EY Worldwide Transfer Pricing Reference Guide

2019-20

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Preface

EY Worldwide Transfer Pricing Reference Guide 2019–2020

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 2019–20* 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 Global Reference Guide 2019–20* covers 134 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 2019–20 is updated as of April 2020. This publication does not include the COVID-19 related tax regulatory changes that have happened since April 2020. The **EY COVID-19 Transfer Pricing Tracker** provides a snapshot of the tax regulatory changes that have been announced in the countries around the world in response to the ongoing crisis.

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 your 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 ey.com/gl/en/services/tax/ey-oecd-base-erosion-and-profit-shifting-project-by-action to follow the latest BEPS developments.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

General Directorate of Taxes (GDT)

b) Relevant TP section reference

- **Name of TP 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 TP, aligned with the OECD Transfer Pricing Guidelines of 2010.
- Article 36/5 introduces TP 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 TP.
- Double taxation treaties are enacted by Albania.

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

The Ministry of Finance 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 TP 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/c/6/70/tatimi-mbi-te-ardhurat – information available only in Albanian language.**

2. OECD Guidelines treatment and BEPS implementation

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

Albania is not a member of the OECD.

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

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, it has. There are no explicit requirements to prepare the TP 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 foreign company need to comply with the local TP rules?**

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

- **Should TP documentation be prepared annually?**

Yes, TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

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

b) Materiality limit or thresholds

- **TP 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 documentation obligation for domestic transactions.

- **Local language documentation requirement**

Pursuant to Paragraph 15.6 of the Transfer Pricing Instruction, the TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 (EUR365,000). 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 CIT 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 and annual report**

Related-party disclosures are included in the financial statements of the taxpayer pursuant to International Financial Reporting Standards (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.

5. TP documentation and disclosure timelines

a) Filing deadline

- CIT return

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

- Other TP 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) TP documentation and local file preparation deadline

There is no specific deadline for the preparation of the TP 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) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP documentation or local file?

There is no specific deadline for the submission of TP documentation. The TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions

With regard to international transactions, under the current TP rules, all TP 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 TP rules, all TP 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.

7. 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 TP 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 TP 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 TP 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. roll forwards and update of the financials**

The TP 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 TP 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 vs. weighted average**

The TP 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.

8. TP penalties and relief

a) Penalty exposure

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

The failure to file the annual controlled transaction notice (explained in the "TP returns 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?**

TP adjustments for which no documentation has been made available 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).

- **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 TP documentation in a timely manner (i.e.,, within 30 days upon receipt of the tax authorities' request) are relieved from penalties in the case of a TP 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.

9. Statute of limitations on TP assessments

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

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of a TP audit in Albania is high. In light of the TP rules that became effective on 4 June 2014, and especially because of the introduced documentation requirements, TP issues are expected to continue to attract significant attention. It is anticipated that TP audits will increase rapidly.

- **Likelihood of TP methodology being challenged (high, medium or 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 TP method applied by the taxpayer, to the extent that it is the most appropriate one for that transaction.

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

The likelihood is medium; refer to the section above.

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

There are no differences among transactions, industries and situations.

11. APA and MAP opportunities

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

The TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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, and 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 (TP) regulation or rulings

a) Name of tax authority

Directorat General of Taxes (Direction générale des Impôts – DGI)

b) Relevant TP section reference

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

Order dated 12 April 2012 pertaining to the documentation justifying the transfer prices applied on related companies

- **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. 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 TP legislation makes considerable reference to the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP legislation only refers to a document to be structured as follows:
    - A base documentation relating to general information relating to the group
    - A documentation 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 TP documentation may be requested by the tax authorities, notably in the frame of an audit, to provide a complementary documentation that aims at providing specific information that 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP 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 Enterprises – 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 TP documentation along with their annual tax returns (before 30 April of each year).

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

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

Yes

- **Should TP documentation be prepared annually?**

Yes

For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

Yes

b) Materiality limit or thresholds

- **TP documentation**

There are no materiality limits or thresholds

- **BEPS master and local files**

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

- **Local language documentation requirement**

The TP 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 TP regulations. However, a ruling request can be submitted by companies registered at the level of the DGE regarding the taxpayer's TP practices. However, the latter cannot be considered as a request for an APA.

- **Any other disclosure or compliance requirement**

All companies subject to the TP 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.

4. TP return and related-party disclosures

- **TP-specific returns**

There is no specific return to be filed in addition the TP 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) – as in 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).

Furthermore, according to provisions of the 2019 Finance Act, entities subject to the obligation of submitting a TP documentation may be required, in the context of a tax audit, to provide a complementary documentation if the primary documentation submitted is considered to be insufficient by the tax inspectors. The 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

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

- **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) TP documentation and local file preparation deadline

30 April of the subsequent year to current year under consideration

c) TP documentation and local file submission deadline

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

The statutory deadline for the submission of TP 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 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 has to submit the TP documentation within 30 days of the tax authority's request, if the latter was not filed with the annual tax return.

6. TP 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 TP legislation does not provide an official TP 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.

7. 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. roll forwards and update of the financials**

Under the current legislation, there are no specific guidelines or requirements on the need to conduct a fresh benchmarking search every year or for updating the financials of a prior study. However, OCED Guidelines recommending an update every three years should apply.

- **Simple vs. weighted average**

It is not specified by the current TP regulations.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

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

For taxpayers subject to a tax audit, the tax administration is entitled to send a formal notice asking for the TP documentation or the complementary TP 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?**

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.

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

Interest (late-payment penalties) can be charged on principals and base penalties if the latter aren't paid on schedule. These interests are capped at 25%.

b) Penalty relief

No specific penalty relief is applicable to TP, 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.

9. Statute of limitations on TP assessments

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

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of a TP audit in Algeria is low to medium.

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

The likelihood of TP methodology being challenged is low to medium.

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

The likelihood of an adjustment if the TP methodology is challenged is high, given the TP environment in Algeria.

- **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 performing large payments to foreign related parties are more likely to undergo an audit.

11. APA and MAP opportunities

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

The Algerian tax legislation does not provide 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Article 2 of the Finance Act for 2019 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 CIDTA provides full deductibility of interests on loans paid to shareholders concerning trading operations.

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

- **Interests 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 latter 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.
- **Interests 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 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.

Note to GRG team: The Algerian Government is expected to wave this limitation through the Complementary Finance Act for FY 2020. We will provide you an update by the beginning of July of this year.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Administração Geral Tributária

b) Relevant TP section reference

- **Name of TP 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

- **Section reference from local regulation**

Special relations concept set out in Article 11 of Chapter IV of Presidential Decree 147/13 of 1 October 2013

2. OECD Guidelines treatment and BEPS implementation

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

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

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP documentation is expected from each eligible taxpayer.

- 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 TP documentation is expected from each eligible taxpayer. Consequently, only TP documentation fully compliant with local regulations can be considered to protect against potential penalties.

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Yes, the TP 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

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

Yes

b) Materiality limit or thresholds

- TP documentation

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

The documentation is applicable to companies 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 reporting an annual revenue of more than AOA7 billion.

- **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 intra-group transactions, in which the company was involved, must be reported (domestic and cross-border).

- **Local language documentation requirement**

The TP documentation needs to be submitted in local language (Portuguese).

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

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable.

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

No related-party detailed information is disclosed to the General Tax Administration, other than the submission of entity-specific TP 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**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

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

- **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) TP documentation and local file preparation deadline

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

c) TP documentation and local file submission deadline

[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.

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

TP 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 TP documentation must be submitted by the deadline stated above, so that no additional notice is given to taxpayers.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**
- **Domestic transactions: yes**

b) Priority and preference of methods

Traditional transactional TP methods only, namely: the CUP, resale price and cost-plus methods

7. 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**

There is no reference to preferences regarding single-year vs. multiyear analysis in the local legislation. The practical approach has been to apply a multiyear analysis.

- **Use of interquartile range**

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

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

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

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

The General Tax Administration notifies large taxpayers, who failed to file TP 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, noncompliance with TP 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 noncompliance with tax obligations.

- **If an adjustment is sustained, can penalties be assessed?**

If a TP adjustment is made, a penalty equivalent to 35% 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.

9. Statute of limitations on TP assessments

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

10. Likelihood of TP scrutiny and related audit by the local authority

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

It is medium. Large taxpayers have already been notified to pay penalties for noncompliance with the contemporaneous TP documentation preparation and submission to the Large Taxpayers' Office.

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

Medium

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

Medium

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

Large taxpayers

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

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

However, as of 18 April 2019, since Law 4/19 entered into force, such expenses have become tax-deductible, provided that the portion exceeding the average annual interest rate established by the Central Bank is added to the taxable income.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

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

b) Relevant TP section reference

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

TP 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 (Dirección General Impositiva) Regulation No. 1,122 (published on 31 October 2001, but applicable for fiscal years beginning on 31 December 1999 or later), as amended by several regulations: No. 1,227/02, No. 1,296/02, No. 1,339/02, No. 1,590/03, No. 1,663/04, No. 1,670/04, No. 1,918/05, No. 1,958/05, No. 1,987/05, No. 3,132/11, No. 3,149/11, No. 3,476/13, No. 3,573/13, No. 3,576/13, No. 4,130-E/2017, No. 4,332/2018, No. 4,338/2018, No. 4,496/2019, No. 4,497/2019, No. 4,502/2019, No. 4,538/2019, No. 4,650/2019, No. 4,680/2020, No. 4,689/2020 and external notes No. 6/05 and No. 1/08

- **Section reference from local regulation**

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

2. OECD Guidelines treatment and BEPS implementation

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

Argentina 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Yes, but it's only for the CbC report.

