and its bylaws. This is, however, an overall deduction rule and not specific to related-party transactions.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority [1]

Senegalese Revenue Authorities (SRA) (*Direction Générale des Impôts et Domaine* or DGID)

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are the General Tax Code (GTC) Articles 17 (arm's-length principle), 31bis (annual declaration of foreign related-party transactions), 31ter (CbCR), 638 and 639 (transfer pricing documentation obligation), 9-2 (thin-capitalization legislation, applied in the context of certain intragroup financing arrangements only, e.g., intragroup interest payments on intragroup debt), 667-III.a (annual transfer pricing return fines) 667-III.c (transfer pricing documentation fine) and 667-III.b (CbCR fine). The effective date of applicability was 1 January 2018.

- **Section reference from local regulation**

Direct taxes in the GTC.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Senegal is not a member of the OECD. However, as a member of the inclusive framework, Senegal agrees to implement a minimum BEPS standard (Actions 5, 6, 13 and 14). In addition, the guides published regarding transfer pricing by the SRA clearly refers to OECD Principles.

However, in practice, tax authorities stated in some tax audits that they were not bound by the OECD Guidelines and OECD Principles in assessing the effectiveness of intragroup transactions, such as management fees. This position seems marginal.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  All the three, i.e., Master File, Local File and CbCR, are covered.

- Effective or expected commencement date

  The transfer pricing regulations entered into force in Senegal as of 1 January 2018. However, the Local File was also due for FY2017.

- Material differences from OECD report template or format

  There is none specified.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  A BEPS Action 13 format report should be sufficient to achieve penalty protection, but financial data relating to the Senegalese entity itself (including amounts of intragroup transactions) needs to be sourced from the Senegalese statutory accounts.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 4 February 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

[1] **http://www.impotsetdomaines.gouv.sn/**

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Taxpayers that fulfill at least one of the following conditions need to prepare the transfer pricing documentation:

  - Turnover, excluding taxes or gross assets, equal to XOF5 billion, at least
  - Holding, at the end of the fiscal year, directly or indirectly, more than half of the share capital or voting rights of a company, located in Senegal or abroad, which generates a turnover, excluding taxes or holds gross assets, equal to XOF5 billion at least
  - Being directly or indirectly held for more than half of the share capital or voting rights by a company generating a turnover, excluding taxes, or holding gross assets equal to XOF5 billion

- **Master File**

As from financial years opened after 1 January 2018, the content of the documentation is fully in line with BEPS Action 13 (Master File and Local File).

- **Local File**

As from financial years opened after 1 January 2018, the content of the documentation is fully in line with BEPS Action 13 (Master File and Local File).

- **CbCR**

Taxpayers that fulfill at least one of the following conditions need to file the CbCR:

  - The Senegalese tax-resident company has been elected by the multinational group to file a CbCR and has informed the Senegalese Tax Administration.
  - The Senegalese tax-resident company fails to give evidence that another company of the multinational group (either based in Senegal or in a jurisdiction that has implemented a similar CbCR requirement or in a jurisdiction that has concluded with Senegal a qualified exchange of information instrument) has been designated for purposes of filing the CbCR.
  - The Senegalese jurisdiction has been notified regarding a systematic failure to exchange the information.

- **Economic analysis**

The GTC does not provide for any materiality limit with regard to the intercompany transactions to be reported in the transfer pricing documentation. Indeed, there is no applicable notion of "important intercompany transactions," which consequently entails the reporting of all intercompany transactions to which a local company is a party.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, it is expected for domestic transactions to follow arm's-length principles as they may be under scrutiny during tax audit.

- **Local language documentation requirement**

There is no guidance as for the language for documentation. However, tax auditors are entitled to request a translation of the documentation if it is provided in English.

- **Safe harbor availability, including financial transactions if applicable**

There is no specific guidance.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The transfer pricing return needs to be submitted in French

as part of the taxpayer's annual tax return. Online submission tool is provided.

- **Related-party disclosures along with corporate income tax return**

There is no filing obligation for the transfer pricing documentation (Master File and Local File). The documentation package has to be prepared on a contemporaneous basis and provided upon request during a tax audit (20 days after an official request).

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

Yes, it is there if the Senegalese entity is not the ultimate parent entity (UPE) or surrogate parent entity (SPE).

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 30 April following each fiscal year-end.

- **Other transfer pricing disclosures and return**

The annual transfer pricing return due date is 30 April.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

CbCR is to be submitted within 12 months following the fiscal year-end.

- **CbCR notification**

The deadline is by the last day of the MNE's fiscal year (31 December).

b) Transfer pricing documentation/Local File preparation deadline

It should be available by the time of a tax audit (accounts examination on-site).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No, there is no submission deadline.

- **Time period or deadline for submission upon tax authority request**

The deadline is 20 days following the tax auditor's request of the transfer pricing documentation.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes
- Domestic transactions: Yes

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost-plus, profit-split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific indication. However, local comparables would be preferred.

- **Single-year vs. multiyear analysis**

There is no guidance provided.

- **Use of interquartile range**

Yes, there are requirements.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no guidance provided.

- **Simple, weighted or pooled results**

There is no guidance provided.

- **Other specific benchmarking criteria, if any**

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

XOF10 million fine applies for the failure or delay to submit the transfer pricing return. It is also to be noted that the transfer pricing return is used as a "risk assessment tool" by the tax authorities.

In cases where the transfer pricing return is incomplete or inaccurate, and in accordance with Article 667-II of the GTC, a fine of XOF200,000 is due for each time when the information is incomplete or inaccurate. However, the amount of the fine recorded in a "*procès-verbal*" of violation should not exceed XOF1 million.

XOF25 million fine applies for the failure or delay to submit the CbCR. As for the transfer pricing documentation and, in case where it is either not provided or is incomplete within the 20-day period, a fine applies at the rate of 0.5% of the volume of transactions that were not documented or are missing.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

After a transfer pricing reassessment is made, the profit indirectly transferred should be qualified as a deemed distribution of a benefit. Such "benefit" transfer should entail corporate income tax and withholding tax (WHT) on distributed amounts payments. Accordingly, tax auditors should apply penalties at the rate of 25%, applied on the due corporate income tax, and 50% applied on the due WHT on distributed amounts. See article 671(III)(4) of the Senegalese General Tax Code.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

After a transfer pricing reassessment is made, the profit indirectly transferred should be qualified as a deemed distribution of a benefit. Such "benefit" transfer should entail corporate income tax and withholding tax (WHT) on distributed amounts payments. Accordingly, tax auditors should apply penalties at the rate of 25%, applied on the due corporate income tax, and 50% applied on the due WHT on distributed amounts. See article 671(III)(4) of the Senegalese General Tax Code.

- **Is interest charged on penalties or payable on a refund?**

No interest will apply on the penalties mentioned above.

b) Penalty relief

Subject to further negotiations with tax authorities

10. Statute of limitations on transfer pricing assessments

Four years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium as it will allow tax authorities to assess the effective profit which should be taxed locally.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium if they assume that the company chose this method to lower the taxable base.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium as we assume that challenging the transfer pricing method may entail for SRA an increase of the taxable base.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The industries are large companies: telecommunication, oil and gas, mining, and companies in the hospitality industry.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral and bilateral APAs are available.

- **Tenure**

The APA application should be filed at least six months before the beginning of the first fiscal year indicated in the APA request.

- **Rollback provisions**

There is no guidance provided.

- **MAP opportunities**

Yes, taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty to which Senegal is signatory.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Senegal does not have specific thin-capitalization rules, but the following limitations are imposed on interest paid to related foreign parties in respect of funds provided to local companies:

- The rate of interest paid to shareholders, partners or other related parties on loans advanced directly or indirectly to the company in excess of the share capital may not exceed the advance rate of the central bank by more than 3 percentage points.
- The interest referred to in (1) may be deducted only if the capital is fully paid up.
- The deduction of interest paid to an individual is limited to the interest attributable to loans not exceeding the amount of the share capital.
- Interest, referred to in (1) when paid to companies, is not deductible to the extent it is paid on loans that exceed 1.5 times the share capital and the interest exceeds 15% of profits from ordinary activities, plus interest, depreciation and provisions taken into account in determining those profits.
- The total amount of deductible annual interest in respect of all debts incurred by members of a group cannot exceed 15% of the group's consolidated profits from ordinary activities, plus interest, depreciation and provisions taken into account for the determination of those profits.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Authority of Singapore (IRAS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

On 22 February 2018, the Singapore Government published the Income Tax (Transfer Pricing Documentation) Rules 2018 (the TPD rules), under the Singapore Income Tax Act (ITA), in the Singapore Government Gazette. The TPD rules are effective as of 23 February 2018, and apply for the basis period for the year of assessment (YA) 2019 and thereafter.

On 23 February 2018, the IRAS released the fifth edition of the Singapore transfer pricing guidelines (2018 Singapore Transfer Pricing Guidelines). The changes incorporate the TPD rules into the guidelines and provide examples and explanations on certain aspects of the TPD rules.

Section 34D of the ITA[2] relates to transfer pricing and empowers the IRAS to make transfer priing adjustments in cases where a Singapore taxpayer's transfer pricing practices are not consistent with the arm's-length principle.

Section 34E allows the comptroller to impose a surcharge of 5% on the transfer pricing adjustments made by the comptroller with effect from the YA 2019.

Section 34F legislates the mandatory requirement for contemporaneous and adequate transfer pricing documentation, and penalties for non-compliance from YA 2019 onward.

On 10 August 2021, the IRAS released the sixth edition of the Singapore transfer pricing guidelines, which provides updates and additional transfer pricing guidance in a number of areas as compared with the previous edition.

The sixth edition does not deviate significantly from the fifth edition in terms of guidance on the considerations for the application of the arm's-length principle and transfer pricing documentation requirements. However, the various updates and guidance in additional areas (including conditions for mitigating a transfer pricing surcharge) are reflective of the IRAS' continuing focus on transfer pricing matters and enforcement of the arm's-length requirement on taxpayers.

- **Section reference from local regulation**

Under Section 13(16) of the Singapore ITA, "a related party, in relation to a person, means any other person who, directly or indirectly, controls that person, or is controlled, directly or indirectly, by that person. It also means where he or she and that other person, directly or indirectly, are under the control of a common person."

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No, the Inland Revenue Authority of Singapore (IRAS) has published on its website with responses to certain transfer pricing questions commonly asked by taxpayers who are dealing with the disruption caused by COVID 19.

In the COVID 19 transfer pricing guidance, the IRAS has set out the types of information to be provided in the transfer pricing documentation to substantiate the arm's-length nature of the transfer pricing outcome arising from COVID 19

The IRAS has also stated that taxpayers, under usual circumstances, are required to consult the IRAS before applying term testing. Recognising COVID-19 to be exceptional circumstances, the IRAS has indicated willingness for a taxpayer to apply term testing (generally over three years) for the year of assessment 2021 due to COVID 19 impact without prior consultation with the IRAS, provided that this is a one-off application and the taxpayer is also able to substantiate with evidence such impact on its business.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Singapore is not an OECD member jurisdiction; however, it is a BEPS associate jurisdiction (as announced on 16 June 2016).

The 2021 Singapore Transfer Pricing Guidelines are generally consistent with the OECD Guidelines.

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[1] **https://www.iras.gov.sg/.**

[2] **Relevant sections of the Singapore ITA are available at http://statutes.agc.gov.sg/aol/search/display/view.w3p;page=0;query=DocId%3A45fc380e-12d4-4935-b138-c42d-c45d377c%20Depth%3A0%20Status%3Ainforce;rec=0.**

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations? Yes**
  - Coverage in terms of Master File, Local File and CbCR

    Under Action 13, the IRAS has not adopted the application of the OECD Master File and Local File concepts as separate documents. Nonetheless, the information requirements for Singapore transfer pricing documentation are largely aligned to the OECD approaches though the details requested are for the applicable Singapore entity.
  - Effective or expected commencement date

    This is already in place (under the requirements for local Singapore transfer pricing documentation).
  - Material differences from OECD report template or format

    There are no material differences, but the requirements under both the OECD Master File and Local File need to be met in the Singapore transfer pricing documentation.
  - Sufficiency of BEPS Action 13 format report to achieve penalty protection

    A BEPS Action 13 format report (including both OECD Master File and Local File requirements) will help in mitigating penalties, particularly non-compliance with transfer pricing documentation requirements.

    Having contemporaneous transfer pricing documentation is also one of the conditions to mitigate the surcharge of 5% on the amount of the transfer pricing adjustment under Section 34E (applicable from YA2019 onward).

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes, it is.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 21 June 2017.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, with effect from YA2019, Singapore has compulsory transfer pricing documentation requirements. It is mandatory to prepare a transfer pricing report on a contemporaneous basis, which should be ready by the time of the filing of the tax return.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, they need to comply.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation should be prepared annually under the 2021 Singapore Transfer Pricing Guidelines. However, to reduce taxpayers' compliance burden, IRAS allows them to use the transfer pricing documentation they have prepared previously to support the transfer price in the basis period concerned if it is a qualifying past transfer pricing documentation.

Qualifying past transfer pricing documentation means:

- Past transfer pricing documentation prepared for the first basis period immediately preceding the basis period concerned and that satisfies certain conditions

  Or
- In the absence of subparagraph (a), past transfer pricing documentation prepared for the second basis period immediately preceding the basis period concerned and which satisfies certain conditions

Hence, the transfer pricing documentation is required to be refreshed only once every three years if the existing one qualifies as past transfer pricing documentation.

For existing transfer pricing documentation to be qualify as past transfer pricing documentation, the following conditions must be satisfied:

- The transaction for which the past transfer pricing documentation was prepared must be of the same type as the transaction undertaken in the basis period concerned.
- The transaction for which the past transfer pricing documentation was prepared and the transaction in the basis period concerned must have been undertaken with the same related parties.

- The past transfer pricing documentation must contain documentation at group level and entity level as prescribed in the TPD rules.
- The past transfer pricing documentation must be dated and prepared in English.
- The information contained in the past transfer pricing documentation on the following matters accurately describes the same matters in relation to the transaction in the basis period concerned.
  - The commercial or financial relations between the taxpayers and their related parties
  - The conditions made or imposed between the taxpayers and their related parties
  - The transfer pricing method that is used for the transaction
  - The arm's-length conditions

To make use of qualifying past transfer pricing documentation for a related-party transaction undertaken in the basis period concerned, taxpayers only need to prepare simplified transfer pricing documentation for that transaction. The simplified transfer pricing documentation need only:

- Contain a declaration by the taxpayer that it has prepared qualifying past transfer pricing documentation
- Include, by way of an attachment, a copy of the qualifying past transfer pricing documentation

However, it is still required to conduct annual testing of the actual results against the arm's-length results in the qualifying past transfer pricing documentation.

As mentioned above, with effect from YA2019, Section 34F legislates the requirement for Singapore taxpayers to prepare contemporaneous transfer pricing documentation. They must prepare transfer pricing documentation if they meet certain conditions. It must be prepared no later than the statutory deadline for the filing of the income tax return.

Additionally, per paragraph 6.6 of the 2021 Singapore Transfer Pricing Guidelines, the preparation of contemporaneous transfer pricing documentation is important to help avoid the consequences of being unable to deal with transfer pricing enforcement actions by tax authorities and the double taxation arising from those actions. This includes:

- Defending the taxpayer's transfer pricing in the event of a transfer pricing audit by tax authorities
- Helping tax authorities resolve potential transfer pricing issues under the MAP
- Facilitating the discussion and conclusion of APAs

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone transfer pricing reports if it has related-party transactions.

b) Materiality limit and thresholds

- **Transfer pricing documentation**

Unless exemption from transfer pricing documentation for specified transactions applies, taxpayers must prepare transfer pricing documentation for their related-party transactions undertaken in a basis period (referred to as the "basis period concerned") when either of these two conditions are met:

- Condition (a): The gross revenue from their trade or business for the basis period concerned is more than SGD10 million.
- Condition (b): They were required to prepare transfer pricing documentation under Section 34F of the ITA for the basis period immediately before the basis period concerned. In other words, taxpayers who were required to prepare transfer pricing documentation for a previous basis period would continue to be required to do so for the subsequent basis period, and so on.

Transfer pricing documentation is not required in the following situations:

- When the taxpayer transacts with a related party in Singapore and such local transactions (excluding related-party loans) are subject to the same Singapore tax rates or exempt from Singapore tax for both parties
- When a domestic loan is provided between the taxpayer and a related party in Singapore, and the lender is not in the business of borrowing and lending
- When the taxpayer applies the "safe harbor" 5% cost markup for routine services that fall under Annex C of the 2021 Singapore Transfer Pricing Guidelines
- Where the taxpayer applies the indicative margin for related-party loans in accordance with the administrative practice
- When the related-party transactions are covered under an APA, although annual compliance reports are still required under an APA
- When the related-party transaction does not exceed a certain value as follows:

- SGD15 million for purchase or sale of goods (respectively)
- SGD15 million for loans owned to, or by, related parties (respectively)
- SGD1 million for all other categories of transactions (e.g., service income and expense, royalty income and expense, rental income and expense, and guarantee income and expense)

For the purpose of determining if the threshold is met, aggregation should be done for each category of transactions (strict pass-through costs should be included in the computation to determine if the threshold is met). For example, all service incomes received from related parties should be aggregated.

- **Master File**

The IRAS has not adopted the application of the BEPS Master File concepts as separate documents. Nonetheless, the information requirements for Singapore transfer pricing documentation are largely aligned to the OECD approaches, though the details requested are for the applicable Singapore entity. The 2021 Singapore Transfer Pricing Guidelines contains a two-tiered approach in which both group and entity-level details are required when preparing Singapore transfer pricing documentation.

- **Local File**

The IRAS has not adopted the application of the BEPS Local File concepts as separate documents. Nonetheless, the information requirements for Singapore transfer pricing documentation are largely aligned to the OECD approaches, though the details requested are for the applicable Singapore entity. The 2021 Singapore Transfer Pricing Guidelines contains a two-tiered approach in which both group and entity-level details are required when preparing Singapore transfer pricing documentation.

- **CbCR**

The IRAS has published an e-tax guide on CbCR. Broadly, CbCR is required for an MNE group in relation to a financial year beginning on or after 1 January 2017 (but before 1 January 2018), where Singapore-resident ultimate parent entities (UPEs) of the following two types of MNE groups are required to submit a CbC report to the comptroller (or an authorized person):

- Type A group: an MNE group with consolidated revenues of at least SGD1.125 billion (USD850 million) and has two or more entities that are tax residents in different countries
- Type B group: an MNE group with consolidated revenues of at least SGD1.125 billion having a single entity that is tax resident in one jurisdiction, but is also subject to income tax for its business carried out through a permanent establishment in another jurisdiction

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. Still taxpayers are not expected to prepare transfer pricing documentation in the following situations:

- Where the taxpayer transacts with a related party in Singapore and such local transactions (excluding related-party loans) are subject to the same Singapore tax rates or exempt from tax for both parties
- Where a related domestic loan is provided between the taxpayer and a related party in Singapore, and the lender is not in the business of borrowing and lending

- **Local language documentation requirement**

The transfer pricing documentation needs to be prepared in English. Paragraph 6.40(c) of the 2021 Singapore Transfer Pricing Guidelines specifies that the IRAS may request translation of any transfer pricing documentation not written in English.

- **Safe harbor availability, including financial transactions if applicable**

As mentioned above, safe harbor is available for routine services and related-party loans if certain conditions are met (refer to paragraph 14.29 of the 2021 Singapore Transfer Pricing Guidelines for routine services and paragraph 15.50 of the same for related-party loans).

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is no transfer pricing return required to be filed, either separately or along with the Singapore income tax return.

- **Related-party disclosures along with corporate income tax return**

With effect from YA2018, a related-party transactions reporting requirement for companies was introduced. Under the related-party transactions reporting requirement, a company must state in Form C whether the value of related-party transactions, as disclosed in the audited accounts, exceeds SGD15 million for the relevant year of assessment. If the value of related-party transactions exceeds SGD15 million, the company has to complete the Related-Party Transactions Form and submit it together with Form C.

- **Related-party disclosures in financial statement/annual report**

It is required to disclose related-party transactions in the annual financial statement; however, the same may not be presented as a separate note.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Corporate income tax return should be filed by 30 November.

- **Other transfer pricing disclosures and return**

With effect from YA 2018, it should be filed by 30 November for Related-Party Transactions Form which is to be submitted together with Form C.

- **Master File**

There is no Master File preparation or submission requirement in Singapore.

- **CbCR preparation and submission**

For financial years beginning on, or after, 1 January 2017, Singapore MNE groups are required to submit a CbC report to the comptroller within 12 months from the end of that financial year.

- **CbCR notification**

There is no CbCR notification requirement in Singapore. Nonetheless, Singapore-headquartered MNEs having a filing obligation in Singapore will need to provide the following information to the IRAS at least three months before the filing deadline via email:

- Name and unique entity number (UEN) of the UPE (i.e., reporting entity)
- Financial reporting period of the UPE (DD/MM/YYYY to DD/MM/YYYY)
- Contact person's name and contact number
- Email of contact person (if different from the one used to provide the reply)

b) Transfer pricing documentation/Local File preparation deadline

To be considered contemporaneous, the transfer pricing documentation is required to be prepared no later than the statutory deadline for the filing of the income tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

Taxpayers should have evidence that their transfer pricing documentation was prepared in accordance with the contemporaneous requirements (e.g., dating of the report).

- **Time period or deadline for submission upon tax authority request**

Transfer pricing documentation should be submitted within 30 days upon request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

Transfer pricing documentation and transfer pricing declaration/form/filing: not applicable

CbCR notification: not applicable

CbC report: not applicable

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes
- Domestic transactions: Yes

b) Priority and preference of methods

The IRAS generally does not have a specific preference for any of the five prescribed methods outlined in the OECD Guidelines, and it stipulates that the transfer pricing method that produces the most reliable results should be selected and applied.

To apply the arm's-length principle, the 2021 Singapore Transfer Pricing Guidelines recommends a three-step approach:

1. Conduct a comparability analysis.
2. Identify the most appropriate transfer pricing method and tested party.
3. Determine the arm's-length results.

8. Benchmarking requirements

- **Local vs. regional comparables**

As much as possible, taxpayers should use local comparables in their comparability analysis. When taxpayers are unable to find sufficiently reliable local comparables, they may expand their search to regional comparables (such as pan-Asian).

- **Single-year vs. multiyear analysis for benchmarking**

Single-year results of the tested party are expected to be compared with multiple-year results of the comparables.

- **Use of interquartile range**

Interquartile range calculation is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year; however, the 2021 Singapore Transfer Pricing Guidelines states that taxpayers should update their transfer pricing documentation, including the benchmarking set, when there are material changes that impact the functional analysis or transfer pricing analysis. Taxpayers are also required to update their transfer pricing documentation at least once every three years.

- **Simple, weighted or pooled results**

There is a preference for weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

Per paragraph 5.50 (a) to (d), the IRAS has clarified that:

- The IRAS has no preference for any particular commercial database, as long as it provides a reliable source of information that assists taxpayers in performing comparability analysis.
- Taxpayers should only use comparables with publicly available information. Such information can be readily obtained from various sources and verified, making the analyses of these comparables more reliable, compared with those based on privately held information.
- Taxpayers should use local comparables in their comparability analysis. When taxpayers are unable to find sufficiently reliable local comparables, they may expand their search to regional comparables.
- Taxpayers should exclude comparables that have weighted average loss for the tested period, or loss incurred for more than half of the tested period.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

A penalty of up to SGD10,000 (USD7,600) applies to a person who knowingly provides materially false or misleading transfer pricing documentation to the comptroller.

- **Consequences of failure to submit, late submission or**

incorrect disclosures

With effect from YA2019, taxpayers will be fined not more than SGD10,000 if they fail to comply with any of the following:

- Prepare contemporaneous transfer pricing documentation if required to do so under Section 34F
- Prepare transfer pricing documentation with the details and in the form and content as prescribed in the TPD rules.
- Retain the transfer pricing documentation for a period of at least five years from the end of the basis period in which the transaction took place
- Furnish the comptroller with a copy of the transfer pricing documentation within 30 days of receiving the notice to submit

Similar penalties apply to a person who knowingly provides materially false or misleading transfer pricing documentation to the comptroller.

An SGD1,000 (USD760) penalty will be imposed upon failing to file the CbC report by the due date or in order to retain all records used to prepare a CbC report for a period of five years. If the penalty is not paid, the responsible person may be imprisoned for up to six months. An additional penalty of up to SGD50 (USD38) per day may also be imposed for every day the failure continues after conviction.

A penalty of up to SGD10,000 (USD7,600) applies to the filing of false or misleading CbCR information. The responsible person may also be imprisoned for up to two years.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Applicable from YA 2019 onward, Section 34E introduces the penalty regime which allows the comptroller to apply a surcharge of 5% on the transfer pricing adjustment made for non-compliance with the arm's-length principle.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to above section

- **Is interest charged on penalties or payable on a refund?**

The Comptroller may also collect and recover any interest charged on top of the surcharge. The Comptroller is required to refund the taxpayer the surcharge and interest paid if the surcharge is reduced or annulled at a later date.

b) Penalty relief

Adequate and contemporaneous transfer pricing documentation to support the pricing of the taxpayer's related-party transactions will help in mitigating penalties in relation to non-compliance with transfer pricing documentation requirements.

It is also one of the conditions to mitigate the surcharge of 5% on the transfer pricing adjustments under Section 34E (applicable from YA 2019 onward).

10. Statute of limitations on transfer pricing assessments

The statute of limitations is four years from the end of the year of assessment (i.e., the latest date the IRAS may make an additional assessment for YA2018 is 31 December 2022).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not applicable

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium to high: the IRAS may raise transfer pricing queries as part of its routine corporate income tax reviews, as well as through more detailed transfer pricing audits with taxpayers.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium to high: in examining the related-party transaction under audit, the IRAS may question the applicability of the transfer pricing methodology adopted. This may include the PLI applied, the specific margin and results arrived at, the transfer pricing method applied, as well as economic substance questions and request for evidence.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium to high: this depends on whether the taxpayer's position is defensible. The risk of an adjustment may be mitigated through contemporaneous transfer pricing documentation.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral, bilateral and multilateral APAs are available; requests for APAs have markedly increased in recent years.

- **Tenure**

The IRAS will generally accept an APA request to cover three to five financial years.

- **Rollback provisions**

The IRAS accepts taxpayers' requests to extend APAs to prior years for bilateral or multilateral APAs. The number of rollback years will generally not exceed two financial years immediately prior to the covered period. Depending on the facts and circumstances, the IRAS may exercise discretion to vary the number of rollback years.

- **MAP opportunities**

They are available. Taxpayers should submit an MAP application to the IRAS within the time limit specified in the MAP article of the relevant DTT.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

The Inland Revenue Authority of Singapore (IRAS) has recently published guidance on its website on APA implications related to COVID 19.

For APA applications that are under review, if taxpayers assess that there are transfer pricing implications arising from COVID 19 that may impact their APA application (e.g., changes in functional profile), they should provide the relevant details to the IRAS as soon as possible. In the case of ongoing bilateral/multilateral APA, the IRAS will have to discuss the case with the other competent authorities to reach a mutually acceptable conclusion.

For existing APAs, if taxpayers evaluate that there may be a breach in terms and conditions of the existing APA as a result of COVID 19, they should notify the IRAS as soon as possible and provide an analysis of the impact, explaining why the terms and conditions may have been breached, and suggest the next course of action. In the case of ongoing bilateral/multilateral APA, the IRAS will have to discuss the case with the other competent authorities to reach a mutually acceptable conclusion.

For taxpayers considering a new APA or renewal on an existing APA, only cases where there is high level of certainty on the factors that may affect the determination of arm's-length transfer prices between related parties will be considered by IRAS. In the event of doubt, taxpayers are recommended to approach IRAS early for a discussion.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no thin-capitalization rules in Singapore.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Slovak Financial Directorate, local tax authorities and Ministry of Finance.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

  The Slovak transfer pricing rules established in the Income Tax Act generally conform to the OECD Guidelines. The OECD Guidelines were published in the *Slovak Financial Newsletter* but are not legally binding. Nevertheless, the tax authorities generally follow them in practice.

  Since 2009, taxpayers have been obligated to prepare and keep transfer pricing documentation supporting the transfer pricing method used in transactions with foreign related parties. The Slovak Ministry of Finance regularly issues official guidance on the contents of transfer pricing documentation.

  Transfer pricing rules in Slovak Republic are stipulated by:

- Sections 2, 17 (5, 6, 7) and 18 of the Income Tax Act
- Relevant sections of the Act on Tax Administration (Tax Code)
- Guidance of the Ministry of Finance on the content of the transfer pricing documentation (new guidance applicable for documentations from 2018 onward)

- **Section reference from local regulation**

See the previous section.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The Slovak Republic is a member of the OECD.

The tax authority usually follows the provisions of the OECD Guidelines (e.g., the acceptable methods listed in the Income Tax Act correspond with the methods listed in the OECD Guidelines). As of 1 January 2014, the Slovak Income Tax Act reflects the 2010 version of the OECD Guidelines (e.g., elimination of preference in applying the selected transfer pricing method).

At the time of this publication, there was no formal acknowledgment of the 2017 BEPS-updated version of the OECD Guidelines in the Slovak legislation (except for the update regarding the transfer pricing documentation – see below).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  Master File, Local File and CbCR are covered.

- Effective or expected commencement date

  The law is applicable for the fiscal year beginning on 1 January 2018.

- Material differences from OECD report template or format

  There is none specified.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  BEPS Action 13 format report should be sufficient to achieve penalty protection. However, the OECD templates do not match with local reality completely, and some details might be missing either in functions, assets and risk (FAR) analysis or intercompany transactions. Thus, local review is recommended.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it became a signatory on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

No; however, tax authorities can request the transfer pricing documentation for the relevant year once the obligation to file the tax return for the relevant period is fulfilled.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Obligation to prepare full documentation is set for every cross-border transaction (or a group of such transactions) whose value exceeds EUR10 million during the tax period. Basic documentation will be required for each cross-border transaction (or group of such transactions) that exceeds the value of EUR1 million. The basic documentation should also be prepared by every taxpayer with revenues exceeding EUR8 million regardless of the value of a cross-border transaction.

- **Master File**

The new Slovak guidelines for transfer pricing documentation issued in 2018 are almost fully compatible with the BEPS recommendations for Local and Master file.

- **Local File**

The new Slovak guidelines for transfer pricing documentation issued in 2018 are almost fully compatible with the BEPS recommendations for Local and Master file.

- **CbCR**

CbCR reporting is required.

- **Economic analysis**

Economic analysis should be performed as part of the full documentation for each transaction exceeding the materiality threshold. Shortened analysis substantiating the transfer pricing method used (but not requiring the benchmark) is required for basic documentation.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions, but only in specific cases, i.e., material transactions of taxpayers applying for tax relief, APA, MAP or corresponding adjustments.

- **Local language documentation requirement**

The transfer pricing documentation should be submitted in the local language. However, it is also possible to submit the documentation in English if permitted by the tax authority. The tax authority can always request for a translation into Slovak language.

- **Safe harbor availability, including financial transactions if applicable**

This is not reflected formally in Slovak tax regulations but, in general, tax authorities abide by the OECD Transfer Pricing Guidelines.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

There are no other specific requirements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no transfer pricing-specific returns in the Slovak Republic. The corporate income tax form contains an overview of the transactions in a summarized format.

- **Related-party disclosures along with corporate income tax return**

The taxpayer should state (on a specific row of the tax return) the difference, if any, between the prices charged in transactions with related parties and the arm's-length prices that decreased the tax base or increased the tax loss. The tax base must be increased by this difference at the same time. The corporate income tax return includes a summary table in which the amounts of various types of related-party sales and purchases must be stated (regardless of whether they diverge from arm's-length prices).

Transfer pricing documentation does not need to be enclosed with the tax return.

- **Related-party disclosures in financial statement/annual report**

Financial statements contain specific rows for related-party loans, receivables and liabilities. Also, the notes to financial statements contain a section with information about related-party transactions.

Transfer pricing documentation doesn't need to be enclosed with the financial statements.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

No other information is required.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is usually three months after the end of the fiscal year, with the possibility of a three-month extension.

- **Other transfer pricing disclosures and return**

The high-level information on intercompany transactions is submitted within the corporate income tax return.

- **Master File**

Master File should be enclosed with the Local File. On the basis of the guidance, Master File and Local File form one complete documentation. This applies only if the taxpayer has the obligation to prepare full transfer pricing documentation.

- **CbCR preparation and submission**

The deadline is 12 months after the fiscal year-end.

- **CbCR notification**

Yes, the deadline is three months from the end of fiscal year.

b) Transfer pricing documentation/Local File preparation deadline

It should be available at the time the corporate income tax return is filed.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for the submission of transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has 15 days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: The Slovak Income Tax Act is in line with the OECD Guidelines. A combination of methods is permitted. Non-listed methods may be used if they comply with the arm's-length principle.**

- **Domestic transactions: Yes, the same conditions apply as listed above.**

b) Priority and preference of methods

There is no direct preference, though the most appropriate method should be used (in line with the OECD Guidelines).

8. Benchmarking requirements

- **Local vs. regional comparables**

Regional searches are acceptable and preferred.

- **Single-year vs. multiyear analysis**

Multiyear analysis is acceptable.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Slovak legislation does not explicitly require new benchmark studies every year, but our experience indicates that it is recommended to update benchmark searches at least annually. Brand-new benchmarks should be prepared every three years.

- **Simple, weighted or pooled results**

There is none specified (not formally mentioned in regulations).

- **Other specific benchmarking criteria, if any**

Comparables with not more than 25% ownership are specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The penalty is up to EUR3,000 per any type of non-compliance; it can be assessed repeatedly.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The penalty is up to EUR3,000 per any type of non-compliance; it can be assessed repeatedly.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section below.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to section below.

- **Is interest charged on penalties or payable on a refund?**

If any discrepancies are identified in transfer prices, the Slovak Tax Authorities (SKTA) would levy an additional tax at the rate of 21% from an adjusted amount, plus a penalty of 10% per year or three times the base interest rate of the European Central Bank (ECB) – whichever is higher – from additional levied tax.

There is also a system of transfer pricing-related penalties under which the SKTA can impose a penalty, doubling a sanction of 10% or three times the base interest rate of the ECB (whichever is higher) on the sums equal to differences in the newly determined tax liability of the taxpayer. This would apply if the SKTA determines that the tax base is not calculated using arm's-length prices in transactions with the taxpayer's related parties and that the general anti-abuse rules stated in the Slovak tax legislation have been breached. If the taxpayer does not file an appeal against a decision of the SKTA on an increase of the tax liability stated in the tax return, a double penalty increase should not apply (i.e., only three times the base interest rate of the ECB should be applied).

b) Penalty relief

As of 2016, there is a general option to submit a supplementary tax return within 15 days from the beginning of the tax audit, which offers taxpayers a possibility of reducing the imposed penalty, compared with a tax audit determination of the tax assessment. That means a penalty at 7% per year or twice the base interest rate of the ECB per year (whichever is higher) could be assessed (instead of 10% per year or three times the ECB base rate per year).

10. Statute of limitations on transfer pricing assessments

The statute of limitations in the Slovak Republic in the case of applying a double tax treaty is 10 years from the end of the year in which the tax return is filed.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, the likelihood of a corporate income tax audit in Slovakia may be considered to be medium, while the likelihood that the taxpayer's related-party transactions will be reviewed as part of that audit may be considered to be high.

On the basis of the experience with transfer pricing audits in Slovakia, if transfer pricing is reviewed as part of the tax audit, the risk of a challenge by the Slovak tax authorities of the taxpayer's methodology is also medium to high. Since the obligation to prepare and keep transfer pricing documentation was introduced, the tax authority has intensified its activity on transfer pricing and is increasingly focused on the transfer pricing and related documentation when auditing companies that form part of a multinational group. In 2013, a group specializing in transfer pricing was established within the structure of the tax authorities, and the first audits solely focused on transfer pricing issues have commenced.

Notwithstanding the focus of documentation rules on taxpayers that are obligated to maintain the so-called full transfer pricing documentation, transfer pricing audits do not focus only on such taxpayers. The likelihood of a transfer pricing audit is roughly the same for companies falling in the "basic" documentation scope (e.g., for midsize companies).

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium to high since the SKTA normally has internal control to select the taxpayer for which an audit should be performed. Therefore, once an audit takes place, there is a medium to high probability that the SKTA will focus on challenging the transfer pricing structure.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium to high. As per experience, the SKTA usually tries to push for its position, but many circumstances are taken into account during the audit process from the standpoint of both the client and authorities.

- **Specific transactions, industries and situations, if any, more likely to be audited**

This can vary depending on the transfer pricing structure, though structure on royalties, services, financial transactions and limited-risk manufacturers is an area of relatively straightforward challenge.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

In cases of related-party transactions, the taxpayer may request that the tax authority approves the selected transfer pricing method. If approved, the method should be applied for a maximum of five tax periods. The Income Tax Act does not explicitly stipulate whether the tax authority may approve the particular price or margin percentage used. Nevertheless, in practice, the Slovak tax authority may approve the practical application of the transfer pricing method (e.g., process of identifying comparable transactions or entities) and request information regarding the specific targeted remuneration considering the model under application. Given this, an APA should provide a reasonable level of comfort for taxpayers.

- **Tenure**

The tenure is up to five years from the approved fiscal year (if business circumstances don't change).

- **Rollback provisions**

For a unilateral APA, no rollback provisions exist. For a bilateral APA, there may be a five-year rollback if the tax authority agrees.

- **MAP opportunities**

MAP is applicable under tax treaties, and the EU Arbitration Convention and the Ministry of Finance has issued Guidance in February 2018. From July 2019, an act governing the MAP and local procedure for resolution of transfer pricing disputes in Slovakia will be effective.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules restrict the maximum amount of tax-deductible interest on related-party (foreign and domestic) loans (new and old) to 25% of the taxpayer's earnings before interest, taxes, depreciation and amortization (EBITDA).

Contact

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Financial Administration of the Republic of Slovenia (Finančna Uprava Republike Slovenije, or FURS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer pricing rules are provided under the:

- Corporate Income Tax Act (Official Gazette of the Republic of Slovenia, Nos. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16,69/17, 79/18, 66/19 and 172/21) (*Zakon o Davku od Dohodkov Pravnih Oseb* (ZDDPO-2))
- Rules on Transfer Prices (Official Gazette of the Republic of Slovenia, No. 141/06 in 4/12) (*Pravilnik o Transfernih cenah*)
- Rules Amending the Rules on Transfer Prices (Official Gazette of the Republic of Slovenia, No. 4/12) (*Pravilnik o spremembah in dopolnitvah Pravilnika o transfernih cenah*) Tax Procedure Act (*Official Gazette of the Republic of Slovenia,* Nos. 13/11 – official consolidated text, 32/12, 94/12, 101/13 – ZDavNepr, 111/13, 22/14, 25/14 – ZFU, 40/14 – ZIN-B, 90/14, 91/15, 63/16, 69/17 13/18 - ZJF-H, 36/19, 66/19, 145/20 and 203/20 – ZIUPOPDVE) (*Zakon o Davčnem Postopku* (ZDavP-2))

- **Section reference from local regulation**

Articles 16 and 17 of the Corporate Income Tax Act provide the definition of "related party" and the general requirements with which related parties need to comply.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Slovenia is a member of the OECD and EU Joint Transfer Pricing Forum (JTPF).

As the Slovenian transfer pricing regulations follow the principles established in the OECD Guidelines, the tax authority, in the absence of guidance in Slovenian legislation, will also consider the OECD Guidelines during tax audits. The JTPF's recommendation shall also generally apply.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Based on BEPS Action 13, Slovenia implemented the CbCR requirement for certain multinational entities. The Master File and Local File concepts according to BEPS Action 13 have not yet been implemented in the law. However, similar concept and requirement exists for Master File and Local File, and follows the Code of Conduct on transfer pricing documentation in the EU.

- Coverage in terms of Master File, Local File and CbCR

  Master File and Local File to a great extent, while CbCR is fully covered.

- Effective or expected commencement date
- Relevant legislation for CbCR was adopted in 2016 and 2017 respectively. The CbC reports are due within 12 months after the end of the fiscal year of the entity. Material differences from OECD report template or format

  Slovenian requirements on the CbCR template or format follow the OECD report template or format on essential items. Information on financing and intellectual property (IP) is not explicitly required by the Slovenian documentation rules.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

There is no penalty protection concept in Slovenia. The content of the documentation and deadline is prescribed and penalties may be raised if the documentation does not comply with the requirements.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, the Slovenian transfer pricing documentation requirements are based on a Master File concept. Under this concept, as recommended by the European Community (EC) Council and the JTPF, the transfer pricing documentation should consist of a Master File and a jurisdiction-specific file. Disclosure of any related-party transaction amounts should be provided with the tax return when it is filed with the tax authority. Following the implementation of CbCR rules in 2016, relevant multinational entities are required to file CbCRs, which are commonly considered a part of transfer pricing documentation. The documentation should be prepared contemporaneously, within three months of the financial year-end.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes – if it is considered taxable as permanent establishment.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation should be prepared annually and for each year separately. A mere memo that outlines changes vis-à-vis previous years is not acceptable.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit and thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

There is no materiality limit.

- **Local File**

There is no materiality limit.

- **CbCR**

The CbCR requirement applies to multinational groups with consolidated revenues of EUR 750 million or above in the reporting period.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

For Local File: if one of the related parties involved in the controlled transaction is in a beneficial tax position of one of the following:

- **Has TLCF (Tax Losses Carries Forward)**
- **Pays tax at a 0% rate or at a special rate lower than the general tax rate**
- **Is exempt from paying corporate income tax**

For local transfer pricing documentation: no specific rules for domestic transactions in the other local transfer pricing documentation.