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

  The master file has been recently introduced within the Argentine TP regulations through the enactment of Decree 1170/2018. As of April 2020, further implementation rules are yet to be published by the AFIP.

- Effective or expected commencement date

  The master file is effective for fiscal years beginning 1 January 2018. As of April 2020, further implementation rules are yet to be published by the AFIP.

- 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 your 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.

3. TP documentation requirements

a) Applicability

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

Yes, it needs to be submitted depending on minimum thresholds. As of April 2020, further implementation rules are yet to be published by the AFIP.

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

Yes

- **Should TP documentation be prepared annually?**

Yes

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

Yes

b) Materiality limit or thresholds

- **TP documentation**

Taxpayers will not be required to file the TP 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, ARS300,000. This should be done without prejudice to the duty to preserve the documents, information and evidence supporting the aforementioned transactions.

- **BEPS master and local files**

The master file has been recently introduced within the Argentine TP regulations through the enactment of Decree 1170/2018. As of April 2020, further implementation rules are yet to be published by AFIP.

- **CbCR**

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

- **CbCR notification and CbC report submission requirement**

Yes, starting 2018 for the financial year 2017 onward, there will be CbCR notification and CbC report submission requirements. There are two notifications:

  - Up to the last business day of the third month counting from the end of the financial year for the parent entity, the local entity must provide certain information about the company that should be prepared and submitted with the CbC report.
  - Up to 12 months after the end of the financial year for the parent entity, the CbC report must be filed.
  - Up to the last business day of the second month after the due date to file the CbC report, the local entity must give notification that the CbC report was actually submitted.

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

There is none specified.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation requirement for domestic transactions. Through the Argentine tax authority's General Resolution 4,502/2019, the obligation to file the monthly TP form (Form F 968) for transactions carried out in the domestic market with any related party, no longer applied, beginning with the July 2019 deadlines.

- **Local language documentation requirement**

The TP documentation needs to be submitted in the local language (Spanish). Argentine tax authority's General Resolution 1122/01, Section 6, subsection "b," mandates the use of "local" language in TP documentation.

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

There is none specified.

- **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. As of April 2020, further implementation rules are yet to be published by the AFIP regarding disclosure and compliance requirements.

4. TP return and related-party disclosures

- **Related-party disclosures and TP-related appendices**

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

- An annual TP study
- Audited financial statements for the fiscal year, if they have not already been filed
- Certification of certain contents of the TP study by an independent certified public accountant
- TP-specific returns

- **TP-specific returns**

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

- Annual Form 743
- Annual Form 741 (for commodities exports and imports with independent parties not located in countries or jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions)
- Annual Form 867 (for other exports and imports with independent parties not located in countries or jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions)
- Annual Form 4501 (for the digital filing of the TP study and certified public accountant's certification)
- Monthly Form 968 (transaction with local related parties); (in force up to June 2019 deadlines)

Through the Argentine tax authority's General Resolution 4,496/2019, Form 969 is no longer in force. As of April 2020, further implementation rules are yet to be published by the AFIP.

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

As of April 2020, further implementation rules are yet to be published by AFIP.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

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's end.

- **Other TP disclosures and return**

For fiscal years ending in December, the deadline falls in the August of the following financial year. There are specific due dates that depend on the taxpayer's fiscal ID and the fiscal year's end.

- **Master file**

Master file needs to be prepared and filed with the tax authority. As of April 2020, further implementation rules are yet to be published by the AFIP on this point. The master file should be in Spanish language.

- **CbCR preparation and submission**

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

- **CbCR notification**

The deadline is the third month after the financial year-end and the second month after the CbC report filing.

b) TP documentation and local file preparation deadline

The TP 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's end.

c) TP documentation and local file submission deadline

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

Yes, the statutory deadlines for Argentine TP filings are:

- Financial year-end plus five months: The income tax return is due the fifth month after the financial year-end. Within such filing, the local taxpayer must disclose TP adjustments (if any). In that filing, the company must disclose whether a TP adjustment is needed to have arm's-length prices in its transactions with related parties and unrelated parties located in countries or jurisdictions considered noncooperative for fiscal transparency purposes, and in low or nil tax jurisdictions. Thus, the TP analysis should be performed by that time even though the documentation is not due until later (financial year-end plus eight months).

- Financial year-end plus eight months: Companies' trading commodities are required to file an annual TP return (Form 741) that includes the imports and exports of commodities with unrelated entities not located in countries and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions, accrued during the financial year. Through the Argentine tax authority's General Resolution 4,689/2020, the due date has been extended from 18 May to 22 May 2020 for fiscal years closed between 31 December 2018 and 30 September 2019.
- Financial year-end plus eight months: If the local company carried out exports or imports of non commodities goods to or from unrelated parties, not located in countries and jurisdictions considered noncooperative for fiscal transparency purposes, or in low or nil tax jurisdictions for an overall amount higher than ARS10 million, an additional TP return is required (Form 867). Through the Argentine tax authority's General Resolution 4,689/2020, the due date has been extended from 18 May to 22 May 2020 for fiscal years closed between 31 December 2018 and 30 September 2019.
- Financial year-end plus eight months: The company must file the TP annual return (Form 743), 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 nil tax jurisdictions). TP report (in AFIP's General Resolution 1122/01) 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 TP 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 4,689/2020, the due date has been extended from 18 May to 22 May 2020 for fiscal years closed between 31 December 2018 and 30 September 2019.

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

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

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

International transactions must be informed and analyzed.

- **Domestic transactions**

Domestic transactions need to be informed for up to June 2019 deadlines.

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 nil tax jurisdictions, are CUP, resale price, cost plus, profit split and TNMM.

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, 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 nil 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.

7. 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**

A single-year analysis is required for the local taxpayer (tested party).

- **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. roll forwards and update of the financials**

A fresh benchmarking search is required every year.

- **Simple vs. weighted average**

There is none specified; as of April 2020, further implementation rules are yet to be published by the AFIP.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

For late filing of tax returns containing international transactions involving the export or import of goods with independent parties, the taxpayer will be fined ARS9,000. 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 noncompliance 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-and-a-half years 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 noncompliance 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).

  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 CbC report by the reporting entity in its tax jurisdiction.
- There will be an adjustable penalty (between ARS600,000 and ARS900,000) when the local taxpayer must file the CbC report 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 noncompliance with the requirements made by the AFIP on complementary information requested in addition to the CbC report.
- There will be a penalty of ARS200,000 when the local taxpayer does not comply with the formal duties related to the requirements of subparagraphs "a" and "b." This penalty is cumulative with that of subsections "a" and "b" (above).

- **If an adjustment is sustained, can penalties be assessed?**

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.

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

Interest accrues on unpaid tax balances (as of 1 January 2011, the rate is 3% on a monthly basis and 4% upon lawsuit filing).

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 vista) from the AFIP, the penalty is reduced to one-quarter of the minimum fine. If the tax returns are amended before receiving a special notice, 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 the notice, the penalty is reduced to three-quarters of the minimum fine.

9. Statute of limitations on TP assessments

The general statute of limitations for federal tax matters is 5 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 TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of an annual tax audit, in general, can be considered high; meanwhile, given the increasing focus of the authorities on TP cases, the chances of a TP review during such an audit is estimated as medium.

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

Once TP has become a topic of the audit, the likelihood of the tax authority challenging the taxpayer's TP methodology is high.

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

It depends on the circumstances but, usually, the chance is 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.

11. APA and MAP opportunities

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

Yes, there is unilateral availability; further regulations are expected to make these changes operative.

- **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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible interest for five years and the unutilized deduction capacity for three years. Certain exceptions to the above limitation are also available.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

State Revenue Committee

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes

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

Yes

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

[1] http://www.translation-centre.am/pdf/Translat/HH_Codes/Harkayin_orensgirq_en.pdf.

b) Materiality limit or thresholds

- TP 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.

- Any other disclosure or compliance requirement

There is none specified.

4. TP return and related-party disclosures

- TP-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.

5. TP documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The deadline is 20 April.

- Other TP 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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

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

No

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

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

6. TP 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 and preference of methods.

7. 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**

A multiyear analysis (three years) is preferred.a

- **Use of interquartile range**

The 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. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

No penalty is defined yet for noncompliance.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

The statute of limitations on TP assessments is three years.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or low)**

Refer to the section above.

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

Refer to the section above.

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

Refer to the section above.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulations or rulings

a) Name of tax authority

Australian Taxation Office (ATO)

b) Relevant TP section reference

- **Name of TP 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)
  - Subdivision 284-E of 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 (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.

All Australian TP legislations only apply 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. 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

[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.

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 analogous approach as found in Subdivisions 815-B and 815-C.

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.

- **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 procurement, marketing, sales and distribution functions
- PCG 2017/4: ATO compliance approach to taxation issues associated with cross-border related-party financing arrangements and related transactions
- PCG 2019/1: ATO compliance approach to inbound distribution entities
- Draft PCG 2019/D3: ATO compliance approach to the arm's-length debt test
- 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
- Jurisdiction-by-Jurisdiction 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) vs. Commissioner of Taxation [2008] AATA 261
- Commissioner of Taxation vs. SNF (Australia) Pty Ltd [2011] FCAFC 74
- Chevron Australia Holdings Pty Ltd vs. Commissioner of Taxation [2017] FCAFC 62
- Glencore Investment Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia [2019] FCA 1432

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.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 interpretation of the provisions. 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 2 files: the local file/master file (LCMSF) (as defined below) and the CbC report. As detailed below, it is noted that 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 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 typically 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.

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

  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 minor adaptations to meet the legislative TP documentation requirements, and accordingly allows a taxpayer to argue that the TP positions taken by the taxpayer are reasonably arguable (prerequisite for lower penalties in case of a TP adjustment by the ATO). In more complex cases, e.g.,, those involving restructures, intangibles, intra-group financing or commercially unrealistic results, substantive additional 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 (where BEPS Action 13 format report may to a certain extent satisfy the local requirements as stated in the three paragraphs above), there is the separate lodgement obligation for the LCMSF mentioned above that cannot be satisfied through a BEPS Action 13 format report.

c) Is your 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, 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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?

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

Subdivision 815-C deals with TP in relation to permanent establishments. 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 these differences and the interactions with domestic legislation in relation to source rules, TP for permanent establishments can be a highly complex matter.

- **Should TP documentation 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.

Care has to also be given to the benchmarking analysis used. In particular, it is unlikely that regional Asian sets would meet the requirements due to the significant differences between the regional economies.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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.

- **Reportable tax positions (RTPs)**

Taxpayers are required to lodge RTP schedules in the following cases:

- The ATO sends a notification to the taxpayer notifying them of the requirement to lodge the RTP schedule.
- For the years ending on or after 30 June 2019, the taxpayer meets certain criteria (specifically, if it is a public company or a foreign-owned company and meets the AUD250 million total business income threshold).

- **RTP and TP documentation**

Where taxpayers have to prepare an RTP schedule as part of the income tax return, any related-party dealing will need to be disclosed as an RTP unless:

- It is immaterial.

Or

- It is supported by Section 284-E compliant documentation. The following conditions must apply as well:
  - The documentation includes an assurance from a sufficiently qualified (Australian) TP professional that the position is reasonably arguable.
  - The result or price does not fall outside the interquartile range of arm's-length results.

b) Materiality limit or thresholds

- **TP documentation**

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

- **Master file**

CbCR requirements apply to SGEs, i.e.,, 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 including ignoring the consolidation exception for immaterial subsidiaries.

- **Local file**

Same as provided for master 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:

- 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 2.33% for the 2020 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 2.33% for the 2020 tax year

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. These margins 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%

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

We refer to the above for the CbCR and 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 and 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 that they are SGEs (i.e.,, are part of a group with a global turnover in excess of AUD1 billion) in the tax return.

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

This is not applicable.

5. TP 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.

- **Other TP 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.

- **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 above-mentioned IDS do not need to be completed (this is an "administrative concession" provided by the ATO).

- **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.

- **CbCR preparation and submission**

Refer to "CbCR notification."

- **CbCR notification**

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. 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 notify on its Australian local file, and the ATO then obtains a copy of the CbC report directly from the other revenue authority.

b) TP documentation and local file preparation deadline

- TP documentation

To achieve penalty protection, documentation must be on hand by the date of lodging the corporate tax return. The documentation does not need to be provided to the ATO.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 on 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.

6. TP 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.

7. 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. 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**

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. However, interquartile ranges, calculated using Excel 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.

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

There is no specific requirement to update the 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 and the financial results of the tested party are not at the low end of the comparable benchmark range.

- **Simple vs. weighted average**

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

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- 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 AUD105,000 for filings that are one date late and gradually increase to AUD525,000 for lodgements that are 112 days late or more.

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 for noncompliance 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or 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 favor 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 TP methodology is challenged (high, medium or low)**

The chance of some adjustment is 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 undergo audit**

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.

11. APA and MAP 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.

- **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, more recently, the ATO is moving away from retrospective application of APAs, instead favoring other mechanisms such as a "letter of comfort" or a "settlement deed."

- **MAP opportunities**

Australia has an active and usually effective MAP program.

12. Relevant regulations and rulings with

respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant TP section reference

- **Name of TP 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
  - Transfer Pricing Guidelines (BMF-010221/2522-IV/4/2010, 28 October 2010)
  - 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, 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
  - Information of the Austrian Ministry of Finance regarding transfer pricing documentation (BMF-010221/0395-IV/8/2019, 17 December 2019)
- **Section reference from local regulation**

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

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

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

Yes

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

Yes, it is so as of 27 January 2016.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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.

In addition, according to a published opinion of the Austrian Ministry of Finance (EAS 3198), TP documentation should be available when the corporate income tax (CIT) returns are filed; however, TP documentation does not need to be submitted. If represented by an Austrian tax advisor, the annual 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 foreign company need to comply with the local TP 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.

- **Should TP documentation be prepared annually?**

Yes, Austria requires preparing TP documentation annually under its local jurisdiction regulations. The regulation for implementation of the TPDL states that the master file and local file requirements can be fulfilled by referencing information already available. However, in such cases, the referenced information needs to be attached to the TP documentation.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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. And it's not recommended to submit TP documentation for entities in addition to those requested by the Austrian tax authorities.

b) Materiality limit or thresholds

- **TP 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.

- **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.

- **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. Purely domestic intra-group transactions with no cross-border implications do not need to be documented in the local file.

- **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. 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

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

- **Related-party disclosures along with CIT 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 and 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **CIT 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 TP disclosures and return**

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.

b) TP 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). Consequently, it is highly recommended to have the master file and the local file prepared when the tax return is filed. According to a published opinion of the Austrian Ministry of Finance (EAS 3198), TP documentation should be available when the tax returns are filed.

c) TP 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 TP 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 on 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.

6. TP 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.

7. 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 28 along with Iceland, Norway and Switzerland) 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

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 Excel Quartile formulas is acceptable.

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

Following the OECD approach, 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. Financial data for the comparables should nonetheless be updated every year in order to apply the arm's-length principle reliably.

- Simple vs. weighted average

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

8. TP penalties and relief

a) Penalty exposure

- 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.

- **If an adjustment is sustained, can penalties be assessed?**

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).

- **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, nondeductible late-payment interest, in the amount of two 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.

If the taxpayer provides insufficient documentation, the tax authorities nonetheless need to consider such documentation for their judgment. 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny or related audit by local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or low)**

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

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

The likelihood is 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 undergo audit**

Intercompany services 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.

11. APA and MAP 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 311 active MAP applications as of 31 December 2018. 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	47.92
Other cases	32.07

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	13.65
Other cases	10.50

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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 and statistic data published by the Austrian National Bank, 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).

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

The Ministry of Taxes of the Republic of Azerbaijan

b) Relevant TP section reference

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

The TP 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 TP Rules)

Major TP 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 nonresident, both qualifying as related parties under Article 18
- Transactions between a permanent establishment of a nonresident in Azerbaijan and such nonresident 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 nonresident in Azerbaijan and any person associated (under Article 18) with such nonresident located in other jurisdiction
- Transactions between a resident of Azerbaijan and any person incorporated (registered) in jurisdictions with preferential tax regime (offshore jurisdictions)

2. OECD Guidelines treatment and BEPS implementation

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

Azerbaijan is not a member of the OECD.

The local TP Regulations entered into force from 2017 and include fundamental principles stipulated by the OECD Guidelines. There is no established practice of application of fundamental TP principles in Azerbaijan.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

This is not applicable.

3. TP documentation requirements

a) Applicability

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

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

There are no specific guidelines or rules for TP documentation. However, the TP Rules provide the right to the tax office to review pricing in controlled transactions. Accordingly, taxpayers have the right to justify pricing. TP 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 foreign company need to comply with the local TP rules?**

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

- **Should TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes.

b) Materiality limit or thresholds

- **TP 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 TP documentation.

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

This is not applicable for the 2019 reporting period.

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.

- **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 TP 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.

- **Any other disclosure or compliance requirement**

No other requirements.

4. TP return and related-party disclosures

- **TP-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.

5. TP 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 TP 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**

The deadline is yet to be established by the competent authority.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

No specific deadline.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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]

6. TP methods

a) Applicability (for both international and domestic transactions)

International transactions: yes

Domestic transactions: no

b) Priority and preference of methods

The TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

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

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

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

- **Simple vs. weighted average**

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

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

[4]Section 5 of the TP Rules.

[5]Section 5.2 of the TP 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 TP Rules.

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

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

The TP rules prescribe independence and other benchmarking criteria.

8. TP penalties and relief

a) Penalty exposure

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

A penalty of AZN 500 (approx. USD 200) applies for failure to submit the Notification.

A penalty of AZN 500 (approx. USD 200) applies for presenting inaccurate information in the Notification.

- **If an adjustment is sustained, can penalties be assessed?**

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.

b) Penalty relief

No specific penalty relief.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

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

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

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

- **Likelihood of an adjustment if the TP 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 undergo audit**

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

11. APA and MAP opportunities

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

The TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

This is not applicable.

[9] Section 6.3 of the TP Rules.

[10] Article 56.1 of the Tax Code.