- **Local language documentation requirement**

The transfer pricing documentation should be prepared in Slovenian. However, an entity may decide to prepare it in another language and translate it in Slovenian upon tax authorities' request (the tax authorities should grant a minimum of 60 days to translate the documentation)

- **Safe harbor availability, including financial transactions if applicable**

Safe harbor rules are available for related-party loans. Intercompany interest rate is determined as an interbank

interest rate with a markup. Markup is determined based on the characteristics of the loan (credit rating and the term).

- **Any other disclosure/compliance requirement**

Disclosure of turnover with related parties is required with submission of a corporate income tax return for intercompany loans and other transactions if it exceeds a threshold of EUR 50,000.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

Related-party transactions must be reported as part of the information included on the annual corporate income tax return. In addition, if certain conditions are fulfilled, specifically prescribed attachments must be enclosed with the corporate income tax return. Such conditions include:

- If the cumulative amount of the given or received loans from a particular related party exceeds EUR 50,000 in a tax period, the taxpayer must disclose the name of the related party, its state of residence and tax number, the cumulative amount of the loan given or received and the relationship with the related party.
- Similarly, if the cumulative amount of other intercompany receivables or liabilities toward a particular related party exceeds EUR 50,000 in a tax period, the taxpayer must disclose the name of the related party, its state of residence and tax number, the cumulative amount of receivables or liabilities toward the related party and the relationship with the related party.

  A similar attachment is required if the resident taxpayer has tax losses generated from previous periods, if it is taxed at a 0% corporate income tax rate or at a lower rate than the general one, or if the resident related party is tax-exempt.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

CbCR notification should be filed as an appendix to the corporate income tax return.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed within three months after the end of the fiscal year (i.e., by 31 March for a fiscal year ending on 31 December).

- **Other transfer pricing disclosures and return**

Related-party transaction volumes should be reported in an appendix to the corporate income tax return.

- **Master File**

This is not applicable.

- CbCR preparation and submission
- The CbCR should be filed within 12 months after the end of the fiscal year of the entity.CbCR notification

  The CbCR notification should be filed as an appendix to the corporate income tax return.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation (including jurisdiction specific file and master file) should be prepared by the time the corporate income tax reporting is due. Nevertheless, it does not need to be submitted to the tax authority on this date, as submission is required only upon the tax authority's formal request made in scope of a tax audit.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of transfer pricing documentation apart from the CbCR.

In line with provisions of the Tax Procedure Act, the CbCR

should be submitted to the tax authorities within 12 months following the fiscal year-end.

- **Time period or deadline for submission upon tax authority request**

The documentation should be provided to the tax authority upon request, which is usually made in the course of a tax audit. If it is not possible to submit the documentation immediately, an extension of up to 90 days (depending on the extent and complexity of the information) may be granted. If the Master File is not kept in the Slovenian language, the tax authority may request that it be translated before submission, with an extension of minimum 60 days granted to do so.

In line with provisions of the Tax Procedure Act, the CbC report should be submitted to the tax authorities within 12 months following the fiscal year-end.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

In accordance with the Article 382 of Tax Procedure Act, the TP documentation has to be prepared by the taxpayer before submission date of its CIT return (i.e. 3 months after the end of the fiscal year e.g. for companies which FY ended on 31 December this means 31 March).

Nevertheless, the Slovenian National Assembly on 22nd of February 2022 decided that the taxpayer must submit the corporate income tax (CIT) return to the tax authorities no later than 30th of April for the year of 2021. Since this day falls on Saturday, the actual effective deadline for submission of CIT return is therefore 3 May 2022.

Although there is no explicit information within this new law about the prolongation of the deadline for preparation of TP documentation, the applicable regulations links the deadline for TP documentation to the relevant deadline for CIT return. For this reason, we believe it is safe to assume the deadline for submission of full set of TP documentation for 2021 (in case fiscal year of the company is aligned with calendar year) has also been delayed until the above noted deadline for CIT return.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Following the changes to the OECD Guidelines regarding the hierarchy of transfer pricing methods, the Regulation on Transfer Prices introduced the "best-method rule" in the beginning of 2012. The best-method rule replaced the previous hierarchy, which preferred traditional transactional methods over transactional profit methods.

- **Domestic transactions**

Refer to the section above.

b) Priority and preference of methods

To some degree, the preference for transactional methods over profit methods still exists; when both can be applied in an "equally reliable manner," the traditional transactional method should be selected. There is a similar conclusion regarding the application of the CUP method, which will trump any other method if both can be applied in an equally reliable manner.

8. Benchmarking requirements

- **Local vs. regional comparables**

Pan-European benchmarks are acceptable in Slovenia.

- **Single-year vs. multiyear analysis**

There are no specific rules on this; it should be examined on a case-by-case basis. As the tax authorities usually review m ultiple periods, it is possible to apply a multiyear analysis (usually 3-year period is accepted by the tax authority).

- **Use of interquartile range**

An interquartile range is determined in such a way that 25% of the lower values and 25% of the upper values are eliminated from the total observed range of comparable market prices.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A benchmarking study may be updated by a refresh of the financials in the study. There is no legal requirement to perform a new benchmarking study each year. Updating it at least every three years is required.

- **Simple, weighted or pooled results**

Weighted average.

- **Other specific benchmarking criteria, if any**

When establishing comparable market prices, the conditions from related transactions must be compared with the

conditions, in identical, or comparable transactions between unrelated parties.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

A taxpayer may be fined up to EUR30,000 if the transfer pricing documentation is not submitted in the prescribed manner. Additionally, the individual responsible for preparing the documentation on behalf of the taxpayer may also be fined up to EUR4,000.

- **Consequences of failure to submit, late submission or incorrect disclosures**

A taxpayer may be fined up to EUR30,000 if the transfer pricing documentation is not submitted in the prescribed manner. Additionally, the individual responsible for preparing the documentation on behalf of the taxpayer may also be fined up to EUR4,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In the case of a tax adjustment, late-payment interest and penalties for offenses may be charged.

Interest rates for non-compliance as of 1 January 2017 are:

- For postponement of payment or payment in instalments, 2% per year
- For submitting a tax return based on voluntary self-disclosure, 3% per year
- For submitting a tax return during tax audit (new institute), 5% per year
- Penalty interest based on decision issued by the tax authorities in tax audit, 7% per year
- Interest rate for late payment of tax and late filing of tax returns, 9% per year

If the additional tax exceeds EUR5,000, the tax offense qualifies as severe, and fines in the amount of 45% of the additional tax may be levied.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

See section above.

- **Is interest charged on penalties or payable on a refund?**

No, there is no interest on penalties or on penalty interest. Late-payment interest is applied only on the tax underpayment arising from adjustments of income and costs corresponding to related-party transactions as a result of the tax audit process.

b) Penalty relief

Penalties (fines) for a tax offense may be avoided if the taxpayer makes a voluntary disclosure before receiving the notice at the beginning of a tax audit or the notice at the beginning of a tax offense procedure or criminal procedure. When making a voluntary disclosure, the taxpayer should adjust the tax liability accordingly.

When making the voluntary disclosure, the taxpayer also must pay the amount of tax due and late-payment interest. When tax and late-payment interest are paid simultaneously while making the disclosure, the taxpayer avoids facing penalties for a tax offense.

10. Statute of limitations on transfer pricing assessments

The statute of limitations on corporate income tax assessments is generally five years.

If the tax authorities intervene with any official action against the taxpayer with a purpose to assess or collect tax, the relevant period is reset, without taking into account any previous lapse of time. Nevertheless, the right of the tax authorities to assess and collect tax will cease after 10 years. The transfer pricing documentation must be archived for 10 years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, the risk of an annual tax audit is characterized as medium; however, the risk of an immediate tax audit after a taxpayer applies for a tax refund may be considered to be high.

In practice, taxpayers that exhibit the following characteristics are at a higher risk of being subject to a transfer pricing audit in Slovenia:

- Losses for more than three consecutive years
- An increase in gross revenue or receipts, but no change in net profit
- Lower net profit in comparison with other comparable enterprises or with the industry average, i.e., those taxpayers whose profits fall below the range of profit ratios are exposed to increased transfer pricing audit risk
- Fluctuating profit and loss histories
- Related parties in tax havens
- A high number of related-party transactions

In addition, there is a high risk for a tax audit:

- For a branch that operates in Slovenia that does not pay corporate income tax
- For a taxpayer for which a specific risk was recognized in a previous tax audit
- For a taxpayer subject to an exchange of information between tax authorities

Despite the medium likelihood of a transfer pricing-related audit, the likelihood that transfer pricing will be reviewed as part of the audit may be considered to be high.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It's generally medium; the likelihood depends on the appropriateness of the transfer pricing system in place (i.e., if the transfer pricing system of the company under review seems to be reasonable and is supported by transfer pricing documentation).

For example, if an entity having a limited risk profile incurs tax losses, the tax authorities will most likely challenge the transfer pricing method.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

It's generally high; the tax authorities make a transfer pricing adjustment for controlled transactions especially when they can support such a decision with a benchmark study. In this respect, the tax authorities recommend to the company what kind of PLI (Profit Level Indicator) it should have based on the benchmark study performed by the tax authorities. Since the recommended PLI is usually different from the current one, the company should make a transfer pricing adjustment in its corporate income tax return.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The tax authority mainly initiates a transfer pricing audit when a Slovenian taxable person is part of a multinational group. The tax authority is currently putting the following transactions under increased scrutiny:

- Limited function and risk entities with tax losses carried forward
- Intragroup services
- Intangible goods, e.g., royalties and licensing
- Financial transactions, e.g., loans and cash pooling

Additional risk factors are the profitability of the local taxpayer, business restructurings, the nature and volume of related-party transactions, transfer pricing issues identified in previous tax audits and information available from the media.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

As of 2017, a taxable entity can request a unilateral, bilateral or multilateral APA with the Slovenian tax authorities.

However, the following conditions apply:

- The taxable entity and the tax authorities have met beforehand and agreed on the feasibility of an APA.
- The transaction that is subject to the APA has economic substance.
- The taxable entity has a genuine intention to perform such a transaction.
- The taxable entity and the tax authorities agree on concluding an APA.
- The transaction that is subject to the APA will be performed for a longer period of time and is not due to end shortly after the APA is concluded.

The duration of the APA is determined at the tax authorities'

discretion. Administrative fees of EUR15,000 for first conclusion and EUR7,500 for extension of an APA apply.

- **Tenure**

The duration of the APA is determined at the tax authorities' discretion. The maximum duration is five years, with the possibility of an extension.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Guidance on the access and the use of MAP is available on the website of the Ministry of Finance of the Republic of Slovenia.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There is a safe harbor debt-to-equity ratio of 4:1. The definition of debt and equity generally follows the accounting rules. The calculation is as following:

- Equity: an average of the equity at the beginning and the end of the tax period should be considered in the calculation (taking into account all components of capital for capital in accordance with the accounting standards in place, including tax losses carried over from previous years as deductible components of the capital and except net profit or loss for the financial year).
- Debt: any related-party debt qualifies and should be included in the calculation. Third-party loans guaranteed by the shareholder or granted in relation with the deposit of the shareholder also qualify as debt.

Please appreciate this rule is expected to change in the next 2 years, as a result of ATAD 2 (Anti Tax Avoidance Directive 2).

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

South African Revenue Service (SARS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Section 31 of Income Tax Act No. 58 of 1962 (the act) contains the main legislative provisions concerning transfer pricing.

The SARS issued Practice Note 7 (PN7) as a practical guide to implementing Section 31 and applying the arm's-length principle. PN7 is essentially based on the OECD Guidelines and states that the SARS intends following PN7 and the 2022 OECD Guidelines when conducting transfer pricing reviews. PN7 constitutes an "official publication" under SA tax law and therefore represents "practice generally prevailing" to which the SARS is legally bound.

Section 210 (1) and 211 of Tax Administration Act, 2011: Amendments contain fixed-amount penalties for non-compliance with regard to CbCR filing in South Africa.

- **Section reference from local regulation**

Section 1 of the act contains the definition of "connected person," which is used to determine whether a related party can be considered to be within the scope of Section 31 of the act.

With effect from 1 January 2021 and applicable in respect of years of assessment commencing on or after that date, Section 31 of the act includes the definition of "associated enterprise," to be defined as contemplated in Article 9 of the Model Tax Convention on Income and on Capital (MTC) of the Organisation for Economic Co-operation and Development (OECD).

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

There are no changes expected to the local transfer pricing legislation; however, the guidance on the transfer pricing implications of the COVID-19 pandemic published by the OECD on 18 December 2020 should be considered.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

South Africa is not a member of the OECD. However, PN7 acknowledges that the OECD Guidelines should be followed in the absence of specific guidance in terms of PN7, the provisions of Section 31 or the tax treaties entered into by South Africa.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  It covers the Master File and Local File.

- Effective or expected commencement date

  1 January 2016, for financial years commencing after 1 October 2016 (if not a reporting entity) to submit the Master and Local files.

- Material differences from OECD report template or format

  There are no material differences between the OECD report template or format and South Africa's regulations. True but manual data would need to be completed on an income tax return (ITR14) e filing form for each local entity, together with the information related to the constituent entities.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  A BEPS Action 13 format is sufficient, however, penalty protection is not guaranteed.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

[1] **https://www.sars.gov.za/Pages/default.aspx**

Yes, 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes. Documentation is required to be prepared contemporaneously and submitted as per the thresholds below.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

A local branch will need to comply with the local transfer pricing rules if it has related-party transactions. Although the transactions between a head office and a branch do not meet the "affected transaction" definition as defined in Section 31 of the act, the arm's-length principle should be applied to transactions entered into between a SA branch and its head office if there is a DTA in place between South Africa and the jurisdiction of the head office. It follows that the transaction should be governed by the guidance provided by Article 7 of the OECD MTC and paragraph 6.4 of PN7.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation should be prepared annually. However, benchmarking studies are required to be updated annually and prepared anew every three years.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone transfer pricing reports if it has potentially affected transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

The threshold for filing information pertaining to the Master File is the aggregate of potentially affected transactions (without offsetting any transactions against each other) exceeding or reasonably expected to exceed ZAR100 million. Please note that even if an entity does not meet this threshold to submit its documentation, it is still required to prepare transfer pricing documentation and have this available should SARS request it.

- **Local File**

The threshold for filing information pertaining to the Local File is the aggregate of potentially affected transactions (without offsetting any transactions against each other) exceeding or reasonably expected to exceed ZAR100 million. Please note that even if an entity does not meet this threshold to submit its documentation, it is still required to prepare transfer pricing documentation and have this available should SARS request it.

- **CbCR**

Total consolidated group revenue of more than ZAR10 billion (EUR750 million) during the fiscal year immediately preceding the reporting fiscal year.

- **Economic analysis**

No set rule but it is advisable to perform a benchmarking study for transactions in excess of ZAR5 million.

c) Specific requirements

- **Treatment of domestic transactions**

There is none specified.

- **Local language documentation requirement**

Transfer pricing documentation should be prepared in English.

- **Safe harbor availability, including financial transactions if applicable**

There are none specified; however, reliance is placed on the OECD Guidelines for Financial Transactions published 11 February 2020.

- **Is aggregation or individual testing of transactions preferred for an entity**

As the Local File documentation requirements apply to taxpayers that have aggregated connected party transactions of a value of ZAR100 million or more. If this threshold is met, documentation should be completed for all individual transactions of ZAR5 million or more.

- **Any other disclosure/compliance requirement**

None.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no transfer pricing returns.

- **Related-party disclosures along with corporate income tax return**

Income Tax Return 14 (ITR14) provides for specific information pertaining to cross-border transactions with "connected persons." In particular, taxpayers are required to provide the values of individual cross-border transactions entered into with foreign-connected persons. This includes information such as the amounts received or receivable from foreign-connected persons and amounts paid or payable to foreign-connected persons, and whether there have been any changes to the taxpayer's transfer pricing methodologies. In addition, taxpayers are required to provide certain financial ratios that indicate the level of borrowings and the overall performance of the South African entity.

- **Related-party disclosures in financial statement/annual report**

Yes, all annual financial statements that are prepared in accordance with the IFRS are supposed to disclose all related-party transactions within the related financial period. Further guidance can be obtained in IFRS standard IAS 24.

- **CbCR notification included in the statutory tax return**

Yes, the CbCR notification now forms part of a taxpayer's ITR14 (tax return).

- **Other information/documents to be filed**

None.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

An ITR14 return must be submitted to the SARS within 12 months after the taxpayer's financial year-end.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

Master File needs to be submitted with a taxpayer's Local File within 12 months after the taxpayer's financial year-end.

- **CbCR preparation and submission**

A CbCR must be submitted to the SARS within 12 months after the taxpayer's financial year-end.

- **CbCR notification**

A CbCR notification must be submitted to the SARS within 12 months after the taxpayer's financial year-end.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation is typically recommended to be finalized by the time of lodging the tax return to achieve compliance (e.g., where there is a contemporaneous requirement).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission upon tax authority request**

Taxpayers have to submit the transfer pricing documentation within 21 business days once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

For CbCR: the South African Revenue Service has extended the deadline to file the returns required for reporting fiscal years commencing before 1 July 2020 as follows:

- With regard to persons required to file by 31 December 2020 or 31 January 2021, the deadline is extended to 30 June 2021.
- With regard to persons required to file by 28 February 2021, 31 March 2021, 30 April 2021, 31 May 2021 and 30 June 2021, the deadline is extended to 30 July 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes
- Domestic transactions: Not applicable

b) Priority and preference of methods

The SARS accepts the methods prescribed by the OECD (i.e., CUP, resale price, cost-plus, TNMM and profit-split).

The SARS has indicated that it will subscribe to the OECD's view of accepting a best-method approach as long as it is substantiated. The SARS may require that adjustments be made to foreign comparable company results used for benchmarking the results of the South African entity to compensate for differences in risks assumed by entities operating in a different jurisdiction.

8. Benchmarking requirements

- **Local vs. regional comparables**

The South African domestic transfer pricing legislation does not contain specific legislation or guidelines for the selection and or use of domestic or foreign comparables. However, the OECD Guidelines are consulted to provide guidance on comparability analysis.

- **Single-year vs. multiyear analysis**

The South African domestic transfer pricing legislation does not contain a specific provision that allows or requires the use of an arm's-length range and/or statistical measure for determining the arm's-length range. However, South Africa follows the OECD Guidelines, which provide in-depth guidance on the use of an arm's-length range and/or statistical measure for determining arm's-length remuneration. This is reflected in PN7 at a high level.

- **Use of interquartile range**

See previous response.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year. A fresh benchmarking search is to be conducted every three years, with a financial update annually.

- **Simple, weighted or pooled results**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

Regarding independence criteria, South African statutory rules stipulate that companies are considered to be related parties if ownership share is above 20% and should be excluded from a comparables search, as per the definition of "connected person" in Section 1 of the act. This provision does not apply for financial services transactions (specifically excluded in Section 31 of the act).

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

If the Local File does not pass the validation, the party submitting will be notified and be requested to resubmit the documents or submit more information. If the uploaded documents have successfully passed validations, they will be saved on the SARS system for further evaluation.

- **Consequences of failure to submit, late submission or incorrect disclosures**

An administrative penalty of up to ZAR16,000 can be levied for every month that the documentation remains outstanding. The administrative penalty is based on the assessed loss or taxable income for the preceding year.

Prior to 11 May 2018, the filing of the CbCR was compulsory; however, no specific interest or penalties were assigned for non-compliance. From May 2018, a fixed amount penalty is imposed by Section 211 and it varies from R250 to R16,000 per month, dependent on the amount of an assessed loss or taxable income for the preceding year. The amount of the penalty will increase automatically by the same amount for each month that the person fails to remedy the non-compliance.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalty is the amount resulting from applying the highest percentage (up to 200%) to the shortfall arising from the understatement resulting from an adjustment in the event of default, omission, incorrect disclosure or misrepresentation. The 200% penalty can be reduced depending on the applicable behavior in which the understatement relates as per Section

223 of the Tax Administration Act.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above.

- **Is interest charged on penalties or payable on a refund?**

Yes, interest is levied at the prescribed rate, which is determined by the Minister of Finance from time to time by notice in the Government Gazette.

b) Penalty relief

With respect to other penalties that may be imposed under the Tax Administration Act, if taxpayers have made conscientious efforts to establish transfer prices that comply with the arm's-length principle and have prepared documentation as evidence of such compliance, the SARS will likely take the view that the taxpayer's transfer pricing practices represent a lower tax risk. Such evidence may provide some mitigation against the maximum penalty for the underpayment of income tax of 200%, as provided by the Tax Administration Act.

Should the transfer pricing report be prepared by a South African-registered tax practitioner, a substantial understatement penalty would not be levied by the SARS.

SARS must remit the understatement if either:

- **It resulted from a bona fide inadvertent error (a misstatement that genuinely is not achieved through or does not result from deliberate planning; or a misstatement that is genuinely, sincerely and honestly unintentional, unintended, unpremeditated, unplanned and unwitting)**

Or

- **There was "substantial understatement" and the taxpayer has:**
  - Made full disclosure of the arrangement
  - Received an opinion by an independent registered tax practitioner that:
    - Was issued by or before the return was due
    - Was based on full disclosure of specific facts and circumstances of the arrangement; however, this is not applicable for opinions regarding cases of substance over form doctrine or anti-avoidance provision unless the taxpayer can demonstrate that all steps or parts of arrangement were fully disclosed to the tax practitioner
    - Confirms that the taxpayer's position is more likely than not to be upheld if matter goes to court

The taxpayer can object to the adjustment, or a portion thereof.

10. Statute of limitations on transfer pricing assessments

The normal statute of limitations is three years from the date of assessment of the taxpayer. Under the Tax Administration Act, self-assessment provisions have an extended statute of limitations of five years. As transfer pricing is now a self-assessment provision, the statute of limitations is arguably now five years where the Commissioner issued a notice to the taxpayer prior to the prescription. This can be extended or removed in the cases of fraud, misrepresentation or nondisclosure of material facts.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Yes. The tax authority has suspended physical interactions with taxpayers in the form of meetings and has encouraged SARS officers to make use of online platforms for any assessments and communication with taxpayers.

Case-by-case application to SARS for the waiving of penalties: Larger businesses (with gross income of more than R100 million) that can show they are incapable of making payment due to the COVID-19 pandemic may apply directly to SARS to defer tax payments without incurring penalties. Similarly, businesses with gross income of less than R100 million may apply for an additional deferral of payments without incurring penalties.

12. Likelihood of transfer pricing scrutiny and related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of a general annual tax audit is currently assessed as medium, and the likelihood of transfer pricing forming a part of such an audit may be considered to be high. To the extent that the SARS requests information from a taxpayer, including transfer pricing documentation that the taxpayer does not have, this is grounds for an automatic transfer pricing audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It depends on a case-by-case basis; however, the methodology is normally challenged within the audit process. The likelihood may be considered to be medium.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

The likelihood of an adjustment may be considered to be high, should SARS challenge the methodology.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There is none specified.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral, multilateral)**

On 11 November 2020, SARS published draft legislation and proposed a model for the establishment of an APA program in the jurisdiction.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

South Africa introduced a draft interpretation note (IN) on thin capitalization, which provides guidance to taxpayers on the application of the arm's-length principle in determining whether a taxpayer is thinly capitalized under the revised version of Section 31 of the ITA. The draft IN relates to years of assessment commencing on or after 1 April 2012, which is therefore applicable to South African taxpayers as part of the potential borrowing analysis.

In terms of the draft IN, financial assistance is subject to the arm's-length principle. The arm's-length principle is used internationally as a yardstick in assessing the financial assistance from a transfer pricing perspective. The authoritative statement of the arm's-length principle is found in paragraph 1 of Article 9 of the OECD Model Tax Convention, which forms the basis of bilateral tax treaties involving OECD member countries and an increasing number of non-member countries.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Tax Service (NTS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The following regulations refer to transfer pricing:

- **Adjustment of International Taxes Act** (AITA) (since December 1995)
- Enforcement Decree (PED) of the AITA (since December 1995)
- Enforcement Regulations of the AITA (since March 1996)
- Basic Rulings of the AITA (since June 2004)

- **Section reference from local regulation which defines related party or associated enterprise**

AITA Article 2 (1) 3 defines the term "special relationship" for transfer pricing purposes.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No) Not yet, but planned (as of Feb 2022)

Currently not applicable; however, under the Korean transfer pricing regulations, a taxpayer can apply for an extension (up to one year) prior to 15 days from the statutory filing deadline; and AITA is now planned to be enacted since July 2022 as it will accept the comaprables (under applying the Transactional Net Margin Method) who achieved negative profits under specific circumstances i.e. COVID-19 pandemic.

An application for the extension shall be submitted to regional tax office in person or via online filing website, Hometax, and it will be determined whether the NTS will grant any extension within seven days. It can be extended up to one year, and a taxpayer shall have one of following reasons:

1. Data cannot be submitted due to fire, disaster or theft.
2. The business is in serious trouble, and it is very difficult to submit data.
3. The related books and documents are confiscated by the competent authority.
4. Related party's fiscal year has not been ended.
5. It requires significant time in collecting and preparing the data
6. Tt can be determined that documents cannot be submitted by the deadline due to the similar reasons under subparagraphs 1 through 5.

BEPS threshold

A taxpayer having more than KRW100 billion of sales revenue and KRW50 billion of total overseas related-party transaction shall submit a master file and local file within 12 months from its fiscal year-end.

Traditional transfer pricing documentation

Where a taxpayer prepares and maintains transfer pricing documentation by CIT due and submits the transfer pricing report in 30 days upon tax authority's request, taxpayer could get a waiver of underreporting penalty (10% on the additional tax to be paid through transfer pricing adjustment in audit). No automatic submission is required. There is no specific threshold for preparing traditional transfer pricing documentation, but it is advised to prepare it in practice when the taxpayer meets the threshold for transfer pricing forms.

Extension

To our experience, a one-year extension is rarely granted, and it varies upon regi onal tax office.

Contemporaneous documentation shall include the followings:

- Overview of business
- Information of related-party structure that may affect transfer price
- Reasonings for selection of transfer pricing method (including economic analyses, etc.)
- Reasonableness of the documentation might be determined by the following:
- Representativeness of data used
- Selection and application of transfer pricing method based on systematic analyses

[1] **https://www.moef.go.kr/lw/entexlaw.do?bbsId=MOSFBBS_000000000058&menuNo=7060000&pageIndex=7**

- Whether there is agreed transfer pricing method with tax authority or there is a reason to choose another transfer pricing method

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

South Korea is a member of the OECD.

The AITA, though enacted based on the OECD Guidelines, takes priority over them. The NTS recognizes the OECD Guidelines, but they are not legally binding. Hence, if a taxpayer's argument is based only on the OECD Guidelines and not on the AITA, the NTS or regional tax offices may not accept it.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, after the OECD's announcement of the BEPS actions in 2015, the NTS revised the AITA reflecting the BEPS Action 13 recommendations to implement the Consolidated Reports on International Transaction Information (CRIT), which comprises the CbCR, master file and local file. The format of CRIT is specified by the NTS which is not exactly same as the BEPS Action 13.

- **Coverage in terms of Master File, Local File and CbCR**

It covers all.

- **Effective or expected commencement date**

It was enacted in December 2015, effective for fiscal years starting on or after 1 January 2016.

- **Material differences from OECD report template or format**

There is no material difference between the OECD report template and the Korean master file and local file templates released by the NTS. However, as the NTS released the standardized template for the preparation of the master and local files, the taxpayer needs to localize the reports prepared and provided from a foreign affiliate to fully align with the Korean standardized templates (following the exact standardized template form is not strictly required for the master file as long as the relevant contents are covered) including RPT forms.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Penalty protection is available to taxpayers that have prepared and submitted a local file and master file in Korean by the prescribed due date and where the tax authorities acknowledge that the transfer pricing method as documented in the local file was reasonably selected and applied.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 30 June 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Taxpayers who meet thresholds aforementioned must prepare BEPS transfer pricing documentation (i.e., master file, local file and CbCR) annually.

Taxpayers that are not subject to the BEPS transfer pricing documentation but wish to be eligible for penalty relief should prepare and maintain a transfer pricing study report at the time of filing their corporate income tax return (CITR) annually and submit the report within 30 days upon request from the tax authority.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, a separate report per entity is required.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is none specified.

- **Master File**

Domestic corporations and foreign corporations with a domestic place of business must prepare a master file if they meet the following conditions:

- Revenue of the relevant fiscal year exceeds KRW100 billion.
- Total cross-border related-party transaction amount for the relevant fiscal year exceeds KRW50 billion.

- **Local File**

Domestic corporations and foreign corporations with a domestic place of business must prepare local file if they meet the following conditions:

- Revenue of the relevant fiscal year exceeds KRW100 billion.
- Total cross-border related-party transaction amount for the relevant fiscal year exceeds KRW50 billion.

- **CbCR**

CbCR should be submitted by the following:

- A domestic UPE with consolidated group revenue in the immediately preceding fiscal year exceeding KRW1 trillion will be required to submit the CbCR.
- Taxpayers whose foreign ultimate parent meets the prescribed threshold (i.e., equivalent to EUR750 million) will be required to submit the CbCR if any of the following conditions apply:
  - The ultimate parent jurisdiction does not impose CbCR submission requirement.
  - There is no exchange of CbCR between the relevant jurisdictions due to the absence of tax treaty or other reasons.

- **Economic analysis**

There is none specified by the law but the NTS shall request to perform it with the local database when the tested party is Korean entity.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, the tax authority may question and challenge the domestic related-party transaction based on the Corporate Income Tax Law.

- **Local language documentation requirement**

The local file and master file must be submitted in Korean. While the master file can be initially submitted in English, a Korean version must be additionally submitted within one month of the date of submitting the English version. (See AITA PED Article 21-2, paragraphs 5 and 6.)

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

The preference is not applicable, but the appropriateness shall be considered.

- **Any other disclosure/compliance requirement**

The master and local file should be submitted with electronical form defined by the NTS and uploaded on the Hometax homepage by the deadline.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The transfer pricing disclosure forms mentioned above should be filed with the tax authority at the time of the corporate income tax filing subject to the following:

A taxpayer having more than transaction amount of KRW 1 billion of tangibles or KRW200 million of services including royalties between each foreign related parties (or KRW5 billion of tangibles/KRW1 billion of services in total among all foreign related parties) shall submit transfer pricing forms with attaching those in the CITR.

- **Related-party disclosures along with corporate income tax return**

The AITA requires a taxpayer to submit the following transfer pricing disclosure forms at the time the CITR is filed:

1. A form stating the transfer pricing method selected and

the reason for selecting the method for each related-party transaction (there are different forms for tangible property transactions, intangible property transactions, service transactions and cost sharing arrangement (CSA))

2. A summary of cross-border transactions with foreign related parties

3. A summary of income statements of foreign related parties that have cross-border transactions with the South Korean entity

There are certain minimum threshold exemptions for the first and third forms mentioned above, based on the transaction amount.

When the taxpayer meets the BEPS master and local file threshold, the 3 Related-party disclosures mentioned above should not be included on the corporate income tax return but on the local file with 2 additional disclosures.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

See above transfer pricing forms 1, 2 and 3.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Taxpayers that do not meet the thresholds for master file and local file documentation requirements but, nonetheless, wish to be eligible for penalty protection should prepare and maintain a transfer pricing study report by the time of filing their CITR. The CITR is due three months from the fiscal year-end date (four months in the case of a consolidated return).

- **Other transfer pricing disclosures and return**

TP (Related-party) disclosure shall be submitted at the time of the CITR filing. Taxpayers can apply for an extension; the application must be submitted 15 days prior to the original deadline. The tax authority may approve the extension due date up to one year.

The master and local files must be submitted within 12 months of the taxpayer's fiscal year-end date. The master file can be submitted in English; however, a Korean version must be submitted within one month of submitting the English version.

When the taxpayer meets the BEPS master and local file threshold, the TP disclosures shall be included on local file with 2 additional disclosures. Hence the filing deadline shall be same as the master and local files. For the taxpayer does not meets the BEPS master and local file threshold, the TP disclosures shall be filed with the CITR (3 months from the fiscal year-end) or submitted within 6 months from the fiscal year-end date.

- **Master File**

The master file must be submitted within 12 months of the taxpayer's fiscal year-end date. The master file can be submitted in English; however, a Korean version must be submitted within one month of submitting the English version.

- **CbCR preparation and submission**

Domestic UPEs with consolidated group revenue in the immediately preceding year exceeding KRW1 trillion are required to prepare and submit the CbCR within 12 months of the end of the relevant fiscal year.

If the Korean entity's foreign UPE meets the CbCR filing threshold (i.e., equivalent to EUR750 million), but the NTS cannot obtain the CbCR successfully from the other foreign tax jurisdiction (e.g., due to the absence of a tax treaty), the Korean entity will be required to submit the CbCR to the Korean tax authorities within 12 months of the end of the relevant fiscal year.

- **CbCR notification**

CbCR notification is due within six months of the end of the fiscal year.

b) Transfer pricing documentation/Local File preparation deadline

There is no specified deadline for the preparation of transfer pricing documentation.

However, taxpayers that are not subject to BEPS transfer pricing documentation requirements (i.e., master file, local file and CbCR) but wish to be eligible for penalty protection should prepare and maintain a transfer pricing study report at the time of filing the CITR (three months from the end of the relevant reporting year).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Yes, taxpayers that meet the thresholds for BEPS transfer pricing documentation (i.e., master file, local file and CbCR) must prepare and submit such documentation within 12 months from the end of the relevant reporting year.

- **Time period or deadline for submission on tax authority request**

Taxpayers that are not subject to BEPS transfer pricing documentation requirements (i.e., master file, local file and CbCR) have 30 days to submit the documentation upon the tax authority's request. In a tax audit setting, however, the taxpayer will be expected to submit the documentation within a very short timeframe upon request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No change in submission deadlines.

7. Transfer pricing methods

a) Applicability

- **International transactions**

Yes.

- **Domestic transactions**

This is not applicable; fair market value gets priority for domestic transactions.

b) Priority and preference of methods

Regulations prescribe the following five transfer pricing methods: CUP, resale price, cost plus, profit split and TNMM. Other reasonable methods can only be used if the five methods are not applicable. Of the aforementioned methods, the taxpayer is to select the most reasonable one based on the availability and reliability of data.

According to recent amendments to the AITA (Article 5), the tax authority must thoroughly understand the actual circumstances of the transaction between a resident and its foreign related party by considering the commercial, financial and other important conditions of the transaction and evaluate whether the tested transaction can be considered commercially reasonable by comparing it with third-party transactions between independent companies that engage under similar circumstances. If the tested transaction is determined to considerably lack commercial rationality, making it difficult to calculate an arm's-length price, the transaction can be denied as a whole and recharacterized for the purpose of application of the transfer pricing methods.

8. Benchmarking requirements

- **Local vs. regional comparables**

The tax authority will request a local benchmark (if the tested party is a Korean company).

- **Single-year vs. multiyear analysis for benchmarking**

Single year analysis is preferred.

- **Use of interquartile range**

The NTS has its own version of calculating the interquartile range.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Rollforwards and update of the financials.

- **Simple, weighted or pooled results**

The weighted average is preferred for arm's-length analysis in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Penalty of KRW30 million per report (master file, local file or CbCR).

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are certain penalties for failing to comply with information or documentation requests issued by the NTS. A taxpayer must submit information and documents requested by the NTS within 30 days.

A penalty shall be imposed on the taxpayer for omitting or falsifying a part or all of the "summary of cross-border transactions with foreign related parties" at the time of filing a CITR. A penalty of KRW5 million applies for each foreign related party.

Under the current tax law, taxpayers failing to file a master file, local file or country-by-country report, or those found to file false information or omit a filing, are subject to penalties of KRW30 million (USD27,000) per report.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, there are two types of penalties associated with a transfer pricing adjustment: an underreporting penalty and an underpayment penalty:

- The underreporting penalty is approximately 10% of the additional tax resulting from a transfer pricing adjustment.
- The underpayment penalty, which is an interest payment in nature, is calculated as 0.03% of the additional tax on a transfer pricing adjustment per day (10.95% per year) on cumulative days. Counting the cumulative days of the underpayment starts from the day after the statutory tax filing due date, which is three months after the fiscal year-end and ends on the date that a payment for the tax assessment is made.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes; underreporting penalty (10% on the additional tax due through transfer pricing tax audit) and underpayment penalty (9~11% of yearly interests).

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

b) Penalty relief

Under Article 13 of the AITA, if the taxpayer has prepared and maintained contemporaneous transfer pricing documentation for the transfer pricing methods applied to the cross-border related-party transactions reported in the CITR, and it is acknowledged that such documentation supports the reasonableness of the transfer pricing methods reported, the penalty for underreporting may be waived if a transfer pricing adjustment is made. To be eligible for an underreporting penalty waiver, the transfer pricing documentation must be submitted within 30 days upon request by the NTS.

10. Statute of limitations on transfer pricing assessments

This is generally five years from the day after the income tax return filing due date. It extends to 10 years in the case of fraud or another wrongful act and 7 years if a taxpayer does not submit the tax filing by the due date.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny or related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Companies should expect to be audited every four to five years, depending on their size, or more frequently if other special factors exist. The likelihood of transfer pricing being reviewed during a tax audit may be considered to be high. The NTS, in practice and as a matter of policy, requests transfer pricing documentation at the onset of a tax audit. Such requests can also be made separately from a field tax audit (e.g., desk audit).

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Generally, if transfer pricing is reviewed as part of a tax audit, the tax auditors are likely to challenge the method used by the taxpayer and may propose alternate methods that are less favorable to the taxpayer.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high to medium, depending on the size and nature of transactions, industries and situations. Refer to the section below.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The NTS closely monitors companies whose profitability suddenly drops and companies whose profits fluctuate substantially over a number of years. These companies are likely to be subject to tax audits.

Also, the NTS will likely scrutinize companies paying high royalties abroad or receiving high management service fee charges or cost allocations from overseas related parties.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral, bilateral and multilateral APAs are available under the AITA. To encourage the use of APAs, the NTS does not require an application fee, and documents submitted to the NTS with regard to an APA are to be kept confidential from tax audit. In addition, APA officials of the NTS are making continuous efforts to shorten the APA processing period.

- **Tenure**

An APA with the NTS is generally for three to five years with rollbacks to previous open tax years.

- **Rollback provisions**

Five-year rollback is applicable for bilateral and multilateral APAs, and three-year rollback is applicable for a unilateral APA.

- **MAP opportunities**

Taxpayers can resort to MAP under the relevant tax treaty in order to resolve double taxation arising from a transfer pricing adjustment. MAP can generally be requested within three years from the date that the taxpayer becomes aware of the adjustment (depending on the applicable tax treaty, the time limit for requesting MAP may be extended).

A request for MAP requires the submission of a request form and position paper on audit background, assessment, issues addressed and taxpayer's position along with supporting material.

MAP is often initiated in the jurisdiction that is expected to make a tax refund. Competent authority (CA) negotiations will commence at the date the relevant CA sends a letter to the other CA accepting the request for MAP. The CAs will then discuss issues through the exchange of position papers and via CA meetings in a year (generally one to two meetings).

MAP will be deemed to be closed where no agreement is reached within five years (or eight years if extended for three more years).

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Though there is no official publication from the NTS with regard to APAs, it is expected that term test as opposed to year-by-year test and/or other accounting adjustments could be allowed due to the impact of the COVID-19 pandemic.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The thin-capitalization rules recommend 2:1 debt-to-equity ratio (6:1 in case of financial institutions). Further, deduction of net interest (i.e., the amount of interest expense paid to overseas related parties minus the interest income received from overseas related parties) claimed by a domestic company for international transactions will be limited to 30% of the adjusted taxable income (i.e., taxable income before depreciation and net interest expenses) of the domestic company. This has been implemented from the fiscal year beginning on or after 1 January 2019.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Revenue Authority, Ministry of Finance.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are no special transfer pricing regulations or rulings in South Sudan.

The transfer pricing regulations are contained in Taxation Act 2009 as part of the Tax Act 2009 – Regulations.

- **Section reference from local regulation**

Section 81 of the Taxation Act 2009 and Regulation 1.81, Transfer Pricing.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

South Sudan is not a member of the OECD. Though its regulations do not specifically refer to the OECD Guidelines, the jurisdiction broadly follows them.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

No.

- Coverage in terms of Master File, Local File and CbCR

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  There's no prescribed format. There's only limited information required, compared with the OECD report and transfer pricing methods limited to CUP, resale price and cost plus, in that order of priority – separate documents of each transaction as opposed to OECD template.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Significant modification and adaptation will be required.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

The law is silent on this. However, taxpayers engaged in cross-border related-party transactions must keep separate documentation of each transaction, including the transfer price paid and the arm's-length price.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

No.

b) Materiality limit or thresholds

- Transfer pricing documentation

There's no materiality limit.

- Master File

This is not applicable.

- Local File

This is not applicable.

- CbCR

This is not applicable.

- Economic analysis

It's required.

c) Specific requirements

- Treatment of domestic transactions

There's no requirement for documentation.

- Local language documentation requirement

The documentation should be in English.

- Safe harbor availability including financial transactions if applicable

There's none specified.

- Is aggregation or individual testing of transactions preferred for an entity

There is no specification.

- Any other disclosure/compliance requirement

There's none specified.

5. Transfer pricing return and related-party disclosures

- Transfer pricing-specific returns

This is not applicable.

- Related-party disclosures along with corporate income tax return

This is not applicable.

- Related-party disclosures in financial statement/annual report

IFRS format.

- CbCR notification included in the statutory tax return

This is not applicable.

- Other information/documents to be filed

There's none specified, but audited financial statements are required.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

1 April of the year following the tax period, which is the calendar year.

- Other transfer pricing disclosures and return

This is not applicable.

- Master File

This is not applicable

- CbCR preparation and submission

This is not applicable.

- CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

No specific deadline is prescribed under the Taxation Act 2009 and the accompanying regulations.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

No; however, it should be submitted upon request.

- Time period or deadline for submission on tax authority request

Normally, the tax authority gives seven days.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

None.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Transfer pricing rules apply.

- Domestic transactions

Not subject to transfer pricing rules.

b) Priority and preference of methods

The CUP method, followed by the resale-price or cost-plus methods in that order of priority.

8. Benchmarking requirements

- Local vs. regional comparables

There is a preference for local and regional comparables based on geographical market area comparability.

- Single-year vs. multiyear analysis for benchmarking

There is a preference for single-year analysis.

- Use of interquartile range

There is none specified.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

Though not specific, the regulations require annual justification.

- Simple, weighted or pooled results

There is a preference for the simple average.

- Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- Consequences for incomplete documentation

This is not applicable.

- Consequences of failure to submit, late submission or incorrect disclosures

It's not applicable since filing is not a requirement.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?

Yes, additional tax can be assessed – a 5% late payment penalty per month and 3.6% interest per month.

- If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?

No specific information available for penalty. Refer to the above section

- Is interest charged on penalties or payable on a refund?

1% per month.

b) Penalty relief

No defense is available; however, an application for a waiver can be submitted to the tax authorities.

Objection to the additional assessment can be lodged with the Commissioner of Domestic Taxes, and an appeal can follow to the tax tribunal.

10. Statute of limitations on transfer pricing assessments

The statute of limitations on transfer pricing assessments is three years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Not covered in the COVID-19 tracker.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

It may be considered to be low, as tax authorities have not started these kinds of audits. South Sudan is a new tax jurisdiction, and taxation is still in its infancy.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Refer to the section above.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in South Sudan.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

No thin-capitalization rules exist.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Spanish National Tax Agency (*Agencia Estatal de Administración Tributaria* – AEAT) and General Directorate of Taxation (*Dirección General de Tributos* – DGT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The transfer pricing regulations are contained in the Corporate Income Tax Law (CITL) 27/2014 of 27 November and in the Corporate Income Tax Regulations (CITR), approved by Royal Decree 634/2015, of 10 July.

- **Section reference from local regulation**

The section reference is Article 18 of the CITL and Articles 13 and following of the CITR.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Spain is a member State of the OECD.

The CITL's Explanatory Statement explicitly says that Spanish transfer pricing regulations must be interpreted in accordance with the OECD Transfer Pricing Guidelines and with the recommendations of the Joint Transfer Pricing Forum of the EU, insofar as they do not contradict what is expressly stated in the CITL.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  Master file, local file and CbCR is covered.

- Effective or expected commencement date

  1 January 2016.

- Material differences from OECD report template or format

  There are no material differences between the OECD report template or format and the jurisdiction's regulations.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Since there are no material differences, the OECD master file and local file should suffice to achieve penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, transfer pricing documentation should be prepared contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

[1] **https://www.boe.es/buscar/act.php?id=BOE-A-2014-12328&p=20200506&tn=1#a18; https://www.boe.es/buscar/act.php?id=BOE-A-2015-7771&p=20171230&tn=1#cv**

- **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation needs to be prepared annually under local jurisdiction regulations.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

There are no specific rules in this regard. Although it would be advisable to prepare a single transfer pricing report for each entity, in certain cases, it might be acceptable to prepare a transfer pricing report that covers more than one entity, which in any case should have the content prescribed by the local regulations.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Transactions carried out with the same counterparty that, in sum, are lower than EUR250,000 at market value are exempt from documentation obligations.

Additionally, transfer pricing documentation is not required in the following cases:

- Transactions carried out within the same consolidated tax group
- Transactions carried out with its members, or with other entities forming part of the same consolidated tax group, by economic interest groupings (Agrupación de Interés Económico – AIEs), and temporary joint ventures (Uniones Temporales de Empresas – UTEs)
- Transactions carried out in the context of share public offerings or takeover bids

- **Master File**

Groups with income lower than EUR45 million are exempt from preparing a master file.

- **Local File**

See above 'Transfer pricing documentation' thresholds.

- **CbCR**

Consolidated revenues of the group in the previous fiscal year amounted to at least EUR750 million.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

No specific rules are set out in this regard. If documentation is drafted following the recommendations of the EU Joint Transfer Pricing Forum, it should be acceptable. Although documentation in English may be acceptable in practice, a tax auditor may request a translation into Spanish, depending on the case. Penalties are not applied in practice to documentation prepared in English if translated in the course of a tax audit.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing is preferred.

- **Any other disclosure/compliance requirement**

There is none other than those mentioned in this guide.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

One of the new measures introduced by Royal Decree 634/2015 relates to the reporting obligations of transactions with related parties, which has been traditionally complied within the annual corporate income tax return and which is now switched to a new model with the aim of simplifying the administrative burden deriving from the annual tax return compliance. The information includes the amount, payer, payee, type of transaction and valuation method applied.

Specific disclosure rules exist for transactions with tax havens, even with unrelated parties (as per a prohibited list).

- **Related-party disclosures along with corporate income tax return**

None.

- **Related-party disclosures in financial statement/annual report**

Notes to the annual accounts should disclose information about related-party transactions that have taken place and the effect of those transactions on the financial statements.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

There is none other than those mentioned in this guide.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax return should be filed 25 days after a six-month period after the end of the fiscal year. Normally, it is 25 July for companies closing books on 31 December.

- **Other transfer pricing disclosures and return**

Informative statement of related transactions and operations and situations related to tax havens (Model 232): The statement should be filed within one month after a 10-month period after the end of the fiscal year. Normally, it is 30 November for companies closing books on 31 December.

- **Master File**

There is no filing deadline. It should be available for the tax authorities by the end of the voluntary period for filing the CIT return.

- **CbCR preparation and submission**

During the 12 months following the end of the fiscal year to which it refers

- **CbCR notification**

The documentation should be filed before the end of the fiscal year.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation should be available for the tax authorities by the end of the voluntary period for filing the CIT return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

No.

- **Time period or deadline for submission on tax authority request**

The taxpayer has to submit the transfer pricing documentation within 10 days once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

To determine the market value, the law establishes that one of the following methods should be applied: CUP, cost plus, resale price, profit split or TNMM. In any case, other methods different from these can be applied if they are more useful to price the transaction at arm's length. All of these methods have the same preferential level. The selection of the transfer pricing methods should be based on the nature of related-party transactions, the availability of information and the comparability analysis.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local jurisdiction comparables, and Western European and Eastern European comparables are accepted, although Spanish comparables are preferable if available.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year (three-year) analysis, as per common practice.

- **Use of interquartile range**

The Spanish tax authorities always rely on the information publicly available. Thus, they prefer spreadsheet quartile since they can ascertain the results.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year. As long as the operating conditions remain unchanged, searches in databases could be updated every three years while financial data for the comparables should be updated every year.

- **Simple, weighted or pooled results**

The weighted average is preferred, as per common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

When the assessment does not produce a tax adjustment, the penalty will be EUR1,000 per fact or EUR10,000 per group of omitted or false facts. Certain limits apply.

- **Consequences of failure to submit, late submission or incorrect disclosures**

When the assessment does not produce a tax adjustment, the penalty will be EUR1,000 per fact or EUR10,000 per group of omitted or false facts. Certain limits apply.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

When the tax authorities adjust the pricing of a transaction, the penalty may be up to 15% of the gross adjustment.

- **Is interest charged on penalties or payable on a refund?**

There is no interest on penalties; if payable, up to 5%, depending on the year.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

b) Penalty relief

Some reductions are applicable to penalties. Penalties do not apply if the documentation requirements have been completely fulfilled, even if the tax authorities propose a reassessment.

10. Statute of limitations on transfer pricing assessments

A general statute of limitations of four years applies. The term will be interrupted in the case of a tax audit. If a new income tax return is filed with the tax authorities, the four-year period is interrupted and a new one begins.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Tax audits have been reactivated following the lockdown period. An increase in the number of tax audits opening has been observed as compared to similar periods in past years. The Spanish Tax Administration has introduced the possibility to attend meetings electronically, via videoconference.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood that transfer pricing will be reviewed as part of an audit may be considered to be high if the taxpayer regularly enters into cross-border related-party transactions. For all other cases, the likelihood of a transfer pricing review during a general audit may be considered to be medium. This implies that the related transactions will only be audited if they mean

less taxes as a consequence of the prices determined by the companies.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of a challenge to the transfer pricing methodology may be considered to be high. Companies normally under audit have been previously selected to be audited because their financial statements show inconsistences between the transfer pricing methodology and the business rationale (loss-making companies would be a good example of this).

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. When the methodology is not accepted, an adjustment will normally occur.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The tax authorities have stated that transfer pricing audits are an area of major attention, particularly with regard to business restructurings and intangible transactions.

In this sense, loss-making companies, limited risk distributors and limited risk services providers are normally a focus of the tax authorities.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Spain. Taxpayers may request that the tax authorities issue rulings on related-party transactions before they are carried out. This request has to be filed with a proposal based on the arm's-length principle. On the other hand, tax authorities may also settle agreements with other tax authorities to determine the market value of the transactions jointly (i.e., bilateral APAs).

- **Tenure**

The APA will take effect with respect to the transactions carried out after the date on which it is approved and will be valid for the tax periods specified in the agreement itself, without exceeding the four tax periods following that of the date in which it is approved.

- **Rollback provisions**

An APA can be rolled back to reach previous tax periods for which the tax authority's right to conduct a tax audit has not become statute-barred and no final assessment in relation to the transactions referred in the APA request has been carried out.

- **MAP opportunities**

MAP opportunity is made available. Spain has been allocating more resources to the MAP function in order to meet the target of 24 months' average timeframe to resolve MAP cases.

If requested under a Spanish double taxation treaty (DTT), taxpayers must make an MAP request before the end of the period provided for in the respective DTT, starting from the day following the notification of the act which causes or is likely to cause the taxation not in accordance with the provisions of the Convention. If requested under the EU Arbitration Convention (90/436/EEC), taxpayers have three years to present a case to the tax authorities

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No specific changes.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

In general, net interest expenses exceeding 30% of earnings before interest, tax, depreciation and amortization (EBITDA), with some adjustments, may not be claimed as a deduction for tax purposes in the year of their accrual (with some exceptions, such as a minimum allowance of EUR1 million per year). The excess may be carried forward indefinitely. This restriction applies regardless of whether the interest is paid to a related party or an unrelated lender. In addition, interest expense on intragroup financing related to the acquisition (or equity increase) of participation in group entities is disallowed unless valid business reasons for such transactions are proven.

Additional rules for leveraged acquisitions limit the deductibility of interest on loans to purchase shares (acquisition debt) to 30% of the operating profit of the acquiring entity. The limitation applies if the acquired and acquiring entities are merged within a four-year period or if new entities join the tax group in which the acquiring and acquired entity are included. Under an escape clause in the law, the limitation does not apply in the year of the acquisition if the acquisition debt does not exceed 70% of the consideration paid for the shares. In the following years, the limitation will not apply if the acquisition debt is proportionally repaid within an eight-year period until it is reduced to 30% of the total consideration.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Inland Revenue Department (IRD).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Inland Revenue Act (IRA), transfer pricing regulations and relevant provisions of the double tax treaties.

- **Section reference from local regulation**

TP rules are primarily contained in Sections 76, 77 and 78 of the IRA.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No, but the Transfer Pricing Disclosure Form filing deadline was extended by one month from the usual deadline of 30 November 2021 to 31 December 2021.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Sri Lanka is not a member of the OECD. However, the IRD generally refers to the OECD Transfer Pricing Guidelines to resolve matters involving interpretations of its own TP regulations. By the same token, the IRD broadly recognizes the pricing methods stipulated in the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Sri Lanka has adopted the OECD's three-tiered documentation approach (i.e., master file, local file and CbCR) set out in BEPS Action 13.

- Coverage in terms of Master File, Local File, and CbCR

Yes.

- Effective or expected commencement date

  The effective commencement date for local file and master file is 1 April 2018. The CbCR is effective from 1 April 2020.

- Material differences from OECD report template or format

  The Sri Lankan format is generally in line with the format of the OECD.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is no concept of penalty protection in Sri Lankan tax law.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.[2]

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, TP documentation has to be prepared annually as per the TP regulations. Local file and master file are required to be submitted upon request.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with local TP rules if it has associated enterprise transactions.

- **Does transfer pricing documentation have to be prepared annually?**

[1] **www.ird.gov.lk**

[2] **https://www.oecd.org/tax/exchange-of-tax-information/CbC-MCAA-Signatories.pdf**

The master file and local file must be available at the time of the income tax return filing, on or before 30 November, following the end of each year of assessment (YA).

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has associated enterprise transactions.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Taxpayers are required to maintain TP documentation, comprising a local file, master file and CbCR, if the following thresholds are met.

- **Master File**

If the aggregate revenue exceeds EUR50 million (or LKR equivalent).

- **Local File**

If the aggregate value of associated enterprise transactions exceeds LKR200 million.

- **CbCR**

If the entity is a member of an MNE group and the group's revenue exceeds EUR750 million (or LKR equivalent) in the preceding financial year.

- **Economic analysis**

There is a materiality limit of LKR200 million for the preparation of economic analysis.

c) Specific requirements

- **Treatment of domestic transactions**

In the case of domestic transactions, the TP provisions apply only in the following cases:

  - If exemptions are granted to any one of the associated enterprises, or
  - If the associated enterprises are taxed at different income tax rates, or
  - If any one of the associated enterprises have incurred losses

- **Local language documentation requirement**

For international transactions, English language should be used. For domestic transactions, Sinhalese or Tamil can be used.

- **Safe harbor availability including financial transactions if applicable**

No.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing is required.

- **Any other disclosure/compliance requirement**

Taxpayers are required to make TP-specific disclosures in the income tax return.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Refer to the section below.

- **Related-party disclosures along with corporate income tax return**

The taxpayer needs to file a Transfer Pricing Disclosure Form along with the income tax return by the due date. The Transfer Pricing Disclosure Form should provide information related to transaction, associated enterprise, TP methodology and arm's-length price.

- **Related-party disclosures in financial statement/annual report**

Yes, there is a requirement under the Sri Lankan Accounting Standards.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Taxpayers should file this on or before 30 November following the end of each YA.

- **Other transfer pricing disclosures and return**

The Transfer Pricing Disclosure Form specified in Section 5 above should be filed along with the income tax return.

- **Master File**

The master file should be submitted to the IRD within 60 days upon request.

- **CbCR preparation and submission**

The CbCR should be filed no later than 12 months after the last day of the reporting fiscal year of the MNE group.

- **CbCR notification**

The CbCR notification should be filed annually by not later than 31 December of the reporting fiscal year of such MNE group.

b) Transfer pricing documentation/Local File preparation deadline

The master file and local file must be available at the time the income tax returns are filed, on or before 30 November following the end of each year of assessment (YA).

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

The master file and local file should be furnished upon request.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has to submit the master file and local file within 60 days from the corresponding notice by the IRD in an audit or inquiry. Usually, the IRD will determine a submission deadline for other documents, which can vary greatly from case to case (e.g., from only one week to several weeks).

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

The Transfer Pricing Disclosure Form filing deadline was extended by one month from the usual deadline of 30 November 2021 to 31 December 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The TP regulations prescribe the following methods for the determination of the arm's-length price:

- CUP method
- Resale price method
- Cost-plus method
- Profit-split method
- TNMM

The TP regulations do not provide a hierarchy of methods, but require that the process of selecting a method should be aimed at finding the most appropriate method.

8. Benchmarking requirements

- **Local vs. regional comparables**

TP regulations neither provide a clear guidance on benchmarking studies nor prohibit the use of regional comparables. Therefore, regional comparables should be acceptable, provided that the differences can be eliminated through appropriate adjustments and analyses.

- **Single-year vs. multiyear analysis for benchmarking**

In general, the data of the current YA is required to be considered. However, data pertaining to up to two preceding financial years may be used, if such data reveals facts that could affect the determination of transfer prices.

- **Use of interquartile range**

As per the TP regulations, the use of interquartile range is mandatory. However, there is a risk that the IRD may amend the TP regulations, narrowing the range further.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

As per the TP regulations, if no significant changes have occurred, no fresh benchmarking search needs to be conducted every year, but the financial data of the comparables needs to be updated. A fresh benchmark search is required every three years.

- **Simple, weighted or pooled results.**

The TP regulations do not contain guidance regarding the application of simple or weighted average prices in cases where multiple years are considered for benchmarking purposes. In this regard, it is our view that taxpayers should apply the method that represents a proper application of the arm's-length principle.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Refer to the section below for penalties. In addition, the Income Tax Return may be considered as incomplete.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The TP-specific penalty regime became effective from 1 April 2018. Such penalties are imposed as follows:

- For not maintaining documentation, a penalty of up to 1% of the aggregate transaction value may be levied.
- For not furnishing required documents, a penalty of up to LKR250,000 may be levied.
- For nondisclosure of any required information, a penalty of up to 2% of the aggregate transaction value may be levied.
- For failure to submit documents on the specified date, a penalty of up to LKR100,000 may be levied.
- Concealment of income, furnishing inaccurate particulars or evasion could lead to imposing a penalty of 200% of incremental tax on the TP adjustment.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, it may be 200% of the incremental tax.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

This is not applicable.

- **Is interest charged on penalties or payable on a refund?**

Yes, the IRA provides for interest at the rate of 1.5% per month.

b) Penalty relief

Penalties may be avoided by establishing reasonable cause and good faith via preparation of documentation of the taxpayer's application of the arm's-length principle.

10. Statute of limitations on transfer pricing assessments

There are 30 months from the date of the filing of the income tax return. In the case of fraud or willful evasion, the statute of limitations will not apply.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

The likelihood depends on the facts and circumstances. The questions below will help taxpayers understand the key risk factors that prompt TP audits:

- Are the transactions with associated undertakings large or complex?
- Does the Sri Lankan entity have transactions with associated undertakings in low-tax jurisdictions?
- Are there other dealings with associated undertakings that are not charged for?
- Has there been a business restructuring recently?
- Are there secondments of senior management to the associated undertakings?
- Are there local entities or permanent establishments in Sri Lanka with operating losses?

- Does the Sri Lankan entity pay royalty fees to associated undertakings for the use of intangible assets?
- Was there a failure to submit the Transfer Pricing Disclosure Form as required by the regulations?
- Was there a failure to prepare TP documentation for the YA?

If any of the responses to the above are yes, there is a higher risk of being selected for audit.

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, the likelihood may be considered to be high if the selection of the most appropriate method is not supported with an explanation of the reasons why it was considered the method that best reflected the arm's-length principle.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

In general, the likelihood may be considered to be high.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If a methodology has been challenged, there is high risk that an adjustment will be proposed and a dispute process will commence.

- **Specific transactions, industries and situations, if any, more likely to be audited**

No particular transaction, industry and situation is more at risk of receiving a tax audit than another. Experiences indicate that once the IRD has had substantial success with a tax audit of a particular company, other companies in the same industry have been targeted.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The TP regulations provide an opportunity for taxpayers to opt for a unilateral, bilateral or multilateral APA.

- **Tenure**

The TP regulations provide that an APA is available for a period not exceeding four years. This term could be reduced if the economic circumstances from one year to another change drastically. However, the corresponding guidelines have not yet been issued specifying the procedures to be followed.

- **Rollback provisions**

As stated above, the corresponding guidelines have not yet been issued.

- **MAP opportunities**

In the case of international transactions, the taxpayer may request relief from double taxation under the double tax treaty.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

For group companies, a debt-to-equity ratio of 4:1. Finance costs paid in excess of the debt-to-equity ratio are not deductible for tax purposes. As a temporary concession, the thin-cap adjustment has been suspended in YA 2021/22.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Swedish Tax Agency[1] (STA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Sections 14:19–20 of the Income Tax Act (*Inkomstskattelagen* (1999:1229)) include the arm's-length principle and definition of related party.
  - Section 33a of the Tax Procedures Act (*Skatteförfarandelagen* (2011:1244)) includes the CbCR requirements.
  - Sections 39:15–16 of the Tax Procedures Act (*Skatteförfarandelagen* (2011:1244)) include the transfer pricing documentation requirements.
  - The Advance Pricing Agreements Act (Lag (2009:1289) *om prissättningsbesked vid internationella transaktioner.*

The STA issues general taxation guidelines and opinions, including information about transfer pricing.

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules in the current COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Sweden is an OECD member.

The Swedish tax laws on transfer pricing are based on the OECD Guidelines, and the courts and tax authorities apply the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, it is effective for financial years starting after 31 March 2017.

- Coverage in terms of Master File, Local File and CbCR

  It covers all the three — Master File, Local File and CbCR.

- Effective or expected commencement date

  Financial years starting after 31 March 2017.

- Material differences from OECD report template or format

  There are no material differences.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Transfer pricing documentation prepared in line with the documentation requirements and provided in a timely manner, has adhered to the OECD transfer pricing principles, describes actual facts and circumstances and also has been implemented in the business at hand, may give 50% penalty reduction. Full reduction of the penalties may be applicable if the taxpayer in addition to the above can show that there has been a misjudgement of what constitutes correct transfer pricing. However, MNEs, due to their international business, are also presumed to be aware of transfer pricing issues and regulations. Hence, full reduction may only be at hand if the taxpayer clearly provides information of any deviation of the above requirements in order to trigger the STA's investigation obligation; a so called "open disclosure".

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes, Sweden is a part of the OECD/G20 Inclusive Framework on BEPS.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

[1] **https://www.skatteverket.se/**

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, transfer pricing documentation has to be prepared contemporaneously on an annual basis under the local jurisdiction regulations, but is only to be submitted to the STA upon request.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, the documentation requirements apply to Swedish branches and permanent establishments of foreign companies.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation has to be prepared annually under the local jurisdiction regulations but is only to be submitted to the STA upon request.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

A Swedish Local File may include information on multiple Swedish entities.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The Swedish transfer pricing documentation requirements are based on the OECD Master File-Local File concept. Documentation is not required if the company has less than 250 employees, and the company has either an annual turnover of SEK450 million or less, or a balance sheet value of SEK400 million or less. The thresholds are evaluated based on consolidated numbers, i.e., on group level.

Additionally:

- Insignificant transactions do not need to be documented.
- Transactions amounting to less than SEK5 million per counterparty are always considered insignificant and do not need to be analyzed in detail in the Local File.
- For the materiality limit to be applied to transactions involving intangible assets, the intangible assets at hand need to be considered immaterial or insignificant for the business operations engaged.

- **Master File**

See above.

- **Local File**

See above.

- **CbCR**

Multinational groups with a total turnover of at least SEK7 billion, or a corresponding amount in foreign currency, are subject to the CbCR rules. Generally, this means that the ultimate parent entity is required to file a CbC report for the entire group in the jurisdiction where it resides. Swedish parent companies of groups exceeding the threshold are required to file the CbC report with the STA within 12 months after the end of the financial year covered by the report, the "reporting year." If the ultimate parent entity resides in a jurisdiction that has not adopted CbCR filing requirements, or has an agreement on information exchange but is not exchanging information with the STA, a Swedish entity or permanent establishment or branch may be obligated to file the report in Sweden.

- **Economic analysis**

This is not applicable; refer to the section above.

c) Specific requirements

- **Treatment of domestic transactions**

There are no documentation requirements for domestic transactions, although the arm's-length principle must still be adhered to.

- **Local language documentation requirement**

The transfer pricing documentation can be prepared in Swedish, English, Norwegian or Danish.

- **Safe harbor availability including financial transactions, if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

Aggregation of the same type of transactions is generally accepted.

- **Any other disclosure/compliance requirement**

There is none specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no specific returns that have to be filed for transfer pricing purposes.

- **Related-party disclosures along with corporate income tax return**

No specific disclosure requirements currently exist for filing the tax return.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

There are four different dates for filing the corporate income tax return, depending on the taxpayer's financial year-end. For taxpayers with a calendar year-end, the tax return is due by 1 July (paper return) or 1 August (electronic return). Generally, the due date is approximately six months after the end of the financial year.

- **Other transfer pricing disclosures and return**

There is none specified.

- **Master File**

Refer to "Transfer pricing documentation/Local File preparation deadline" section below.

- **CbCR preparation and submission**

The report has to be submitted within 12 months after the end of the financial year covered by the report.

- **CbCR notification**

Before the end of the reporting year.

b) Transfer pricing documentation/Local File preparation deadline

The documentation does not have to be filed unless requested by the STA. The Master File may be requested when the parent entity is due to file its corporate tax return for the relevant year. The Local File may be requested when the Swedish entity is due to file its corporate tax return for the relevant year.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of transfer pricing documentation.

- **Time period or deadline for submission upon tax authority request**

Under the previous transfer pricing documentation legislation, there was a 30-day time period to submit once the transfer pricing documentation was requested by the STA. However, in the transfer pricing documentation legislation that was introduced in 2017, there is no formal time period that the STA gives after it requests the submission of the transfer pricing documentation and one to four weeks is common.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**
- **Domestic transactions: No**

b) Priority and preference of methods

One of the methods described in the OECD Guidelines should be applied. There is no local priority or preference of methods other than what is stated in the OECD Guidelines.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local benchmarks are preferred, but regional (Nordic) or pan-European benchmarks are generally accepted if the comparability criteria are met.

- **Single-year vs. multiyear analysis for benchmarking**

Single-year analysis is preferred.

- **Use of interquartile range**

Yes, interquartile range calculation is preferred.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Sweden follows the OECD recommendations, and annual financial updates are therefore generally advised, and fresh benchmarking every third year.

- **Simple, weighted or pooled results**

The weighted average is generally preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Transfer pricing documentation that is prepared in line with the documentation requirements, is provided in a timely manner, has adhered to the OECD transfer pricing principles, describes actual facts and circumstances and has been implemented in the business at hand may give 50% penalty reduction. Full reduction of the penalties may be applicable if the taxpayer, in addition to the above, can show that there has been a misjudgement of what constitutes correct transfer pricing. However, MNEs, due to their international business, are also presumed to be aware of transfer pricing issues and regulations. Hence, full reduction may only be at hand if the taxpayer clearly provides information of any deviation of the above requirements to trigger the STA's investigation obligation: a so-called open disclosure.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Sweden has no specific transfer pricing penalties; however, general penalties apply, ranging from 10%–40% of the additional tax imposed or reduction of losses carried forward in case of adjustments. In transfer pricing cases, penalties at a rate of 40% are generally imposed. For 2022, penalties above SEK48,300 are reported to the Swedish Economic Crime Authority.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the section above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**

Interest is charged on additional tax imposed, but not on penalties if paid on a timely basis. The interest rate currently ranges from 1.25%–16.25%, mainly depending on when the payment is made.

b) Penalty relief

Penalties are imposed on taxpayers for supplying the STA with inaccurate or insufficient information.

Transfer pricing penalties may be eliminated if there is a so called open disclosure of an issue related to transfer pricing. General descriptions or attachment of the transfer pricing documentation do not suffice as an open disclosure. Instead, an issue must be presented that triggers the investigation obligation of the STA.

Dispute resolution options include litigation in court, MAPs and the EU Arbitration Convention.

10. Statute of limitations on transfer pricing assessments

A reassessment may be made during the six-year period after the end of the calendar year in which the relevant fiscal year ended.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit, in general, may be considered to be medium to high. The likelihood depends on a number of factors, including the industry in which the company operates, the occurrence of certain transactions, the outcome of previous tax audits and changes in turnover or profit levels, compared with prior years.

The likelihood that transfer pricing will be reviewed as part of an audit may be considered to be high. The STA's focus on transfer pricing-related issues has increased significantly since formal documentation requirements were introduced in 2007. In some cases, tax audits focus only on transfer pricing.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be low to high that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit. The likelihood depends, for example, on the transactions involved, the transfer pricing methods applied, whether documentation and agreements have been prepared, and whether the documentation and agreements are adhered to in practice.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If the transfer pricing methodology is challenged, the likelihood of an adjustment may be considered to be high, unless the amounts are insignificant.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Business restructurings and transactions involving intangible assets are often subject to audit.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

In Sweden, formal APA procedures have existed since 1 January 2010. Bilateral and multilateral APAs are available.

An APA can only be concluded if Sweden has entered into a tax treaty with the jurisdiction of the counterparty to the transaction(s). APAs are not available for transactions that are not sufficiently complex or that involve minor amounts. This will be assessed on a case-by-case basis.

- **Tenure**

The term for an APA would generally be three to five years unless there are specific reasons for a shorter or longer term.

- **Rollback provisions**

Rollbacks may be possible.

- **MAP opportunities**

Taxpayers may request an MAP if taxation has or is likely to occur that is not in accordance with the provisions of a double taxation treaty of which Sweden is signatory. Taxpayers have three years to present a case to the STA under the EU Arbitration Convention (90/436/EEC).

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

The Swedish Government has issued a deferral of the DAC6 reporting obligations for a period of six months, which means that reportable arrangements for the transition period (25 June 2018–1 July 2020) should be reported no later than 28 February 2021, and that reporting for the rest of the reportable arrangements (1 July 2020–31 December 2020) should be made no later than 31 January 2021.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no formal thin-capitalization rules, although substantial interest deduction restrictions apply on loans from affiliated persons. New interest deduction limitation rules that became effective on 1 January 2019 and apply to fiscal years commencing after 31 December 2018 include targeted and general restrictions on deductions for interest expense, and provisions for hybrid arrangements.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Cantonal tax administrations and Swiss Federal Tax Administration (SFTA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

There are no specific references to transfer pricing in Swiss tax law. The legal support for adjusting a taxpayer's taxable profits is derived from the arm's-length principle in Article 58 of the Federal Direct Tax Act on a federal level (14 December 1990), as well as in Article 24 of the Federal Law on the Harmonization of Taxes on a cantonal and communal level (14 December 1990).

Additionally, on 4 March 1997, the SFTA issued a circular letter instructing the cantonal tax administrations to adhere to the OECD Guidelines and the arm's-length principle when assessing cross-border intercompany transactions.

There is no definition of the term "related party" in Swiss domestic law or regulations. According to the jurisprudence of the federal court, an entity is considered related if a commercial or a close personal relationship exists between two entities or individuals. A direct or indirect participation in the management, control or capital is not required. The crucial criterion is whether the tested transaction was conducted only as a consequence of the close relationship or not.

- **Section reference from local regulation**

Refer to the information provided above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Switzerland is a member of the OECD. Switzerland relies on the OECD Guidelines for the interpretation of the arm's-length principle.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Switzerland adopted the global minimum standard included in Action 13 of the OECD BEPS project for the international automatic exchange of CbCR.

- **Coverage in terms of Master File, Local File and CbCR**

Switzerland adopted the global minimum standard included in Action 13 of the OECD BEPS project for the international automatic exchange of CbC reports. However, there is no specific requirement for Master File and Local File.

There is a CbCR notification requirement for Swiss ultimate parent entities or surrogate parent entities. The Government is entitled to put in place notification requirements for other Swiss constituent entities. Mandatory CbC report filing applies for fiscal years starting on or after 1 January 2018.

- **Effective or expected commencement date**

Financial years beginning on or after 1 January 2018 for CbCR.

- **Material differences from OECD report template or format**

This is not applicable.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

This is not applicable.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Switzerland does not have transfer pricing documentation guidelines or rules concerning the Master File and Local File. Switzerland does, however, have transfer pricing documentation regulations for CbCR. Switzerland adopted the global minimum standard included in Action 13 of the OECD BEPS project for the international automatic exchange of CbCRs.

Besides the obligation to file a CbCR for fiscal years starting in or after 2018, there is no specific requirement concerning transfer pricing documentation. In particular, there is no obligation to prepare a Master File and a Local File.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Besides the obligation to file a CbCR for fiscal years starting in or after 2018, there are no specific requirements concerning transfer pricing documentation. Swiss domestic legislation requires the taxpayer to provide all the documents necessary for properly assessing the taxable income. In the case of related-party transactions, the taxpayer has to demonstrate that the transfer prices are based on the arm's-length principle (implicit obligation to prepare transfer pricing documentation). It is hence recommended that a Master File and a Local File be prepared to document the arm's-length character of transactions in case of an inquiry by the tax administration.

Even though Switzerland has no legal documentation rules for the Master File and Local File, Swiss taxpayers factually prepare them to defend their transfer pricing system in tax audits.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

Multinational groups with an annual consolidated turnover of CHF900 million or more (in the fiscal year immediately preceding the reporting fiscal year) must file a CbCR. Filing of a CbCR is mandatory for fiscal years starting in or after 2018.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions. However, especially for material and complex transactions, it is recommended preparing a transfer pricing documentation also for domestic transactions to demonstrate the arm's-length character of the transactions in case of an inquiry by the tax administration.

- **Local language documentation requirement**

The CbCR must be submitted in one of the Swiss official languages (German, French or Italian) or in English.

Besides the CbCR, other transfer pricing documentation (Master File and Local File) should be submitted in one of the Swiss official languages (German, French or Italian). Documentation submitted in English is usually accepted by the tax administration. Taxpayers may sometimes be asked to provide translations.

- **Safe harbor availability, including financial transactions if applicable**

The SFTA has issued circulars containing safe harbor rules for financing with regard to thin capitalization and interest rates for intragroup debt or receivables in Swiss francs and in foreign currency. The safe harbor interest rates are updated annually.

- **Is aggregation or individual testing of transactions preferred for an entity**

Both approaches may be accepted, depending on the case.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- Transfer pricing-specific returns

This is not applicable.

- Related-party disclosures along with corporate income tax return

This is not applicable.

- Related-party disclosures in financial statement/annual report

This is not applicable.

- CbCR notification included in the statutory tax return

This is not applicable.

- Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Corporate tax returns must be filed annually (an exemption applies in the first business year in case of an extended business year). The filing deadlines vary from canton to canton (usually between six and nine months after the close of the business year).

- Other transfer pricing disclosures and return

This is not applicable.

- Master File

This is not applicable.

- CbCR preparation and submission

The CbCR must be filed with the SFTA within 12 months following the end of the reporting period.

- CbCR notification

There is a CbCR notification requirement for Swiss ultimate parent entities or surrogate parent entities of 90 days after the end of the reporting period. The government is entitled to put in place notification requirements for other Swiss constituent entities.

b) Transfer pricing documentation/Local File preparation deadline

Even though Switzerland has no legal documentation rules for the Master File and Local File, Swiss taxpayers factually prepare them to defend their transfer pricing system in tax audits.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submission of transfer pricing documentation or Local File?

This is not applicable.

- Time period or deadline for submission on tax authority request

Once requested by the tax authorities, documentation must usually be submitted within 30 days (extendable upon agreement).

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

There is none specified. In principle, the same methods as for international transactions should be used.

b) Priority and preference of methods

In practice, Switzerland relies on the most appropriate method as recommended by the OECD Transfer Pricing Guidelines.

8. Benchmarking requirements

- **Local vs. regional comparables**

Because of the lack of sufficient independent comparable companies in the Swiss market, pan-European comparables are generally accepted. Benchmarking searches of local comparable companies are preferred, but not mandated by law.

- **Single-year vs. multiyear analysis**

Both, in principle, are accepted, but the multiyear analysis is more commonly used.

- **Use of interquartile range**

The use of interquartile ranges is usually accepted.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no requirement to conduct a fresh benchmarking search every year. Typically, annual financial updates are performed, whereas new benchmark searches are performed every three years.

- **Simple, weighted or pooled results**

Typically, simple or weighted average is applied. There is no preference between the two in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Refer to the following section.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Swiss tax legislation does not contain specific transfer pricing penalties. In particular, there are no penalties for a lack of transfer pricing documentation (other than for the CbCR – see below). Rather, the general penalty provisions of each relevant tax act apply. Formal penalties include monetary fines for infractions of administrative duties or for tax evasion, and imprisonment in severe cases of tax fraud. In addition, the following penalties may apply:

- Assessment of the taxable base by the tax authorities: if the taxable base cannot be properly determined during a tax assessment (for example, because of inappropriate documentation), it is estimated at the discretion of the tax authorities. By law, these estimates must be dutiful and based on experience in other cases. However, assessments of the taxable base are rarely in favor of the taxpayer.
- Withholding tax: if a constructive dividend is paid by a Swiss taxpayer, a withholding tax of 35% is imposed. According to Swiss practice, in most cases, the Swiss recipient has the right to a refund of the withholding tax under the "direct beneficiary theory." In the case of an international beneficiary, that is not the direct parent but a sister company of the Swiss taxpayer, this situation results in a higher rate of nonrefundable withholding tax, even if a double tax treaty (DTT) is available. This is because DTTs generally require direct investment between companies for them to benefit from the higher refund rate.

Regarding the CbC report, there are different layers of penalties:

- **Administrative penalty for late submission: CHF200 per day after the expiration of the deadline, capped at a maximum amount of CHF50,000**
- **Criminal sanctions:**
  - Intentional falsification or incompleteness of CbCR data: up to CHF100,000 to whoever intentionally submits a false or incomplete CbCR that substantially distorts the information requested, and provides an inaccurate representation of the facts
  - Non-compliance with the decision of the tax authority: up to CHF10,000 to whoever intentionally does not comply with the decision of the tax authority in the event of an audit
- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Refer to the preceding section.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Refer to the preceding section.

- **Is interest charged on penalties or payable on a refund?**

Late interest is due on penalties that are not paid on time. The general provisions on late interest apply. The interest rate is determined by the SFTA annually.

b) Penalty relief

There are no special provisions for penalty reductions.

Penalties charged are lower in the case of ordinary negligence and higher in the case of gross negligence.

Many tax disputes can be prevented using the advance ruling process or settled by negotiation with the tax authorities during a tax assessment or tax audit process (by way of formal complaint). In this way, the number of court cases can be reduced. However, if a transaction was not subject to a ruling, or if a ruling was not properly implemented, disputes may still arise and require resolution. Additionally, if transfer prices are adjusted by a foreign tax authority, a dispute resolution mechanism may be needed to avoid double taxation. Each canton has one or two judicial instances that are competent for tax litigation. The highest court for tax litigation is the Federal Court.

According to the Federal Constitution, intercantonal double taxation is prohibited. Therefore, the Federal Court has developed numerous rules on how intercantonal double taxation can be avoided. In practice, these rules often also apply to international cases unless overruled by a DTT.

The Swiss competent authority for tax treaties is the State Secretariat for International Finance (SIF), a division of the Federal Department of Finance. Among other duties, the SIF represents Switzerland's interests in international financial and tax matters, and leads negotiations in these areas.

10. Statute of limitations on transfer pricing assessments

As a general rule, the right to assess a taxpayer in relation to corporate income and capital taxes expires five years after the end of the corresponding tax period (relative statute of limitations). Under certain conditions (e.g., when the relative statute of limitations is interrupted), the absolute statute of limitations of 15 years applies. In the cases of tax fraud or tax evasion (e.g., when specific information was not available to the tax inspector at the time of the assessment), finally assessed tax periods can be reopened. The statute of limitations to reopen finally assessed tax periods is 10 years after the end of the corresponding tax period.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Tax audits focusing exclusively on transfer pricing are rare. However, the likelihood that transfer pricing will be reviewed as part of an audit may be considered to be medium. Even though the level of awareness is different from canton to canton, recent experience with tax audits seems to indicate that the tax authorities are taking a firm stand on transfer pricing issues, notably as a reaction to the OECD's BEPS Action Plan.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of the transfer pricing methodology being challenged may be considered to be medium.

Switzerland has various safe harbor and administrative guidelines (e.g., debt-capacity, interest rates, low-value-adding services, valuation), and it is common practice for the tax authorities to assess the appropriateness of transfer prices on the basis of these guidelines. In case where taxpayers follow a different methodology or do not comply with the safe harbor thresholds, there is a high likelihood of inquiry by the tax administration, either upon the tax return assessment or in a tax field audit.

Another area in which disputes arise more frequently is business valuations; tax authorities sometimes apply the "practitioner method" (a method based on past earnings and value of assets), whereas taxpayers use internationally accepted methods such as the discounted cash-flow approach. For this reason, it is recommended requesting a ruling or APA prior to transactions involving the transfer of a business.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

In cases in which the transfer pricing methodology is challenged, the likelihood of a transfer pricing adjustment may be considered to be medium, as the disallowance of the methodology regularly leads to an adjustment of profitability.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The risk of scrutiny may be considered to be high, concerning the transfers of intangibles and restructurings leading to significant base erosion, unless agreed upfront in a tax ruling with the authorities. Risk of scrutiny is moderate for intercompany financing and guarantee fees. The risk of scrutiny for tangible transactions is low.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The mechanisms available in Switzerland to prevent and resolve transfer pricing disputes include rulings, bilateral APAs, multilateral APAs and MAPs.

It is common practice to clarify the taxation of critical or complex transactions, including transfer pricing issues, in an advance ruling from the Swiss tax authorities. An advance ruling can be requested for both the interpretation of a relevant tax law or administrative guideline and the actual amount of tax payable on a transaction. The Swiss practice of issuing advance rulings helps reduce the number of disputes.

Bilateral APAs with foreign tax authorities have become a favored option for Swiss-based multinational groups with complex or high-volume transactions. Bilateral APAs are conducted under the corresponding MAP in the relevant DTT. In practice, the procedure starts with a presentation of the facts and a formal request to the SIF. The SIF has proven very helpful in supporting the interests of Swiss taxpayers in APA negotiations with foreign tax authorities. The SIF has published guidance on MAPs and APAs, which can be found at www.sif.admin.ch/sif/en/home/themen/ doppelbesteuerung---dba/dba-verstaendigungsverfahren.html.

- **Tenure**

The tenure period is subject to negotiation, but only up to three to five years.

- **Rollback provisions**

Depending on the countries involved, taxpayers have the option of requesting rollbacks.