[11] Section 9 of the TP Rules.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

National Bureau for Revenue (NBR)

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability

There were no TP regulations and rulings in Bahrain at the time of this publication. 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 – refer to the section above.

2. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EUJTPF

Bahrain is not an OECD member jurisdiction and there are no local TP regulations.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation (TPD) in your local regulations?

No; however, CbCR rules may be introduced soon. Bahrain is a member of the BEPS Inclusive Framework (BEPS IF) and is therefore committed to the BEPS minimum standard of implementing CbCR rules.

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

This is not applicable.

- Effective or expected commencement date

There is none specified.

- 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 your 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 in December 2019.

3. TPD requirements

a) Applicability

- Does your jurisdiction have TPD guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

No

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

This is not applicable.

- Should TPD be prepared annually?

This is not applicable.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

This is not applicable.

b) Materiality limit or thresholds

- TPD

This is not applicable.

- BEPS master and local files

This is not applicable.

- CbCR

This is not applicable.

- CbCR notification and CbC report submission requirement

There is no CbCR notification or CbC report submission requirement in Bahrain.

Economic analysis

This is not applicable.

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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable.

- **Related-party disclosures and TP-related appendices**

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.

5. TPD 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 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) TPD and local file preparation deadline

This is not applicable.

c) TPD and local file submission deadline

- **Is there a statutory deadline for submitting TPD or local file?**

This is not applicable.

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

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

- **Local vs. regional comparables**

This is 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. roll forwards and update of the financials**

This is not applicable.

- **Simple vs. weighted average**

This is not applicable.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

This is not applicable.

10. Likelihood of TP scrutiny and related audit by the local authority

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

11. APA and MAP 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 TP issues.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

National Board of Revenue (NBR)

b) Relevant TP section reference

- **Name of TP 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**

Section 107A (2) of the Ordinance refers to TP.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- **CbCR notification and CbC report submission requirement**

There is neither a CbCR notification nor CbC report submission requirement in Bangladesh.

- CbCR notification included in the statutory tax return

This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

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

- **TP documentation**

[1] **http://nbr.gov.bd/.**

There is an applicable materiality limit in Bangladesh for the purpose of preparing TP documentation based on aggregate transaction values of BDT30 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 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.

- **Any other disclosure or compliance requirement**

No additional requirements or disclosures apart from the statement of international transactions (SIT), TP documentation and TP certificate

4. TP return and related-party disclosures

- **TP-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 and 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 or documents to be filed**

None

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Every company (resident or nonresident) 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 TP 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) TP documentation and local file preparation deadline

The TP documentation needs to be finalized by the time of submission, upon request.

c) TP documentation and local file submission deadline

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

No

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

This is not known as assessments are yet to begin. Typically, 7 to 10 days may be expected.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes, it's applicable for international transactions (not applicable for domestic transactions). Furthermore, Bangladesh TP regulations also include the concept of deemed international transactions wherein the third-party transactions (both resident and nonresidents) are covered.

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.

7. 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**

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. roll forwards and update of the financials**

A fresh benchmarking search is to be conducted every year. The regulations do not explicitly provide guidance in relation to the use of contemporaneous data. Since the TP guidelines are aligned with India, we are of the view that a fresh benchmarking search is required every year.

- **Simple vs. weighted average**

There is a preference for the weighted average.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

This is not applicable.

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

Interest at the rate of 7.5% per year shall be payable to the assessed taxpayer on the amount of refund from the month following the stipulated two months to the date of issue of the refund.

b) Penalty relief

No penalty relief regulation has been provided as of the time of this publication.

An aggrieved assessee 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
- Final authority: Supreme Court

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

This is not applicable; the first round of audits in Bangladesh is expected to commence soon.

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

Refer to the section above.

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

Refer to the section above.

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

Refer to the section above.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Tax and Duties Ministry of the Republic of Belarus (TDM)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes, compliance is required if the local branch of foreign company is a taxpayer in Belarus.

- **Should TP documentation be prepared annually?**

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.

[1] **http://www.pravo.by/document/?guid=3871&p0=Hk0200166.**

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

Yes, one TP report for multiple entities is not accepted.

b) Materiality limit or thresholds

- **TP documentation**

Type of transaction	Thresholds, the total value of all purchase or sale transactions with one party per year (BYN)			
	2018		2019-20	
	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	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[4]			Not a subject for TP control	

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).

- **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.

In addition, intra-group financing is not subject to TP rules in Belarus.

- **Any other disclosure or compliance requirement**

There are two formats of TP documentation in Belarus:

[2]In 2018, all foreign transactions of large taxpayers were subject to control if their total annual value exceeded BYN1 million.

[3]Here and further on, BYN100,000 is approximately USD39,000, BYN400,000 is approximately USD155,000, BYN1 million is approximately USD387,000 and BYN2 million is approximately USD774,000 (at the exchange rate set by the National Bank of the Republic of Belarus as of 1 April 2020).

[4]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).

- 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.

4. TP return and related-party disclosures

- **TP-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 related parties and 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 and annual report**

Notes to annual financial statement should include, interalia, 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.

5. TP 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 TP 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) TP documentation and local file preparation deadline

TP documentation should be finalized by the time of submission upon the request of tax authorities.

c) TP documentation and local file submission deadline

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

No, TP documentation should not be provided along with the corporate income tax return, but may be requested by the tax authorities on an annual basis (before 2019, it was on a quarterly basis).

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

Effective from 1 January 2019, companies are required to file the 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 large taxpayers and taxpayers involved in foreign-trade transactions with strategic goods.

6. TP 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:

- CUP
- Resale price
- Cost plus
- TNMM
- Profit split

The CUP method prevails, whereas the profit split is of last resort.

In addition, starting 1 January 2019, there is a best-method rule in respect of the cost plus and TNMM, 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.

7. 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. At the same time, the law allows tax authorities to use secret comparables (customs information, peer analysis, etc.).

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

Starting from 1 January 2019, the Tax Code stipulates that, in calculating an arm's-length range, one should use the financial information available at the date of the controlled transaction (but no later than 31 December of the year during which the controlled transaction was performed) 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 full range is to be used instead of the interquartile range.

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

A fresh benchmarking search every year is preferable; however, there are no official clarifications from the Belarusian tax authorities in this respect.

- **Simple vs. weighted average**

Starting 1 January 2019, the Tax Code stipulates calculation of a weighted average range. Previously, the weighted average was also used; however, no preference was specified as such.

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

Starting 1 January 2019, the benchmarking criteria for comparable companies were amended.

Local search criteria for comparables	2018	2019–20
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.

8. TP penalties and relief

a) Penalty exposure

- **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?**

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 BYN810, starting 1 January 2020).

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 1/360 of the refinancing rate set by the National Bank of the Republic of Belarus.

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

Interest is payable by the tax authorities on a 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 1/360 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.

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 penalty 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 1/360 of the national bank's refinancing rate.

9. Statute of limitations on TP assessments

From 1 January 2018, the tax authority can perform the tax audit for the five-year period.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-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. The average frequency of tax audits is five calendar years and the likelihood of TP matters to be covered by such audits is generally high.

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

If TP is reviewed as a part of the audit, the probability that TP methodology will be challenged is unknown because of the novelty of the legislation and limited practical experience in Belarus.

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

The likelihood of an adjustment is unknown because of the novelty of the legislation and limited practical experience in Belarus.

- **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

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Thin-capitalization rules came into force in 2013. The rules limit the deductibility of certain types of 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**

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Belgian General Administration of Taxes, part of the Federal Public Service Finance

b) Relevant TP section reference

- **Name of TP 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.

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 noncompliance with the Belgian TPD requirements, is set in a Belgian administrative guidelines published in February 2019.

Articles 26, 49, 53, 54, 55, 79, 207, 307, Section 1, s. 3; and 344 of the Belgian ITC also relate to TP.

- **Section reference from local regulation**

Belgian tax legislation does not properly define a related party. Article 26 of the Belgian ITC states that two parties are related if one of them participates directly or indirectly in the management, control or share capital of both the parties. The Royal Decree of 10 August 2009 refers to International Accounting Standard 24 for further definitions of related parties.

2. 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 TP legislation is in line with the OECD Guidelines. In its administrative guidelines, the tax authority indicates that taxpayers generally should follow the guidance mentioned in the OECD Guidelines to implement the arm's-length principle (as embedded in Article 185, Section 2). Although the legislation does not contain any formal confirmation as to the applicable version of the OECD Guidelines, in practice, it is generally considered that the most recent version is applicable in Belgium.

While Belgium considers its TP laws and regulations to be consistent with the OECD Guidelines through historical practice, coupled with case laws and TP circulars specifying the position of the Belgian tax administration, the Belgian interpretation of certain TP elements differs from other countries. Belgium has implemented additional compliance requirements (TP forms) in addition to the arm's-length principle.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TPD in your 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 TP form (275.MF) and general local file TP form (Parts A and C of 275.LF) are applicable for financial years beginning on or after 1 January 2016. A detailed local file TP 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

c) Is your 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.

3. TPD requirements

a) Applicability

- **Does your jurisdiction have TPD guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, it needs to be prepared contemporaneously.

- **Does a local branch of foreign company need to comply with the local TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, stand-alone TP reports need to be prepared for each entity.

b) Materiality limit or thresholds

- TPD

For companies not exceeding the thresholds in the following section, but having intercompany transactions, TPD requirements also exist. Specifically, in the case of a TP audit, all Belgian companies and permanent establishments must provide TPD demonstrating that their intercompany transactions take place at arm's length, within 30 days of the request of the Belgian tax authorities. In this respect, the 1999 guidelines recommend that such documentation should include, at least the following:

- Activities of the group, including competitive position, level of the market, economic circumstances and business strategies
- Identification and characterization of intercompany transactions and contractual relationships among affiliates
- Functional analysis, including an overview of the functions, risks and intangibles
- Economic analysis sections regarding the TP methods used

- 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 year have to submit master file TP form (275.MF) and local file TP form (Parts A and C of 275. LF):

- **Operating and financial income equal to or exceeding EUR50 million (excluding nonrecurring items)**
- **Balance sheet total (i.e.,, total assets) equal to or exceeding EUR1 billion**
- **The average annual number of employees of 100 in FTE positions (in total)**

In addition, a detailed local file TP form (Part B of 275.LF), containing transaction-specific information, will be required for business units of the Belgian entity of which the cross-border transactions with affiliates exceed EUR1 million in the last accounting year. A detailed local file TP form will be required for every business unit of the Belgian entity for every intercompany cross-border transaction exceeding EUR25,000.

- 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 other 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, indicating whether the Belgian entity is the ultimate parent company or the surrogate parent company. If it is not, the Belgian entity should identify the group entity that will comply with the CbCR. The notification should be filed with the Belgian tax authorities by the end of the financial year of the group.

However, with the Act of 2 May 2019 on various technical direct and indirect tax measures, the legislator abolished this annual obligation for reporting periods ending on 31 December 2019 or later. From that point on, filing of the Form 275 CBC NOT will only be required in case of changes. The new reporting rules will be subject to evaluation within three years to see whether they have resulted in an increased number of incorrect tax filings.

- Economic analysis

There is no materiality limit. However, in the absence of an economic analysis, the TPD will likely be considered incomplete.

c) Specific requirements

- Treatment of domestic transactions

TPD has to be prepared even though the Belgian company or the permanent establishment has only domestic transactions. In the latter case, the TPD 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 TP forms and local file TP forms, it must submit them even though 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**

The TPD and TP forms need not be submitted in the local language. They can be submitted in one of the Belgian official languages (i.e.,, French, Dutch and German) or in English.

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

Belgium has no formal safe harbor rules.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There are specific TP 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 to which they relate. The local file TP forms (275.LF) have to be filed with 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 nonresident 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 nondeductibility 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. Noncompliance may result in director liability. Evidently, any such disclosures are an excellent source of information for a tax inspector to initiate a (targeted) TP audit.

- **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.

5. TPD and disclosure timelines

a) Filing deadline

- Corporate income tax return

Generally, the deadline is six months after year-end, with a three-month general extension available and usually applicable. For a company with a calendar financial year, the deadline is typically the end of September (the exact date is specified by the Belgian tax authorities each year).

- Other TP disclosures and return

Local file TP forms (275.LF), with the corporate tax return – for a company with a calendar financial year – are required typically by the end of September (the exact date is specified by the Belgian tax authorities each year).

- Master file

Master file TP 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 to which it relates. For a group with a calendar financial year, the deadline would be 31 December.

- 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 (that is, in case there is a change in ultimate parent entity).

b) TPD and local file preparation deadline

For the master file TP form (275.MF) and local file TP form (275.LF), please see the above section.

In addition, when completing the local file form, which is due together with the corporate income tax return, the taxpayer shall notify the tax authorities if TPD is available. The TP local file report must be available upon the request of the Belgian tax authorities (e.g.,, in case of a TP audit).

c) TPD and local file submission deadline

- Is there a statutory deadline for submitting TPD or local file?

There is no obligation to submit the local file TP report. However, as mentioned above, the local file TP report must be available upon the request of the Belgian tax authorities (e.g.,, in case of a TP 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 TP forms – as the latter asks to confirm the existence of the aforesaid local file TPD 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 has to submit the TPD report within 30 days upon request. This can be extended for justified reasons.

6. TP methods

a) Applicability (for both international and domestic transactions)

In principle, taxpayers are free to choose any OECD TP method as long as it results in arm's-length pricing for the transaction.

b) Priority and preference of methods

Transaction-based methods are often preferred over profit-based methods.

Taxpayers are not required to use more than one method or demonstrate that multiple methods were considered, but such documented reviews strongly support their position to apply a particular method upon an audit.

7. 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

Single-year testing is required.

- Use of interquartile range

Excel interquartile is used as the best practice; however, no legal regulations in this respect are available.

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

The Belgian tax authorities typically accept the validity of the benchmark for up to three years. No legal regulation is available. However, in practice, it is recommended, as a minimum, to annually update the financials of the comparable companies selected in the final set of the benchmark.

- **Simple vs. weighted average**

There is a preference for weighted average for arm's-length analysis. No legal regulations exist in this regard.

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

This is not applicable. However, based on experiences, there is a well-established expectation of certain specific benchmarking criteria of the Belgian tax authorities, some of which include:

- The selection of companies (with unconsolidated accounts only)
- The selection of independent companies (owning no subsidiaries and not owned by any shareholders)
- The rejection of start-up companies (i.e.,, those active for less than three years)

In addition, recently, the Belgian tax authorities issued detailed draft of TP administrative guidelines containing, interalia, suggested criteria for the benchmarking search. The circular is in draft form and is subject to public consultation; final administrative guidelines is expected to follow.

8. TP penalties and relief

a) Penalty exposure

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

In accordance with the new TP legislation, failure to submit the CbC report, CbCR notification, master file forms (275.MF) or local file TP 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, noncompliance with the TPD obligations increases the likelihood of a TP audit.

In addition, the absence of the mandatory TPD required to be filed with the tax return (local file TP forms) results in an incomplete or inaccurate tax return, which may lead to the reversal of the burden of proof.

- **If an adjustment is sustained, can penalties be assessed?**

The general tax penalty framework applies to TP 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 TP adjustment).

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

There is none specified.

b) 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.

9. Statute of limitations on TP assessments

The general rules regarding the statute of limitations apply to TP 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.

10. Likelihood of TP scrutiny or related audit by the local authority

- **Likelihood of TP-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 TP audit questionnaires sent by the Belgian tax authorities to Belgian companies and permanent establishments (i.e.,, about 300 TP audit questionnaires sent each year), and the significant staffing and reinforcement of the Belgian TP Audit Cell. The Belgian tax authorities also use systematic data-mining techniques to identify and target Belgian companies, and permanent establishments for TP audits; they also use information available in the filed TP forms.

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

Depending on the robustness of the TP methodology and support available, as well as on the type of the intercompany transactions under review, the likelihood that the TP methodology will be challenged may be regarded as medium to high. This is due to the significant sophistication of the Belgian tax authorities in TP. In case of uncertain position or doubts, there is a room for interpretation.

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

Depending on the robustness of the TP methodology and support available, the likelihood of an adjustment may be regarded as medium to high.

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

In practice, a TP audit is often triggered by situations, such as:

- Structural losses
- Sudden decrease in profitability
- Business reorganizations
- Migration of businesses
- The use of tax havens or low-tax-rate countries
- Back-to-back operations
- Circular structures
- Invoices for services sent at the end of the year, i.e.,, management services
- Changes in the number of employees
- Business restructurings
- Intangibles-related and financial transactions
- Financial transactions
- Failure to file TP forms in Belgium

11. APA and MAP opportunities

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

There is an APA program available in Belgium for unilateral, bilateral and multilateral APAs.

- **Tenure**

The APAs are generally granted for a five-year term, which is the legal maximum.

- **Rollback provisions**

Rollbacks are not allowed, except for exceptional circumstances to be agreed upon with the Belgian Competent Authority. Rollbacks can 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.

Rollbacks are not available for unilateral APAs. Rollback is available for bilateral and multilateral APAs when the relevant facts and circumstances of prior years are identical to those in the proposed APA, and filing deadlines have not expired when the bilateral or multilateral APA is concluded with the relevant foreign tax authority. The foreign tax authority must also approve of the rollback.

- **MAP opportunities**

MAPs are generally available under the double tax treaties that Belgium has with its treaty partners. Belgium had a total of 772 active MAP applications as of 31 December 2017 with 502 cases started in 2017 (also on non-TP aspects).

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

- **Old thin capitalization rule (until tax year 2019 with grandfathering)**

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.

For the purposes of the thin-capitalization rule, equity is defined as the sum of the taxed reserves at the beginning of the taxable period and the paid-up capital at the end of the taxable period.

For the purposes of the thin-capitalization rule, debt is defined as:

- All loans, whereby the beneficial owner is not subject to income taxes, or, with regard to the interest income, is subject to a tax regime that is substantially more advantageous than the Belgian tax regime
- All intra-group loans

Bonds and other publicly issued securities are excluded, as well as loans granted by financial institutions.

Interest payments or attributions in excess of the 5:1 ratio are not tax-deductible. The thin-capitalization rule is not applicable to loans contracted by (movable) leasing companies and companies whose main activity consists of factoring or immovable leasing (within the financial sector).

In case the loans are guaranteed by a third party or in case loans are funded by a third party that partly or wholly bears the risk related to the loans, the third party is deemed to be the beneficial owner of the interest if the guarantee or the funding has tax avoidance as its main purpose.