- **MAP opportunities**

Taxpayers may request a MAP, if taxation has or is likely to occur that is not in accordance with the provisions of a DTT to which Switzerland is signatory. Most of Switzerland's DTTs permit taxpayers to present a case to the SIF within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. It is prudent to consult the relevant DTT to determine the time limit that applies and to ensure that the deadline for presenting a case is not missed.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

The SFTA has issued a circular containing safe harbor rules for financing with regard to thin capitalization.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Taxation Bureau.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Article 43-1 of the Income Tax Law (ITL)
  - Article 50 of the Financial Holding Company Law (FHCL)
  - Article 42 of the Business Mergers and Acquisitions Law (BMAL)

The Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non Arm's-Length Transfer Pricing (transfer pricing guidelines) became effective on 30 December 2004 (amended 28 December 2020, 13 November 2017 and 6 March 2015).

- **Section reference from local regulation**

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Taiwan is not a member of the OECD; however, it recognizes the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Ministry of Finance (MOF) drew up an amendment (the amendment) to the transfer pricing guidelines on the basis of the BEPS Action 13 final report. The final amendment was released 13 November 2017. In line with OECD BEPS Action 13, the amendment adopts a three-tiered transfer pricing documentation requirement that includes the Master File (Master File), CbCR, and Local File or transfer pricing report. The amendment applies to profit-seeking enterprises' income tax returns starting fiscal year 2017.

- **Coverage in terms of Master File, Local File and CbCR**

Both the Master and Local files (transfer pricing report) are covered.

- **Effective or expected commencement date**

The Master File and CbCR requirements came into effect starting fiscal year 2017.

- **Material differences from OECD report template or format**

There are no material differences between the OECD report template or format and Taiwan's regulations. However, for CbCR, there is an additional requirement for the appendix list of all constituent entities of the MNE group. The taxpayer should disclose tax jurisdiction, tax identification number (TIN), other identification number (IN), English name of constituent entity, Chinese name of constituent entity, English address of constituent entity, and additional Information.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A penalty protection regime is not available. An enterprise that fails to file or submit the required information and documents shall be subject to a fine of no less than TWD3,000 but no more than TWD30,000, as per Article 46 of the Tax Collection Act. Specifically, for the first-time infringement, penalty will be TWD3,000; second-time infringement, it will be TWD9,000; third-time and onward, it will be TWD30,000 per request. Please note that the penalty under the said Article 46 can be imposed repeatedly until the taxpayer submits the relevant penalty.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

As of February 2022, Taiwan has bilateral CbCR exchange

[1] **https://www.dot.gov.tw**

agreements with Switzerland, Australia, Japan and New Zealand, respectively.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Taiwan has transfer pricing documentation guidelines and rules. A transfer pricing report has to be prepared annually. Refer to the below for more information.

Taiwan's Taxation Administration, MOF, released the transfer pricing guidelines in December 2004.

Except for immaterial related-party transactions, extensive contemporaneous documentation is required. According to the transfer pricing guidelines, an enterprise must have the transfer pricing report and relevant documentation prepared when the annual income tax return is filed.

If the enterprise meets the safe harbor threshold and does not prepare a transfer pricing report, the tax authority may still request other supporting documents as evidence for the arm's-length nature of the intercompany transactions (alternate transfer pricing documentation). One example of other supporting documents is the parent's or headquarters' transfer pricing report, as long as it does not significantly vary from the concepts presented in the transfer pricing guidelines.

If the taxpayer does not meet the safe harbor criteria for the transfer pricing report, its transfer pricing report must contain:

- Business overview
- Organizational structure
- Description of controlled transactions
- Industry and economic analysis
- Functions and risks analysis
- Application of the arm's-length principle
- Selection of comparables and related information
- Comparability analysis
- transfer pricing methods selected by the enterprises
- transfer pricing methods selected by related parties under the same control
- Result of comparables search under the best method of transfer pricing
- A copy of intragroup agreements
- A copy of unilateral APAs concluded with other tax jurisdictions for the same controlled transactions
- Report of affiliated enterprises under Article 369 of the Taiwan Company Law
- Any other documents that significantly influence pricing between the related parties

In November 2017, the MOF released the amendment to revise the existing Articles 21 (addition of new guidance for CbCR notifications) and 22 (amended guidance for the transfer pricing report). To be in accordance with OECD BEPS Action 13, the amendment also added two new Articles, 21-1 and 22-1, to the transfer pricing guidelines. Article 21-1 added new guidance regarding the Master File and Article 22-1 added new guidance for the CbCR.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation has to be prepared annually under the local jurisdiction regulations. The minimum requirement to achieve this is an annual update of the transfer pricing documentation, including the transaction values and benchmarking analysis.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

A separate transfer pricing report per entity must be prepared.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Refer to the "Safe harbor availability" section below.

- **Master File**

This covers Master File. Please refer to the "Safe harbor availability" section below.

- **Local File**

This covers Local File. Please refer to the "Safe harbor availability" section below.

- **CbCR**

Refer to the "Safe harbor availability" section below.

- **Economic analysis**

Transaction value greater than TWD10 million by type of transaction (e.g., tangible goods, intangible, service or fund), and TWD5 million for each transaction with one related party.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing report and Master File need to be submitted in the local language.

- Article 22, paragraph V: the transfer pricing report or alternate transfer pricing documentation provided by profit-seeking enterprises pursuant to the preceding paragraphs should contain a table of contents and an index. A Mandarin Chinese translation should be attached if the materials are provided in a foreign language, unless otherwise agreed upon by the tax collection authorities with the provision of the English documents.
- Article 21-1, paragraph II: the Master File is to be prepared in English. A Mandarin Chinese translation shall be provided to the tax authority within one month after receipt of a notice of examination. The submission deadline can be extended for one month with the justification for an extension.

The CbCR needs to be submitted in both the local language and English.

- **Safe harbor availability, including financial transactions if applicable**

The safe harbors for transfer pricing report (Local File) are provided as follows:

- The MOF released a letter ruling to further relax the safe harbor criteria. The rule applies for fiscal years ending in December 2008 and afterward. The ruling states that the enterprise is not required to prepare a transfer pricing report if any of the following criteria are met:
  - The total annual revenue (including operating and nonoperating) of the enterprise does not exceed TWD300 million.
  - The total annual revenue (including operating and nonoperating) of the enterprise exceeds TWD300 million, but does not exceed TWD500 million, and either:
    - The enterprise does not utilize tax credits of more than TWD2 million in a particular year or a loss carryforward of more than TWD8 million for the preceding 10 tax years to reduce the income tax or undistributed earnings surplus tax.
    - The enterprise, under the FHCL or BMAL, has no transactions with any overseas related parties (whether a company or an individual), or the enterprise has no transactions with overseas affiliated companies.
  - The total annual controlled transactions amount is less than TWD200 million.
  - The total annual revenue (including operating and nonoperating) of the enterprise exceeds TWD500 million, but the total annual controlled transactions amount is less than TWD200 million.

The safe harbors for the Master File are provided as follows:

- **A Taiwan profit-seeking enterprise that is a member of an MNE group can be exempted from the Master File requirement if either of the criteria below is met (the letter ruling was released by the MOF on 13 December 2017):**
  - The sum of operating revenue and nonoperating revenue in the current year is less than TWD3 billion.
  - The aggregated amount of cross-border controlled transactions in the current year is less than TWD1.5 billion.

The safe harbors for the CbCR are provided as follows:

- **An MNE group's total consolidated revenue in the preceding year is less than TWD27 billion, which is consistent with OECD standards of EUR750 million (the letter ruling was released by the MOF on 13 December 2017).**
- **A Taiwan profit-seeking enterprise that is a member of an MNE group can be exempted from the CbCR requirement if either of the criteria below is met (the letter ruling was released by the MOF on 10 December 2019):**
  - The sum of operating revenue and nonoperating revenue in the current year is less than TWD3 billion.
  - The aggregated amount of cross-border controlled transactions in the current year is less than TWD1.5 billion.
- **Is aggregation or individual testing of transactions preferred for an entity**

There is no specific rule, but in practice individual testing of transactions is preferred by tax authorities.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The tax authority currently does not require transfer pricing-specific returns.

- **Related-party disclosures along with corporate income tax return**

A taxpayer must disclose related-party transactions and include the disclosure with the annual income tax return (pages B2-B5), pursuant to the transfer pricing guidelines. The disclosure generally includes:

- The investing structure
- Identification of related parties
- The related-party transaction amounts by type, including transfer of tangible assets, use of tangible assets, transfer of intangible assets, use of intangible assets, rendering of services, use of funds and other types of transactions prescribed by the MOF
- The related-party transaction balances
- The related parties' financial information, including total revenues, gross margins, operating margins and net margins
- Whether the enterprise has prepared transfer pricing documentation for that fiscal year

The tax authority has issued safe harbor rules for related-party transaction disclosures in two rulings. Both rulings provide that the enterprise must disclose related-party transactions in its income tax return if the sum of its annual operating and nonoperating revenue (total annual revenue amount) exceeds TWD30 million and meets one of the following criteria:

- The enterprise has related parties outside Taiwan, including the headquarters and branches.
- The enterprise utilizes tax credits of more than TWD500,000, or loss carryforwards of more than TWD2 million, to reduce the income tax or undistributed earnings surplus tax.
- The enterprise has total annual revenue exceeding TWD300 million.

- **Related-party disclosures in financial statement/annual report**

Yes.

- **CbCR notification included in the statutory tax return**

Notification shall be done upon filing income tax return by completing a form of the tax return.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 May (example for a calendar-year profit-seeking enterprise).

- **Other transfer pricing disclosures and return**

31 May (example for a calendar-year profit-seeking enterprise).

- Master File notification: Notification shall be done upon the filing of an income tax return by completing a form of the tax return (page B6).
- Master File preparation and submission: The Master File shall be prepared while filing the income tax returns and submitted to the tax authority within 12 months after the fiscal year-end.

- **Master File**

Master File needs to be prepared by the tax return submission date and must be submitted within 12 months after the last day of the reporting fiscal year.

- **CbCR preparation and submission**

The CbCR shall be submitted to the tax authority within 12 months after the fiscal year-end.

- **CbCR notification**

Notification shall be done upon filing income tax return by completing a form of the tax return.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation should be prepared by the time of lodging the tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

The transfer pricing report shall be prepared upon the filing of income tax returns and be submitted to the tax authority within one month after the receipt of a notice of examination.

The CbCR shall be submitted to the tax authority within 12 months after the fiscal year-end.

The Master File shall be prepared upon the filing of income tax returns and submitted to the tax authority within 12 months after the fiscal year-end.

- **Time period or deadline for submission upon tax authority request**

The Local File shall be submitted within one month after the receipt of a notice of examination. The CbCR shall be submitted to the tax authority within 12 months after the fiscal year-end. The Master File shall be submitted within 12 months after the fiscal year-end.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

NO

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions – Yes
- Domestic transactions – Yes

b) Priority and preference of methods

In accordance with the OECD Guidelines, the pricing methods are as follows: CUP, resale price, cost-plus, profit-split, comparable profit and other methods prescribed by the MOF.

The MOF follows the changes in the hierarchy of the methods in favor of the "most appropriate method" approach within the OECD Guidelines.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local benchmarks are preferred; this can be expanded to countries in the Asia-Pacific region if necessary.

- **Single-year vs. multiyear analysis for benchmarking**

Multiyear analysis is preferred.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no specific requirement for a fresh benchmarking search every year. However, the transfer pricing guidelines requires that the financials of a benchmarking study remain updated to the current year. In case the current year data is not available upon the filing of the income tax return, the enterprise may use the most recent three years' data without the current year.

- **Simple, weighted or pooled results**

The weighted average is required while testing an arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Where the profit-seeking enterprises failed to comply with the assessment regulations thereby resulting in a reduction of tax payable, and the collection authorities in charge have made transfer pricing adjustments and assessed the taxable income of related taxpayers in accordance with the Income Tax Act and these assessment regulations, Article 110 of Income Tax Act, shall apply to the following specific tax omission or underreporting situations:

- The reported price of controlled transaction is two times or more than the arm's-length price assessed by the collection authorities-in-charge; or lower than 50% of the arm's-length price.
- The increase in taxable income of the controlled transactions adjusted and assessed by the collection authorities in charge is more than 10% of the annual taxable income of the enterprise; and more than 3% of the annual net operating revenue.
- A profit-seeking enterprise cannot produce transfer pricing report as required under paragraph 1 of Article 22 thereof, and no other documents evidencing the transactions is arm's-length result.
- The increase in taxable income of the controlled transactions, which are not disclosed in the report or transfer pricing document in accordance with Articles 21 to 22-1 by a profit-seeking enterprise, adjusted and assessed by the collection authorities in charge is more than 5% of the annual taxable income of the enterprise; and more than 1.5% of the annual net operating revenue.

- **Consequences of failure to submit, late submission or incorrect disclosures**
  - A profit-seeking enterprise that fails to file or submit the relevant information and documents required would be subject to a penalty prescribed under Article 46 of the Tax Collection Act.
  - Pursuant to the transfer pricing guidelines, up to 200% of the tax shortfall could be imposed if assessed by the tax authority, under certain circumstances.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Per the Taiwan regulations, if an adjustment is sustained, penalties can be assessed. However, penalties are generally rarely assessed, should the taxpayer fully cooperate with the requests from the tax authorities during an audit.

The penalties under Article 110 of the Income Tax Act are imposed if both:

- The profit-seeking enterprise failed to comply with the requirements to disclose its controlled transactions in its income tax return and transfer pricing documentation.
- The increase in taxable income of the controlled transactions adjusted and assessed by the tax collection authorities is more than 5% of the annual taxable income of the enterprise and more than 1.5% of the annual net operating revenue.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Per the Taiwan regulations, if an adjustment is sustained, penalties can be assessed. However, penalties are generally rarely assessed, should the taxpayer fully cooperate with the requests from the tax authorities during an audit.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

Currently, there is no penalty relief regime in place.

10. Statute of limitations on transfer pricing assessments

The statute of limitations is five years (commencing from the date following the expiration date of the period for payment of said tax) if the tax return was filed in a timely manner – and seven years if it was not.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Yes. Approval of extension may be granted after discussion with the tax authority.

12. Likelihood of transfer pricing scrutiny and related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, the likelihood of an annual tax audit is characterized as high because the tax authority frequently conducts corporate income tax audits.

The likelihood that transfer pricing will be reviewed as part of the annual corporate income tax audit is also characterized as high. All corporate income tax audits may include a request and review of the documentation, as well as related supporting materials. In the past year, there has been increased activity by the tax authority, especially with respect to requests to see documentation reports.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the transfer pricing methodology will be challenged in Taiwan may be considered to be medium. According to the Taiwan regulations, the most appropriate transfer pricing methodology should be applied in evaluating arm's-length pricing of intercompany transactions. Generally, the CPM or TNMM are the most widely applied methods in Taiwan. It is advised that the taxpayer discusses with the authorities to find a consensus on the transfer pricing methodology, should questions arise. Through such steps, challenges on the transfer pricing methodology can be mitigated.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

It's high, because the tax authority in Taiwan has been taking a firm stand in conducting transfer pricing audits in recent years.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The MOF has issued a ruling that sets forth circumstances under which a transfer pricing audit will be triggered as follows:

- The gross profit ratio, operating profit ratio and net-income-before-tax ratio are below the industry average.
- The parent or headquarters reports profit on the global consolidated level, but the local affiliate reports a loss or much less profit than the industry average.
- The enterprise reports significant fluctuations in profit during the transaction year and in the two preceding years.
- The enterprise fails to disclose related-party transactions in accordance with the related-party transactions disclosure requirements.
- The enterprise fails to determine whether its related-party transactions are within an arm's-length range and fails to prepare documents in accordance with the transfer pricing guidelines.
- The enterprise fails to charge related parties in accordance with the transfer pricing guidelines or charges an abnormal amount.
- The enterprise fails to provide the transfer pricing report upon a tax audit.
- The tax authority adjusted the transfer pricing of the enterprise, in which case the tax years preceding and subsequent to the year of a transfer pricing audit are likely to be selected for audit.
- The enterprise has significant or frequent controlled transactions with related parties in tax havens or low-tax jurisdictions. (In particular, companies conducting business through tax havens have attracted more scrutiny, along with those making losses.)
- The enterprise has significant or frequent controlled transactions with related parties entitled to tax incentives.
- Any other transaction fails to meet the arm's-length requirements in accordance with the transfer pricing guidelines.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs are available under Articles 23–32 of the transfer pricing guidelines.

If the transactions undertaken by a profit-seeking enterprise with related parties satisfy the following criteria, the enterprise may file an application for an APA with the tax collection authorities, pursuant to the following provisions:

- The total amount of the transactions being applied for APAs shall be no less than TWD500 million, or the annual amount of such transactions is no less than TWD200 million.
- No significant tax evasion was committed in the past three years.
- Documentation, as required under subparagraphs 1–3, and subparagraphs 5–9, paragraph 1, of Article 24, has been well-prepared.
- A transfer pricing report, as prescribed under subparagraph 4, paragraph 1 of Article 24, has been prepared.
- Other criteria, as approved by the MOF, have been met.

In addition, the taxpayer may file an application for a pre-meeting with the tax authority, per the amendment.

According to Tax Letter Ruling No. 9404540920, under an APA, a tax return is not subject to a transfer pricing audit

except when:

- The enterprise fails to provide the tax authority with the annual report regarding the implementation of the APA.
- The enterprise fails to keep the relevant documents in accordance with the transfer pricing guidelines.
- The enterprise fails to follow the provisions of the APA.
- The enterprise conceals material facts, provides false information or conducts wrongful acts.

- **Tenure**

Three to five years.

- **Rollback provisions**

Yes, upon the successful agreement of bilateral (or multilateral) APA, the taxpayer could further request both tax authorities (Taiwan and treaty party) to consider, and agree with, the application of APA conclusion to the prior years which have not been assessed yet.

- **MAP opportunities**

Yes, Taiwan has concluded 32 double tax agreements in total and all of them include an MAP article with language, in general, equivalent to Article 25 of the OECD Model Tax Convention. In June 2018, the MOF further published "Regulations Governing Application of Mutual Agreement Procedure for Double Taxation Agreements," which provides procedures to taxpayers and tax authorities for making the dispute resolution mechanism more effective and settling the cases within a reasonable time frame.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No changes.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest expense from related-party debt exceeding a 3:1 debt-to-equity ratio is not deductible for tax purposes. Companies in the financial industry, such as banks, financial holding companies, insurance companies and securities firms, are not subject to the thin-capitalization rules.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority [1]

Tanzania Revenue Authority (TRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Section 33 of the Income Tax Act (ITA) 2004 emphasizes the arm's-length principle of transactions between associates. Transfer pricing regulations were issued on 7 February 2014 and published in May 2014.

Updated regulations were published on 27 April 2018 as The Tax Administration (Transfer Pricing) Regulations, 2018.

Section 7(3) stipulates the transfer pricing documentation framework.

- **Section reference from local regulation**

Associates are defined under Section 3 of the ITA 2004.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Tanzania is not a member of the OECD.

Tax authorities and the Commissioner recognize the OECD Guidelines and the United Nations transfer pricing manual (UN manual).

Nevertheless, the ITA 2004 and the 2018 transfer pricing regulations prevail if there are any inconsistencies between them and the OECD/UN documents.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**
  - Coverage in terms of Master File, Local File and CbCR

    This is not applicable.
  - Effective or expected commencement date

    This is not applicable.
  - Material differences from OECD report template or format

    This is not applicable.
  - Sufficiency of BEPS Action 13 format report to achieve penalty protection

    Yes, this is applicable to a large extent. Additional details will be required.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, The Tax Administration (Transfer Pricing) Regulations, 2018, were issued by way of a gazette notice published on 27 April 2018 and took effect on the date of the publication.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

[1] **https://www.tra.go.tz/**

Yes, the regulations require contemporaneous transfer pricing documentation to be prepared "for the year of income" (Regulation 7(3)).

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Each entity (including branches) needs transfer pricing documentation.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality threshold for transfer pricing documentation. However, the filing of the transfer pricing documentation together with the income tax return is required for entities with an aggregate value of related-party transactions of TZS10 billion (around USD 4.3 million).

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. The regulations apply to taxpayers dealing with related parties both inside and outside Tanzania.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in either of the official languages of Tanzania (English or Swahili). In practice, TP documentation is normally completed in English.

- **Safe harbor availability, including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified. However, there is preference for individual testing

- **Any other disclosure/compliance requirement**

Annual updating of benchmarking is expected.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

The taxpayer is required to disclose the amount of sales, purchases and loans made or received from associates in and outside Tanzania in its tax return.

- **Related-party disclosures in financial statement/annual report**

Yes, IFRS is applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is six months after the financial year-end of the company.

- **Other transfer pricing disclosures and return**

The filing should be made together with the CIT return six months after the company's financial year-end (if the value of the related-party transactions is TZS10 billion (around USD 4.3 million) or more).

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The documentation should be prepared by the due date of the annual income tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

Yes, taxpayers with an aggregate value of related-party transactions of TZS10 billion (around USD 4.3 million) and above should submit the documentation together with the CIT return.

- **Time period or deadline for submission upon tax authority request**

A taxpayer who is required to file a tax return may apply in writing to the Commissioner General for an extension of time by which the return shall be filed. The application should be made within 15 days before the due date of filing the return.

The extension of time to file the return shall not exceed 30 days from the due date of filing the return.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes
- Domestic transactions: Yes

b) Priority and preference of methods

Despite the fact that transfer pricing methods are based on the OECD Guidelines and the UN TP manual, taxpayers must first apply traditional transactional methods. Transactional profit methods can be applied if traditional transactional methods cannot be reliably applied.

Notwithstanding the above, the transfer pricing regulations reiterate that the most appropriate method should be applied with regard to the nature and specific features of the transaction in question.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is a preference for local comparables; however, it is not mandatory.

- **Single-year vs. multiyear analysis for benchmarking**

There is a preference for multiple-year testing (preferably three years).

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is needed every year. As per Section 6(3), "When applying the comparability factors in determining the arm's-length price, the results of a controlled transaction shall be compared with the results of an uncontrolled transaction for the same basis year for a year of income."

- **Simple, weighted or pooled results**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The regulations stipulate that where four or less comparable data points are used, the average is the arm's-length result; meanwhile, in the case of more than four comparable data points, the arm's-length result is to be the data point between the 35th percentile and 60th percentile. If the result falls outside the arm's-length range, the price should be adjusted to the median point of the range.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

The penalty for taxpayers who fail to comply with the transfer pricing regulations is set at a minimum of 3,500 currency points as prescribed from time to time by the Commissioner (currently 1 currency point is equal to TZS15,000), which results in a penalty of TZS52.5 million. This penalty is in addition to a possible penalty of 100% of the tax shortfall of the adjusted amount that is applicable for failure to comply with the arm's-length principle when transacting with associates.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The penalty for taxpayers that fail to comply with the transfer pricing regulations is set at a minimum of 3,500 currency points as prescribed from time to time by the Commissioner (currently 1 currency point is equal to TZS15,000), which results in a penalty of TZS52.5 million. This penalty is in addition to a possible penalty of 100% of the tax shortfall of the adjusted amount that is applicable for failure to comply with the arm's-length principle when transacting with associates.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, it will be 100% of the tax shortfall of the adjusted amount.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes, it will be 100% of tax shortfall of the adjusted amount.

- **Is interest charged on penalties or payable on a refund?**

Yes, a strict interpretation of the law provides for interest on penalties and refunds at the current statutory rate (7%). However, in practice, the tax authority does not apply interest on penalties and refunds.

b) Penalty relief

The Commissioner may grant relief for interest and penalties if he or she is satisfied that the non-compliance or underpayment of tax has reasonable cause.

10. Statute of limitations on transfer pricing assessments

A general rule of five years (previously three), effective from 1 July 2016, from the date of filing the tax return applies.

The tax authorities can ignore the five-year limitation when they suspect fraud or intention to evade the payment of tax.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high. The tax authority has revamped its transfer pricing team and there has been an increased number of transfer pricing audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be high. Refer to the section above.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to be audited**

A wide range of related-party transactions are targeted and, thus, all related-party transactions are potentially auditable by the tax authority. However, there is an increased focus on intra-group services, such as management services and IP-related transactions.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

The transfer pricing regulations provide for an opportunity to enter into unilateral, bilateral or multilateral APAs. In a seminar for taxpayers on transfer pricing, the tax authorities have indicated that, until further notice, no APAs will be

stipulated until local expertise has been built.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Yes; however, it is in the context of double tax treaties.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

The total amount of interest that an "exempt controlled resident entity" may deduct for corporate tax purposes may not exceed the amount of interest equivalent to a debt-to-equity ratio of 7:3. An entity is an exempt controlled resident entity if it is a resident and 25% or more of the underlying ownership of the entity is held by entities exempt under the second schedule to the Income Tax Act, approved retirement funds, charitable organizations, non resident persons or associates of such entities or persons.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Thai Revenue Department (TRD).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Thai Revenue Code (TRC) – Section 35 Ter, Section 71 Bis and Section 71 Ter
  - Ministerial Regulation No. 369 (B.E. 2563) – clarification regarding the adjustment of income and expenses by the TRD
  - Director-General of the Revenue Department No. 400 (DGN 400) – clarification regarding the adjustment of income and expenses by the TRD
  - Notification of Director-General of Revenue Department No. 407 (DGN 407) – mandatory items to be included in transfer pricing documentation
  - Director-General on Income Tax No. 408 (DGN 408) – local requirement for CbCR
- **Section reference from local regulation**

See above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Thailand is not a member of the OECD. However, most Thai transfer pricing-related regulations and guidelines generally follow the OECD Guidelines.

[1] **https://www.rd.go.th**

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  Local File and CbCR are covered.

- Effective or expected commencement date

  Local File requirement under the transfer pricing laws – from the fiscal year starting on or after 1 January 2019 onward

  CbCR - effective from the fiscal year starting – from the fiscal year starting on or after 1 January 2021 onward

- Material differences from OECD report template or format

  No.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  No.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

It was not a signatory at the time of this publication's preparation.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Master File – not specified in any transfer pricing guidelines, laws and regulations

Local File – yes but contemporaneous documentation was not specified

CbCR – yes and submission will be when the conditions are met only

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch will need to comply with the local transfer pricing laws and regulations.

- **Does transfer pricing documentation have to be prepared annually?**

See above.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Local File must be prepared on an entity basis. The group entity concept is not applied in Thailand.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

For Local File, THB200 million (USD6 million) threshold is generally applied in Thailand.

- **Master File**

Master File is not required in Thailand.

- **Local File**

For Local File, please see our response above.

- **CbCR**

A consolidated revenue threshold of THB28 billion per year (approx. USD840 million) (or proportionate amount if such ultimate parent company operates less than a year) is applied.

- **Economic analysis**

The benchmarking study is not required in the Local File if all of the following apply:

- Revenue of the financial year is less than THB500 million.
- The taxpayer has only domestic related-party transactions.
- Neither the taxpayer nor any of the relevant counterparties have loss carryforwards for corporate income tax computation purposes.
- All relevant counterparties are subject to the same corporate income tax rate.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic and cross border transactions must be declared in the Local File.

- **Local language documentation requirement**

As per transfer pricing regulation, effective for the fiscal year starting on or after 1 January 2021, Local File should be submitted to TRD in local Thai language.

- **Safe harbor availability, including financial transactions if applicable**

No.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none stipulated in the Thai transfer pricing regulations but aggregation approach (i.e., TNMM) is widely used in Thailand.

- **Any other disclosure/compliance requirement**

Refer to Section 5.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

With effect for financial years starting on or after 1 January 2019, taxpayers with annual revenue of at least THB200 million are required to prepare a transfer pricing Disclosure Form (transfer pricing disclosure form). The due date is within 150 days from the financial year-end.

- **Related-party disclosures along with corporate income tax return**

No.

- **Related-party disclosures in financial statement/annual report**

It's only required for public accountable entities or PAEs (i.e., listed companies), which are required to prepare audited financial statements in accordance with Thai Financial Reporting Standards (TFRS). TFRS require PAE to disclose about related-party transactions. For non-public accountable entities or NPAEs (i.e., non-listed companies), it is their choice to disclose their transactions with related parties.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

CbCR: a Thai corporate taxpayer with consolidated revenue of THB28,000 million or more in the immediately preceding fiscal year is required to submit a CbCR if it is:

- Thai ultimate parent entity of an MNE group
- A Thai subsidiary of an MNE group where:
  - The ultimate parent entity of the MNE group is not required to submit a CbCR in its jurisdiction of residence for tax purposes.
  - The ultimate parent entity of the MNE group is required to submit a CbCR in its jurisdiction of residence for tax purposes, but that jurisdiction does not have an agreement on exchange of information with Thailand, or such agreement was not yet effective during the reporting period.
  - There is a systematic failure during information exchange.
- A Thai subsidiary is appointed as a surrogate by the ultimate parent entity of the MNE group

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The tax return should be submitted within 150 days after each financial year-end of the taxpayer.

- **Other transfer pricing disclosures and return**

Transfer pricing disclosure form must be submitted within 150 days after each financial year-end.

Local File must be submitted within 60 days after the request.

- **Master file**

Not applicable.

- **CbCR preparation and submission**

Submission of CbCR by ultimate parent entity or Thai surrogate entity must be made within 12 months from fiscal year-end. Submission of CbCR by a subsidiary carrying on business in Thailand must be made within 60 days after receiving request from an assessment officer.

- **CbCR notification**

The taxpayer must notify whether it is a part of MNE group that is obliged to file CbCR by ticking a box in Part C of transfer pricing disclosure form.

b) Transfer pricing documentation/Local File preparation deadline

See above.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or local file?**

See above.

- **Time period or deadline for submission upon tax authority request**

See above.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions — Same as OECD guideline.**
- **Domestic transactions — Same as OECD guideline.**

b) Priority and preference of methods

No.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no written regulation; however, in practice, local comparables are requested.

- **Single-year vs. multiyear analysis for benchmarking**

Both single-year and three-year testing are required.

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

In practice, there is a need to conduct new benchmarking on a three-year basis, i.e., after new benchmarking study is prepared in a financial year, conducting only financial updates on that benchmarking study are acceptable for the next two years.

- **Simple, weighted or pooled results**

The preference is for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**
  - Revenue threshold
  - Majority foreign shareholders
  - Availability of financial data
  - Different function or product
  - Unqualified audited financial statements
  - Evidence of related party transaction
  - Consistent operating losses

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Non-compliance for transfer pricing disclosure form and Local File or wrongly declaring the information will be subject to a penalty not exceeding THB200,000.

- **Consequences of failure to submit, late submission or incorrect disclosures**

See above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**

Interest is applied on the shortfall tax amount.

b) Penalty relief

No.

10. Statute of limitations on transfer pricing assessments

Generally, five years.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

High likelihood of transfer pricing-related audits.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Low if the local file strictly follows the principle in OECD Guidelines.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Depends on the results.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Normally tax officers focus on the significant intercompany transactions. Recently, service fee and royalty transactions have become a focus by tax officers.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Only bilateral APA.

- **Tenure**

It is up to five years.

- **Rollback provisions**

No.

- **MAP opportunities**

Yes.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no thin-capitalization rules specified.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Office Togolaise des Recettes (Togolease Revenue Office).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**
  - Article 106 of the General Tax Code: Transfer Pricing form/declaration obligation (Finance Bill 2020)
  - Article 106 of the General Tax Code: Transfer Pricing documentation obligation (Finance Bill 2020)
  - Article 206 of Tax Book Procedure: Transfer Pricing documentation obligation (Finance Bill 2020)
- **Section reference from local regulation**

General Tax Code: Article 106 (Updated Finance Bill 2022)

Article 125 of General Tax Code provides rules about transfer pricing documentation in case of closure of the company or suspension of activities

Tax Book Procedure: Article 206 (Updated Finance Bill 2022)

Article 113 Tax Book procedures provides rules in case of failure for the submission of transfer pricing return

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Togo is not a member of the OECD and is not a member of the Inclusive Framework on BEPS as of December 2019.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Togo has implemented transfer pricing documentation and transfer pricing return obligations.

- Coverage in terms of Master File, Local File and CbCR

  Master File and Local File.

- Effective or expected commencement date

  1 January 2020.

- Material differences from OECD report template or format

  A BEPS Action 13 format report typically is sufficient to achieve penalty protection.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- Article 106 of the General Tax Code: Transfer Pricing documentation obligation (Finance Bill 2020)
- Article 206 of Tax Book Procedure: Transfer Pricing documentation obligation (Finance Bill 2020)

The transfer pricing documentation (Master File and Local File) will have to be prepared within three months from the submission of annual financial statements to the tax authorities.

Also, the transfer pricing documentation (Master File and Local File) must be available to the tax authorities at the beginning of a tax audit of the accounting records.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

A separate transfer pricing report is required per legal entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

The documentary obligation in French applies to anyone who meets the following conditions:

- Companies established in Togo whose annual turnover net of tax or gross assets on the balance sheet is greater than XOF20 billion
- Companies established in Togo that hold at the end of the financial year, directly or indirectly, more than half of the capital or voting rights of a company whose annual turnover, excluding taxes or the gross assets on the balance sheet, exceeds XOF20 billion
- Companies established in Togo that own or control, at the end of the financial year, directly or indirectly, more than half of their capital or their rights of voting by a company whose annual turnover, excluding taxes or the gross assets on the balance sheet, is greater than XOF20 billion

The transfer pricing return is required even if the conditions are not met, and the local company has transactions with local or foreign affiliates companies (according to the definition of Togo legislation).

Only transactions above XOF10 million must be disclosed.

- **Master File**

There is no materiality limit or threshold.

- **Local File**

Only transactions more than XOF10 million should be disclosed in the transfer pricing documentation.

- **CbCR**

This is not applicable.

- **Economic analysis**

There is no materiality limit or threshold.

c) Specific requirements

- **Treatment of domestic transaction**

Yes, the obligation of documentation shall be applied to all transactions of all kinds carried out with related companies established in or outside Togo.

- **Local language documentation requirement**

The transfer pricing documentation and return should be submitted in French.

- **Safe harbor availability, including financial transactions if applicable**

There is no specific requirement.

- **Is aggregation or individual testing of transactions preferred for an entity**

Individual testing of transactions is preferred.

- **Any other disclosure/compliance requirement**

During the tax audit, the tax authorities can request transfer pricing information (nature of relationship between companies, the relevant transfer pricing method, the activities carried out by the companies, etc.) even if the legal entity is not subject to the transfer pricing documentation obligation.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The transfer pricing return needs to be submitted in French as part of the taxpayer's annual tax return. A model of this transfer pricing declaration has been published by the Togolese tax administration.

- **Related-party disclosures along with corporate income tax return**

The documentation must be available within three months following the filing of the annual financial statements.

- **Related party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

No CbCR notification requirement.

- **Other information/documents to be filed**

There are no other documents to be filed.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline for filing the annual financial statements is 30 April following each fiscal year.

- **Other transfer pricing disclosures and return**

The deadline for filing the transfer pricing return is 30 April.

- **Master File**

There are no filing obligations for the Master File and the Local File.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

The deadline for preparing the transfer pricing documentation is three months following the submission of the annual financial statements.

Also, the transfer pricing documentation must be available to the tax authorities at the beginning of a tax audit of the accounting records.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

The transfer pricing documentation must be prepared within three months as of the filing of the income tax return.

- **Time period or deadline for submission upon tax authority request**

If the documentation is not available or ready at the time of the tax audit of the accounting records, a 30-day formal notice will be sent to the audited company.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**

- **Domestic transactions: Yes**

b) Priority and preference of methods

These OECD methods are generally accepted: CUP, resale price, cost-plus, profit-split and TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific requirement. However, local or west African comparables would be preferred.

- **Single-year vs. multiyear analysis for benchmarking**

No specific requirement.

- **Use of interquartile range**

No specific requirement.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

No specific requirement.

- **Simple, weighted or pooled results**

No specific requirement.

- **Other specific benchmarking criteria, if any**

No specific requirement.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Not applicable.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Transfer pricing documentation:

- For each audited fiscal year, a fine of 1% based on the amounts of the unjustified transactions after the formal notice from the tax authorities

  Or

- A fine of 10% in case of reassessed amounts

  The lack of reply or a partial reply may trigger the application of the automatic taxation procedure.

  Failure to submit the transfer pricing return: XOF500,000.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Same as above.

Penalties are assessed at rates ranging from 10%, 40% or 80% of tax due, depending on whether the taxpayer's return was accidentally, mistakenly or fraudulently in error.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not applicable.

- **Is interest charged on penalties or payable on a refund?**

One percent per month.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

The limitation period is set to three years (common tax regime).

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Medium.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Medium.

- **Specific transactions, industries and situations, if any, more likely to be audited**

No specific transactions.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No specific requirement.

- **Tenure**

No specific requirement.

- **Rollback provisions**

No specific requirement.

- **MAP opportunities**

No specific requirement.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Togo has the following thin-capitalization rules regarding loans by shareholders and related parties to local entities:

- The sums made available by all shareholders should not exceed the amount of the share capital.
- The interest rate should not exceed the legal rate, increased by 3 percentage points.
- The share capital of the local entity should be entirely paid up.
- The interest paid to the shareholders should not exceed 30% of the profit before corporate income tax and before deduction of such interest, and depreciation and provisions.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Ministry of Finance (Tunisia); The General Directorate of Taxes (*La Direction Générales des Impôts*).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The Finance Act for the year 2019 introduced, within the local tax regulation, the following main articles that govern transfer pricing aspects:

- Article 48septies of the Personal & Corporate Income Tax Code (PCITC), which was initially added by Article 51 of the Finance Act for the year 2010 and modified by virtue of the Article 29 of the Finance Act for the year 2019, and then amended by virtue of the Article 15 of the Finance Act for the year 2021: governing the transfer pricing adjustments dealing with cross-border transactions, defining the associated enterprises, and excluding the deduction from the tax base of amounts charged by entities that are resident or established in low-tax jurisdictions notwithstanding the fact that they are qualified or not as associated enterprises.
- Article 59 paragraph II bis of the PCITC: governing the annual transfer pricing return requirement aspects
- Article 38bis of the Code of Fiscal Rights & Procedures (CFRP): governing the documentation supporting the transfer pricing policy requirement aspects in case of a comprehensive tax audit
- Article 17ter of the CFRP: governing the CbCR requirement aspects
- Article 35bis of the CFRP: governing the APA aspects
- Article 84nonies of the CFRP: governing the sanctions and fines that may be applicable in case of non-compliance with the annual transfer pricing return requirement aspects
- Article 84undecies of the CFRP: governing the sanctions and fines that may be applicable in case of non-compliance with the documentation supporting the transfer pricing policy requirements aspects in case of a comprehensive tax audit
- Article 84decies of the CFRP: governing the sanctions and fines that may be applicable in case of non-compliance with the CbCR filing requirements aspects

Article 15 of the Finance Act for the year 2021 introduced some amendments to the rules instituted by virtue of the Finance Act for the year 2019. For example, the minimum sales threshold requiring the preparation of documentation supporting the transfer pricing policy and transfer pricing return is increased (modifying Article 38bis of CFRP and Article 59 paragraph II bis of the PCITC), a materiality threshold is introduced (modifying Article 38bis of CFRP and Article 59 paragraph II bis of the PCITC), and a delimitation of the scope of transfer pricing to cross-border transactions is established (modifying Article 48septies and Article 59 paragraph II bis of the PCITC).

All the transfer pricing rules added by virtue of the Finance Act for the year 2021 apply to fiscal years commencing as of 1 January 2020.

In addition to the above, Tunisian tax regulation contains other legal tax references that are in force even before the Finance Act for the year 2019 and that are not rescinded by virtue of this law, which are mainly the following:

- Article 6 of the CFRP: allows tax authorities to rely on presumptions of law and fact to adjust the tax position, notably made of comparison with data that relate to similar exploitations, sources of incomes or operations.
- Article 38 of the CFRP: provides that the comprehensive tax audit covers the tax position totally or partially, and that it is processed based on the accounting of the taxpayer who is required to keep accounting, and in all cases based on information, documents or presumptions of fact or of law.
- Article 94 of the CFRP: governing the sanctions and fines that may be applicable in case of non-compliance with the arm's-length principle
- Article 101of the CFRP: governing the sanctions and fines that may be applicable in case of abuse of rights (even in terms of transfer pricing policy aspects)

- **Section reference from local regulation**

Please see above.

[1] **https://doc-fiscale.finances.gov.tn/cimf-internet/page/document/fr/preview?path=/Loi%20de%20Finances/2019/Loi%20de%20Finances%202019%20Fr.pdf**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Tunisia is not a member of the OECD. However, the Tunisian newly incorporated transfer pricing regulations that are applicable starting from 1 January 2020 are highly inspired from the OECD Guidelines (mainly the BEPS Action 13).

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, Tunisia has adopted and implemented the substance of the BEPS Action 13 effective from 1 January 2020.

- **Coverage in terms of Master File, Local File and CbCR**

The Master File, Local File and CbCR are covered.

- **Effective or expected commencement date**

These provisions apply to financial years starting on or after 1 January 2020, and subject to a notice of a comprehensive tax audit notified as from 1 January 2021.

- **Material differences from OECD report template or format**

Pursuant to the Minister of Finance's orders dated 16 October 2019 and the Tax Administration public joint note n°13/2020 published on 19 June 2020, the transfer pricing documentation template or format is highly inspired from the OECD Guidelines and rules.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The Minister of Finance's orders on 16 October 2019 as well as the Tax Administration public joint note n°13/2020 published on 19 June 2020 have set out the contents of the supporting documents of transfer pricing's policy (Master File and Local File). Also, Tax Administration public joint note n°14/2020 published on 24 June 2020 has set the content of the CbC report. The aforementioned regulation sources are highly inspired from the OECD Guidelines and rules. Entities that are compliant with these regulation sources can avoid the penalties for lack of compliance with transfer pricing documentation rules.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 26 November 2019.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

According to Tunisian tax regulation, which are applicable from 1 January 2020, the transfer pricing documentation requirements are summarized as following:

- An annual transfer pricing return (to be filed annually): this is required by associated enterprises as defined by Article 48septies of the PCITC, which are undertaking cross-border transactions, and of which the annual sales exclusive of all taxes is greater than or equal to TND200 million. The form and the content of the annual transfer pricing return, which should be e-filed, are fixed by Tax Administration public joint note n°13/2020 published on 19 June 2020.