To safeguard companies having a centralized treasury function in Belgium, a netting for thin-capitalization purposes is allowed at the level of the interest payments and interest income related to the centralized financing function or cash pool function.

The thin-capitalization rule will 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.

However, please note that the thin-capitalization rule will remain applicable in case of (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.

- **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 (i) 30% of the taxpayer's fiscal EBITDA or (ii) EUR3 million. The exceeding borrowing costs that could not be deducted in the current taxable period can be carried forward for an unlimited time. Furthermore, upon certain conditions, taxpayers belonging to the same group also have the possibility to transfer unused EBITDA capacity to other group companies.

A grandfathering clause will apply for loans granted before 17 June 2016. The old thin-capitalization rule will, however, remain applicable for interest payments to tax havens.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Direction Générale des Impôts (DGI)

b) Relevant TP section reference

- **Name of TP 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: Articles 34, 37, 1085 ter 2 bis, 1085 ter-2 ter

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EUJTPF

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 your jurisdiction adopted or implemented BEPS Action 13 for TPD in your 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes

d) Signatory to the MCAA on the exchange of CbCR

No

3. TPD requirements

a) Applicability

- **Does your jurisdiction have TPD guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, Benin has TPD rules:

- Article 34 of the GTC: TP form or declaration obligation (Finance Law 2020)
- Article 1085 ter 2 bis GTC: TPD obligation (Finance Law 2020)
- Decree n°0121/MEF/DC/SGM/DGI/DLC/, dated 24 January 2020

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 foreign company need to comply with the local TP rules?**

Yes

- **Should TPD 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

A separate TP report is required per legal entity.

b) Materiality limit or thresholds

- **TPD**

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 (1,000,000,000)
- 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"
- More than half of the capital or voting rights of which 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:

- 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
- It has an annual consolidated turnover before tax of at least XOF492 billion for the financial year preceding the year concerned by the declaration,
- No other enterprise holds directly or indirectly an interest described in paragraph (a) in the above-mentioned enterprise
- 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
- 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
- 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.

- **Any other disclosure or compliance requirement**

There is no specific requirement.

4. TP return and related-party disclosures

- **TP-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 and 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.

5. TPD and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline for filing the annual financial statements is the 30th April following each FY.

- **Other TP disclosures and return**

The deadline for filing the TP form is the 30th 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) TPD and local file preparation deadline

It should be available by the time of a tax audit of the accounting records.

c) TPD and 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 submitting TPD or local file?**

It should be submitted by the time of a tax audit.

- **Time period or deadline for submission on 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.

6. TP 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.

7. 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. roll forwards and update of the financials**

There is no specific requirement.

- **Simple vs. weighted average**

There is no specific requirement.

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

There is no specific requirement.

8. TP penalties and relief

a) Penalty exposure

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

TP return: Fine is applicable at XOF10,000,000.

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 XOF10,000,000 per FY.

CbCR: Fine is applicable at XOF10,000,000.

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **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.

9. Statute of limitations on TP assessments

The limitation period is set to three years (common tax regime).

10. Likelihood of TP scrutiny and related audit by the local authority

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

Medium

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

Medium

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

Medium

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

There are no specific transactions mentioned.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Internal Taxes Service (Servicio de Impuestos Nacionales)

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability
  - Act Nº 843 (amended by Act Nº 549)
  - Supreme Decree Nº 2227 and Nº 2993
  - Normative Resolution Nº 10-0008-15, Nº 101700000001, 101800000006 and 10190000002
- Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EUJTPF

Bolivia is not a member of the OECD.

OECD rules are not expressly accepted, but the current TP regime is based on the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation (TPD) in your 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No

d) Signatory to the MCAA on the exchange of CbCR

No

3. TPD requirements

a) Applicability

- Does your jurisdiction have TPD guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

Yes, Bolivia has had TP rules since 2015.

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

Yes

- Should TPD be prepared annually?

Yes, TPD has to be prepared annually under Bolivia's local jurisdiction regulations.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

Yes

b) Materiality limit or thresholds

- TPD

There is no materiality limit.

- Master file

This is not applicable.

- Local file

This is not applicable.

- CbCR

This is not applicable.

- Economic analysis

[1] https://www.impuestos.gob.bo/pag/Normativa_Tributaria.

There is no materiality limit.

c) 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 TPD 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.

- **Any other disclosure or compliance requirement**
  - TPD must be presented in physical and digital format.
  - The amounts (e.g.,, price or value of transactions with related parties) must be expressed in boliviano (Bs).
  - It must include the signature of the legal representative.
  - It must comply with a minimum content established in Article 4º of RND Nº 10-0008-15.

4. TP return and related-party disclosures

- **TP-specific returns**

TP Informative Return Form 601

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

For the presentation of the corporation tax return, a prior analysis of the transactions with related parties must be carried out. However, related-party disclosures are not included along with the corporation tax return.

- **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**

No

5. TPD and disclosure timelines

a) 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 TP 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: December 31
  - Industrial companies: March 31
  - Agribusiness companies: June 30
  - Mining companies: September 30

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TPD and local file preparation deadline

The TPD should be finalized before the deadlines indicated above.

c) TPD and local file submission deadline

- **Is there a statutory deadline for submitting TPD or local file?**

The TPD needs to be submitted each year. It is necessary to send Form 601 when the transactions are higher than USD1.08 million. A TP study and the Form 601 must be presented when the transactions are higher than USD2.16 million. But in all cases, the company should have supports to

demonstrate that transactions are conducted on arm's-length basis.

The TPD 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 TPD generally in 10 days, depending on the request.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: no

b) 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

Both are accepted by the Bolivian IRS.

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

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 difference value range (Rango de Diferencias de Valor in spanish) which is calculated based on an arithmetical criterion.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

USD1,684 for not filing TP information or tax returns (Form 601), and USD842 for uncompleted filing and late submission

- **If an adjustment is sustained, can penalties be assessed?**

This is not applicable.

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

There is no interest charged.

b) Penalty relief

This is not applicable.

9. Statute of limitations on TP 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, TP audits can be performed within a period of two years.

10. Likelihood of TP scrutiny and related audit by local authority

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

There is no experience regarding this as the TP regime is being enforced from FY15. However, TP audits were initiated in FY17 for a few companies in Bolivia. No results are available from those audits yet.

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

Refer to the section above.

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

Refer to the section above.

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

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 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 TP section reference

- Name of TP 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.

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 refers to penalties, among others, for non-possession 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 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.

[1]Tax Authority of the FBiH website: **https://www.pufbih.ba/.**
Tax Administration of Republic of Srpska website: www.poreskaup-ravars.org.

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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes, branches are required to be compliant with local rules.

- **Should TP documentation be prepared annually?**

A 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP 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.

c) Specific requirements

- **Treatment of domestic transactions**

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.

[2]Please note that the mentioned Rulebooks are separate bylaws in the FBiH and the Republic of Srpska.

- **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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 also 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 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 approximately 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 and annual report**

Information relating to transactions with related parties should be disclosed within notes in the financial statements.

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

This is not applicable.

5. TP 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 most cases, 31 March of a current FY for the previous FY) in the Republic of Srpska.

- **Other TP disclosures and return**

It's 31 March for the previous FY for the 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

- **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

6. TP methods

a) Applicability (for both international and domestic transactions)

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.

7. 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**

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. roll forwards 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 roll forward (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 vs. weighted average**

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 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.

Specifically, TP legislation in the FBiH prescribes that companies that incurred a loss should be excluded from a benchmarking analysis.

8. TP penalties and relief

a) Penalty exposure

- **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 (approximately 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 (approximately 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 noncompliance (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 approximately EUR30,000 for the legal entity. And it's between approximately EUR2,500 and approximately EUR7,500 for the responsible individual in the legal entity.

- **If an adjustment is sustained, can penalties be assessed?**

In addition to above-mentioned penalties, the possible adjustment of taxable income on a TP basis may result in increased interest for late tax payments.

- **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%.

b) Penalty relief

This is not applicable.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is 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 TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or low)**

The likelihood is medium – refer to the section above.

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

This is not applicable.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Botswana Unified Revenue Service (BURS)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

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

Botswana is not a member of OECD. However, the OECD Guidelines is a relevant source of interpretation for the regulations.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

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

Yes

b) Materiality limit or thresholds

- **TP documentation and local file**

There is no materiality thresholds for the local file.

- **Master file**

The detailed group information (master file) will be required from only those taxpayers whose transactions with connected persons exceed BWP5 million.

- 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 TP 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-harbour rules.

- Any other disclosure or compliance requirement

This is not applicable.

4. TP return and related-party disclosures

- TP-specific returns

There is no TP-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.

5. TP documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Four months after the end of taxpayer's financial year

- Other TP 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) TP documentation and local file preparation deadline

The local file should be prepared before filing the tax return.

c) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP 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 financial year.

- Time period or deadline for submission on tax authority request

It will be specified in the tax authority notice.

6. TP methods

a) Applicability (for both international and 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

- **Transaction methods:**
  - Transaction net margin method (TNMM): net profit margin
  - Transaction 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 TP 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 TP method used is consistent with the regulations and none of the five approved methods can be reasonably applied.

7. 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. roll forwards and update of the financials**

The law provides for analysis for each tax year.

- **Simple vs. weighted average**

There is no provision for the use of averages.