- The documentation supporting the transfer pricing policy, i.e., the Master File and the Local File (to be submitted to tax authorities in charge of the tax audit when this latter occurs): this is required by associated enterprises as defined by Article 48septies of the PCITC, which are undertaking cross-border transactions, and of which the annual sales exclusive of all taxes is greater than or equal to TND200 million. The form and the content of the documentation supporting the transfer pricing policy are fixed by common Note 13/2020 published on 19 June 2020.

The CbCR (to be filed annually): this is required according to the conditions detailed in the below section "CbCR notification

and CbC report submission requirement." The form and the content of the CbCR, which should be e-filed, are fixed by Tax Administration public joint note n°14/2020 published on 24 June 2020.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**
  - The annual transfer pricing return and the CbCR (if it applies) have to be prepared and filed annually.
  - The documentation supporting the transfer pricing policy, i.e., the Master File and the Local File, should not be prepared annually but be submitted to tax authorities in charge of the tax audit when the latter occurs.
- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Article 15 of the Finance Act for the year 2021 introduced the following :

- Threshold above which the enterprise becomes required to comply with the annual transfer pricing form filing requirement and the submission of the MF & LF at the starting of the comprehensive tax audit: annual sales exclusive of all taxes is greater or equal to TND200 million.
- Materiality limit above which a cross-border controlled transaction has to be reported on the annual transfer pricing form filing requirement and to be included within the transfer pricing documentation to submit to tax authorities at the starting of the comprehensive tax audit: annual amount exclusive of taxes, per each category of transaction, is greater of equal to TND100,000.

- **Master File**

Article 15 of the Finance Act for the year 2021 introduced the following :

- Threshold above which the enterprise becomes required to comply with the annual transfer pricing form filing requirement and the submission of the MF & LF at the starting of the comprehensive tax audit: annual sales exclusive of all taxes is greater or equal to TND200 million.
- Materiality limit above which a cross-border controlled transaction has to be reported on the annual transfer pricing form filing requirement and to be included within the transfer pricing documentation to submit to tax authorities at the starting of the comprehensive tax audit: annual amount exclusive of taxes, per each category of transaction, is greater of equal to TND100,000.

- **Local File**

Article 15 of the Finance Act for the year 2021 introduced the following :

- Threshold above which the enterprise becomes required to comply with the annual transfer pricing form filing requirement and the submission of the MF & LF at the starting of the comprehensive tax audit: annual sales exclusive of all taxes is greater or equal to TND200 million.
- Materiality limit above which a cross-border controlled transaction has to be reported on the annual transfer pricing form filing requirement and to be included within the transfer pricing documentation to submit to tax authorities at the starting of the comprehensive tax audit: annual amount exclusive of taxes, per each category of transaction, is greater of equal to TND100,000.

Any company that is established in Tunisia and meets all conditions exposed below, are required to file, within the 12 months after the year-end date and by reliable electronic exchange means, a CbCR. The CbCR is based on a form established by the tax administration and contains the distribution of the country-by-country profits of the companies' group it belongs to, and tax and accounting data, as well as information regarding the location where the activities are carried out:

- The company owns interests directly or indirectly in one or many companies, which make it a requirement to prepare consolidated financial statements in accordance with the current accounting legislation in force, or where it is required to do so if its stocks are listed on the Tunis Stock Exchange.
- The company's annual consolidated sales exclusive of taxes is equal to or greater than TND1.636 million during the period prior to the period concerned by the reporting.
- No other company owns direct or indirect interests in the concerned company in accordance with the above first point (i.e., no other entity can include it within its

consolidated financial statements).

It is also required to file the reporting within the deadlines and in the means and form, where any company resident in Tunisia should meet at least one of the following conditions:

- It is owned, directly or indirectly, by an enterprise resident in a state not requiring the filing of the CbCR, but who would be required to file that return, if it is resident in Tunisia.
- It is held, directly or indirectly, by an enterprise resident in a state not included in the list of states having concluded an agreement with Tunisia authorizing the automatic exchange of the CbCR, but with which Tunisia has concluded a tax information exchange agreement.
- It is designated for this purpose by the group of related companies to which it belongs and has informed the tax administration.

The content of this reporting is fixed by a ruling of the Finance Minister's order on 16 October 2019.

The CbCR is subject, under reserve of reciprocity, to an automatic exchange with the states that have concluded an agreement with Tunisia for this purpose.

- **Economic analysis**

Pursuant to the Finance Minister's order on 16 October 2019, the Local File should include, inter alia, the following elements:

- A comparability analysis and a detailed functional analysis of the enterprise and related companies for each class of intragroup transactions, including any changes from previous years
- An indication of the most appropriate transfer pricing method for each transaction and the reasons why it was chosen
- An indication of the related undertaking that has been selected as a tested party, if any, and an explanation of the reasons for that choice
- A summary of the important assumptions that have been made to apply the transfer pricing method used
- If applicable, an explanation of why a multiyear analysis of transfer pricing methods has been applied
- A list and description of comparable open-market transactions and independent company financial indicators used in the transfer pricing analysis, including a description of the comparable data search method with the indication of the source of this information
- A description of any adjustments made – whether these adjustments were made to the results of the tested party, to comparable transactions on the open market or to both
- A description of the reasons for concluding that transaction prices were established in accordance with the arm's-length principle in accordance with the transfer pricing method used
- A summary of the financial assumptions used to apply the transfer pricing method
- A copy of the prior unilateral transfer pricing agreements, bilateral and multilateral agreements as well as the decisions of other tax authorities to which Tunisia is not a party and which are related to intragroup transactions described above
- In addition to the above, Tax Administration public joint note n°11/2020 defined the comparability analysis, related comparability factors and the five OECD transfer pricing methods. These newly introduced rules are highly inspired from BEPS Action 13.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are no more covered by the transfer pricing Documentation rules. According to Article 15 of the Finance Act for the year 2021, the scope of transfer pricing rules is clearly delimited to cross-border transactions.

- **Local language documentation requirement**

Local File has to be prepared in Arabic or in French.

Master File has to be prepared in Arabic or in French, but tax authorities can accept it if already prepared in English.

- **Safe harbor availability, including financial transactions if applicable**

The current legislation did not mention any safe harbor availability, and this is apart from thin-capitalization rules and rules governing the interests that should be charged on amounts made available to shareholders.

With regard to thin-capitalization rules, interests on shareholders loans may be deductible from the tax base in case the remunerated amount does not exceed 50% of the share capital (which should be already entirely paid up) and the interest rate does not exceed 8%.

With regard to amounts made available to shareholders,

interests should be charged at an interest rate that should not be less than 8%.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not specified according to the regulation in force.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Companies that are controlled by other companies or that control other companies according to Article 48septies of PCITC, which are undertaking cross-border transactions and of which the annual sales exclusive of taxes greater than or equal to TND200 million, are required to submit an annual transfer pricing return using reliable electronic means according to a form established by tax authorities, and this is within the same deadlines as the corporate income tax (CIT) return.

This return should provide (for indicative, but not limitative, purposes):

- **Information about the group of companies of which mainly:**
  - Information about the activity including changes that occurred during the fiscal year
  - Information about the companies' group transfer pricing policy
  - List of assets owned by the group of companies and used by the reporting company, as well as the corporate name and the jurisdiction of tax residency of the owner
- **Information about the reporting company:**
  - Information about the activity including changes that occurred during the period
  - A summary statement of financial and commercial transactions with companies that are controlled by the reporting company or that control the reporting company according to Article 48septies of the PCITC – this statement includes the nature and the amount of transactions, the corporate names and the jurisdiction of tax residency of controlled or controlling companies concerned by the transactions, methods for setting transfer pricing applied by the group of companies, and the changes that occurred during the period
  - Information about loans and borrowings with companies that are controlled by the reporting company or that control the reporting company according to Article 48septies of the PCITC
  - Information about financial and commercial transactions with companies that are controlled by the reporting company or that control the reporting company according to Article 48septies of the PCITC for free or for a non-monetary counterpart
  - Information about transactions with companies that are controlled by the reporting company or that control the reporting company according to Article 48septies of the PCITC, which are subject to an APA or a tax ruling concluded between the companies concerned by the transactions and tax authorities of other states
- **Related-party disclosures along with corporate income tax return**

Companies that are controlled by other companies or that control other companies according to Article 48septies of PCITC, which are undertaking cross-border transactions and of which the annual sales exclusive of taxes greater than or equal to TND200 million, are required to communicate to the Tax Administration agents, at the starting date of the comprehensive tax audit of their tax position, the documentation supporting the transfer pricing policy applied to transactions with associated enterprises according to Article 48septies of the PCITC. The content of this documentation is fixed by a ruling of the Finance Minister's order dated 16 October 2019 and Tax Administration public joint note n°13/2020 published on 19 June 2020.

These documents do not replace supporting documents relevant to each transaction.

In case these documents are not presented to Tax Administration agents, at the starting date of the comprehensive tax audit of their tax position, or are incomplete or inaccurate, Tax Administration agents should send a formal notice to the concerned company in which the concerned company is required to present or to complete the missing information within 40 days after the notification. The Tax Administration should specify the nature of the concerned documents.

These provisions are effective for financial years that begin from 1 January 2020 and that have been subject to a prior notice starting from 1 January 2021.

- **Related-party disclosures in financial statement/annual report**

There is no specific additional requirement other than those exposed with regard to annual transfer pricing return.

- **CbCR notification included in the statutory tax return**

The CbCR should be filed within the 12 months after the year-end date, but is not required to be filed within the same deadlines as the annual statutory tax return (CIT return).

Tax Administration public joint note n°14/2020 published on 24 June 2020 sets out the contents of the CbC report.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

For companies that close the fiscal year by 31 December, the CIT return should be filed no later than 25 March that follows the year-end closing date. In case the company is subject to the requirement of the appointment of a statutory auditor, the return filed on 25 March may have a provisional statute. Additionally, in this case, the final CIT return should be filed no later than the 15th day that follows the annual general shareholders ordinary meeting that approve the financial statement without exceeding 25 June that follows the year-end closing date.

- **Other transfer pricing disclosures and return**

The annual transfer pricing return should be filed within the same deadlines as the CIT return.

The documentation supporting the transfer pricing policy, i.e., the Master File and the Local File, is not to be filed annually but should be communicated to the Tax Administration agents, at the starting date of the comprehensive tax audit, and no later than 40 days in case it is not communicated by the starting date of the same comprehensive tax audit.

- **Master File**

The documentation supporting the transfer pricing policy, i.e., the Master File and the Local File, is not to be filed annually but should be communicated to the Tax Administration agents, at the starting date of the comprehensive tax audit, and no later than 40 days in case it is not communicated by the starting date of the same comprehensive tax audit.

- **CbCR preparation and submission**

Within the 12 months after the fiscal year closing date

- **CbCR notification**

Within the 12 months after the fiscal year closing date

b) Transfer pricing documentation/Local File preparation deadline

The documentation supporting the transfer pricing policy, i.e., the Master File and the Local File, is not to be filed annually but should be communicated to the Tax Administration agents, at the starting date of the comprehensive tax audit, and no later than 40 days in case it is not communicated by the starting date of the same comprehensive tax audit.

c) Transfer pricing documentation/Local File submission deadline

The documentation supporting the transfer pricing policy, i.e., the Master File and the Local File, is not to be filed annually but should be communicated to the Tax Administration agents, at the starting date of the comprehensive tax audit, and no later than 40 days in case it is not communicated by the starting date of the same comprehensive tax audit.

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

Transfer pricing documentation requirements have to be filed, prepared and submitted within the same deadlines (as indicated above).

- **Time period or deadline for submission upon tax authority request**

Apart from the cases of the annual transfer pricing return as well as the CbCR that should be submitted "spontaneously" (i.e., not upon request by tax authorities), on an annual basis, the companies with annual sales exclusive of taxes greater or equal to TND200 million are required to communicate to the Tax Administration agents at the starting date of the comprehensive tax audit of their tax position, the documentation supporting the transfer pricing policy applied to transactions with associated enterprises according to Article 48septies of the PCITC, i.e., the Master File and Local File. In case these documents are not presented to Tax Administration agents at the starting date of the comprehensive tax audit of their tax position, or are incomplete or inaccurate, Tax

Administration agents should send a formal notice to the concerned company in which the concerned company is required to present or to complete the missing information within 40 days after the notification.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes Specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

e) International transactions

Prior to the adoption of the new transfer pricing rules by virtue of the Finance Act for the year 2019, Tunisian regulation recognized the OECD's traditional transaction methods (i.e., the CUP method, the resale-price method and cost-plus method), and this is by virtue of the Tunisian Accounting Standard n°39 governing the related parties. However, according to the wording of the previous version of Article 48 septies of the PCITC, which governed the transactions between associated enterprises, and this is before being amended by the Finance Act for the year 2019, it can be understood that the method that was recognized from a tax standpoint was the CUP.

Currently, the tax legislator has recognized the five OECD methods by virtue of Tax Administration public joint note n°11/2020 issued on 17 June 2020. It introduced additional guidelines that harmonize Tunisian tax legislation with international transfer pricing standards.

f) Domestic transactions

Prior to the adoption of the new transfer pricing rules by virtue of the Finance Act for the year 2019, Tunisian regulation recognized the OECD's traditional transaction methods (i.e., the CUP method, the resale-price method and cost-plus method), and this is by virtue of the Tunisian Accounting Standard n°39 governing the related parties. However, according to the wording of the previous version of Article 48 septies of the PCITC, which governed the transactions between associated enterprises, and this is before being amended by the Finance Act for the year 2019, it can be understood that the method that was recognized from a tax standpoint was the CUP.

Currently, the tax legislator has recognized the five OECD methods by virtue of Tax Administration public joint note n°11/2020 issued on 17 June 2020. It introduced additional guidelines that harmonize Tunisian tax legislation with international transfer pricing standards.

b) Priority and preference of methods

Prior to the adoption of the new transfer pricing rules by virtue of the Finance Act for the year 2019, the CUP was the preferred method.

Currently, the tax legislator has recognized the five OECD methods by virtue of Tax Administration public joint note n°11/2020 issued on 17 June 2020. However, the current transfer pricing regulation does not present any specified preferred or prioritized methods. Instead, it states explicitly that what is important is that the selected transfer pricing method be the base that reflects as fairly as possible the arm's length principle, i.e., any other method other than the OCED 5 methods that may lead to a better compliance with the arm's-length principle may be accepted by Tunisian tax authorities.

8. Benchmarking requirements

- **Local vs. regional comparables**

No applicable.

- **Single-year vs. multiyear analysis**

The current provision considers single year testing as the most preferred method.

- **Use of interquartile range**

Not applicable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

The current legislation prefers Fresh benchmarking search every year.

- **Simple, weighted or pooled results**

Not applicable.

- **Other specific benchmarking criteria, if any**

Not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

A tax fine equal to 0.5% of the amount of the concerned transactions for the missing or inaccurate documents with a minimum of TND50,000 per year covered by the tax audit.

- **Consequences of failure to submit, late submission or incorrect disclosures**
  - Annual transfer pricing return: any company that has not filed the annual transfer pricing return within the legal deadlines is liable to an administrative tax fine equal to TND10,000. Any missing information in the abovementioned return or any information provided in an incomplete or inaccurate manner gives rise to the application of a fine equal to TND50 per information, without exceeding TND5,000 (Article 84nonies of the CFRP).
  - The documentation supporting the transfer pricing policy: any company that did not communicate the documentation supporting the transfer pricing policy to tax authorities or that presents incomplete or inaccurate documents within 40 days after the notification is exposed to a tax fine equal to 0.5% of the amount of the concerned transactions for the missing or inaccurate documents with a minimum of TND50,000 per year covered by the tax audit (Article 84undecies of the CFRP).
  - The CbCR: any company that has not filed the CbCR within the legal deadlines is punished by an administrative tax fine equal to TND50,000. Any information not provided in the reporting or provided in an incomplete or inaccurate manner, gives rise to the application of a fine equal to TND100 per information, without exceeding TND10,000 (Article 84decies of the CFRP).
- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**
- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Same as above.

- **Is interest charged on penalties or payable on a refund?**

b) Penalty relief

Article 78 of the CFRP allows tax authorities to grant a relief for criminal tax offenses of which finding, or prosecution is incumbent on them, before a final judgment relating thereto is pronounced, and this is excluding the offenses referred to in Article 102 of the CFRP and Articles 180 and 181 of the Penal Code. Therefore, the offenses provided for in Articles 94 of the CFRP, which may be applicable to the non-compliance with transfer pricing rules, are liable to the said transaction. Article 79 of the CFRP provides that the transaction is based on a tariff fixed by a ruling of the Minister of Finance, after adjustment by the offender of his tax position.

10. Statute of limitations on transfer pricing assessments

In case of compliance with the tax returns filing requirements: the current considered year and the four previous years (can be extended to the six previous years for the case of back burner enterprises)

In case of non-compliance with the tax returns filing requirements (failure to file tax returns): the current considered year and the 10 previous years

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

  High.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

  High.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

  High.

- **Specific transactions, industries and situations, if any, more likely to be audited**

No specifications: tax authorities may challenge all transfer pricing transactions, industries and situations.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Companies with dependency or control relationships, within the meaning of the fourth paragraph of Article 48septies of the PCITC, with companies established outside Tunisia can request from tax authorities to conclude an APA in terms of transfer pricing on the method to be applied in the future, with associated enterprises established outside Tunisia.

The procedure for concluding an APA and the associated obligations are set by the Minister of Finance's order dated 6 August 2019, and clarified by virtue of Tax Administration public joint note n°12/2020 published on 17 June 2020. It also requires the taxpayer to provide the Tunisian tax authorities with a report detailing the transactions covered by the APA within 6 months from the end of each fiscal year covered by the APA.

These provisions are effective for financial years beginning from 1 January 2020.

- **Tenure**

The APA is concluded for a term that may vary from three to five years. Parties cannot end the agreement before the expiry of the period fixed in the agreement.

- **Rollback provisions**

This is not applicable as the APA may cover only future transactions and, so, cannot have a retroactive effect.

- **MAP opportunities**

MAP remains possible by virtue of double taxation treaties.

On 12 September 2019, tax authorities published a guidance to set out the practical arrangements for implementing the MAP provided for in the double taxation treaties concluded by Tunisia.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Pursuant to Article 48 of PCITC, the interests on shareholders' loans can be deductible from the tax base in case the remunerated amount does not exceed 50% of the share capital (which should be already entirely paid up) and the interest rate does not exceed 8%.

With regard to amounts made available to shareholders, interests should be charged at an interest rate that should not be less than 8%.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Turkish Ministry of Finance and Turkish state authorities.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and effective date of applicability**

Transfer pricing is regulated by Article 13 of the Corporate Tax Code No. 5520, published 21 June 2006.

- **Section reference from local regulation**

Article 13 of the Corporate Tax Code states: "Income shall be considered to have been wholly or partially distributed in a disguised manner through transfer pricing, if the company engages in purchase of goods and services with related parties at prices or at amounts which they determine do not comply with the arm's-length principle."

Transfer pricing provisions have been effective since January 2007. There are two relevant Cabinet decrees, published in December 2007 and April 2008. Further, three communiqués have been issued by the Ministry of Finance: the General Communiqué on Disguised Profit Distribution by Means of Transfer Pricing Serial Nos. 1, 2, 3 and 4.

Additionally, the Turkish Revenue Administration (TRA), under the Ministry of Finance, issued guidance in 2009 regarding MAPs and in 2010 regarding disguised profit distribution through transfer pricing.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Turkey is a member of the OECD.

The preamble to the law covering transfer pricing states that the provisions of international regulations, especially the OECD Guidelines, are taken as a reference. However, there is no particular reference to the OECD Guidelines in the actual content of the regulations, including Article 13 of the Corporate Tax Code, the related decrees and communiqués. In addition, the law diverges from the OECD approach on two major points: the term "related party" is broadly defined, and it also applies to domestic related-party transactions.

In local transfer pricing rules, business restructurings are not referenced. However, there are strict provisions in local tax codes regarding anti-abuse rules and the substance-over-form principle.

In general, transfer pricing rules place significant documentation and disclosure requirements on Turkish taxpayers, and with the latest changes, having appropriate and on-time transfer documentation provide 50% penalty protection to taxpayers. On the other hand, the tax inspectors are still not fully aligned with the OECD Guidelines, and there is a very strong tendency toward using the CUP method despite the difficulties in comparability and the fact that the regulations endorse all of the transfer pricing methods listed in the OECD Guidelines.

b) BEPS Action 13 implementation

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, the existing documentation requirement has been expanded by Turkey's Presidential Decision No. 2151, published in the Official Gazette dated and effective from 25 February 2020 to include OECD documentation, that is, the Master File, annual transfer pricing report and CbCR for the 2019 accounting period.

- Coverage in terms of Master File, Local File and CbCR

  Master File: the multinational taxpayers that have net sales and assets greater than TRY500 million are required to prepare a Master File. The first Master File will be related to the period 2019 and has to be prepared until following year-end and shall be submitted to tax authorities upon request.

  Local File: the requirement is the same as the former annual transfer pricing report and all taxpayers that have cross-border transactions (for large corporation taxpayers, both domestic and cross-border intercompany transactions) have to prepare a local transfer pricing report. In addition, companies operating in free trade zones are required to prepare a transfer pricing report for

their domestic intercompany transactions.

CbCR: for taxpayers belonging to an MNE group that has consolidated revenue of EUR750 million or above. The first CbCR is for the year 2019 and will be submitted by 31 December 2020.

- Effective or expected commencement date

The effective commencement date is 1 January 2019.

- Material differences from OECD report template or format

There are no material differences from the OECD report template or format. However, there is local language requirement.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

This is not applicable.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, there are transfer pricing documentation guidelines, rules and strict documentation requirements. Transfer pricing documentation is required to be prepared contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

The transfer pricing documentation report (i.e. local file) has to be prepared annually under the local jurisdiction regulations.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is none specified.

- **Master File**

Corporate income taxpayers that are part of an MNE group and have both previous year-end balance sheet assets and a net sales revenue in income statement amounting to TRY500 million and above are required to prepare a Master File.

- **Local File**

There is none specified.

- **CbCR**

The ultimate parent company of a multinational enterprise group that is resident of Turkey is required to electronically submit a CbC report to the Turkish tax authority by the end of the 12th month following the relevant fiscal period, if the consolidated group revenue in the previous fiscal period is EUR750 million or above.

- **Economic analysis**

There is none specified.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation requirement for domestic intercompany transactions for companies registered with the Large Taxpayers Tax Office (*Büyük Mükellefler Vergi Dairesi Başkanlığı*).

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language.

"If the relevant information and documents are presented in a foreign language, their Turkish translations are required to be submitted," according to the General Communiqué on Disguised Profit Distribution by Means of Transfer Pricing (Serial No. 1).

- **Safe harbor availability, including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers are required to disclose information about all related-party transactions (domestic and cross-border) performed with related parties, regardless of the magnitude, on their transfer pricing form, which should also include the following information in detail:

- Name or title of the local related party
- Taxpayer identification number
- Name of the foreign related party and the jurisdiction in which it resides

Other required disclosures include the sale and purchase of commodities, both in the form of raw material and finished goods; the lease of any property; construction, R&D and commission-based services; all related-party financial transactions, including lending and borrowing funds, marketable securities, insurance and other transactions; and intragroup services. Taxpayers must also disclose the transfer pricing methods applied in the related-party transactions.

A draft general communiqué, in compliance with Action 13, requires that the following appendices be submitted:

- Appendix 2: if corporate taxpayers' sales or purchases of goods or services with related parties during a fiscal year exceed TRY30,000, they are required to complete the form on transfer pricing, controlled foreign corporation and thin capitalization regarding such transactions, and submit it to the relevant tax office in the attachment of the corporate tax return.
- Appendix 4: if corporate taxpayers have assets on the balance sheet of the previous year-end and net sales revenue in the income statement of TRY100 million or above, they are obligated to electronically submit the transfer pricing form on transactions conducted with related parties exceeding TRY30,000 within a fiscal year by the end of the second month following the filing deadline of the corporate tax return.

- **Related-party disclosures along with corporate income tax return**

Same as above.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed on or before 25 April.

- **Other transfer pricing disclosures and return**

The documentation should be filed on or before 25 April.

- **Master File**

The Master File should be prepared by the following year-end and should be submitted within 15 days of the request by the Turkish tax authority.

- **CbCR preparation and submission**

The CbCR should be submitted electronically within 12 months after the end of the reporting period.

- **CbCR notification**

Notifications will be submitted annually by the end of June of the relevant year.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation should be finalized by the time of submission of the tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Documentation reports are required to be prepared by 25 April of the following fiscal year, which is also the due date of the corporate income tax return. The reports are submitted if/when they are requested by the Tax Authority.

- **Time period or deadline for submission upon tax authority request**

The taxpayer has to submit the transfer pricing documentation within 15 days once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions – Yes**
- **Domestic transactions – Yes**

b) Priority and preference of methods

There is no priority among the methods. However, there is a priority among comparables, and if there are internal comparables, they should be analyzed first. Only if there is a lack of internal comparables (or if these internal comparables are not accurate or reliable enough) can external comparables be used.

8. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are preferred.

- **Single-year vs. multiyear analysis**

A multiyear analysis is preferred.

- **Use of interquartile range**

The interquartile range is preferred.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Fresh benchmarking is preferred.

- **Simple, weighted or pooled results**

The weighted average is preferred.

- **Other specific benchmarking criteria, if any**

There is a preference for applying independence and unconsolidated financials criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are no specific transfer pricing penalties, but failure to submit, late submission or incorrect disclosures trigger a tax audit.

Under the Tax Procedural Code, late filing, incomplete or inaccurate filing of reports are subject to a procedural tax penalty. Additionally, a "Penalty Protection Regime" applies where taxpayers may get a penalty reduction of 50% in the case of full and timely preparation of transfer pricing documentation. Provided that the documentation liabilities for transfer pricing are fulfilled completely and on time, tax loss penalty for the taxes that are not accrued on time or taxes under-assessed concerning the profit disguisedly distributed is applied with 50% deduction.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes

- **Is interest charged on penalties or payable on refund?**

Additionally, late-payment interest (1.6% monthly) and a tax loss penalty (which is the same as the tax loss amount) are charged to the taxpayer.

b) Penalty relief

A 50% penalty relief will be applied to residual taxes due to disguised profit distribution, provided for taxpayers that have submitted proper transfer pricing documentation.

It is also possible to come to a settlement regarding the tax loss amount and the tax penalty assessed. In settlement negotiations, taxpayers may assert a good-faith defense.

It is possible to come to a settlement regarding the tax loss amount and the tax penalty assessed by the tax authority or the filing of a lawsuit against the assessment. Additionally, although not widely applied in Turkey, taxpayers can file a request to begin an MAP with the competent authorities.

10. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations on transfer pricing assessments. Rather, the general rule for the statute of limitations is applicable, which is five years from the accrual of the tax payment.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

For medium- and large-sized multinational firms, the likelihood of an annual tax audit may be considered to be high. Most large multinationals are handled by a specific tax office (Large Taxpayers Tax Office) that requests information from these taxpayers throughout the year.

In this respect, the risk of transfer pricing scrutiny during a tax audit may be considered to be high, as tax inspectors generally focus on related-party transactions.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of a challenge to the transfer pricing methodology is similarly high. Among tax inspectors, there is a strong tendency for using the CUP method, regardless of the inherent difficulties based on comparability. It has also been common practice to use secret comparables, which the taxpayer can challenge if the case is taken to litigation.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

For medium- and large-sized multinational firms, the likelihood of an annual tax audit may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The frequency of transfer pricing audits has increased, and these audits are mainly focused on intragroup charges, such as management fees and cost allocations. Tax inspectors often look to find out whether specific services or projects were provided to the recipient under management services (e.g., preparation of a procurement agreement, redesign of a compensation policy or legal advice for a court case). If the service charges are not documented with specificity about the type of service being provided to the Turkish entity, then they are likely to be treated as royalties (and therefore subject to withholding tax), based on the claim that industrial or commercial experience is used.

Also, taxpayers in sectors, such as pharmaceuticals, telecommunications, banking and finance, and automotive, are often continuously audited. Moreover, most of the tax revenue in Turkey is generated through indirect taxes; thus, companies subject to excise taxes are usually subject to closer examination.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Companies can apply for unilateral, bilateral or multilateral APAs for their cross-border intercompany transactions.

- **Tenure**

The term could be as long as five years.

- **Rollback provisions**

With APAs, it has been uncertain as to the actions that would be applied for previous periods outside the scope of the agreement. Although taxpayers with an APA have determined their transfer pricing methods prospectively by agreeing with the Ministry of Finance, thereby eliminating the risk in this way, they would still be subject to the tax risks relating to previous periods when the method in question was not applied.

The following provisions have been added to sub-article 5 of Article 13 of Law No. 5520:

- The taxpayer and Ministry can ensure the application of the designated method to previous taxation periods that have not lapsed by including the periods in the scope of the agreement, provided that it is possible to apply the penalty and correction provisions of the Tax Procedures Law and the conditions of the agreement are also effective in those periods. In this case, the agreement shall substitute for the petition on notification mentioned in the relevant provisions, and declaration and payment transactions shall be consummated accordingly. The taxes paid previously shall not be rejected and refunded due to the application of the agreement to previous taxation periods.
- This amendment has allowed the application of the method determined under the agreement to be applied to the taxation periods that have not lapsed in the case of an agreement between the taxpayer and the Ministry of Finance. Therefore, taxpayers have been allowed to retroactively apply the relevant APA (rollback) and hence eliminate tax risks, provided they retroactively pay the tax principal and interest charge.
- In connection with an application for an APA with a rollback that results in a transfer pricing adjustment, there will neither be the imposition of a deemed dividend (arising as a result of the transfer pricing adjustment) nor an associated withholding tax on such deemed dividend if the following conditions are met:
  - Any corporate income tax difference related to the amount is paid on time.
  - In the framework of general accounting principles, the amount is added to the earnings of the related year and amended within the books of the related year.
  - An amount is booked as an account receivable from the related party resident abroad or as paid in cash to the entity in Turkey.

- **MAP opportunities**

Applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

According to local thin-capitalization regulation, if the ratio of the borrowings from shareholders or from people related to the shareholders exceeds three times the shareholders' equity of the borrower company at any time within the relevant year, the exceeding portion of the borrowing will be considered thin capital and the corresponding interest will not be deductible. Accordingly, the ratio of loans received from related parties to shareholders' equity must be no more than 3:1 in order to eliminate Turkish thin-capitalization issues.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Federal Tax Authority (FTA).

b) Relevant transfer pricing section reference

- Name of transfer pricing regulations or rulings and effective date of applicability

There are currently no local transfer pricing regulations in place, except the requirement around submission of country by country reports (CbCR) by multinational companies which is effective from January 1, 2019.

- Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The United Arab Emirates (UAE) is not a member of the OECD. However, it has joined the BEPS Inclusive Framework.

b) BEPS Action 13 implementation overview

- Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?

No. However, the UAE has issued legislation around CbCR requirements.

- Coverage in terms of Master File, Local File and CbCR

  At present, the UAE has only issued CbCR obligations as part of BEPS Action 13 requirements.

- Effective or expected commencement date

  January 1, 2019.

- Material differences from OECD report template or format

  No material differences in the CbCR format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Not applicable.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, 24 June 2018.

4. Transfer pricing documentation requirements

a) Applicability

- Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?

No.

- Does a local branch of a foreign company need to comply with the local transfer pricing rules?

No. The CbCR requirements are only applicable to the UAE-headquartered MNE groups and there are no additional documentation requirements (such as Master File or Local File) at this stage.

- Does transfer pricing documentation have to be prepared annually?

Yes, CbCR is an annual requirement.

- For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?

This is not applicable.

b) Materiality limit or thresholds

- Transfer pricing documentation

This is not applicable.

- Master File

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The requirements are applicable to the UAE headquartered MNE groups with consolidated group revenue exceeding AED3.15 billion (approx. USD850 million) in previous financial year.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

This is not applicable.

- **Local language documentation requirement**

This is not applicable.

- **Safe harbor availability, including financial transactions if applicable**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related party disclosures in financial statement/annual report**

This is in accordance with accounting standards. As for now, there are no requirements from a TP perspective in the UAE to include such disclosure in the financial statement.

- **CbCR notification included in the statutory tax return**

No, CbCR notification is a separate submission.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

This is not applicable.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

The ultimate parent entities of the MNE groups headquartered in the UAE (i.e., UPE) must file its CbCR no later than 12 months after the last day of the reporting fiscal year of the MNE group.

- **CbCR notification**

Only ultimate parent entities of the MNE groups headquartered in the UAE are required to submit a notification no later than the last day of the reporting fiscal year of MNE group.

b) Transfer pricing documentation/Local File preparation deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

This is not applicable.

- **Time period or deadline for submission upon tax authority request**

This is not applicable.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

- **Local vs. regional comparables**

Not applicable

- **Single-year vs. multiyear analysis**

This is not applicable.

- **Use of interquartile range**

This is not applicable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Not applicable.

- **Simple, weighted or pooled results**

Not applicable.

- **Other specific benchmarking criteria, if any**

Not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Regarding CbCR requirements, failure to comply with the obligations may result in penalties as follows:

- Penalty of AED100,000 (USD27,400) for failure to retain supporting documentation and information
- Penalty of AED100,000 for failure to provide the competent authority with requested information
- Initial penalty of AED1 million (USD274,000), and AED10,000 (USD2,740) to be applied daily until a maximum of AED250,000 (USD68,500) for failure to file the CbCR notification or CbC report
- Minimum penalty of AED50,000 (USD13,700) to a maximum of AED500,000 (USD137,000) for failure to report complete and accurate information

Apart from the additional penalty provided under the third point above, total penalties shall not exceed AED1 million.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

An administrative penalty shall be imposed if the Reporting Entity fails to provide the information required to be reported in a complete and accurate manner of a minimum of AED 50,000 and with a maximum of AED 500,000

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

This is not applicable.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing assessments

This is not applicable.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

Low.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

Low.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

Low.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Not applicable.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Not available at this stage.

- **Tenure**

Not applicable.

- **Rollback provisions**

Not applicable.

- **MAP opportunities**

Limited at this stage.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

There is none specified.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

This is not applicable.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Uganda Revenue Authority (URA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Uganda's TP legislation is contained in the Income Tax Regulations 2011, under Sections 90 and 164 of the Income Tax Act, Cap 340, and became effective since 1 July 2011.

- **Section reference from local regulation**

Section 3 of the Ugandan Income Tax Act.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Uganda is not a member of the OECD.

Ugandan regulations adopt the arm's-length standard and recognize the OECD Guidelines. However, where the OECD Guidelines conflict with the Domestic Taxing Acts, the provisions in the Domestic Taxing Acts take precedence.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Since the tax authority follows the OECD Guidelines, Action 13, with respect to having a local TP file, is applied. However, the other aspects of requiring the taxpayer to have a master file and CbCR may not apply.

- Coverage in terms of Master File, Local File and CbCR

  Only the local file is required.

- Effective or expected commencement date

  There's none specified.

- Material differences from OECD report template or format

  There is no difference; the local TP rules are a replica of the OECD Guidelines.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Yes, and only the local file is required.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

The branch and its head office are considered to be associated parties whose transactions must be structured at arm's length in conformity with Uganda's Income Tax (Transfer Pricing) Regulations, 2011.

The branch is expected to maintain TP documentation in Uganda that verifies that transactions with its head office as well as other associated parties conform with the arm's-length principle. The TP documentation for a year of income should be in place prior to the due date of filing the corporate income

tax (CIT) return for that year.

- **Does transfer pricing documentation have to be prepared annually?**

No.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each subsidiary is expected to maintain TP documentation in Uganda that verifies that its transactions with associated parties are in conformity with the arm's-length principle. The TP documentation for a year of income should be in place prior to the due date of filing the CIT return for that year.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

For in-jurisdiction transactions between related entities, the threshold is UGX500 million in aggregate for the transaction during the year.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

Economic analysis requires taking into account the five comparability factors, i.e., the characteristics of the property or services transferred or supplied; the functions undertaken by the person entering the transaction, taking into account assets used and risks assumed; the contractual terms of the transactions; the economic circumstances in which the transaction takes place; and the business strategies pursued by the associate to the controlled transaction.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. Transactions between two domestic entities should be included in the TP documentation.

- **Local language documentation requirement**

The TP documentation does not need submitted in the local language, and English documentation is acceptable.

- **Safe harbor availability including financial transactions if applicable**

There's none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

There's none specified.

- **Any other disclosure/compliance requirement**

No

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There are no specific TP returns required to be filed with the tax authority. However, most recently, the tax authorities have come up with a related-party disclosure form that has been circulated to most MNEs as part of the initial TP audit procedure.

- **Related-party disclosures along with corporate income tax return**

The related-party disclosure form is not filed with the corporate income tax return.

- **Related-party disclosures in financial statement/annual report**

Yes, the audited financial statements would have a disclosure on related-party transactions. However, the TP rules don't specify the level details to be reported in financial statement and annual report.

The following TP information needs to be disclosed:

- The group organization structure of the entity
- The details of the transaction under consideration
- The TP method, including the reasons for its selection

- The assumptions, strategies and policies applied in selecting the method
- The application of the method, the calculations made and the price adjustment factors considered
- The TP policy agreement
- Such other background information as may be necessary

- **CbCR notification included in the statutory tax return**

This is not applicable

- **Other information/documents to be filed**

This is not applicable; the local TP regulations state that documents pertaining to TP are not to be physically submitted with return forms, but must be in place prior to the due date for filing the income tax return for the relevant year, and must be in the English language or translated into the English language, prepared at the time the transfer price is established.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

For entities with a year-end of 30 June, the corporate income tax return (CITR) becomes due within six months of the year-end, i.e., by 31 December. For entities with a year-end of 31 December, the CITR becomes due by 30 June of the following year.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbC report preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

TP documentation must be typically finalized by the time of submitting the income tax self-assessment return or upon request by the tax authority within 30 days.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No

- **Time period or deadline for submission upon tax authority request**

The taxpayer has to submit TP documentation within 30 days of the tax authority's request.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions — Yes**
- **Domestic transactions — Yes**

b) Priority and preference of methods

Uganda accepts the five methods specified in the OECD Guidelines:

- CUP
- Resale price
- Cost plus
- TNMM
- Transactional profit split

The most appropriate method is selected based on the circumstances and data available.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local jurisdiction comparables, and a search conducted in regions with economic indicators that are similar to the local jurisdiction is accepted.

- **Single-year vs. multiyear analysis for benchmarking**

Multiple-year (three-year) analysis, as per common practice

- **Use of interquartile range**

Interquartile range calculation using spreadsheet quartile formulae is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year, unless the legal and economic circumstances of transactions being analyzed have changed.

- **Simple, weighted or pooled results**

There is no reference prescribed in the local TP regulations but, in practice, the weighted average is used.

- **Other specific benchmarking criteria, if any**

A well-laid-out search process, as provided for in the OECD Guidelines, has to be followed. It includes:

- Determination of the years to be covered
- Broad-based analysis
- Understanding of the controlled transactions
- Selection of the most appropriate method
- Existing internal comparable data
- Sources of external comparables
- Identification of potential comparables
- Comparability adjustments
- Interpretation and use of the data collected

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

TP documentation being the first line of defence by the taxpayer, any incomplete information or inconsistencies within the TP documentation are to the detriment of the taxpayer. The Tax Authority, therefore, may either disregard the facts presented in the "incomplete documentation" or rely on them while making conclusions on the arm's-length nature of the transactions.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Specific TP penalties apply for failure to comply with TP documentation requirements. Where one fails to put in place documentation under the TP regulations, the person is liable, upon conviction, to imprisonment for a term not exceeding six months or a fine not exceeding 25 currency points (currently, UGX500,000) or both.

The penalty for late payment is 2% per month of the shortfall and 2% of the gross tax liability for the year for which the return is filed late. Other civil and criminal penalties may apply under specific circumstances.

Furthermore, the domestic tax laws introduced penalties in which a person who, upon request by the Commissioner, fails to provide records on TP within 30 days after the request is liable to a penal tax equivalent to UGX50 million (effective from 1 July 2017).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In the event that the URA raises an upward TP adjustment, a 20% penalty on the shortfall will be imposed if the provisional tax paid is less than 90% of the actual tax liability.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not specified within the TP rules. We note however, that if the URA raises an upward TP adjustment, a 20% penalty on the shortfall will be imposed if the provisional tax paid is less than 90% of the actual tax liability.

- **Is interest charged on penalties or payable on a refund?**

Interest on outstanding tax payable is 2% per month (simple interest) but capped to a maximum of the aggregate of principal tax and penalty tax (i.e., interest should not exceed the sum of principal tax and penalty tax).

b) Penalty relief

There is no specific penalty relief. However, penalties may be

reversed in case of successful objection to a tax assessment before the tax authority or appeals of tax decisions made before the Tax Appeals Tribunal or the courts of law.

10. Statute of limitations on transfer pricing assessments

It is three years, but it may be open if new information is obtained by the tax authority. Considering that TP regulations came into force in July 2011, the period before this date would be outside TP review. However, other income tax provisions regarding recharacterizing of the transaction may apply.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

As a temporary measure and response to COVID-19, the tax authority at one point suspended interaction with the taxpayers (in the form of in-person meetings), hence only focused on the online issue audits.