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

None

8. TP penalties and relief

a) Penalty exposure

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

A penalty not exceeding P500,000

- **If an adjustment is sustained, can penalties be assessed?**

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 P10,000.

- **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 TP documentation is applicable.

9. Statute of limitations on TP assessments

There is no guideline provided yet. However, the general statute of limitation is eight years.

10. Likelihood of TP scrutiny or related audit by local authority

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

The likelihood is high.

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

The likelihood is low based on the current general anti-avoidance audits.

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

The likelihood is low based on the current general anti-avoidance audits.

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

Based on prior BURS audit activity, related-party transactions are more likely to undergo audits. Mining, capital projects, financial services are the industries most likely to undergo audits.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Federal Revenue Department (Receita Federal do Brasil)

b) Relevant TP section reference

- **Name of TP 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 recently by Normative Instruction RFB 1.870/19.
- **Section reference from local regulation**

The terms "related party" and "associate enterprise" are defined in Article 2 of IN RFB 1.312/12.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 are not included in the local TP rules.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 filled 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Brazil is part of G20.

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

Yes, Brazil signed on 21 October 2016.

3. TP documentation requirements

a) Applicability

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

The Brazilian TP rules are described in a specific regulation (Law 9.430/1996, amended by Law 12.715/2012 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 foreign company need to comply with the local TP rules?**

Yes, the local branch is required to comply with the Brazilian TP rules as any other entity that have any intercompany transaction with related companies or entities located in low tax jurisdiction (LTJ).

- **Should TP documentation be prepared annually?**

[1] https://receita.economia.gov.br/.

TP calculations (local TP study) must be prepared annually under local jurisdiction regulations. In Brazil, the TP analysis must be prepared for all transactions.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

This is not applicable.

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

The threshold is BRL2.26 billion.

- **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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Taxpayers are expected to have the calculations and documentation necessary to support the information filed 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Last business day of July

- **Other TP disclosures and return**

Last business day of July

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

Last business day of July

- **CbCR notification**

Last business day of July

b) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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.

7. 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**

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. roll forwards 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 vs. weighted average**

There is a preference for weighted average for determining benchmark prices.

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

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

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

The regulation imposes potentially heavy penalties for noncompliance with the CbCR rules. Transactions and financial operations that are not fully reported in the CbCR report 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?**

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, called 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 make it easier for them to monitor any discrepancy of tax information.

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

The likelihood is 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

For certain industries – such as automotive, pharmaceutical, chemical, and oil and gas – and intra-group services into Brazil (services and cost allocations), the likelihood of a TP audit is high. The risk of a TP audit is 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/SISCOSERV).

11. APA and MAP opportunities

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

The Brazilian Revenue Authority (RFB) has issued the Normative Instruction 1,846/18 that 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 are able to 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

National Revenue Agency (NRA)

b) Relevant TP section reference

- **Name of TP 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 96, 6 December 2019
- Tax and Social Insurance Procedure Code (TSIPC), promulgated in SG Issue 105, 29 December 2005, most recent amendments promulgated in SG Issue 96, 6 December 2019
- 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 the 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 which are similar to the criteria for a large enterprise set in the Accountancy Act.

2. OECD Guidelines treatment and BEPS implementation

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

Bulgaria is not a member of the OECD.

Although there is no specific reference in the Bulgarian TP legislation and the relevant soft law, they generally follow the 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.

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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

[1] **http://www.minfin.bg/en/page/174.**

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, 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 your 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 17 November 2017.

3. TP documentation requirements

a) Applicability

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

Mandatory TP rules effective as of 1 January 2020

Yes, there are mandatory TP documentation requirements which 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, starting from 1 January 2020, the 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 foreign company need to comply with the local TP rules?**

Yes, the provisions governing the preparation of the TP documentation also apply to the transactions of the Bulgarian branches of foreign entities.

- **Should TP documentation 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 roll-forward 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP 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 EUR0.5 million) applicable to the value of the loan principal
- BGN50,000 (or approximately EUR25,000) applicable to interest rate accrued

- **Master file and local 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 obliged to prepare TP documentation consisting of local file and master file. The local TP file should be prepared by 31 March of the following year, while the master file should be available by 31 March 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 the OECD Guidelines and follow the BEPS Action 13 framework. However, there are some local specifics that 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. Failure to submit the master file may trigger penalties ranging from BGN5,000 (or approximately EUR2,500) to BGN10,000 (or approximately EUR5,000).

- **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 the 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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-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 nonresident 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), the 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, which have an obligation to prepare a CbC report, should file a notification to the tax authorities stating which entity in the group submits the CbC returns.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 31 March of the following year. Therefore, the CIT return for the financial year 2019 should be filed by 31 March 2020.

- **Other TP disclosures and return**

The filing deadline is 31 March of the following year. Therefore, the CIT return and the relevant disclosures related to TP for the financial year 2019 should be filed by 31 March 2020.

- **Master file**

The due date for the master file is within 12 months after this period.

- **CbCR preparation and submission**

The CbC reports should be submitted within 12 months of the end of the fiscal year for the MNE. Thus, a CbC report 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) TP documentation and 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 31 March of the following year, while the master file should be available by 31 March of the year after.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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.

7. 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**

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. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 nondeductible 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 (or approximately EUR2,500) to BGN10,000 (or approximately EUR5,000).

- **If an adjustment is sustained, can penalties be assessed?**

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. The latter 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 Arbitration Convention.

9. Statute of limitations on TP 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 31 March 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 31 March 2014.

10. Likelihood of TP scrutiny or related audit by local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

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.

11. APA and MAP 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 Minister 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.,, noncompliance 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 (TP) regulation or rulings

a) Name of tax authority

Direction Générale des Impôts

b) Relevant TP section reference

- **Name of TP 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

Decree n°2018-211 MINEFID/SG/DGI setting out the conditions for implementing the TP documentation requirement

- **Section reference from local regulation**

General Tax Code: Articles 66, 99, 588-8°, 616-1°, 618-2

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, it has to be prepared contemporaneously.

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

Yes, if the companies operate in Burkina Faso, they have to comply.

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

The documentation obligation applies to companies operating in Burkina Faso:

  - Which carry out transactions of any kind with related companies operating inside or outside Burkina Faso
  - Which achieve an annual turnover excluding taxes or with gross assets equal to or greater than XOF3,000,000,000

- **Master file**

This is not applicable.

- **Local file**

The content of the TP documentation includes general information of the group and specific information on the local entity.

The content of the TP documentation is expected to be specified within an instruction.

BEPS Action 13 format is not yet applicable.

- **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 nonresident enterprises and on the method of determining the prices of the transactions.

4. TP return and related-party disclosures

This is not applicable.

- **TP-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 and 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.

5. TP 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 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) TP documentation and local file preparation deadline

It should be available at the time of a tax audit.

c) TP documentation and local file submission deadline

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

There is no submission deadline.

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

To be provided within 30 days upon official request by the auditors addressed to the audited companies

6. TP 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.

7. 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. roll forwards and update of the financials

There is no specific requirement.

- Simple vs. weighted average

There is no specific requirement.

- Other specific benchmarking criteria, if any

There is no specific requirement.

8. TP penalties and relief

a) Penalty exposure

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

When a TP documentation is not, or partially, available, the expenses or reassessment of the revenue omitted are not deductible, and a fine of 5% of the amount of the transaction is applied. And the tax authorities are permitted to estimate the amount of the reassessment on the basis of the only information available.

- If an adjustment is sustained, can penalties be assessed?

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.

9. Statute of limitations on TP assessments

The limitation period is set to three years (common tax regime); added to two years in case of TP tax audit or whether the information exchange procedure has been implemented.

10. Likelihood of TP scrutiny and related audit by the local authority

- Likelihood of TP-related audits (high, medium or low)

Medium

- Likelihood of TP methodology being challenged (high, medium or low)

Medium

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

Medium

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

Medium

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

The intercompany interests are only deductible if the capital has been fully released. In any case, the maximum deductible amount cannot exceed: i) the legal interest rate increased by two percentage points, and ii) 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 (TP) regulation or rulings

a) Name of tax authority

General Department of Taxation

b) Relevant TP section reference

- **Name of TP 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 TP purposes.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

  This is not applicable.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  None

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

  Yes

- **CbCR notification and CbC report submission requirement**

This is not applicable.

- CbCR notification included in the statutory tax return

  This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Yes, there are TP documentation rules. A TP report has to be prepared annually.

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

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Should TP documentation be prepared annually?**

Yes, the TP documentation needs to be prepared annually, and a TP memo should also include contemporaneous benchmarking.

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

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has related-party transactions.

b) Materiality limit and thresholds

- **TP documentation**

There is none specified.

[1] https://www.tax.gov.kh/en/.

- **Master file**

There is none specified.

- **Local file**

There is none specified.

- **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 TP documentation prepared in the English language may be submitted to the tax authority.

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

There is none specified.

- **Any other disclosure or compliance requirement**

None, besides the below

4. TP return and related-party disclosures

- **TP-specific returns**

There is none specified.

- **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

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Within 90 days after the end of the financial year-end

- **Other TP disclosures and return**

The documentation should be filed 90 days after the end of the financial year-end.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

There is none specified.

b) TP documentation and local file preparation deadline

There is no specified deadline for the preparation of TP documentation.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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.

7. 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 Excel Quartile formulas is acceptable.

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

Roll-forward study is acceptable.