However, with ongoing mass vaccination drive, this measure has been relaxed and the tax authority resumed physical interactions with taxpayers.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

It's medium. The rationale of the selected scale is such that TP audits take a long time to close. Therefore, the tax authority may not conduct many reviews in the TP space.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

It's medium, though the focus by the tax authority is mainly on the analysis of the relevant costs upon which the TP method has been premised.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

If disputes on a particular methodology arise, there is a high likelihood of adverse TP adjustments.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Management fees and royalties: The general focus by the tax authority is on MNEs, irrespective of the sector, with significant related-party transactions.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Uganda. Applications for multilateral APAs are allowed. The tax authority may enter into an APA with the person either alone or together with the competent authorities of the jurisdiction or countries of the person's associate or associates.

- **Tenure**

The APAs must specify the years of income to which the agreement applies. Although the regulations provide that the APA is for a fixed period of time, the exact number of years covered by APAs is not mentioned.

- **Rollback provisions**

There's none specified.

- **MAP opportunities**

There's none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest on loans received by the subsidiary from its parent company is a deductible expense for CIT purposes, subject to interest capping rule as clarified below:

The amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group shall not exceed 30% of the tax earnings before interest, taxes depreciation and amortization.

A taxpayer who exceeds 30% of the tax earnings before interest, tax depreciation and amortization may carry forward the excess interest for not more than three years, and the excess interest shall be treated as incurred during the next year of income.

Tax earnings before interest, tax and depreciation means the sum of gross income less allowable deductions, except interest, depreciation and amortization.

Group, in this context, means people other than individuals with common underlying ownership

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

State Tax Service of Ukraine.

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 39, subparagraph 14.1.159, paragraph 120.3, 201.4 of the Ukrainian Tax Code (the TCU) regulates transfer pricing in Ukraine. Generally, the provisions of the law are in line with the OECD Guidelines.

A number of rules and provisions related to transfer pricing are also established by other laws and decrees, as follows:

- Decree of the Cabinet of Ministers of Ukraine No. 381 (4 June 2015) defines the new algorithm for the interquartile range calculation.
- Decree of the Cabinet of Ministers of Ukraine No. 191 (29 March 2017) defines an approval of the procedure for the weighted-average profit-level indicator (PLI) calculation of the comparable party for transfer pricing purposes.
- Decree of the Cabinet of Ministers of Ukraine No. 480 (4 July 2017) provides a list of organizational legal forms of non residents, which do not pay income tax (corporate tax) in the jurisdiction of registration, that match the criteria specified by subparagraph 39.2.1.1 of Article 39 of the Tax Code of Ukraine.
- Decree of the Cabinet of Ministers of Ukraine No. 1045 (27 December 2017) provides the list of countries (territories) that match the criteria specified by subparagraph 39.2.1.2 of Article 39 of the Tax Code of Ukraine.
- Decree of the Cabinet of Ministers of Ukraine No. 1221 (9 December 2020) provides the list of goods traded on the commodity exchanges and the list of world commodity exchanges for the purpose of CUP method application to improve tax control over transfer pricing.
- Order of the Cabinet of Ministers of Ukraine No. 8 (18 January 2016) defines the forms and procedure for preparation of a report on controlled transactions.
- Order of the Cabinet of Ministers of Ukraine No. 839 (31 December 2020), defines the forms and procedure for preparation of a notification on participation in a MNE group.

The tax authorities provide administrative interpretation and guidance on applying the transfer pricing rules, the release of unified and individual tax rulings, orders, and opinions expressed in the official press and public media.

Local accounting standards: These are the Ukrainian GAAP or International Financial Reporting Standards (IFRS).

Ukraine is not an OECD member; however, it has joined to the BEPS minimal standards in terms of transfer pricing global reporting format: Local File, Master File, CbCR notification and CbCR.

- **Section reference from local regulation**

Provided in the section above.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Yes, according to paragraph 521 of the section on transitional provisions to the TCU, violations in the tax sphere (including transfer pricing) are subject to penalties relief due to COVID 19 (up to the end of official quarantine measures).

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Notwithstanding that Ukraine has incorporated the main standards of the OECD Guidelines, direct connection between national transfer pricing rules and the OECD is not prescribed. The Ukrainian tax authorities are not obliged to follow the OECD Guidelines, as Ukraine is not an OECD member jurisdiction. However, the tax authorities follow the OECD standards and recommendations in practice. Ukrainian legislation that does not address the wide pool of practical issues arising during an arm's-length analysis although OECD principles usually help.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

[1] **https://tax.gov.ua/en/**

- **Coverage in terms of Master file, Local file and CbCR**

Yes – all the above.

- **Effective or expected commencement date**

The first reporting year for Master File is the group's financial year that ends in 2021. The first year for the CbCR notification is 2020. The first reporting year for the CbCR is the group's financial year that ends in 2021.

- **Material differences from OECD report template or format**

Ukraine has local transfer pricing documentation requirements (Local File) that provide for more extensive requirements to the content of the file. The following additional information must be included:

- Detailed description of goods (works, services), including their physical characteristics, market reputation, origin jurisdiction, trademarks, etc.
- Supply chain and creation of added value in a controlled transaction
- Payments made within the controlled transaction
- Factors influencing the pricing and business strategies applied
- Amount of a controlled transaction and its profitability calculated based on actual financial data of the tested party to the controlled transaction (no planned/policy indicator can be used)
- Description and justification of the profitability calculation including provision of algorithm for allocation of operation expenses and income pertained to the specific controlled transaction
- Applicable transfer pricing adjustments
- Justification of the business purpose performing a controlled transaction

Moreover, the transfer pricing rules in Ukraine cover not only the transactions with related parties but also transactions with:

- Counterparties registered in low-tax jurisdictions: Decree of the Cabinet of Ministers of Ukraine No. 1045 (27 December 2017) provides the list of countries (territories) that match the criteria specified by subparagraph 39.2.1.2 of Article 39 of the Tax Code of Ukraine.
- Tax-transparent legal entities: Decree of the Cabinet of Ministers of Ukraine No. 480 (4 July 2017) provides a list of organizational legal forms of non residents, which do not pay income tax (corporate tax) in the jurisdiction of registration, that match the criteria specified by subparagraph 39.2.1.1 of Article 39 of the Tax Code of Ukraine.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

The TCU does not include such concept.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, Article 39 of the TCU includes specific requirements regarding the content of Local File; these differences are described above. Local transfer pricing documentation should be prepared annually and submitted upon the request of tax authorities within 30 days after receiving such request.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a permanent establishment of a non resident in Ukraine determines its taxable income at arm's length and prepares the transfer pricing documentation for each reporting period according to the requirements specified in Article 39 of the TCU if the transaction volume with the non resident exceeds UAH10 million (approx. USD370,000).

- **Does transfer pricing documentation have to be prepared annually?**

Yes.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each legal entity with annual revenue exceeding UAH150 million (approx. USD5.5 million) should file the report on the controlled transaction (specific local transfer pricing reporting form) and the transfer pricing documentation (Local File) on a separate basis. The Master File may be requested from one legal entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Transactions are recognized as controlled if both of the following conditions are met:

- The taxpayer's revenue exceeds UAH150 million (excluding indirect taxes) for the corresponding reporting year.
- The volume of transactions with each separate counterparty exceeds UAH10 million (excluding indirect taxes) for the corresponding reporting year.

- **Master File**

It applies to MNEs with annual consolidated group revenue equal to or exceeding EUR50 million in the previous financial year.

- **Local File**

It is expected to be prepared for each separate transaction that falls under the transfer pricing control.

- **CbCR**

It applies to MNEs with annual consolidated group revenue equal to or exceeding EUR750 million in the previous financial year.

- **Economic analysis**

Must be prepared for each separate type of the controlled transactions that fall under the transfer pricing control.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation and all supporting documents must be prepared and submitted only in Ukrainian.

- **Safe harbor availability, including financial transactions if applicable**

Safe harbor concept is not prescribed in the TCU.

- **Is aggregation or individual testing of transactions preferred for an entity**

The TCU provides conditions under which the separate transactions may be analyzed on an aggregated basis. Namely, aggregation is possible if such transactions are closely related or are a continuation of each other or are continuous or regular in nature.

- **Any other disclosure/compliance requirement**

The annual preparation and submission of the local transfer pricing form, the report on controlled transactions, which contains an item-by-item disclosure of all controlled transactions indicating the transfer pricing testing parameters: tested party, method, profit-level indicator and its numeric value, and the database used.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

As mentioned above, Ukrainian transfer pricing rules require submitting the report on controlled transactions disclosing all the controlled transactions of a taxpayer for the reporting period, indicating the transfer pricing testing parameters: tested party, method, profit-level indicator and its numeric value, and the database used.

- **Related-party disclosures along with corporate income tax return**

Taxpayers must report self-adjustments of tax liabilities arising due to the application of transfer pricing rules in a special transfer pricing annex to the corporate profit tax (CPT) return.

- **Related-party disclosures in financial statement/annual report**

No.

CbCR notification included in the statutory tax return

No.

- **Other information/documents to be filed**

No.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Must be submitted during 60 calendar days after the end of the calendar year.

- Other transfer pricing disclosures and return

The report on controlled transactions must be submitted before 1 October of the year following the reporting one.

The transfer pricing documentation (Local File) must be submitted within 30 calendar days upon the tax authorities' request.

- Master File

Should be submitted upon the receipt of the request made by the Ukrainian tax authorities within 90 days from such receipt.

- CbCR preparation and submission

Must be filed no later than 12 months following the reporting year.

- CbCR notification

The notification should be submitted before 1 October of the year following the reporting (calendar) year.

b) Transfer pricing documentation/Local File preparation deadline

There is no statutory deadline for the submission of transfer pricing documentation; however, it needs to be submitted within 30 calendar days upon the tax authorities' request.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submission of transfer pricing documentation or Local File?

No.

- Time period or deadline for submission upon tax authority request

The taxpayer has 30 calendar days to submit the transfer pricing documentation once requested by the tax authorities.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

No.

b) Priority and preference of methods

The Ukrainian transfer pricing rules provide for the five methods similar to those specified by the OECD Guidelines.

The CUP method is given priority. In cases when the resale-price method, cost-plus method, net-margin or profit-split methods may be applied by the taxpayer with the same reliability, the resale-price or cost-plus method should be used. Profit-based transfer pricing methods may be used without specific restrictions.

For controlled transactions involving the export and import of goods from the list approved by Decree of the Cabinet of Ministers of Ukraine No.1221 (9 December 2020), the CUP method based on information from commodity exchanges applies. To apply other methods in such situations, a taxpayer in the transfer pricing documentation must provide data on Profit level indicator (PLI) of all related parties of the taxpayer that took part in the purchase and sale of the goods in the supply chain (up to the first not-related counteragent).

8. Benchmarking requirements

- Local vs. regional comparables

A local benchmarking study (Ukrainian comparables) must be used if the tested party is a Ukrainian entity.

- Single-year vs. multiyear analysis for benchmarking

Both are possible. However, the best practice is to use single-year (similar to the year of the controlled transaction); the

selection of multiyear analysis should be substantiated in the transfer pricing documentation file.

- **Use of interquartile range**

The interquartile range must be used.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is required every year. According to paragraphs 39.3.3.3, 39.2.2.1 and 39.3.2.8 of the Tax Code of Ukraine, new benchmarking studies must be prepared. This position is supported by the local tax authorities, as well.

- **Simple, weighted or pooled results**

The weighted average must be used.

- **Other specific benchmarking criteria, if any**

Paragraph 39.3.2.9 of the Tax Code of Ukraine prescribes the list of three mandatory criteria that must be used:

1. **Establishing comparability using activity code (NACE Rev.2)**
2. **Financial criteria, no losses in more than one year in the period selected for arm's-length calculation**
3. **Twenty-five-percent independence criteria**

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Potentially, the transfer pricing documentation that does not satisfy the requirements prescribed by TCU may be regarded as non-submitted, which implies a penalty at 3% of transaction volume, for which documentation has not been submitted, but no more than 200 subsistence minimums per year.

Subsistence minimum: 2022 – UAH 2 481.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Violation of the legislation on submission of the report on controlled transaction (local form)

Non-submission of the transfer pricing report	▸ 300 times the subsistence minimum for an able-bodied person, as of 1 January of the reporting year (further – subsistence minimum)
Late submission of the transfer pricing report	▸ 1 subsistence minimum per calendar day of late submission (up to 300 times the subsistence minimum)
Non-inclusion of transactions into the transfer pricing report	▸ 1% of the amount of the undeclared transactions in the submitted report (up to 300 times the subsistence minimum, for all transactions)
Late declaration of the controlled transactions in the submitted transfer pricing report (in case of the adjusted transfer pricing report submission)	▸ 1 subsistence minimum per calendar day of late declaring of transaction in the submitted report (up to 300 times the subsistence minimum)
Non-submission of the transfer pricing report after 30 calendar days upon expiry of the term for penalty payment for non-submission	▸ 5 times the subsistence minimum, for each calendar day of non-submission of the transfer pricing report (up to 300 times the subsistence minimum)
Non-submission of the adjusted transfer pricing report after 30 calendar days upon expiry of the term for penalty payment for non-submission	▸ 1 subsistence minimum per calendar day of non-submission of the adjusted transfer pricing report (up to 300 times the subsistence minimum)

Violation of the legislation on submission of transfer pricing documentation (Local File)

Non-submission of the transfer pricing documentation	▸ 3% of the amount of the controlled transactions (up to 200 times the subsistence minimum, for all transactions)
Non-submission of the transfer pricing documentation after 30 calendar days upon expiry of the term for penalty payment for non-submission	▸ 5 times the subsistence minimum per calendar day of non-submission of the transfer pricing documentation (up to 300 times the subsistence minimum)
Late submission of the transfer pricing documentation	▸ 2 times the subsistence minimum per calendar day of late submission (up to 200 times the subsistence minimum)

Violation of the legislation on submission of Master File

Non-submission of the Master File	▸ 300 times the subsistence minimum as of 1 January of the reporting year
Non-submission of the Master File after 30 calendar days upon expiry of the term for penalty payment for non-submission	▸ 5 times the subsistence minimum per calendar day of non-submission of the Master File (up to 300 times the subsistence minimum)

Late submission of the Master File	▸ 3 times the subsistence minimum per calendar day of late submission (up to 300 times the subsistence minimum)

Violation of the legislation on submission of CbCR

Non-submission of the CbCR	▸ 1,000 times the subsistence minimum as of 1 January of the reporting year
Non-submission of the CbCR after 30 calendar days upon expiry of the term for penalty payment for non-submission	▸ 5 times the subsistence minimum per calendar day of non-submission of the CbCR (up to 300 times the subsistence minimum)
Non-inclusion of information about a member of an MNE group into the CbCR	▸ 1% of the amount of income (revenue) of a member of an MNE group, information about which is not included in the CbCR (up to 1,000 times the subsistence minimum)
Providing untrusted information	▸ 200 times the subsistence minimum as of 1 January of the reporting year
Late submission of the CbCR	▸ 10 times the subsistence minimum per calendar day of late submission (up to 1,000 times the subsistence minimum)

Violation of the legislation on submission of notification on participation in an MNE group

Non-submission of the notification	▸ 50 times the subsistence minimum as of 1 January of the reporting year
Non-submission of the notification after 30 calendar days upon expiry of the term for penalty payment for non-submission	▸ 5 times the subsistence minimum per calendar day of non-submission of the notification (up to 300 times the subsistence minimum)
Providing untrusted information	▸ 50 times the subsistence minimum as of 1 January of the reporting year
Late submission of the notification	▸ 1 time the subsistence minimum per calendar day of late submission (up to 100 times the subsistence minimum)

Constructive dividends concept

Profit withdrawal in controlled transactions in the amount exceeding the arm's-length prices (i.e. the amount of understated income/overstated expenses of an entity in the controlled transaction) is equivalent to payment of dividends and further withholding tax implications.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**

The amount of tax understatement is subject to late-payment interest at a rate of 100%/120% of the discount rate established by the NBU, which is 10% per year as of 21 January 2022.

b) Penalty relief

Penalty relief is provided for the transition period starting 1 September 2013 until the end of 2014, during which the penalty for the understatement of tax liabilities will be UAH1. Additionally, there is penalty relief for all understatements of corporate tax liabilities in 2015. No penalty relief is provided for periods after 1 January 2016.

According to paragraph 52[1] of the Section on Transitional provisions to the TCU, violations in the tax sphere (including transfer pricing) are subject to penalties relief due to COVID-19 (up to the end of official quarantine measures).

10. Statute of limitations on transfer pricing assessments

The statute of limitations for transfer pricing assessments is seven years (2,555 days, as specified by the TCU) from the last date for filing the CPT, or from the actual day the CPT return was filed if it was later than the due date. Statute of limitation is currently suspended on the basis of COVID-19 measures.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of Transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be high. According to the TCU, transfer pricing audits should be performed independently from other tax audits. The tax authorities

shall not have the right to conduct more than one audit of a controlled transaction of the taxpayer during a calendar year. In general, the likelihood of an annual tax audit may be assessed as high, and so is the likelihood of a transfer pricing review.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the transfer pricing methodology will be challenged during the course of an audit may be considered to be high if the method selection is not duly formalized and/or inconsistent with the transfer pricing requirements.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Changing the methodology itself does not lead to the transfer pricing adjustment. However an adjustment is possible if application of a new methodology reveals failure to comply with the arm's length principle.

- **Specific transactions, industries and situations, if any, more likely to be audited**

No industry preference; any company can be selected for transfer pricing audit based on risk analysis.

13. Advanced Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Decree of the Cabinet of Ministers of Ukraine No. 504 (17 July 2015) defines the procedures and requirements for APAs between the tax authorities and the taxpayer (unilateral, bilateral and multilateral APAs are permissible).

Decree of the Cabinet of Ministers of Ukraine No. 518 (04 July 2018) features amendments to the procedures and requirements for APAs between the tax authorities and the taxpayer (unilateral, bilateral and multilateral APAs are permissible). At the time of this publication, there were no APAs signed by the tax authorities.

- **Tenure**

It is up to five years.

- **Rollback provisions**

It is available, although the number of years is not specified.

- **MAP opportunities**

Yes, MAP opportunities are available. Most of Ukraine's double taxation treaties provide a three-year limitation period for filing MAP applications.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Thin-capitalization rules apply to all loans received by resident companies from non resident persons where the debt is greater than 3.5 times the company's equity. Deductions for interest paid on such loans is limited to 50% of profits before tax (plus the amount of financing expenses and depreciation) for the relevant tax period. Non deductible interest may be carried forward to future periods, but the carry forward amount is reduced by 5% annually.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

Her Majesty's Revenue and Customs (HMRC).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The United Kingdom's transfer pricing legislation is set out in Part 4 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) - were enacted in February 2010 and took effect for all accounting periods ending on or after 1 April 2010. This covers cross-border and UK-to-UK transactions between related parties.

- **Section reference from local regulation**

For accounting periods beginning on or after 1 April 2018, the UK transfer pricing legislation operates by reference to the version of the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations published by the OECD on 10 July 2017 (the OECD 2017 Guidelines) by Treasury Order in SI 2018.266 in exercise of powers conferred in TIOPA 2010, Section 164(4)(b).

Related parties are defined by the "participation condition" in Section 148 TIOPA 2010 and the related interpretative sections.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The UK is a member of the OECD and the OECD Guidelines are effectively imported into the UK transfer pricing rules because the guidelines are required to be used in interpreting the rules. Section 164 of the TIOPA 2010 confirms that the UK's transfer pricing provisions are to be construed in alignment with Article 9 of the OECD Model Tax Convention and its associated transfer pricing guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Currently there is no prescribed format of the local file in the UK so an OECD Guidelines Chapter V approach should be acceptable as long as all key transfer pricing risks are covered. However, following the public consultation on transfer pricing documentation in 2021, the UK Government has decided that it will legislate to require the largest businesses to maintain a master file and local file in line with Chapter V of the OECD Guidelines, together with a supporting summary audit trail, to take effect from April 2023.

It is noted that the following comments relate to the current period (October 2021).

- Coverage in terms of Master File, Local File and CbCR

  As noted above, a master file and local file in a specific format are currently not prescribed within the UK transfer pricing legislation. A CbCR report is to be filed where the ultimate parent entity (UPE) is located in the UK in line with OECD guidelines – this is applicable from 1 January 2016.

- Effective or expected commencement date

  Following the public consultation on transfer pricing documentation in 2021, the UK Government has decided that it will legislate to require the largest businesses to maintain a master file and local file and a supporting summary audit trail, to take effect from 1 April 2023.

  A CbCR report is to be filed where the ultimate parent entity is located in the UK – this is applicable from 1 January 2016.

- Material differences from OECD report template or format

  With effect from April 2023, it is intended that the master file and local file will require a supporting summary audit trail. There are no material differences from OECD format for CbCR.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Existence or otherwise of a documentation does not give

[1] **https://www.legislation.gov.uk/ukpga/2010/8/contents**

a taxpayer a penalty protection. See below paragraph on penalty.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, transfer pricing documentation, which sets out the evidence of compliance with Part IV TIOPA, needs to be prepared contemporaneously.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, transfer pricing rules are applicable by proxy for UK branches and permanent establishments (PEs) of non-UK companies in respect of hypothesised dealings between the PE and the enterprise of which it is part on the basis of a separate and independent enterprise, in addition to group transactions attributed to the PE. The analysis will depend on the applicable double taxation agreement.

- **Should transfer pricing documentation be prepared annually?**

Yes, taxpayers should maintain appropriate evidence that transactions meet the arm's-length standard having regard to the UK law in Part IV TIOPA and showing that this position has been considered for each relevant accounting period.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

No, it is not required by law to have stand-alone transfer pricing reports for each UK entity.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is an exemption from the application of transfer pricing rules for small- and medium-sized enterprises (SMEs). For the calculation of profits, the legislation provides an exemption from transfer pricing rules for transactions carried out by a business that is a small- or medium-sized enterprise. However, the exemption only applies to transactions with territories for which there is a full non-discrimination article in the relevant treaty. What constitutes an SME for this purpose is a modification of the European recommendation (2003/361/EC).

An entity qualifies as either small- or medium-sized if it meets the staff headcount ceiling for that class (i.e., 50 or 250, for small- or medium-sized, respectively) and one (or both) of either the annual turnover limit or the balance sheet total limit. The annual turnover limit for small enterprises is GBP10 million; for medium-sized entities, it is GBP50 million. The balance sheet limit is GBP10 million for small-sized enterprises and GBP43 million for medium-sized enterprises. Reference is to the characteristics of the whole group of associated enterprises, and not the UK entity on its own, to determine whether the SME exemption applies.

- **Master File**

There is no requirement to produce documentation aligned with BEPS Action 13, although documents so prepared will be regarded as meeting the UK compliance requirements, provided they are full and complete. Following the public consultation on transfer pricing documentation in 2021, the UK Government has decided that it will legislate to require the largest businesses to maintain a master file and local file and a supporting summary audit trail, to take effect from April 2023.

- **Local File**

There is no requirement to produce documentation aligned with BEPS Action 13, although documents so prepared will be regarded as meeting the UK compliance requirements, provided they are full and complete. HMRC places particular importance on ensuring documentation reflects local facts as confirmed by the business locally. Following the public consultation on transfer pricing documentation in 2021, the UK Government has decided that it will legislate to require the largest businesses to maintain a master file and local file and a supporting summary audit trail, to take effect from April 2023.

- **CbCR**

The UK follows the OECD threshold limit of EUR750 million.

- **Economic analysis**

There is no specific requirement in this regard except that

there should be evidence of compliance with the arm's-length principle and Part IV Taxation (International and Other Provisions) Act (TIOPA) must be construed as best aligned with the OECD Transfer Pricing Guidelines, and this extends to the methods set out therein.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions have the same transfer pricing obligations as cross-border transactions under the law. In practice, HMRC may take a risk-weighted approach to the level of documentation produced to support compliance with the arm's-length principle.

- **Local language documentation requirement**

There is no specific language requirement. In practice, it would be highly unusual not to present transfer pricing documentation in English, and in any case, English translations would be requested.

- **Safe harbor availability including financial transactions if applicable**

There are no specified safe harbors in UK law except for SME exemptions.

Transactions that are taxed under UK chargeable gains rules are not subject to transfer pricing, and special rules will apply for them.

- **Is aggregation or individual testing of transactions preferred for an entity**

Not specified.

- **Any other disclosure/compliance requirement**

No.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

There is none specified. There are no return disclosure requirements (save for confirmation, where applicable, that an entity is an SME) and except those required in statutory accounts and in annual reports filed in compliance with any current APAs. The absence of specific requirements may leave prior years open to discovery assessments. This is because, in many cases, there may not be sufficient disclosure in tax returns for HMRC to arrive at a fully informed view on compliance with the arm's-length principle.

- **Related-party disclosures along with corporate income tax return**

No.

- **Related-party disclosures in financial statement/annual report**

As required under the applicable accounting standard.

- **CbCR notification included in the statutory tax return**

There is a separate process to be followed where a CbCR notification is required.

- **Other information/documents to be filed**

There is none specified.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 12 months after the end of the accounting period.

- **Other transfer pricing disclosures and return**

This is not applicable.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

CbCR submission must be done by 12 months after the end of the accounting period. UK filing is required where a UK entity is the ultimate parent entity. UK filing is also required for the top UK entity of an MNE when it is not the UPE of the MNE and the UPE is resident in a jurisdiction that either does not require CbCR or does not exchange CbCR information with HMRC (unless the report is filed by a surrogate entity in a different jurisdiction with an effective exchange mechanism in place with the UK).

- **CbCR notification**

There is a CbCR notification requirement in the UK. Notifications must be made by the last day of the accounting period for periods commencing on or after 1 January 2016 (or

30 September 2017, if later).

b) Transfer pricing documentation/Local File preparation deadline

There is no specific statutory deadline for the preparation of transfer pricing documentation; however, the evidence in support of compliance with the arm's-length principle to all "provisions" needs to exist when the relevant tax return is submitted, even if not in a form that could immediately be submitted.

Given the prescriptive rules in other territories applying the Action 13 guidance on master files and local files, HMRC will expect multinational companies to have their documentation compliant with those rules available on request.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

There is no statutory deadline for the submission of transfer pricing documentation.

- **Time period or deadline for submission upon tax authority request**

Evidence to demonstrate compliance with the arm's-length principle for the pricing of provisions should be made available to HMRC in response to a legitimate and reasonable request related to a tax return. If such a request is made, it is reasonable to assume that 30 days will be allowed to respond to it or such other time as mutually agreed upon.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

HMRC has not issued any specific guidance in relation to transfer pricing matters and there has not been any leniency expressed in relation to transfer pricing documentation deadlines although, in practice, there has been flexibility from HMRC case teams in progressing enquiries and setting timetables to respond to information requests.

HMRC has, as of 13 May 2020, included CbCR in the list of reporting obligations for which COVID-19 will be accepted as a reasonable excuse for late filing.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

Yes.

b) Priority and preference of methods

The OECD Guidelines are followed with regard to pricing methods. HMRC's publicly available transfer pricing guidance is based on adherence to the OECD Guidelines.

8. Benchmarking requirements

There are no specific benchmarking requirements, provided that the approach is consistent with the OECD Guidelines.

- **Local vs. regional comparables**

This is not specified in the legislation, but HMRC accepts regional comparables.

- **Single-year vs. multiyear analysis**

It is not specified in the legislation, but HMRC generally expects single year for the tested party comparing to multiyear comparable data.

- **Use of interquartile range**

Legislation does not specify full versus interquartile range but in practice the interquartile range is accepted by HMRC.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

Generally, a fresh benchmarking search is not needed every year, although it should always be considered if there are specific factors that may render prior searches unreliable.

- **Simple, weighted or pooled results**

It is not specified in either legislation or guidance, and in practice, HMRC has accepted both.

- **Other specific benchmarking criteria, if any**

There is none specified in the legislation, but there is extensive commentary in the HMRC publicly available guidance on best practices in selecting comparables.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Refer to below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The level of penalty is generally tax geared and varies according to a number of factors based mainly on the taxpayer behaviors that led to the incomplete/untimely filing, including whether this was due to careless or deliberate behavior.

There is a penalty of GBP300 plus GBP60 per day for non-filing of CbCR and CbCR notification after notification of failure to file by HMRC. If no CbCR is filed after the MNE has been notified of the failure, HMRC may apply to the tax tribunal to give an order for an increased daily penalty, which can be up to GBP1,000 per day. The penalty for filing inaccurate or incomplete CbCR information when due to careless or negligent behavior is up to GBP3,000 per day.

Under the UK's corporation self-assessment regime, a UK company is obliged to self-assess its liability to UK corporation tax (CT), including its compliance with all aspects of the UK's transfer pricing legislation. There is a penalty regime in UK law that applies in cases, including inaccuracies in tax returns and failure to notify HMRC of an underassessment to tax.

For accounting periods ending on or after 1 April 2008, the provisions for penalties are set out in Schedule 24 of the Finance Act 2007. These provisions are couched in terms of careless or deliberate inaccuracies. They are tax-geared at up to 100% of the potential lost revenue. However, this is now calculated without adjustment for the availability of loss relief, and when the adjustment affects losses only, the lost revenue figure to which the penalty percentage is applied is calculated at 10% of the loss adjustment.

Under this regime, the level of any penalty will reflect the behaviours that led to the inaccuracy. For an error despite taking reasonable care, there is no penalty. For a careless error, there can be a lower tax-geared penalty (up to 30%), and for deliberate inaccuracies, the penalty will be higher (up to 70%). For a deliberate misstatement that is then concealed, the penalty can be up to 100% of the tax lost.

Examples of careless inaccuracies include:

- No attempt to price the transaction
- Shared service center overseas; cost-based, allocation key applied, turnover; modest markup; but no consideration of benefits test for UK entity
- Policy, otherwise arm's length, not properly applied in practice

Examples of deliberate inaccuracies include:

- A clear internal CUP omitted with no reasonable technical analysis to support why it has been disregarded
- A cost-plus return to a company that has in reality controlled the development of valuable intangibles – not demonstrable as a subcontractor to group members
- Material factual inaccuracies in the functional analysis upon which the pricing analysis has been based

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Penalties can be assessed for transfer pricing adjustments; refer to the section above. It is currently HMRC's practice to consider penalties for any transfer pricing adjustment that results in increased taxable profits in the UK, with the level of penalty reflecting the facts and circumstances of the case.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Not specified.

- **Is interest charged on penalties or payable on a refund?**

Interest is charged on overdue tax, set at the UK base rate plus 2.5% (3.25% from 5 April 2022). Interest is also payable on overpaid tax at UK base rate minus 1%, with a lower limit of 0.5% (currently 0.5%).

b) Penalty relief

Penalty protection can apply where the taxpayer is able to demonstrate sufficient due diligence around compliance. This is best shown through transfer pricing documentation that shows that the application of the arm's-length principle was fully considered, following a two-sided functional and factual analysis (at a local level), in preparing the relevant tax return and applied to each intragroup provision included therein.

Normally, adjustments are mutually agreed in the course of an enquiry. Transfer pricing settlements are required to be reviewed by the HMRC Transfer Pricing Board to achieve consistency across the department. There is a similar board-level review for transfer pricing penalties.

As part of the penalty process, HMRC is obliged to consider

suspending the penalty if certain terms and conditions apply.

Taxpayers may appeal to the First-tier Tribunal and subsequent appeals courts, and the process would be as for any other tax appeal. It is currently rare for transfer pricing cases to be taken to a tribunal or court in the UK.

10. Statute of limitations on transfer pricing assessments

Effective from 1 April 2010, discovery assessments may be made four years following the end of the relevant accounting period, for otherwise closed periods. For instances of carelessness, this can be extended to six years, and this is extended to 20 years if there have been deliberate understatements. This is on the basis that the error was not fully disclosed in the body of the tax return or other documents submitted.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

In general, across the taxpayer population, the likelihood of a tax audit is characterised as low. There is no system for annual tax audits, as HMRC takes a risk assessment approach to tax audits. The likelihood that transfer pricing will be reviewed as part of a wider audit is characterised as medium. Most multinational companies will have transfer pricing considered as part of their overall risk assessment, but only those seen as high risk in this area will typically then be subjected to an audit.

Companies with low- or no-tax entities in their supply chain may find themselves within the Diverted Profits Tax (DPT) regime and, for which, there will be a requirement to notify. DPT is currently levied at 25% rather than the CT rate of 19% (from 1 April 2023 DPT will be levied at 31% and the CT rate will increase to 25%).

HMRC launched a Profit Diversion Compliance Facility (PDCF) in 2019, under which companies may elect to use the PDCF, and come forward with detailed analysis to support a position or arrive at an adjustment. HMRC is increasingly using the PDCF as a tool to conduct the equivalent of taxpayer-led audits, freeing up HMRC resources to initiate coverage across more taxpayers.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood of a challenge to the transfer pricing methodology may be considered to be high. Most risk assessments have, at their core, a challenge regarding the methods and the appropriateness of their application.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high; not all audits or PDCF submissions will result in an adjustment, but equally, given HMRC's risk assessment approach, the expectation is that tax authorities will have selected the appropriate cases for enquiry.

- **Specific transactions, industries and situations, if any, more likely to be audited**

There are no industries that are specifically identified by HMRC as being higher-risk ones. In practice, situations in which there is material activity in the UK but the returns are low and where intellectual property is kept offshore with material, base-eroding payments are likely subject to greater scrutiny.

As noted above, the UK has an additional tax that is potentially chargeable, the DPT. A full discussion of the tax is beyond the scope of this guide, but it is a good practice that its application be carefully considered in any transfer pricing case.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Bilateral APA opportunities are available, including, now, for financial transactions, and there has been an uptick in acceptances. There are complexity thresholds to be satisfied to gain admission to the program, but HMRC also considers whether double taxation is likely without an APA and whether it is worthwhile to admit an APA to the program. There is no automatic admission or fees. HMRC has stated in its Statement of Practice a strong preference for bilateral and multilateral APAs, although unilateral APAs remain potentially available but in very limited circumstances (such as for a UK-based group finance company).

- **Tenure**

APAs typically do not exceed five years.

- **Rollback provisions**

Rollbacks may be available, subject to appropriate fact patterns.

- **MAP opportunities**

A MAP request can be made when a taxpayer considers that the actions of one or both contracting states' tax authorities result, or may result, in taxation not in accordance with the relevant double taxation agreement (DTA). The UK resolved 82 transfer pricing MAP applications in 2020 but admitted 82 new applications. The average time needed to close MAP cases is currently 23.9 months.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No, HMRC has not communicated any changes to its guidance in relation to APAs and rulings.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

The UK's thin-capitalization rules are based on the arm's-length principle, and there are no safe harbors. In this regard, HMRC considers whether at arm's length (a) the loan would have been lent at all, (b) whether the loan would have been lent in that amount, and (c) whether the loan would have been lent on those terms. Outside of transfer pricing rules, there are a number of other domestic rules that may limit interest deductions and should be considered separately.

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1. Tax authority and relevant transfer pricing regulations or rulings

a) Name of tax authority

Internal Revenue Service (IRS).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The following are the transfer pricing regulations or rulings:

- Treasury Regulations (Treas. Regs.):
  - Treas. Reg. § 1.482
  - Treas. Reg. § 1.6662
- Revenue Procedures (Rev. Procs.) include Rev. Procs. 99-32, 2015-40, 2015-41, 2007-13 and 2005-46.
- The Tax Cuts and Jobs Act of 2017 (TCJA), effective from 1 January 2018,[2] made significant changes to the US Internal Revenue Code ("IRC"), including lowering the US corporate income tax rate to 21% and introducing a number of new provisions with transfer pricing implications.

  Key provisions of the TCJA with transfer pricing implications:

  - Base Erosion and Anti-Abuse Tax ("BEAT"): The BEAT minimum tax, detailed in the new Internal Revenue Code Section 59A, is the excess (if any) of 10% (5% for tax years beginning in calendar-year 2018) of an applicable taxpayer's[3] "modified taxable income"[4] over an adjusted regular tax liability amount for the tax year.
  - Foreign Derived Intangible Income ("FDII"): Section 250 of the IRC provides a special deduction for a US corporation's FDII. This new section provides a lower rate of tax on a portion of profits in connection with (i) property sold to any non-US person for foreign use or (ii) services provided to a person, or with respect to property, not located within the US. Section 250 generally allows a domestic corporation an annual deduction for its Global Intangible Low-Taxed Income ("GILTI") inclusion under Section 951A and FDII. For tax years beginning after 31 December 2017, but on or before 31 December 2025, the Section 250 deduction generally is the sum of (i) 50% of the corporation's GILTI inclusion amount (and Section 78 "gross-up" for associated deemed-paid foreign income taxes) and (ii) 37.5% of its FDII. If the sum of the taxpayer's GILTI and FDII amounts exceeds the taxpayer's taxable income, however, the Section 250 deduction is reduced proportionately to those two amounts.
  - GILTI: The GILTI regime is detailed in the new Internal Revenue Code Sections 250 and 951A and in revised Sections 960 and 904. Generally, under Section 951A, a corporation can deduct 50% of its GILTI and claim a foreign tax credit (FTC) for 80% of foreign taxes paid or accrued on GILTI.
  - The TCJA moved the definition of intangibles from Section 936 to Section 367(d)(4) and expanded the definition. Section 367(d)(4) inter alia includes goodwill, going concern value and workforce in place.
- Transfer pricing examination process:
  - Publication 5300 (2018) Issued by the IRS in 2018. This publication provides a guide to best practices and processes to assist with the planning, execution and resolution of transfer pricing examinations. The publication, which must be shared with taxpayers at the start of an examination, is intended to be consistent with the Large Business & International (LB&I) Examination Process (LEP) (Publication 5125).
  - Please refer to the (1) Instructions for LB&I on Transfer Pricing Selection and Scope Analysis – Best Method Selection Memorandum (January 2018) LB&I-04-0118-006[5], (2) Instructions for Examiners on Transfer Pricing

[1] **https://www.irs.gov/ (last visited 23 February 2022).**

[2] An Act to provide for reconciliation pursuant to Titles II and V of the concurrent resolution on the budget for fiscal year 2018, P.L. 115-97.

[3] In general, the BEAT applies to a corporation (other than a RIC, REIT or S corporation) that is subject to US net income tax and has (i) average annual gross receipts of at least USD5,002 million for the three-year period ending with the preceding tax year (the gross receipts test) and (ii) a "base erosion percentage" of 3% (2% for a taxpayer that is a member of an affiliated group with a domestic bank or registered securities dealer) or more (the base erosion percentage test). A corporation subject to the BEAT is an "applicable taxpayer."

[4] An applicable taxpayer's modified taxable income equals its taxable income for the year, determined without regard to (i) any deductions allowed (or certain reductions to gross receipts) (a base erosion tax benefit) with respect to a "base erosion payment" and (ii) the base erosion percentage of any net operating loss (NOL) deduction allowed under Section 172.

[5] **https://www.irs.gov/businesses/corporations/instructions-for-examiners-on-transfer-pricing-issue-examination-scope-appropriate-application-of-irc-ss6662e-penalties** (last visited 23 March

Issue Examination Scope - Appropriate Application of IRC §6662(e) Penalties(January 12, 2018) LB&I-04-0118-003[6], and (3) FAQs on TP Documentation (April 14, 2020)[7] See EY tax alert at https://www.ey.com/en_gl/tax-alerts/us-irs-releases-faqs-on-transfer-pricing-documentation-best-practices

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

Yes, the Internal Revenue Service is extending the ability to electronically sign a number of different tax forms and compliance documents through 31 October 2023. This includes advance pricing agreements and requests for competent authority assistance under Rev. Procs. 2015-40 and 2015-41, respectively.

In response to the COVID-19 situation and stakeholder requests, the IRS will (i) accept images of signatures and digital signatures on documents related to the determination or collection of tax liability and (ii) send or receive documents to or from taxpayers using email with encrypted attachments when no other approved electronic alternative is available. These deviations apply to any statement or form traditionally exchanged between IRS personnel and taxpayers during a compliance interaction outside of standard filing procedures.[8]

3. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

The US is an OECD member jurisdiction.

The IRS considers its transfer pricing laws and regulations to be wholly consistent with OECD Guidelines. For domestic purposes, OECD Guidelines may provide support in certain instances when addressed by the IRS (e.g., APA and MAP) but would not be directly relevant to the application of any US transfer pricing methods. However, if taxpayers pursue competent authority relief from double taxation or a bilateral APA, the OECD Guidelines are relevant and may be used to demonstrate compliance with international principles.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The US has adopted BEPS Action 13 (limited to CbCR) in the local regulations.

- Coverage in terms of Master File, Local File and CbCR

  The master and local files are not covered.

- Effective or expected commencement date

  The law is applicable for taxable years beginning on or after 30 June 2017.

- Material differences from OECD report template or format

  The CbCR template is consistent with the BEPS Action 13 template. The local file documentation template for the US should be consistent with Treas. Reg. §§ 1.482 and 1.6662.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  The local file documentation template for the US should be consistent with Treas. Reg. §§ 1.482 and 1.6662. The specific requirements for penalty protection are listed in the "Applicability" section above.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

2022).

[6] **https://www.irs.gov/businesses/corporations/instructions-for-examiners-on-transfer-pricing-issue-examination-scope-appropriate-application-of-irc-ss6662e-penalties** (last visited 23 March 2022).

[7] **https://www.irs.gov/businesses/international-businesses/transfer-pricing-documentation-best-practices-frequently-asked-questions-faqs** (last visited 23 March 2022).

[8] **IRS APMA Announcement, 11 May 2020 at https://www.irs.gov/businesses/competent-authority-filing-modifications-and-apma-apa-consultations** (last visited April 12, 2022).

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, although transfer pricing documentation is not required by domestic law, in practice, it is recommended that taxpayers maintain contemporaneous documentation to avoid tax penalties. The existence of documentation need not be either disclosed in, or provided with, the domestic return. Generally, the transfer pricing documentation must be in existence when the return is filed. To obtain penalty protection it must be in existence when the return is filed.

For penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained certain documentation (further described below). The documentation must substantiate the taxpayer's assertion that its choice of method and the method's application were reasonable, given the available data and the applicable pricing methods, and that the method provided the most reliable measure of an arm's-length result under the principles of the best-method rule.

The principal documents required by the regulations are:

- An overview of the taxpayer's business and an analysis of the legal and economic factors that affect the pricing of its pricing or services
- A description of the organizational structure (including an organization chart) covering all related parties engaged in transactions potentially relevant under section 482, including foreign affiliates whose transactions directly or indirectly affect the pricing of property or services in the United States
- Any documents explicitly required by regulations under section 482 e.g., cost-sharing arrangement documents
- A description of the pricing method selected and reasons the method was selected (a best-method analysis)
- A description of alternative methods that were considered and why they were not selected
- A description of controlled transactions and any internal data used to analyze those transactions
- A description of the comparables used, how comparability was evaluated, and any adjustments that were made
- An explanation of any economic analysis and any projections relied upon to develop the pricing method
- Any material data discovered after the close of the tax year but before the filing of the tax return, which would help to determine if a taxpayer selected and applied a method in a reasonable manner
- A general index of the principal and background documents and a description of the record-keeping system used for cataloging and accessing those documents

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, section 482 applies to US taxpayers, whether or not incorporated, whether or not organized in the US, and whether or not affiliated.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, for penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained certain documentation.[9] To the extent that there are changes from the previous year, the changes need to be reflected.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Treas. Reg. § 1.6038-4 requires US MNE groups to provide aggregated data on the CbCR. Note, however, that revenue does not include payments received from other constituent entities in the MNE group that are treated as dividends in the

[9] **https://www.irs.gov/businesses/international-businesses/transfer-pricing-documentation-best-practices-frequently-asked-questions-faqs** (last visited January 29, 2022). Treas. Reg. § 1.6662-6(d)(2)(ii)(A) requires a taxpayer to select and apply a specified method in a reasonable manner. Treas. Reg. § 1.6662-6(d)(2) provides the documentation requirements when a specified method is used. Treas. Reg. § 1.6662-6(d)(3) provides similar, but not identical, rules in cases when an unspecified method is used. Treas. Reg. § 1.6662-6(d)(2)(iii)(A) requires a taxpayer to maintain sufficient documentation "to establish that the taxpayer reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application of that method) provided the most reliable measure of an arm's-length result under the principles of the best method rule in Treas. Reg. § 1.482-1(c)." In addition, the regulations require a taxpayer to provide the documentation to the IRS within 30 days of a request for it in connection with an examination of the taxable year to which the documentation relates. With certain exceptions, the transfer pricing documentation must be in existence when the return is filed. In combination, the requirements to select and apply a method in a reasonable manner, maintain sufficient documentation thereof and promptly provide such documentation to the IRS are commonly referred to as the "6662(e) documentation" requirements.

payer's tax jurisdiction of residence. Additionally, distributions and remittances from constituent entities in the MNE group that are partnerships, other fiscally transparent entities or permanent establishments are not considered revenue of the recipient owner.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

There is no materiality limit.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

The limit is USD850 million (approximately EUR700 million). There is no CbCR notification requirement in the US.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is no US federal documentation obligation for domestic transactions between related parties who are part of the same consolidated US federal tax return.

- **Local language documentation requirement**

English is the accepted language for all documentation requirements.

- **Safe harbor availability including financial transactions if applicable**

There are no safe harbors per se. However, Treas. Reg. § 1.482 provides taxpayers the opportunity to use applicable federal interest rates (AFRs) for intercompany loans and advances.[10]

- **Is aggregation or individual testing of transactions preferred for an entity**

Treas. Reg. § 1.6038-4 requires US MNE groups to provide aggregated data on the CbCr. However, revenue does not include payments received from other constituent entities in the MNE group that are treated as dividends in the payer's tax jurisdiction of residence. Further, distributions and remittances from constituent entities in the MNE group that are partnerships, other fiscally transparent entities or permanent establishments are not considered revenue of the recipient owner.

- **Any other disclosure/compliance requirement**

There are no additional requirements.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Taxpayers are required to file Forms 5471, 5472 and 8865 regarding transactions with related parties.

- **Related-party disclosures along with corporate income tax return**

The file has no "related-party disclosures in the financial statement/annual report" section. Under regulations issued in 2010, certain taxpayers must disclose their uncertain tax positions (UTPs) on Schedule UTP (Form 1120) and provide information, such as the ranking of the positions by the size

[10]Treas. Reg. § 1.482-2 provides "[s]afe haven interest rate based on applicable Federal rate. Except as otherwise provided in this paragraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's-length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of chapter 1 of the Internal Revenue Code:
(1) The rate of interest actually charged if that rate is:
(i) Not less than 100 percent of the applicable Federal rate (lower limit) and
(ii) Not greater than 130 percent of the applicable Federal rate (upper limit) or
(2) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's-length rate of interest shall be equal to the lower limit, compounded semiannually, or
(3) If the rate of interest charged is greater than the upper limit, then an arm's-length rate of interest shall be equal to the upper limit, compounded semiannually, unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate determined under paragraph (a)(2)(i) of this section, then the compound rate actually charged shall be deemed to be an arm's-length rate under paragraph (a)(2)(i). In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually."

of their reserves and concise descriptions of the tax positions. There is a phase-in period so that as of 2014, the UTP disclosures are required by corporations with assets of USD10 million or more.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information/documents to be filed**

Form 8975 and Schedule A (Form 8975) are used by filers described under "Who Must File" to annually report certain information with respect to the filer's US MNE group on a CbCR basis. US MNEs filing Form 8975 and Schedule A (Form 8975) should file a separate Schedule A (Form 8975) for each tax jurisdiction where the MNE group operates and list all of the constituent entities resident in the tax jurisdiction. A US MNE group with only fiscally transparent US business entities would not provide a Schedule A for the US, but would provide a Schedule A for "stateless" entities.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is the 15th day of the 4th month following the end of the corporation's tax year.

- **Other transfer pricing disclosures and return**

The deadline is 15 March.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

Filing is due with the tax return for the respective year.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

If the documentation is prepared to help protect against penalties, then it must be in existence by the filing date of a US tax return that has been filed in a timely manner.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

The submission is based on the request of tax authorities.

- **Time period or deadline for submission upon tax authority request**

Taxpayers must provide the documentation to the IRS within 30 days of an examiner's request.

- **Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted**

Transfer pricing documentation: Yes, if documentation is prepared for penalty protection, then it must be in existence by the filing date of the US federal tax return, as noted previously. There are no new submission deadlines for 2022 relating to COVID-19 specific measures.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

Yes, there is applicability for both domestic international and domestic transactions. Domestic transactions IRC 482 applies to domestic transactions as well as international transactions. Pursuant to Treas. Reg. § 1.482-1(i)(2), a "trade or business includes a trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place of operation."

b) Priority and preference of methods

For tangible goods, the IRS accepts the CUP, resale-price, cost-plus, CPM, profit-split and unspecified methods. For intangible goods, the IRS accepts the comparable uncontrolled transaction (CUT), CPM, profit-split and unspecified methods. For services, the IRS accepts the services cost, comparable uncontrolled services price, gross services margin, cost of services plus, CPM, profit-split and unspecified methods. For CSA buy-ins, the IRS accepts the CUT, income, acquisition price, market capitalization, residual profit split and unspecified methods.

The regulations provide a best-method rule for determining the appropriate method to be applied by the taxpayer for each intercompany transaction.

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no such requirement regarding local comparables, as foreign and regional comparables are generally acceptable to local tax authorities, provided the comparability requirements are met.

- **Single-year vs. multiyear analysis for benchmarking**

The results of a controlled transaction ordinarily will be compared with the results of uncontrolled comparables occurring in the taxable year under review. It may be appropriate, however, to consider data related to the uncontrolled comparables or the controlled taxpayer for one or more years before or after the year under review. If data related to uncontrolled comparables from multiple years is used, data related to the controlled taxpayer for the same years ordinarily must be considered.

The extent to which it is appropriate to consider multiple years' data depends on the method being applied and the transactions addressed. Circumstances that may warrant the consideration of data from multiple years include the extent to which complete and accurate data is available for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, and the effects of life cycles of the product or intangible property being examined.

- **Use of interquartile range**

Yes, interquartile range is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no legal requirement for a fresh benchmarking search every year, as rollforward and financial updates are acceptable for up to two to three years (if the fact pattern has remained the same).

- **Simple, weighted or pooled results**

No stipulated requirement; the choice will have to depend on facts and circumstances and comparability.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Pursuant to Internal Revenue Code section 6662, taxpayers may be liable for either a 20% or 40% penalty for an underpayment of tax attributable to a substantial or gross valuation misstatement. Refer to section 6662 and Treas. Reg. § 1.6662-6.

- **Consequences of failure to submit, late submission or incorrect disclosures**

There is no penalty for failure to provide transfer pricing documentation; however, documentation may help avoid a penalty.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, as noted above.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes, as noted above.

- **Is interest charged on penalties or payable on refund?**

Yes, interest is charged using AFRs.

b) Penalty relief

Penalties may be avoided by establishing reasonable cause and good faith through taxpayer-provided documentation, demonstrating the taxpayer's application of Internal Revenue Code Section 482.

10. Statute of limitations on transfer pricing assessments

A general statute of limitations applies in the US – three years from the later of either the tax return due date or the date the return was actually filed. The statute is extended to six years for substantial understatements of income.[11] There is no

[11] Sections 6511(a) and 6501(a).

statute of limitations for fraud-related adjustments.

Most treaties with trading partners provide the IRS access to closed years in order to provide relief from double taxation pursuant to a MAP.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There are no COVID-19-related impacts on transfer pricing audits in 2022.

12. Likelihood of transfer pricing scrutiny or related audit by local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit depends on facts and circumstances. The introduction of what the OECD refers to in its Action Plan on BEPS as "high-risk transactions" increases the likelihood of a tax audit.

In general, the likelihood of transfer pricing scrutiny during a tax audit may be considered to be high. Transfer pricing is extensively regulated in the US, and the IRS has recently taken a number of administrative steps to increase its ability to focus on international transactions, with a particular emphasis on transfer pricing. New positions have been created within the IRS's Large Business & International Division for a deputy commissioner (international) and a director of transfer pricing operations, and a significant number of transfer pricing professionals have been hired. Due to this emphasis, documentation is requested frequently at the outset of any examination of taxpayers transacting with foreign related parties.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The overall likelihood that the transfer pricing methodology will be challenged during the initial stages of any audit, where there are international transactions, may be considered to be high. However, experiences have shown that well-reasoned documentation may potentially reduce the likelihood of further scrutiny.

- **Likelihood of an adjustment if transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high. Once the IRS commits significant resources to the audit, a Notice of Proposed Adjustment should be expected.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Cost sharing and other IP migration transactions are generally challenged. Other high-risk transactions, such as those described in the OECD BEPS Action Plan, also draw scrutiny.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Taxpayers may request unilateral, bilateral or multilateral APAs. The APA process is administered by the IRS Advance Pricing and Mutual Agreement Program. Guidance regarding APAs can be found in Rev. Proc. 2015-41. The revenue procedure has strict case management procedures, disclosure requirements, and detailed guidance regarding the submission and processing of APA requests. Additional competent authority guidance is provided in Rev. Proc. 2015-40.

The IRS increased the user fees for APAs in early 2018.[12]

- **Tenure**

This is not applicable.

- **Rollback provisions**

Rollbacks are applicable. Because most US APAs have a prospective five-year term, the addition of a rollback term could allow a taxpayer to cover eight or more years of transfer pricing issues in a single negotiation process.

- **MAP opportunities**

According to Rev. Proc. 2015-40, Procedures for Requesting Competent Authority Assistance under Tax Treaties, taxpayers may request MAP assistance, often referred to as a "competent authority request" or a "MAP request," if taxation has or is likely to occur that is not in accordance with the provisions of a double tax treaty (DTT) to which the US is signatory. In addition, the taxpayer must be a resident either in the US or in the other relevant contracting state, meet the prescribed time limits, and satisfy the prescribed conditions for a competent authority request. Most of the US DTTs permit

[12] **https://www.irs.gov/businesses/corporations/mitt-and-apa-frequently-asked-questions#:~:text=The%20IRS%20announced%20scheduled%20increases,and%20for%20small%20case%20AP** (last visited 23 March 2022).

taxpayers to present a case to the IRS within a prescribed period from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the DTT. However, time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

14. Have there been any impacts or changes to Advanced Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

Yes, assuming proper procedures are followed, electronic filings are permissible during this period pursuant to Deputy Commissioner, Services and Enforcement (DCSE) memorandum dated 27 March 2020, Memorandum for All Services and Enforcement Employees, and IRS APMA announcement dated 11 May 2020 referencing the DCSE memorandum. The US IRS has extended the date by which APA and MAP requests may be filed electronically with digital signatures until 31 October 2023.[13]

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Earnings stripping rules under Section 163(j) are intended to prevent the erosion of the US tax base of a thinly capitalized corporation by means of excessive deductions for certain interest.

[13] **https://www.irs.gov/businesses/competent-authority-filing-modifications-and-apma-apa-consultations** (last visited 23 March 2022), and **https://www.irs.gov/newsroom/details-on-using-e-signatures-for-certain-forms** (last visited 23 March 2022).

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

[1]General Taxation Directorate (*Dirección General Impositiva* – DGI).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Transfer pricing documentation requirements have been in effect in Uruguay since 1 July 2007 (following Law No. 18.803), but they were not regulated until 26 January 2009, with the publication of Decree No. 56/009. Decree No. 392/009 made additional modifications.

The DGI issued Resolution No. 2.084/009 on 1 December 2009 (with the modifications introduced by Resolutions No. 819/010 and No. 2.098/009), which defined concepts and established requirements for the transfer pricing report. Additional guidance includes:

- Chapter VII, Title 4, Corporate Income Tax Law 1996, as amended, as per Law No. 18,083 (Title 4)
- Presidential Decree No. 56/009, dated 26 January 2009
- Presidential Decree No. 392/009, dated 24 August 2009
- DGI Resolution No. 2.084/009, dated 1 December 2009
- DGI Resolution No. 2.269/009, dated 30 December 2009
- DGI Resolution No. 818/010, dated 6 May 2010
- DGI Resolution No. 745/011, dated 6 May 2011
- DGI Resolution No. 01/020, dated 3 January 2020

- **Section reference from local regulation**

Relevant references include:

- Presidential Decree No. 353/018, dated 26 October 2018
- DGI Resolution No. 2.084/009, dated 1 December 2009
- DGI Resolution No. 094/2019, dated 4 January 2019

[1] **www.dgi.gub.uy**

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

None as of 31 December 2021.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Uruguay is not a member of the OECD.

The OECD Guidelines are not mentioned in Uruguay's Income Tax Law and Regulations. As transfer pricing practice is relatively new in Uruguay, there is no related background with regard to the OECD Guidelines. However, the local regulation is aligned with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes.

- Coverage in terms of Master File, Local File and CbCR

  It covers both the master file and local file.

- Effective or expected commencement date

  The law has applied to the local file since 2009. A new law was published on 5 January 2017 in which CbCR and the master file were added to the regime requirements.

  The CbCR was regulated by Resolution No. 094/2019, published on 4 January 2019, and it applies to fiscal years (FYs) beginning on or after 1 January 2017.

  The master file is not being applied yet because further regulation must be published.

- Material differences from OECD report template or format

Transfer pricing documentation in Uruguay presents differences from the OECD format both for the local file and the country-by-country reporting. CbCR required in Uruguay has a specific format, which may vary from the OECD format, so local customization is required for filing of

this report. Local regulations and transfer pricing practice include specific provisions for the completion of the local file, which may result in variations of content and may have an impact in the transfer pricing analysis.

The master file has yet to be regulated in Uruguay.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

Local file requirements provided in local regulations must be met to avoid penalties.

country-by-country penalties have been applied for failure to comply with filing (at the moment, the suspension of the tax certificate, which has a direct impact on company operations). Nevertheless, fines may apply according to the gravity of the breach, which may go up to USD250,000.

c) Is the jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 30 June 2016.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation has to be prepared annually under local jurisdiction regulations. The minimum requirement is that all economic analysis information and the transfer pricing documentation must be updated (there is a minimum content that transfer pricing documentation must have included, in DGI Resolution No. 2,084/009).

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Whenever there are transactions with related entities, taxpayers are required to prepare and maintain an annual transfer pricing documentation.

The documentation must be submitted to the DGI, with a transfer pricing return, when the total amount of intercompany transactions is equal to or greater than 50 million indexed units (as of 31 December 2021, approximately USD5,700,000).

- **Master File**

Regarding the master file, the threshold is not defined yet; further regulation must be published to do so.

- **Local File**

For the local file, there is no threshold; if a transaction with a related entity exists, a local file must be prepared.

- **CbCR**

If the local taxpayer belongs to an MNE group of which total consolidated revenue is equal to or exceeds EUR750 million, CbCR requirements must be met.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Entities engaging in transactions with other entities that were created, domiciled, based, residing or located in countries with low or no taxation, or that are benefitted by a special low- or no-taxation system, including local free zones, are subject to transfer pricing regime. This means that transactions performed by taxpayers with non residents domiciled, created or located in low- or no-taxation countries or benefiting from

a special low- or no-taxation system that specifically sets forth regulations shall not be considered to comply with practices or normal market values between independent parties, including the transactions carried out in customs exclaves and benefiting from a low- or no-taxation system. Moreover, transactions with non resident entities located in Uruguay, such as permanent establishments or branches from non residents, are also subject to transfer pricing rules.

- **Local language documentation requirement**

The documentation needs to be submitted in the local language.

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Any other disclosure/compliance requirement**

This is not applicable.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified in local regulations; nonetheless the tax administration prefers individual testing of transactions if information is available.

- **Any other disclosure/compliance requirement**

There is none specified.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Only those taxpayers that are obligated to file the transfer pricing study must file the transfer pricing annual return (Form 3001) with the tax authorities.

In that annual return, the company must provide information about the related-party transactions. In the new version of the Form 3001, within the additional information required to be included in the new return form are the financial information of the local entity; list of all the related entities; and details of the functions and activities the related entities develop, their address, jurisdiction, number of employees, and identification number. Moreover, the type of relations the company has with each of them should be detailed. Regarding the controlled transactions, a requirement is to inform all types of activity developed by the related entities in these transactions, such as manufacture and intermediation. A description of in-force agreements that the company has with its related entities should be detailed, as well as the description of all the intangible property (IP) of the local entity and IP that is used by the company though it is not the property of the company. An extensive questionnaire of the company's operating activities with entities abroad must be completed, for example, questions about the company and the group, if there has been any transfer of personnel between group's entities, or if there has been any business restructuring in the group in the last five years.

- **Related-party disclosures along with corporate income tax return**

Taxpayers are required to file:

- The transfer pricing study, including key elements such as the functions and activities of the company, risks and assets used, the methods used, the interquartile range and details of the comparables
- Audited financial statements if the company was not entitled to submit its audited financial statements to the tax authorities by any other applying law
- Annual transfer pricing return Form 3001 if it corresponds:
  - A new transfer pricing return has been approved that requires significant additional information about the multinational group and the related entities of the company.

If the company does not meet the threshold to file the transfer pricing report to the tax authority, but has transactions with related entities, the local file must still be completed and kept by the company in case of an audit.

- **Related-party disclosures in financial statement/annual report**

No specific requirements under Uruguayan TP rules. However, Uruguayan GAAP require certain disclosures for related-party transactions.

- **CbCR notification included in the statutory tax return**

CbCR notification must be submitted separately, within Form 6530.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Four months after the fiscal year-end; the deadline varies if the local company is CEDE (Control Especial De Empresas) or NO CEDE according to the tax authority – 22 April 2022 or 25 April 2022, respectively, for FYE December 2021.

- Other transfer pricing disclosures and return

Nine months after the fiscal year-end; the deadline varies if the local company is CEDE or NO CEDE according to the tax authority – 22 September 2022 or 26 September 2022, respectively, for FYE December 2021.

- Master File

To be regulated.

- CbCR preparation and submission

The deadline is 12 months after the end of the reporting FY of the group.

- CbCR notification

The deadline is by the end of the reporting FY of the group.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing economic analysis should be finalized by the time of lodging the tax return to achieve penalty protection (e.g., where there is a contemporaneous requirement).

The transfer pricing documentation must be prepared nine months after the fiscal year-end, but the transfer pricing preliminary analysis is due four months after the fiscal year-end for the presentation of the income tax return.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submitting transfer pricing documentation or Local File?

Yes, the report must be submitted to the tax authority if the total amount of intercompany transactions exceeds the threshold established by local regulations with the correspondent transfer pricing return (FY2021, approximately USD5,7000,000). It must be submitted nine months after the fiscal year-end. If the amount is below that limit, the company must prepare the documentation and have it in case of a request by the tax authority in an audit.

- Time period or deadline for submission on tax authority request

The time the taxpayer has to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry is not regulated but usually is approximately 10 days. Failure to comply with the request in the limited amount of time may be the suspension of the tax certificate of good standing, which is highly disruptive to the company's operations.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No additional request was made due to the COVID-19 pandemic during FY2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

There are no differences between an analysis of international and domestic transactions; the same preferences apply for both types of transactions.

For transactions involving imports or exports of goods with well-known prices in transparent markets, those prices must be used. If the transactions are performed through international intermediaries that are not the final consignees of the goods, the applicable price is the price in the respective market. The price to be used is the one in the respective market on the day of the shipment or, if it was registered in the mercantile office,

the price on the day of the contract.

Regarding the financial transactions, the most common method used, although not stated in the regulation, is the CUP method.

Moreover, for transactions that involve royalties, the tax authorities have expressed preference for a specific analysis, through the CUP-method analysis with internal comparables, avoiding a global analysis through a TNMM.

In the same sense, the services provided by the tested party are preferred to be analyzed through a specific analysis instead of a global analysis through a TNMM.

8. Benchmarking requirements

- **Local vs. regional comparables**

The use of local comparables is preferred but not usually used due to insufficient qualitative and quantitative information of the databases available. Latin-American comparables should be prioritized in the analysis according to previous experience in audits by the tax authority.

- **Single-year vs. multiyear analysis**

There is a preference for single-year testing. Multiyear analysis should be avoided.

- **Use of interquartile range**

Local regulations include the use of an interquartile range for the analysis, and it must be calculated as follows: when the first quartile is above the median value decreased by 5%, this latter value shall replace that of the first quartile, and when the third quartile is below the median value increased by 5%, the resulting value shall thus replace that of the third quartile.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

A fresh benchmarking search is required every year. This is not specified in the regulation but is commonly accepted by the tax authority.

- **Simple, weighted or pooled results**

There is a preference for a simple average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Same as below.

- **Consequences of failure to submit, late submission or incorrect disclosures**

The penalty for those that breach the formal requirements established in the transfer pricing framework (e.g., failure to timely file a transfer pricing report, CbCR) will be applied on a graduated scale, in accordance with the severity of the breach. The maximum fine is approximately USD250,000.

When there is an underpayment due to transfer pricing, the taxpayer is penalized with a tax omission fine that is 5% of the amount of the underpayment if it is paid before five days after the deadline, 10% if it is paid between 5 and 90 days after the deadline, and 20% if it is paid more than 90 days past the deadline. In each case, corresponding surcharges are added.

If the DGI requires the transfer pricing study or the CbCR and a company does not file it, the DGI can suspend the certificate that shows that the taxpayer fulfilled its tax obligations. The immediate consequence is that it bars the taxpayer from being able to import goods or obtain a bank loan.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

If a transfer pricing adjustment is calculated by the tax administration in an audit, this adjustment could affect the income tax paid, including fines and surcharges. If documentation is deemed incomplete, the substance of the analysis could be questioned, and an alternative analysis may be imposed by the tax authority, which could lead to the calculation of a transfer pricing adjustment.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

If documentation is deemed incomplete, the analysis may be disregarded by the tax authority, and an alternative analysis may be imposed, which could lead to the calculation of a transfer pricing adjustment.

- **Is interest charged on penalties or payable on a refund?**

According to the law, the interest for nonpaid penalty is 5% for delays no longer than 5 days, 10% for delays between 6 and 90 days, and 20% for delays of more than 90 days.

b) Penalty relief

There are currently no provisions for reductions in penalties.

The taxpayer can appeal in trial against the tax authorities; however, at the moment, there are no experiences in Uruguay in which a taxpayer has disputed any resolution of the authorities that the general public is aware of.

10. Statute of limitations on transfer pricing assessments

There is no specific statute of limitations for transfer pricing adjustments; rather, the general regime applies. Assessments can be raised five years after the company's accounting period ends, but this is extended to 10 years when the difference is due to fraudulent or negligent conduct by the taxpayer.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

None were informed as of 31 December 2021.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit, in general, may be considered to be medium, while the likelihood that transfer pricing will be reviewed as part of that audit may be considered to be high. Specifically, if a taxpayer is classified according to the tax authorities as a "great taxpayer," the experience has shown that it will be audited at least every five years.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

If transfer pricing is reviewed as part of the audit, the likelihood that the transfer pricing methodology will be challenged may be considered to be high. Transfer pricing practice is new in Uruguay; therefore, there is not a lot of background for such audit practices. However, in the cases known, the taxing authority has challenged the methodology and the companies' sets of comparables.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

Once a transfer pricing analysis methodology is challenged or questioned by the tax authorities in a transfer pricing audit, the likelihood of an adjustment may be considered to be high based on EY Uruguay's experience over the years. In almost every case in which the tax authority suggests a new methodology and it is applied, a transfer pricing adjustment (significant or not) is applied.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The tax authority relies on a special team of professionals who have focused on performing tax audits for the biggest companies, known as great taxpayers. However, they have not focused on specific industries.

The focus is mainly on:

- Functional analysis
- Segmentation criteria revision
- Comparison between the financial information of the company considered for the transfer pricing analysis and the financial statements, identifying internal and external comparables

General observations pointed out in inspections are:

- Comparability adjustments made to the tested party
- Rejection of the selected comparable companies
- Observations of companies that have continuous losses for many years

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Currently, no APA regime is published in Uruguay, but the tax authority recently signed the first one.

Uruguayan transfer pricing rules have an APA regime. However, there are no specific procedures defined yet. Therefore, in case an APA process is initiated and no agreement is finally reached, there are no rules about how the local tax authorities should proceed with the already provided information.

As of the time of this publication, only one APA case has been announced publicly, and it was related to a chemical company that was going to start conducting business in Uruguay.

- **Tenure**

There is no specific term set in the local regulation.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

None as of 31 December 2021.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

There is none specified.

Contact

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

National Integrated Service for the Administration of Customs Duties and Tax (*Servicio Nacional Integrado de Administración Aduanera y Tributaria* – SENIAT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Administrative Order No. SNAT/2010/0090, issued by the SENIAT, was published in the Official Gazette No. 39,557 of 20 December 2010. It establishes the procedure for the calculation and use of the arm's-length range for transfer pricing purposes. The main considerations are as follows:

- The use of the interquartile range is mentioned as the arm's-length range.
- In case the price or amount or profit margin is within the interquartile range (arm's-length range), the tax administration will deem it as agreed to by independent parties. If, however, it is not within the interquartile range, the taxpayer must take the median of the range as the arm's-length price.

In February 2007, a partial reform of the Income Tax Law (ITL) and rules on thin capitalization were published in the Official Gazette No. 38.628. The thin-capitalization rules apply, as of FY2008, to Venezuelan taxpayers or Venezuelan permanent establishments holding debt (controlled debt) of companies or individuals who are considered related according to Title VII, Chapter III of the ITL. The main inclusions are as follows:

- Taxpayers will have the limited possibility of deducting interest expenses resulting from related parties' loans when the average amount of debt (with related and unrelated parties) exceeds the average amount of equity for the respective fiscal year.
- The amount by which the debt exceeds the taxpayer's equity will be treated as equity for income tax purposes.

- **Section reference from local regulation**

The section reference is Venezuelan ITL, Articles 109 to 168.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Venezuela is not a member of the OECD.

Article 113 of the ITL states that for everything not foreseen in it, the 1995 OECD Guidelines or their later versions will apply, to the extent that they are consistent with the provisions of the ITL.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Venezuela has not formally adopted or implemented BEPS Action 13. However, Article 113 of the ITL establishes that for everything not foreseen in the law, the provisions of the OECD Guidelines will apply.

- Coverage in terms of Master File, Local File and CbCR

  The master file and CbCR do not apply. However, according to Article 167, taxpayers must have the support of the documentation for the calculation of transfer prices.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  This is not applicable (master file and CbCR).

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

This is not applicable. Locally, it is enough to have the transfer pricing informative return and the local file.

c) Is the jurisdiction part of the OECD/G20 Inclusive

[1] **https://www.ciat.org/bolivarian-republic-of-venezuela/?lang=en http://declaraciones.seniat.gob.ve/portal/page/portal/PORTAL_SENIAT**

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes.

- **Should transfer pricing documentation be prepared annually?**

Yes, transfer pricing documentation has to be prepared annually under the local jurisdiction regulations.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

This is not applicable.

- **Master File**

This is not applicable.

- **Local File**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The transfer pricing documentation needs to be submitted in the local language. According to Article 167 of the ITL: "The documentation and information related to the calculation of the transfer prices indicated in the declaration forms authorized by the tax administration must be kept by the taxpayer during the lapse provided for in the law, duly translated into Spanish if applicable."

- **Safe harbor availability including financial transactions if applicable**

There is none specified.

- **Is aggregation or individual testing of transactions preferred for an entity**

No.

- **Any other disclosure/compliance requirement**

Yes, transfer pricing informative return (Form PT-99).

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

A controlled party's transfer pricing informative return (Form PT-99) must be filed during the six months immediately following the close of each tax year of controlled party. The Form PT-99 is available on the SENIAT's website.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement/annual report**

No.

- **CbCR notification included in the statutory tax return**

No.

- **Other information/documents to be filed**

All information that supports transfer pricing calculations, in accordance with the provisions of Article 167 of the ITL.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

According to the ITL, it should be submitted within three months after the company's fiscal year-end.

- **Other transfer pricing disclosures and return**

The deadline is six months after the end of the taxpayer's fiscal year.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation only needs to be finalized by the time of submission upon request by the SENIAT. The transfer pricing informative return (Form PT-99) must be submitted within six months after the end of the fiscal year. The transfer pricing study must be submitted only if the tax authorities require it.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submitting transfer pricing documentation or Local File?**

Yes, usually, the deadline is two to five workdays after the tax authorities require it. The documentation must comply with Article 167 of the local income tax law. The transfer pricing informative return must be submitted within six months after the end of the taxpayer's fiscal year.

- **Time period or deadline for submission upon tax authority request**

The taxpayer usually has two to five working days to submit the transfer pricing documentation once requested by the tax authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes.

- **Domestic transactions**

No.

b) Priority and preference of methods

The acceptable methods are the OECD methods: CUP, resale price, cost plus, profit split and TNMM. In Venezuela, the CUP method takes priority over others.

8. Benchmarking requirements

- **Local vs. regional comparables**

Regional comparable companies are accepted. However, experience tells us that the tax administration prefers comparables located in the United States and Canada.

- **Single-year vs. multiyear analysis**

There is a preference for both single-year and multiyear analysis. However, Article 132 of the ITL establishes that data from previous years may be used in determining the transfer prices to mitigate the effects of macroeconomic variables on the results obtained. The tax administration prefers the use of multiple years. It is important to notice that the comparison is between a single year of the company against three of the comparable set.

- **Use of interquartile range**

Yes, interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

It can be both. But, usually, an update of the financial information of previous comparable companies is used.

- **Simple, weighted or pooled results**

There is a preference for a weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Filing an incomplete PT-99 will trigger a penalty of 100 times the highest exchange rate published by the Venezuelan Central Bank (Banco Central de Venezuela – BCV).

- **Consequences of failure to submit, late submission or incorrect disclosures**

A failure to file Form PT-99 will trigger a penalty of 150 times the highest exchange rate published by the Venezuelan Central Bank and a company closure for 10 consecutive days. When failing to submit the documentation upon request by the SENIAT, the taxpayer faces a fine of 1,000 times the highest exchange rate published by the Venezuelan Central Bank and a company closure for 10 consecutive days. Additionally, there is a fine ranging from 100% to 300% of the omitted tax amount. If there is a transfer pricing assessment, late payment interest may also be added to these amounts. The pecuniary sanctions for formal duties will be increased by 200%, when they are committed by subjects qualified as special by the SENIAT.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

In the case of a transfer pricing adjustment, it must be made to the median of the interquartile range, and in the event that said adjustment modifies the income, it must be paid from 100% to 300% of the omitted tax.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

No.

- **Is interest charged on penalties or payable on a refund?**

No, the interest is charged only for late payment.

b) Penalty relief

If a taxpayer applies a legally sanctioned transfer pricing method, this could be considered a mitigating circumstance in the determination of an assessment. This penalty relief is based on previous tax audit procedures and assessments, but there is no legal provision supporting it.

10. Statute of limitations on transfer pricing assessments

According to Article 55 of the Organic Tax Code, the statute of limitations is six years from the date of filing the return and 10 years if the taxpayer fails to comply with the filing of any tax return, including returns for income tax. However, the transfer pricing informative return doesn't imply payments of any type.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood of an annual tax audit in general may be considered to be high, as is the likelihood that transfer pricing will be reviewed as part of the audit.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood that the transfer pricing methodology will be challenged if transfer pricing is reviewed as part of the audit may be considered to be medium.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high.

- **Specific transactions, industries and situations, if any, more likely to be audited**

The SENIAT continues to be very active and effective in handling transfer pricing audits. It has added transfer pricing as a relevant topic to be reviewed during general tax audits. Thus far, audits have been conducted on taxpayers irrespective of industry.

Tax audits have been focused both on formal duties (i.e., request for contemporaneous transfer pricing documentation, filing PT-99) and on the determination of proper taxable income in intercompany transactions (e.g., challenge methodology, comparables, use of multiple years' data, segmented financial data by transaction or activity).

The evaluation criteria to trigger a transfer pricing audit are:

- Inconsistencies among the transfer pricing report, income tax return and transfer pricing information return
- Use of non-updated financial information from comparable companies up to June of the fiscal year subject to the study
- PLIs below the interquartile arm's-length range
- Lower operating margins, compared with operating margins from prior years or with operating losses
- Late filing of transfer pricing informative return

Currently, in the transfer pricing review process, the time frame to submit the information requested ranges from two to three business days, and there is a reluctance to give extensions.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

Unilateral and bilateral APAs are available to the extent that they are carried out with nations that have concluded double taxation treaties with Venezuela (refer to ITL Articles 141 to 165 and Master Tax Code Chapter III, Articles 230 to 239). Nonetheless, there are no APAs in Venezuela.

- **Tenure**

All specifications and terms for APAs are in Articles 141 to 165 of the ITL.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

There is none specified.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest paid directly or indirectly to persons who are considered related parties will be deductible only to the extent to which amount of debts agreed directly or indirectly with related parties plus the amount of debts agreed with independent third parties does not exceed the net equity of the taxpayer.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority

General Department of Taxation (*Tong cuc Thue* – GDT).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Article 37 of the Law No. 38/2019/QH14 (Law on Tax Administration takes effective on 01 July 2020) articulates the arm's-length principle, which empowers tax authorities to adjust the value of purchases, sales, exchanges and accounting records of goods and services of taxpayers if that value is not in accordance with market prices.

Detailed transfer pricing regulations are included in Decree 132/2020/ND-CP (Decree 132). On 5 November 2020, Vietnam's government issued Decree 132 that takes effective on 20 December 2020 and replaces Decree No. 20/2017/ND-CP dated 24 February 2017, Circular No. 41/2017/TT-BTC dated 28 April 2017, and Decree No. 68/2020/ND-CP dated 24 June 2020. Decree 132 is applicable for the corporate income tax period 2020 onwards.

Article 50 of the Law on Tax Administration No. 38/2019/QH14 articulates the arm's-length principle, which empowers tax authorities to adjust the value of purchases, sales, exchanges and accounting records of goods and services of taxpayers if that value is not in accordance with market prices.

- **Section reference from local regulation**

Article 5 of Decree 132 provides the definition of related parties as follows:

- Related parties are parties having relationships where:

  a. An enterprise participates directly or indirectly in at least 25% of the other enterprise's equity.

  b. Each of the two enterprises has at least 25% of its equity held, whether directly or indirectly, by a third party.

  c. An enterprise is the shareholder having the greatest ownership interest in the other enterprise or participates directly or indirectly in at least 10% of total share capital of the other enterprise.

  d. An enterprise guarantees or offers another enterprise a loan under any form (even including third-party loans guaranteed by financing sources of related parties and financial transactions of same or similar nature) to the extent that the loan amount equals at least 25% of equity of the borrowing enterprise and makes up for more than 50% of total medium- and long-term debts of the borrowing enterprise.

  e. An enterprise appoints a member of the executive board responsible for the leadership or control of another enterprise, provided the number of members appointed by the former accounts for more than 50% of total number of members of the executive board responsible for the leadership or control of the latter, or a member appointed by the former has the right to decide financial policies or business activities of the latter.

  f. Both related enterprises appoint more than 50% of membership of the executive board or have one member of the executive board authorized to decide financial policies or business activities who is appointed by a third party.

  g. Both enterprises are managed or controlled in terms of their personnel, financial and business activities by individuals, each of whom is in one of the following relationships with the others such as a wife, husband, natural/foster father, natural/foster child, natural/foster older/younger sibling, brother/sister-in-law, maternal/paternal grandfather/grandmother, maternal/paternal grandchild, and maternal/paternal aunt, uncle and nibling.

  h. Both business entities have transactions, either between their head offices and permanent establishments or between permanent establishments of overseas entities or individuals.

  i. Enterprises are put under control of one individual through either the person's capital participation into that enterprise or the person's direct involvement in the administration of that enterprise.

  j. In other cases where an enterprise has its business activities managed, controlled or decided de facto by the other enterprise.

  k. A related enterprise performs the disposition or acquisition transaction in at least 25% of its equity within a tax period, the borrowing or lending transaction in at least 10% of its equity performed at the transaction time falling within a tax period with a person holding the executive office or the controlling interest in the enterprise or with a person in one of the relationships prescribed in point (g) of this clause.

[1] **www.gdt.gov.vn**

Point 21, Article 3, of the Law on Tax Administration 38, which takes effect on 1 July 2020, also provides the definition of related-party relationship:

"Related parties are parties directly or indirectly participating in the management, control or equity of the other enterprise. Or they could be parties directly or indirectly under the management or control of an organization or individual. They can also be parties having the investments from the same organization or individual, or enterprises under the management or control of the individuals with a close relationship within the same family."

In addition to the general definition above, Article 5 also defines 11 specific types of related-party relationships.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Vietnam is not a member of the OECD. The OECD Guidelines can be a reference source but are not officially accepted, while Decree 132 adopts certain concepts of BEPS actions.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

Yes, it has.

- Coverage in terms of Master File, Local File and CbCR

  It covers CbCR, master file and local file.

- Effective or expected commencement date

  It is 1 May 2017.

- Material differences from OECD report template or format

  The Vietnamese format is generally in line with the OECD format.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, a local branch needs to comply with Vietnamese transfer pricing rules if the branch is an independent branch and separately submits the corporate income tax (CIT) finalization in Vietnam.

- **Does transfer pricing documentation have to be prepared annually?**

Transfer pricing documentation (local file and master file) must be prepared and made available by the time of submitting the CIT finalization return of the respective year (i.e., three months after the fiscal year-end). Regarding CbCR, Decree 132 provides detailed guidance at Point 5, Article 18 as mentioned below.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Taxpayers shall be exempted from the transfer pricing

documentation requirements in the following circumstances:

- Taxpayers are engaged in transactions with related parties that must pay corporate income tax within the territory of Vietnam, are subject to the same corporate income tax rates as applied to these taxpayers and all of them are not offered the corporate income tax incentive within a specified taxable period.
- Taxpayers are engaged in transfer pricing but their total sales arising within a specified taxable period are less than VND50 billion, and their total values of the related-party transactions arising within a specified taxable period do not exceed VND30 billion.
- Taxpayers already entering into advance pricing agreement (APA) have submitted the annual report in accordance with legislation on advance pricing agreements. For those related-party transactions that are not covered by the APA, taxpayers shall be responsible for making transfer pricing declarations as required under Vietnamese TP regulations.
- Taxpayers perform business activities by exercising simple functions, neither generating any revenue nor incurring any cost from operation or use of intangible assets, generating the sales of less than VND200 billion, as well as applying the ratio of net operating profit before deducting loan interest and corporate income tax (exclusive of the difference between sales and costs of financial activities) to net sales in the following sectors:
  - Distribution: 5% or over
  - Manufacturing: 10% or over
  - Processing: 15% or over

- **Master File**

Refer to the section above (Clause 2, Article 19 of Decree 132).

- **Local File**

Refer to the section above (Clause 2, Article 19 of Decree 132).

- **CbCR**

Decree 132 provides detailed guidance on taxpayers' obligations relating to CbCR as summarized below:

- A Vietnamese ultimate parent entity (UPE) with global consolidated revenue in a tax period of VND18,000 billion or more must prepare Form 04 (CbCR) and submit it to the tax authority no later than 12 months from the fiscal year-end of the UPE.
- For a Vietnamese taxpayer whose overseas UPE is obliged to submit a CbCR in its jurisdiction of residence, the Vietnamese tax authority will obtain that CbCR by engaging on the Automatic Exchange of Information (AEOI) in accordance with its commitment under the International Tax Agreement of Vietnam.
- A Vietnamese taxpayer must submit a CbCR report to the Vietnamese tax authority in the following cases:
  - The jurisdiction of residence of the UPE has signed an International Tax Agreement with Vietnam but there is no Multilateral Competent Authority Agreement (MCAA) for AEOI in place at the time of the CbCR submission deadline.
  - The jurisdiction of residence of the UPE has joined the MCAA with Vietnam but suspended the AEOI or cannot automatically provide the CbCR to the Vietnamese tax authorities.
  - If there is more than one taxpayer in Vietnam, the UPE provides a written notification to the Vietnamese tax authority on the appointed organization for submission of the CbCR on its behalf no later than the financial year end of the UPE.
- A Vietnamese taxpayer is not obligated to submit a CbCR to the Vietnamese tax authority if the UPE appoints an organization to submit the CbCR to the tax authority of the host jurisdiction on its behalf (appointed organization) no later than 12 months from the financial year end of the UPE and the following conditions are fulfilled:
  - The jurisdiction of residence of the appointed organization has the following regulations:
  - Legally requires the submission of CbCR
  - Has an MCAA with Vietnam to which such jurisdiction is a signing party at the time of the CbCR submission deadline
  - Does not suspend the AEOI and can provide a CbCR to the Vietnamese tax authorities
- The appointed organization provides a written notification on the appointed to submit a CbCR to the jurisdiction of its residence no later than the financial year end of the UPE.
- The Vietnamese taxpayer submits the written notification to the Vietnamese tax authority.

Decree 123 also indicates that the Vietnamese tax authorities will annually announce on their tax web portal the list of foreign tax authorities that engage in the AEOI with respect to CbCR.

- **Economic analysis**

Refer to the section above (Clause 2, Article 19 of Decree 132).

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. However, Clause 1, Article 19, of Decree 132 provides that "Taxpayers shall be exempted from the transfer pricing declaration requirements referred to in Section III and IV of the Appendix I to this Decree, and the transfer pricing documentation requirements prescribed herein only if they are engaged in transactions with related parties that must pay corporate income tax within the territory of Vietnam, are subject to the same corporate income tax rates as applied to these taxpayers and all of them are not offered the corporate income tax incentive within a specified taxable period, but they shall be required to clarify bases for such exemption in Section I, II included in the Appendix I hereto."

- **Local language documentation requirement**

Yes, the transfer pricing documentation needs to be submitted in the local language. It is not clearly regulated in law, but in Vietnam, all tax documentations submitted must be in Vietnamese.

- **Safe harbor availability including financial transactions if applicable**

There is no safe harbor available in Vietnam.

- **Is aggregation or individual testing of transactions preferred for an entity**

There is none specified.

- **Any other disclosure/compliance requirement**

Please refer to the below.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

The disclosure forms (as mentioned above) must be submitted together with the CIT return, which must be filed within three months from the end of the financial year as stipulated in Point 2, Article 44, of the Law on Tax Administration 38.

- **Related-party disclosures along with corporate income tax return**

Appendix I – Information on related parties and related-party transactions (replacing Form 01).

Appendix II – Checklist of information and documents required for local file (replacing Form 02).

Appendix III – Checklist of information and documents required for master file (replacing Form 03).

Appendix IV – Report on transactional profitability results in form of country-by-country reporting (CbCR) for a taxpayer who has its ultimate parent in Vietnam and has global consolidated revenue in the tax period of VND18,000 billion or more.

- **Related-party disclosures in financial statement/annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

CbCR notification is required, but whether it is required in the statutory tax return is not clearly mentioned in Decree 132.

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Three months from the end of the fiscal year.

Point 2, Article 44, of the Law on Tax Administration 38, which takes effect from 1 July 2020, provides that the filing deadline is the last date of the third month since the fiscal year-end date.

- **Other transfer pricing disclosures and return**

Three months from the end of the fiscal year.

Point 2, Article 44, of the Law on Tax Administration 38, which takes effect from 1 July 2020, provides that the filing deadline is the last date of the third month since the fiscal year-end date.

- Master File

The master file needs to be maintained and filed on request.

- CbCR preparation and submission

A Vietnamese ultimate parent entity with global consolidated revenue in a tax period of VND18,000 billion or more must prepare Appendix IV (CbCR) and submit it to the tax authority no later than 12 months from the fiscal year-end of the UPE.

For a Vietnamese taxpayer whose overseas UPE is obliged to submit a CbCR in its jurisdiction of residence, please refer the details as mentioned above.

- CbCR notification

Yes, CbCR notification is required starting 20 December 2020.

b) Transfer pricing documentation/Local File preparation deadline

Transfer pricing documentation must typically be finalized by the time of lodging the final CIT return and forms a part of the return.

c) Transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submission of transfer pricing documentation or Local File?

No, there is currently no statutory deadline for the submission of transfer pricing documentation. It will need to be submitted upon request.

- Time period or deadline for submission upon tax authority request

In consultation phase before the official tax/transfer pricing audit, taxpayers have to submit transfer pricing documentation within 30 working days upon the tax authority's written request (possible for onetime extension with no more 15 working days).

In the official tax/transfer pricing audit, transfer pricing documentation must be submitted upon the tax authority's request in a timely manner.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions

Yes.

- Domestic transactions

Yes.

b) Priority and preference of methods

Decree 132 permit the use of the following methods: Comparable Uncontrolled Price (CUP) Method, Resale Price Method (RPM), Cost Plus Method (CPM), Comparable Profit Method (CPM) or TNMM under OECD Transfer Pricing Guidelines, and Profit Split Method (PSM).

Taxpayers are required to select the most appropriate method to determine whether the pricing arrangement is at arm's length under the prevailing regulations.

There is no hierarchy among the methods specified, but recent practices suggest that the Vietnam tax authority has a growing preference for the use of internal comparables, e.g., internal CUP or internal CPM/TNMM if reliable internal information on CUP, CPM/TNMM is available.

8. Benchmarking requirements

- Local vs. regional comparables

There is a legal requirement for local jurisdiction comparables (preferably APAC). Where no local comparables are available, comparables in other countries within regions that have comparable conditions of industries and levels of economic development are acceptable.

- Single-year vs. multiyear analysis for benchmarking

Single-year testing is acceptable. In audits, the tax authority prefers the single-year testing.

- Use of arm's-length range

In accordance with Decree 132, the definition of the arm's-length range has been changed to a set of values from the 35th percentile (previously 25th percentile under Decree 20 and Circular 41) to the 75th percentile with the median value set at 50th percentile value. This accordingly narrows the arm's-length range and may impact the result of taxpayer's transfer pricing analysis compared to the rules of Decree 20

and Circular 41.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year. Comparability review and financial update would be sufficient

- **Simple, weighted or pooled results**

There is a preference for weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

All information relating to the benchmarking analysis, including, but not limited to, annual reports of companies, website snapshots and any other evidence of the search process, can be requested by the tax authority.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

Administrative penalties ranging from VND2 million up to VND25 million are imposed for late submission of CIT finalization return (including transfer pricing disclosure forms).

In addition, a penalty ranging from VND8 million to VND15 million is imposed for not submitting transfer pricing disclosure forms.

- **Consequences of failure to submit, late submission or incorrect disclosures**

In the event of tax/transfer pricing audit, taxpayers are subject to a penalty of 20% of additional tax in the case of an incorrect declaration (even having local file regardless of whether a self-adjustment is already made). Additional penalties of up to three times the outstanding tax due may be imposed if there is a finding of tax evasion or fraud.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Administrative penalties ranging from VND2 million up to VND25 million are imposed for late submission of CIT finalization return (including transfer pricing disclosure forms).

In addition, a penalty ranging from VND8 million to VND15 million is imposed for not submitting transfer pricing disclosure forms.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Administrative penalties ranging from VND2 million up to VND25 million are imposed for late submission of CIT finalization return (including transfer pricing disclosure forms).

In addition, a penalty ranging from VND8 million to VND15 million is imposed for not submitting transfer pricing disclosure forms.

- **Is interest charged on penalties or payable on a refund?**

The interest penalty of 0.03% per day, over the outstanding tax due, may also be imposed if a transfer pricing adjustment is made.

b) Penalty relief

Penalties may be mitigated by timely and adequate disclosure of the related-party transactions on Appendix I, II and III attached to Decree 132, and by the preparation and timely production of the three-tiered transfer pricing documentation.

Taxpayers that do not agree with the decision of the tax authority can appeal on the decision to a higher level or go to court.

10. Statute of limitations on transfer pricing assessments

Transfer pricing is considered as one area of tax and has the same statute of limitations. The statute of limitations applicable for tax collection is 10 years, counted from the date on which the tax offenses are found. However, where the taxpayer did not register for tax, there is no statute of limitations for collecting the tax shortfall and late payment interest.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The likelihood may be considered to be medium to high, as the

tax authority is currently paying more attention to transfer pricing.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium. The tax authority strongly prefers the internal comparables, e.g., internal CUP, internal CPM/TNMM method. In the case of the application of CPM/TNMM, challenges are around the selection of comparables and the comparability of the selected comparables.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be high, mostly around CUP applicability. In the case of application of CPM/TNMM, the challenges are around the selection of comparables and the comparability of the selected comparables.

- **Specific transactions, industries and situations, if any, more likely to be audited**

Transfer pricing audits are increasing and become more sophisticated. Some of the focus points in transfer pricing audit are as follows:

- **Situations: loss-making companies, large enterprises, companies that have not been inspected or examined for a long time, and companies enjoying tax incentives**
  - Industry: various industries
  - Transaction: high-value transactions (royalty, service fee, interest, etc.), production cost (materials, labor cost, etc.)

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Vietnam. APA regulations in Vietnam support unilateral, bilateral and multilateral APAs.

- **Tenure**

In accordance with Circular 45/2021/TT-BTC, an APA can be effective for up to three years, with renewal for a maximum of three years.

- **Rollback provisions**

Rollback provisions are not available for prior years.

- **MAP opportunities**

Yes, taxpayers may request a MAP if taxation has or is likely to occur not in accordance with the provisions of a double taxation treaty (DTT) to which Vietnam is signatory. Most of Vietnam's DTTs permit taxpayers to present a case to the tax authorities within two or three years from the first notification to the taxpayer on the actions giving rise to taxation that are not in accordance with the DTT. However, the time limits may vary, and the relevant DTT should be consulted for the applicable time limit.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

There are no specific tax-driven thin-capitalization rules in Vietnam.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority [1]

Zambia Revenue Authority (ZRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

The Income Tax Act (ITA), Section 97A Draft Regulations were published in 2017 and are more detailed than the initial income tax legislation. The draft regulations and document requirements took effect from FY2017.

As per amendment of transfer pricing regulations through government gazette dated 6 April 2018, Zambia has adopted OECD Transfer Pricing Guidelines July 2017 recommendations. The amendment seeks to enhance the existing transfer pricing regulations by providing detailed guidance on application of arm's-length principle and Zambia's transfer pricing documentation requirement.

- **Section reference from local regulation**

Sections 97A to 97D.

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Zambia is a member of the OECD. The transfer pricing regulations recognize the application of OECD Transfer Pricing Guidelines and the United Nations practical manual on transfer pricing for developing countries. However, the local regulations will prevail in case of any inconsistencies.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

CbCR must be filed no later than 12 months after the last day of the reporting accounting year of the MNE group. These amended CbC regulations came into effect on 1 January 2021.

- Coverage in terms of Master File, Local File and CbCR

  No, Zambia has not explicitly adopted BEPS Action 13 for transfer pricing documentation in local regulations, but there are some elements thereof. Zambia has adopted CBCR regulation with effect from 1 January 2021.

- Effective or expected commencement date

  Zambia adopted CBCR regulation with effect from 1 January 2021.

- Material differences from OECD report template or format

  This is not applicable.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  No.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

Yes, Zambia has transfer pricing documentation guidelines. The documentation has to be contemporaneous. There is no requirement to submit.

- **Does a local branch of a foreign company need to comply**

[1] https://www.zra.org.zm/

with the local transfer pricing rules?

Yes.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, the transfer pricing documentation has to be prepared on an annual basis and maintained for 10 years.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each entity needs its own transfer pricing report.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Local entities with an annual net turnover equal to or exceeding ZMW50 million are required to prepare documentation. However, the threshold does not apply to multinational enterprises (MNEs), effectively rendering all MNEs subject to transfer pricing requirements.

- **Master File**

This is not applicable.

- **Local File**

No threshold.

- **CbCR**

An ultimate parent entity that is tax resident in Zambia, with consolidated group revenue of Zambian Kwacha (ZMW)4,795 million, approx. (EUR240 million) in the previous accounting year must file a CbCR with the Commissioner General, 12 months after the last day of the reporting year of the multinational enterprise with respect to that reporting accounting year. Where no entity in the group files a CbCR, the Zambian resident entity must file as long as the group revenue exceeds the EUR240 threshold.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

The transfer pricing regulations apply to domestic transactions.

- **Local language documentation requirement**

The transfer pricing reports are to be prepared in the local language (English). The Income Tax (Transfer Pricing) (Amendment) Regulations, 2018, state that if the documents are prepared in a language other than English, the taxpayer will have to translate the documentation at the person's own expenses and have it certified by a translator before a notary public.

- **Safe harbor availability, including financial transactions if applicable**

A safe harbor of cost plus 5% is provided on the amount charged for the provision of a low-value-added service between associated person. No specifications have been provided for financial transactions.

- **Is aggregation or individual testing of transactions preferred for an entity**

The guidelines provide for entities to test transactions on a transaction by transaction basis and where an aggregate testing is done, a reasoning should be provided.

- **Any other disclosure/compliance requirement**

This is not applicable.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

Effective from 2018 (including FY2017), taxpayers have to state all related-party transactions in the annual income tax return. Taxpayers are required to disclose details of new related companies (worldwide) within a month of the companies becoming related. The penalty for nondisclosure is approximately USD600 per day for the company and each of the directors.

- **Related-party disclosures in financial statement/annual report**

Companies are required to disclose related-party transactions under the related-party notes to the financial statements.

- **CbCR notification included in the statutory tax return**

There is a requirement to notify the Commissioner, but no return has been issued. Thus, there is no requirement to include the notification in the Tax return

- **Other information/documents to be filed**

This is not applicable.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

For FY2021, the due date for the return filing is 21 June 2022; prior to FY2017, the due date for the corporate income tax return filing was 30 June of the following year.

- **Other transfer pricing disclosures and return**

Taxpayers have to disclose all related-party transactions in their annual returns, effective from FY2017. The regulations state that transfer pricing documentation must be prepared by the date of submission of the annual income tax return, but a transfer pricing document does not need to be submitted.

- **Master File**

This is not applicable.

- **CbCR preparation and submission**

CbCR must be filed no later than 12 months after the last day of the reporting accounting year of the MNE group.

- **CbCR notification**

CbCR notification must be filed no later than 12 months after the last day of the reporting accounting year of the MNE group.

b) Transfer pricing documentation/Local File preparation deadline

Effective from 2018, for FY2017 and each subsequent year, contemporaneous transfer pricing documentation must be prepared by the date of submission of the annual income tax return.

c) Transfer pricing documentation/Local File submission deadline

- **Is there a statutory deadline for submission of transfer pricing documentation or Local File?**

No, however, the document should be in place by the time of submission of the income tax return on 21 June.

- **Time period or deadline for submission upon tax authority request**

Transfer pricing documentation should be submitted within 30 days upon written request by the ZRA Commissioner General.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**
- **Domestic transactions: Yes**

b) Priority and preference of methods

The regulations state the following methods as the approved transfer pricing methods from which an appropriate method can be chosen:

- CUP
- Resale price
- Cost-plus
- TNMM
- Transactional profit-split

8. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement; local comparables are rarely used because of the challenge in finding information locally.

- **Single-year vs. multiyear analysis for Benchmarking**

Multiyear analysis.

- **Use of interquartile range**

Yes, interquartile range calculation using spreadsheet quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. rollforwards and update of the financials**

As a practice, fresh benchmarking search is not required every year.

- **Simple, weighted or pooled results**

A weighted average is preferred, as per common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**

In an instance that the transfer pricing document is requested for by the Zambia Revenue Authority and the document is found to not align to the guidelines as per the Regulations, the penalties that relate to non-compliance of transfer pricing regulations of ZMW24 million may apply.

- **Consequences of failure to submit, late submission or incorrect disclosures**

Non-compliance with the regulations may result in an offence and liability on conviction to penalties specified under the ITA (i.e., from 1 January 2018 to 31 December 2018, penalty is ZMW3,000, and with effect from 1 January 2019, penalty of ZMW24 million).

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes, penalties can be assessed. The rates stated in the income tax return are the applicable rates.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes, penalties can be assessed. The rates stated in the income tax return are the applicable rates.

- **Is interest charged on penalties or payable on a refund?**

The interest rates are per the ITA. The interest is linked to the prevailing Bank of Zambia lending rates.

b) Penalty relief

Penalty relief is available through negotiations with the tax authority.

10. Statute of limitations on transfer pricing assessments

There is a specific statute of limitations on transfer pricing assessments (10 years) with effect from 1 January 2019. The normal income tax statute of limitations of six years is applicable. With effect from 1 January 2019, taxpayers are also required to retain transfer pricing-related records for a period of 10 years (6 years for other tax records) with the base year being 2012.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

The audit program is risk-based, concentrating on thinly capitalized MNEs and specific sectors of the economy, such as mining-related companies and distributors.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

The likelihood may be considered to be medium; tax authorities will usually challenge the characterization of the entity. The methodology is not often challenged.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

The likelihood may be considered to be medium; if methodology is challenged, then an adjustment will be made. However, there is a possibility to object to the assessment raised.

- **Specific transactions, industries and situations, if any, more likely to be audited**

At the time of this publication, the mining industry (mining companies and suppliers) and distributors seemed to be the revenue authorities' focus.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

Zambia does not have a formal APA program.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest exceeding 30% of tax earnings before interest, depreciation, tax and amortization is disallowed for other companies, with the exception of companies registered under the Banking and Financial Services Act, the Pension Scheme Regulation Act or the Insurance Act.

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1. Tax authority and relevant transfer pricing regulation or rulings

a) Name of tax authority[1]

Zimbabwe Revenue Authority (ZIMRA).

b) Relevant transfer pricing section reference

- **Name of transfer pricing regulations or rulings and the effective date of applicability**

Zimbabwe transfer pricing regulations: these regulations became effective on 1 January 2016.

- **Section reference from local regulation**

Section 2A of the Income Tax Act (23:06) defines an associated party as the following: "Where a person, other than an employee, acts in accordance with the directions, requests, suggestions or wishes of another person, whether or not the persons are in a business relationship and whether or not those directions, requests, suggestions or wishes are communicated to the first-mentioned person, both persons shall be treated as associates of each other" for the purposes of the Income Tax Act, Chapter 23:06.

Section 98B along with the 35th schedule of the Income Tax Act (23:06) provides specific laws on transfer pricing as well as statutory instrument 109 of 2019(Income Tax Transfer Pricing Documentation Regulations)2019

2. Are there changes expected to the local transfer pricing rules due to COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/ UN tax manual/EU Joint Transfer Pricing Forum

Zimbabwe is not a member of the OECD but references to the OECD Guidelines and the UN tax manual as relevant sources of interpretation and application for transfer pricing purposes.

b) BEPS Action 13 implementation overview

- **Has the jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation in the local regulations?**

The 2017 Transfer Pricing Guidelines, which Zimbabwe refers to for interpretation, has aspects of Action 13. Our local legislation (35th schedule of the Income Tax Act and Statutory Instrument 109 of 219) refers to Local File requirements as prescribed in Action 13. Our legislation does not, however, refer specifically to Action 13.

- Coverage in terms of Master File, Local File and CbCR

  TP documentation coverage is in terms of Statutory Instrument 109 of 2019. The Statutory instrument detail Zimbabwe TP documentation requirements without referencing to Master File or Local file. In practice, though, Master file or local file coverage is in terms of the OECD Transfer Pricing Guidelines.

- Effective or expected commencement date

  It is not applicable.

- Material differences from OECD report template or format

  Zimbabwe uses the OECD Guidelines and UN tax manual for guidance. There are no material differences

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Our Statutory instrument 109 of 2019 requirements generally resonates with those found in the BEPs Action 13. We agree therefore that BEPS Action 13 format is sufficient to achieve penalty protection.

c) Is the jurisdiction part of OECD/G20 Inclusive Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation requirements

a) Applicability

- **Does the jurisdiction have transfer pricing documentation guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?**

[1] https://www.zimra.co.zw/

The 35th schedule of the Income Tax Act (23:06) and Statutory Instrument 109 of 2019 provide guidance on the documentation requirements. Further, ZIMRA has issued transfer pricing practice notes for guidance. Documentation for a relevant tax year is contemporaneous where it is in place at the statutory tax return's filing date. The documentation must be made available upon request by the Revenue Authority within seven days.

- **Does a local branch of a foreign company need to comply with the local transfer pricing rules?**

Yes, it is required to comply.

- **Does transfer pricing documentation have to be prepared annually?**

Yes, transfer pricing documentation must be prepared annually. This involves updating transaction values, review of any material changes from the prior year, documenting new transactions, updating the industry analysis and updating benchmarks if there is need.

- **For an MNE with multiple entities in the jurisdiction, is it required to have stand-alone transfer pricing reports for each entity?**

Yes, each legal entity is required to have its stand-alone transfer pricing report.

b) Materiality limit or thresholds

- **Transfer pricing documentation**

Zimbabwe has no materiality thresholds. As per our legislation; every "person" that engages in related-party transactions is required to have transfer pricing documentation, including small- to medium-sized enterprises.

- **Master File**

No minimum thresholds.

- **Local File**

No minimum thresholds.

- **CbCR**

Not yet adopted.

- **Economic analysis**

No minimum thresholds.

c) Specific requirements

- **Treatment of domestic transactions**

The legislation applies to both domestic and cross-border transactions.

- **Local language documentation requirement**

The transfer pricing documentation report needs to be submitted in English.

- **Safe harbor availability, including financial transactions if applicable**

Zimbabwe does not have safe harbor rules at this stage.

- **Is aggregation or individual testing of transactions preferred for an entity**

Preferred method is individual transaction by transaction testing. However where separate transaction are so closely linked, aggregation method may be preferred.

- **Any other disclosure/compliance requirement**

According to Statutory instrument 109 of 2019, the Revenue Authority has power to request any additional information that the Commissioner may deem necessary during the course of a Transfer Pricing Audit.

5. Transfer pricing return and related-party disclosures

- **Transfer pricing-specific returns**

Yes (ITF12C2), it must be submitted along with the year-end return (ITF12C).

- **Related-party disclosures along with corporate income tax return**

The specific related-party disclosures are detailed in the transfer pricing return.

- **Related-party disclosures in financial statement/annual report**

These must talk to both the TP documentation report and the TP Return.

- **CbCR notification included in the statutory tax return**

It is not applicable in Zimbabwe yet.

- **Other information/documents to be filed**

Any other information that may have a material impact on the determination of the taxpayer's compliance with the arm's-length principle with respect to the controlled transactions.

6. Transfer pricing documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The filing deadline is 30 April of the following year or any other month approved by the commissioner.

- Other transfer pricing disclosures and return

Transfer pricing return is submitted with the corporate income tax return.

- Master File

Per Revenue Authority request.

- CbCR preparation and submission

Not yet adopted in imbabwe.

- CbCR notification

Not yet adopted in Zimbabwe.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation must be available on request by the Commissioner. It must be submitted within seven days of the written request.

c) transfer pricing documentation/Local File submission deadline

- Is there a statutory deadline for submission of transfer pricing documentation or Local File?
- Yes.
- Time period or deadline for submission upon tax authority request

Documentation shall be provided to the Commissioner within seven days of the written request being duly issued by the Commissioner.

d) Are there any new submission deadlines per COVID-19-specific measures? If Yes, specify which deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic transactions)

- International transactions: Yes
- Domestic transactions: Yes

b) Priority and preference of methods

The following are the approved transfer pricing methods in Zimbabwe:

- CUP
- Resale price
- Cost-plus
- TNMM
- Transactional profit-split

When all the abovementioned methods can be applied with equal reliability, the determination of arm's-length conditions shall be made using the CUP method.

8. Benchmarking requirements

- Local vs. regional comparables

A determination of whether comparables from other geographic markets are reliable has to be made on a case-by-case basis.

- Single-year vs. multiyear analysis

Single.

- Use of interquartile range

Yes.

- Fresh benchmarking search every year vs. rollforwards and update of the financials

Not legislated but in practice we adopt the OECD guidelines approach.

- Simple, weighted or pooled results

Simple.

- **Other specific benchmarking criteria, if any**

None.

9. Transfer pricing penalties and relief

a) Penalty exposure

- **Consequences for incomplete documentation**
- **Consequences of failure to submit, late submission or incorrect disclosures**

Penalties for non-compliance with transfer pricing legislation are:

- 10% of the shortfall tax liability where taxpayer transfer pricing documentation report has been prepared in accordance with the transfer pricing regulations and guidelines
- 30% of shortfall tax liability where the transfer pricing documentation prepared does not meet both the local transfer pricing regulations and transfer pricing guidelines
- 100% of shortfall tax liability where there is evidence of tax evasion

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed incomplete?**

Yes.

- **If an adjustment is sustained, can penalties be assessed if documentation is deemed non-contemporaneous?**

Yes.

- **Is interest charged on penalties or payable on a refund?**

Not on penalty but on principal tax payable.

b) Penalty relief

Penalties can be waived or reduced through negotiation with ZIMRA.

10. Statute of limitations on transfer pricing assessments

It is six years from the relevant year of the assessment except where there is evidence of fraud then the six year limit can be set aside.

11. Are there any COVID-19-related impacts on transfer pricing-specific audits?

Audit Period still to be audited..

12. Likelihood of transfer pricing scrutiny and related audit by the local authority

- **Likelihood of transfer pricing-related audits (high/medium/low)**

High.

- **Likelihood of transfer pricing methodology being challenged (high/medium/low)**

High.

- **Likelihood of an adjustment if the transfer pricing methodology is challenged (high/medium/low)**

High.

- **Specific transactions, industries and situations, if any, more likely to be audited**

a. Specific transactions likely to go under Audit- Management fees, License Fees, Intercompany loans, Use of intangible assets.

b. Industry likely to be audited- Mining, Tobacco, Tourism , Retail.

c. Situations that may Trigger Audit.- Perpetual losses, Management fees based on percentage of Turnover, Groups with members in low Tax Jurisdictions eg Mauritius, Restructuring.

13. Advance Pricing Agreement and Mutual Agreement Procedure opportunities

- **Availability (unilateral, bilateral and multilateral)**

No legislation in place.

- **Tenure**

This is not applicable.

- **Rollback provisions**

Not legislated.

- **MAP opportunities**

It is available to 16 countries with which it has double tax agreements with.

14. Have there been any impacts or changes to Advance Pricing Agreements, rulings or other transfer pricing-related certainty measures due to COVID-19?

None observed Yet..

15. Relevant regulations and/or rulings with respect to thin capitalization or debt capacity in the jurisdiction

Interest expense is disallowed on the portion that causes the debt-to-equity ratio to exceed 3:1. This restriction does not apply to the interest on debt with a local financial institution which is not associated with the taxpayer. "Equity" means issued and paid-up capital, unappropriated profits, reserves, realized reserves and interest-free loans from shareholders.

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Glossary of key terms

APA (advance pricing agreement)
An Advance Pricing Agreement (APA) is an agreement between a tax payer and tax authority determining the transfer pricing methodology for pricing the tax payer's international transactions for future years. The methodology is to be applied for a certain period of time based on the fulfilment of certain terms and conditions (called critical assumptions). An APA may be unilateral involving one tax administration and a taxpayer or multilateral involving the agreement of two or more tax administrations.

Arm's-length principle
The international standard adopted by the OECD and in many jurisdictions mandating that the result that related parties obtain from an intercompany transaction approximates the result that uncontrolled parties would have obtained had they undertaken the same transaction under the same circumstances. It is set forth in Article 9 of the OECD Model Tax Convention.

Arm's length range
A range of outcomes that are acceptable for establishing whether the conditions of a controlled transaction are deemed to be at arm's length.

BEPS (base erosion and profit shifting)
On 12 February 2013, the OECD released its report *Addressing Base Erosion and Profit Shifting*, followed by the release of Action Plan on 5 October 2015. Thus, the OECD aims to develop approaches for addressing government concerns about multinational companies (MNCs) reducing their tax liability through BEPS activity.

CbCR (country-by-country reporting)
Part of the OECD's BEPS Action Plan 13. MNCs are required to provide the country-by-country (CbC) report, which includes information on their global allocation of income, economic activity and taxes paid among countries.

CFC (controlled foreign corporation)
A subsidiary and member of an MNE group.

CPM (comparable profit method)
A method that, under US regulations, is used to determine an arm's-length range of outcomes for transfers of both tangible and intangible property. If the reported operating income of the tested party is not within a certain range, an adjustment will be made. In effect, this method requires a comparison of the operating income that results from the consideration actually charged in a controlled transfer with the operating income of similar taxpayers that are uncontrolled. The CPM in US is similar to the TNMM; see below.

CCA (cost contribution arrangement) or CSA (cost sharing agreement)
A framework agreed upon among enterprises to share the costs and risks of developing, producing or obtaining assets, services or rights and to determine the nature and extent of the interests of each participant in the result of the activity of developing, producing or obtaining those assets, services or rights.

CUP (comparable uncontrolled price) method
A transfer pricing method that compares the price for property or services in a controlled transaction with the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.

EU (European Union)
The European Union (EU) is a group of 28 countries that operates as a cohesive economic and political block.

EUJTPF (EU Joint Transfer Pricing Forum)
The EU Joint Transfer Pricing Forum consists of representatives of governments and the private sector, who advise and consult on transfer pricing issues.

FY
Fiscal year

GAAP (generally accepted accounting principles)
The rules and practices required to be followed in certain jurisdictions for keeping financial records and books of account.

IFRS (International Financial Reporting Standards)
Accounting standards issued by the IFRS Foundation the International Accounting Standards Board. They set common rules so that financial statements can be consistent, transparent and comparable around the world.

MAP (mutual agreement procedure)
A dispute resolution process found in Article 25 of the OECD Model Tax Convention, as well as in various double tax conventions. MAP is a government-to-government process of negotiation to resolve matters of taxation not in accordance with the particular tax treaty and to attempt to avoid double taxation.

MNE (multinational enterprise)/MNC (multinational corporation)
A member of a related group that carries on business directly or indirectly in two or more countries.

MCAA (Multilateral Competent Authorities Agreement)
The purpose of the CbC MCAA is to set forth rules and procedures as may be necessary for Competent Authorities of jurisdictions implementing BEPS Action 13 to automatically exchange CbC Reports prepared by the Reporting Entity of an MNE Group and filed on an annual basis with the tax authorities of the jurisdiction of tax residence of that entity with the tax authorities of all jurisdictions in which the MNE Group operates.

OECD (Organisation for Economic Co-operation and Development)
An intergovernmental organization based in Paris that was formed to foster international trade and economic development. The OECD has 35 member countries. Among its many concerns are the removal of tax barriers to the free flow of goods and services and the avoidance of double taxation of income or profits. The OECD has developed transfer pricing guidelines and a model tax convention; see below.

OECD Guidelines
The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, the latest edition of which was published by the OECD in 2017. The OECD Guidelines endorse the arm's-length principle and consist of a statement of principles rather than a set of specific rules to be applied.

OECD Model Tax Convention
The *Model Tax Convention on Income and on Capital*, first published by the OECD in September 2010 and subsequent shorter versions released, the latest being in 2017. The Model Tax Convention is to be used by member countries in negotiations of bilateral double tax treaties. The OECD also provides commentary on the interpretation of the Model Tax Convention and states that member countries should follow this commentary, subject to their expressed reservations thereon, when applying and interpreting their double tax treaties.

PPLI (profit level indicator)
A ratio that measures the relationship between an entity's profits and the resources invested or costs incurred to achieve that profit.

TNMM (transactional net margin method)
A profits-based method that compares the profitability of an MNE member with the profits of comparable entities undertaking similar transactions.

UN (United Nations)
An intergovernmental organization that aims to maintain international peace and security, develop friendly relations among nations, achieve international cooperation, and be a center for harmonizing the actions of nations.

Quick summary table

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
Albania	No	Yes	No	No	Yes – Albania is a signatory of the MCAA but not a signatory of the CbCR MCAA	No – There is no requirement for contemporaneous documentation. However it is advisable to have it prepared by the CIT return date i.e. 31 March of the following year.	No – Benchmarks should be performed every three years. Financial updates are performed annually.
Algeria	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	No
Angola	Not Applicable	Yes	Not Applicable	Not Applicable	No	Yes	Yes
Argentina	Yes	No	Yes	Yes	Yes	Yes	Yes
Armenia	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	No	No
Australia	Yes	Yes	Yes	Yes	Yes	Yes (for penalty mitigation)	Yes (at least financial update)
Austria	Yes	Yes	Yes	Yes	Yes	Yes	No
Azerbaijan	Not Applicable	Not Applicable	Yes – CbCR is applicable for 2020 reporting period. However, filing procedures and the required statutory forms for such reporting, as well as deadlines are yet to be established by the competent authority.	Not Applicable	No	Yes	Yes
Bahrain	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes	No	No
Bangladesh	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Belarus	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Belgium	Yes	Yes	Yes	Yes	Yes	Yes	No
Benin	Yes	Yes	Yes	No	No	Yes	No
Bolivia	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Botswana	Yes	Yes	Not Applicable	Not Applicable	No	Yes	Yes
Brazil	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes	Yes
Bulgaria	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Burkina Faso	No	No	No	No	No	Yes	No
Cambodia	Not Applicable	Not Applicable	No	No	No	Yes	No
Cameroon	No	No	No	No	No	Yes	No
Canada	Not Applicable	Not Applicable	Yes	No	Yes	Yes	No
Cape Verde	Not Applicable	Yes	Yes	Yes	Not Yet	Yes	Yes
Chad	No	No	No	No	No	No	No
Chile	Not Applicable	Yes	Yes	Yes	Yes	Yes	No
China Mainland	Yes	Yes	Yes	No	Yes	Yes	Yes
Colombia	Yes	Yes	Yes	Yes	Yes	Yes	No

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
Congo Brazaville	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes	No
Congo Republic of (DRC)	No	No	No	No	No	Yes	No
Costa Rica	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Cote d'Ivoire (Ivory Coast)	Not Applicable	Not Applicable	Yes	No	No	Yes	No
Croatia	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes	No
Cyprus	No (as of 2019 tax year) – by "as of 2019" it is implied that there are no relevant obligations up to and including 2019 tax year. As described in detail in our GRG input, this is expected to change from tax year 2020 onwards	No (as of 2019 tax year)	Yes	Yes	Yes	N/A (as of 2019 tax year)	N/A (as of 2019 tax year)
Czech Republic	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes	No
Denmark	Yes	Yes	Yes	Yes	Yes	Yes	No
Dominican Republic	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Ecuador	No	No	No	No	No	Yes	Yes
Egypt	Yes	Yes	Yes	Yes	No	Yes	No
El Salvador	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Estonia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Federation of Bosnia and Herzegovina	Yes	Yes	Yes	Yes	No	Yes	Yes
Fiji	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	No
Finland	Yes	Yes	Yes	Yes	Yes	Not Applicable	No
France	Yes	Yes	Yes	Yes	Yes	Yes	Yes
FYR of Macedonia	Yes	Yes	No	No	No	Yes	Yes
Gabon	Yes	Yes	Yes (In the law but suspended since 2018)	Yes (In the law but suspended since 2018)	Yes	Yes	No
Georgia	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes	Yes	Yes	No
Ghana	Not Applicable	Yes	Not Applicable	Not Applicable	No	Yes	No
Gibraltar	Not Applicable	Not Applicable	Yes	Yes	No	Not Applicable	No
Greece	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Guatemala	Yes	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Guinea Conakry	Yes	Yes	Yes	Yes	No	Yes	No
Honduras	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Hong Kong	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iceland	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
India	Yes	Not formally adopted Action 13 local file template, Indian TP regulations have specifically prescribed contemporaneous documentation requirements in line with the OECD TP Guidelines	Yes	Yes	Yes	Yes	Yes
Indonesia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Iraq	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Not Applicable	Not Applicable
Ireland	Yes	Yes	Yes	Yes	Yes	Yes	No – Not required by law, but is recommended as best practise
Israel	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Yes	No	No
Italy	No	No	Yes	Yes	Yes	Yes – TP Doc is not mandatory, however contemporaneous requirement	Yes
Japan	Yes	Yes	Yes	Yes	Yes	Yes	Yes – Generally yes subject to certain conditions.
Jordan	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Not Applicable	Not Applicable
Kazakhstan	Yes	Yes	Yes	Yes	Yes	No	No
Kenya	Not Applicable	Yes	Not Applicable	Not Applicable	No	No	No
Kosovo	No	Yes	No	No	No	No – There is no requirement for contemporaneous documentation. However it is advisable to have it prepared by the CIT return date i.e. 31 March of the following year.	No – Benchmarks should be performed every three years. Financial updates are performed annually.
Kuwait	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Not Applicable	No
Latvia	Yes	Yes	Yes	Yes	Yes	Yes	No
Lebanon	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	No	No
Lithuania	Yes	Yes	Yes	Yes	Yes	No	No
Luxembourg	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes	Yes
Madagascar	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	No	No
Malawi	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Malaysia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Maldives	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Not Applicable
Mali	No	No	No	No	No	Yes	No
Malta	Not Applicable	Not Applicable	Yes	Yes	Yes	No	Not Applicable
Mauritania	No	No	Yes	Yes	No	Yes	No
Mexico	Yes	Yes	Yes	No	Yes	Yes	Yes
Mongolia	Yes	Yes	Yes	Yes	No	Yes	No
Montenegro	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	No	Not Applicable

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
Morocco	Not Applicable – To be provided upon request of the Moroccan Tax Administration	Not Applicable – To be provided upon request of the Moroccan Tax Administration	Not Applicable	Not Applicable	Yes, effective as of September 2021	Yes	Yes
Mozambique	Not Applicable	Yes	Not Applicable	Not Applicable	No	Yes	Yes
Namibia	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	No	No
Netherlands	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New Zealand	Yes	Yes	Yes	Yes	Yes	Yes	No
Nicaragua	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Nigeria	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Norway	No	No	Yes	Yes	Yes	Yes	No
Oman	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	No	No
Pakistan	Yes	Yes	Yes	Yes	Yes	Yes	No
Panama	Yes	Not Applicable	Yes	Yes	Yes	Yes	Yes
Papua New Guinea	No	No	Yes	Yes	No	Yes	No
Paraguay	Not Applicable	Yes	Not Applicable	Not Applicable	No	Not Applicable	Not Applicable
Peru	Yes	Yes	Yes -postponed until further notice	No	Yes	Yes	No
Philippines	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	No
Poland	Yes	Yes	Yes	Yes	Yes	Yes	No – The benchmarking study should be updated at least every 3 years, but also in the year when the economic environment changes to an extent that significantly influences the results of the study
Portugal	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes	No
Puerto Rico	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Qatar	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Romania	Not Applicable	Not Applicable from a format perspective (content is required)	Not Applicable from a format perspective (content is required)	Yes	Yes	Yes	Yes for large taxpayers
Russia	Yes	Yes	Yes	Yes	Yes	No	Yes
Rwanda	N/A	Yes	Report required where the ultimate parent of the taxpayer is required to prepare such a report.	N/A	No	Yes	Yes
Saudi Arabia	Yes	Yes	Yes	Yes	Yes	Yes	No
Senegal	Yes	Yes	Yes	Yes	Yes	Yes	Not applicable
Serbia (Republic of)	Not Applicable	Not Applicable	Yes	Not Applicable	No	Yes	Yes

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
Singapore	Yes	Yes	Yes	No	Yes	Yes	No
Slovak Republic/ Slovakia	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes	Yes	Yes	Yes	No
South Africa	Yes	Yes	Yes	Yes	Yes	Yes	No
South Korea	Yes	Yes	Yes	Yes	Yes	Yes	No
South Sudan	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Spain	Yes	Yes	Yes	Yes	Yes	Yes	No
Sri Lanka	Yes	Yes	Yes	Yes	No	Yes	Yes
Sweden	Yes	Yes	Yes	Yes	Yes	Yes	No
Switzerland	Not Applicable	Not Applicable	Yes	Yes	Yes	No	No
Taiwan	Yes	Yes	Yes	Yes	No	Yes	Yes
Tanzania	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	Yes
Thailand	Yes	Yes	Yes	Not Applicable	No	Yes	No
Togo	Yes	Yes	No	No	No	Yes	No
Tunisia	Yes	Yes	Yes	Yes	Yes	Yes	Not yet expressly specified
Turkey	Yes	Yes	Yes	Yes	No	Yes	Yes
UAE	Not Applicable	Not Applicable	Yes	Yes	Yes	No	No
Uganda	Not Applicable	Yes	Not Applicable	Not Applicable	No	Yes	No
UK	Not Applicable	Not Applicable	Yes	Yes	Yes	Yes	No
Ukraine	Yes	No	Yes	No	Yes	Yes	Yes
United States	Not Applicable	Not Applicable	Yes	No	No	No – Not required by the law, however required to avoid penalties.	No
Uruguay	No	Yes	Yes	Yes	Yes	Yes	Yes
Uzbekistan							
Venezuela	Not Applicable	Yes	No	No	No	Yes	No
Vietnam	Yes	Yes	Yes	No	No	Yes	Yes (the benchmarking result needs to be updated annually reflecting the latest financial data of the comparable companies)
Zambia	Not Applicable	Not Applicable but the ZRA recommends that taxpayers prepare one	Not Applicable	Not Applicable	No	Yes	No
Zimbabwe	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Yes	No

EY Worldwide Transfer Pricing Reference Guide 2020-21

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EYG no. 003592-22Gbl
CRS_CP_164033186
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