- **Simple vs. weighted average**

Simple average is acceptable.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

Yes, from 10% to 40% of the under-declared amount depending on the quantum of the under-declared amount 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.

9. Statute of limitations on TP assessments

This is 3 years, which may be extended to 10 years if fraud or obstruction of the implementation of the law is involved.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is medium, as Cambodia only introduced its TP regulations in October 2017 and its TP audit capabilities are still being developed. Furthermore, while a dedicated TP audit team has been established within the tax authority, its current resources do not allow it to conduct many TP audits simultaneously.

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

Medium (same reason as above)

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

Medium (same reason as above)

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

Historically, the garment industry has been targeted by the revenue authority for TP audits. The logistic, shipping and freight-forwarding industries are also being targeted for TP 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.

11. APA and MAP opportunities

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

There is none specified.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

No

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

General Directorate of Taxation

b) Relevant TP section reference

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

The TP rules were introduced into 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 M 19 (a) specifies the documentation requirements.

2. OECD Guidelines treatment and BEPS implementation

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

Cameroon is not a member of the OECD.

The OECD Guidelines on TP may be relied upon to determine the arm's-length nature of international transactions and supporting documentation should be prepared.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

  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

- **CbCR notification and CbC report submission requirement**

No

- CbCR notification included in the statutory tax return

  This is not applicable.

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

Yes

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

No

3. TP documentation requirements

a) Applicability

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

Yes, the TP analysis must be prepared for all intercompany transactions (goods, services, rights and interest on loan) without exception.

In accordance with the provisions of the Finance Bill for the financial year 2020, the obligation for filing a TP documentation has been replaced by the obligation to file a TP return. However, it remains essential to prepare the TP documentation which must be presented at the start of a tax audit for the covered companies.

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

Yes; however, the local branch must fulfill the conditions relating to the documentary obligation in terms of TP, namely, achieving a turnover greater than or equal to XAF1,000,000,000 and being under the dependence or control of another entity within the meaning of the (new) provisions of Article M19b of the 2020 finance law.

- **Should TP documentation be prepared annually?**

[1] **www.minfi.gov.cm.**

Yes, the minimum requirement is to present operations that are carried out during the relevant year – and they are subject to TP rules.

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

Yes, each entity of an MNE is required to prepare stand-alone TP report if it has related-party transactions.

b) Materiality limit or thresholds

- **TP documentation**

Regarding the TP return, as per Article 18 ter, companies being at the DGE (Direction des Grandes Entreprises, Large Companies Division), and which are under the dependence, or which control other companies, are required to file an annual TP return using the TP return template provided by the tax authorities. The filing has to be performed electronically.

Regarding TP documentation, the (new) version of the Article 19 as per the Finance Bill for the financial year 2020 specifies that the TP documentation is applicable for companies having a turnover, excluding taxes being equal or greater than XAF1 billion, and which are under the dependence, or which control other entities. The TP documentation is no longer to be filed starting, as from 2020, but it has to be available at the date of the start of a tax audit and provided to the tax authorities upon request.

- **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.

- **Local language documentation requirement**

The TP documentation needs to be prepared in the local language (French or English), as per the General Administrative Law.

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

There is none specified.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-specific returns**

A specific template for the TP return has been shared by the tax authorities.

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

Taxpayers must disclose related-party transactions. The provisions of Article 18 3 indicate that a company must provide a description of transactions with other affiliates, including the nature and amount of flows, such as fees. These disclosures are to be included in the TP documentation submitted during a tax audit and in the TP return.

- **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 financial statements to be submitted to the tax authorities.

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

This is not applicable.

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

TP 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 titles which have occurred during the last two financial years, general description of the group's TP 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 15 March (only for the TP return).

- **Other TP disclosures and return**

The filing deadline is 15 March (only for the TP return).

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

A TP documentation must be prepared contemporaneously.

c) TP documentation and local file submission deadline

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

There is no deadline for the submission of TP documentation. The documentation must be produced on the first day of the 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**

Refer to the previous section.

6. TP 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

No

7. 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. roll forwards and update of the financials**

A fresh benchmarking search is not necessary to be conducted every year; update of the financials is permissible.

- **Simple vs. weighted average**

There is none specified.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

Failure to produce the TP 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 XAF50,000,000.

- **If an adjustment is sustained, can penalties be assessed?**

Yes, penalties of 30%, 100% and 150% in the cases of good faith, bad faith and fraud, respectively, are applicable.

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

Yes, the interest charged is 1.5% in arrears per month, which could go up to a maximum of 50%.

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 – an administrative 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.

9. Statute of limitations on TP assessments

There is no statute of limitations specific to TP matters. Nonetheless, pursuant to Section M34 of the Cameroonian Manual of Tax Procedure, the tax authorities may correct the statute of limitations applicable to total or partial omissions up to the end of the fourth year after the one in which the taxes were due. Thus, this limitation period should be applicable to TP assessments as well.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of an annual tax audit, in general, is high. The likelihood that TP will be reviewed as part of that general tax audit is also high.

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

The likelihood that the TP methodology will be challenged is high because of recent trends in tax audits by the tax administrators.

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

See the above section.

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

There is none specified.

11. APA and MAP opportunities

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

The relevant tax law in Cameroon is silent on APAs. However, based on Section M34 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.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

No

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

The specific rules relating to thin capitalization or the debt capacity concerns 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 General Tax Code, to be deductible, the interest paid to these partners must fulfill the following two 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**

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Canada Revenue Agency (CRA)

b) Relevant TP section reference

- **Name of TP 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 TP adjustments. Certain technical amendments were also proposed in the 2019 federal budget.

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 TP 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
- IC71-17R5, Guidance on Competent Authority Assistance Under Canada's Tax Conventions, 1 January 2005 (currently under revision)
- Fourteen different TPMs

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP with the OECD Guidelines. When dealing with TP 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Canada has not adopted or implemented BEPS Action 13 for TP documentation in its local regulations, but the jurisdiction relies on the TP documentation framework outlined in Section 247(4)(a)(i) to (vi) of the ITA.

- 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 your 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.

3. TP documentation requirements

a) Applicability

[1] https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/information-been-moved/transfer-pricing.html

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

Yes, it 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 foreign company need to comply with the local TP rules?**

Yes, it should to the extent that the local branch has transactions with non-arms-length people that are relevant to the operation of the business in Canada.

- **Should TP documentation be prepared annually?**

Yes, prepared annually under local jurisdiction regulations, TP documentation should completely and accurately describe material changes in the year (if the documentation was previously prepared).

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

Yes, each entity is required to document its TP. 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

- **TP documentation**

This is not applicable; however, reporting of transactions on Form T106 is required only if the total reportable transactions exceed CAD1 million.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

The limit is EUR750 million.

- **CbCR notification and CbCR submission requirement**

There is no CbCR notification requirement in Canada. However, there is a requirement to file CbC report for MNE groups with consolidated revenues of EUR750 million.

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

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 TP 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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-specific returns**

Refer to the T106 details in the section above.

- **Related-party disclosures and TP-related appendices**

Taxpayers are required to file a T106 information return annually, reporting the transactions undertaken with non-arm's-length nonresidents during the taxation year. This requirement applies where the aggregated value of transactions with non-arm's-length nonresidents 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.

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

No

5. TP 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 TP 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 CbC report relates.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

TP 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) TP documentation and local file submission deadline

This is not applicable unless the TP 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 TP 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).

6. TP methods

a) Applicability (for both International and domestic transactions)

For international transactions, the CRA accepts the TP methods recommended in the OECD Guidelines when such methods are applied correctly and result in an arm's-length price or allocation. Commonly accepted TP methods include: CUP, resale price, cost plus, profit split (residual and contribution) and TNMM.

Domestic transactions may conceptually be subject to TP approaches, but they are not addressed by the TP rules in Section 247 of the ITA. Other provisions that apply domestically to transactions between non-arm's-length people for inadequate consideration, and to whether an expense is reasonable, may invite reference to TP approaches.

b) Priority and preference of methods

Traditionally, the CRA considered that, even though Section 247 does not stipulate so, the above-noted TP 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.

7. 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**

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. roll forwards and update of the financials**

It is not necessary for a fresh benchmarking search to be conducted every year; roll forward and update of the financials of a prior study is acceptable if the facts and circumstances have not materially changed for the transaction from those applicable to the year of the study.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 TP 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 TP penalties must be referred to the Transfer Pricing Review Committee (TPRC) for review and recommendation for final action. The TPRC, after considering the facts and circumstances, and the taxpayer's representations, will conclude whether a TP 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 "TP 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 the 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?**

Yes, TP-related penalties are assessed without reference to the taxpayer's income or loss for the relevant reporting year and are not tax-deductible.

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

Yes, interest on penalties is payable from the date of assessment, at 6% currently; 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 TP 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 TP penalty, and the Canadian competent authority and relevant foreign counterpart negotiate a change to the amount of the TP adjustment, the CRA will adjust the amount of the Canadian TP penalty accordingly. If the result of the change is that the adjustment no longer exceeds the penalty threshold, the penalty is rescinded.

An assessed TP penalty may also be vacated by CRA Appeals Branch upon review.

9. Statute of limitations on TP assessments

Under Subsection 152(4) of the ITA, the minister 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 dealings with nonresidents, 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

For large corporations, the likelihood of an annual tax audit is high, as is the likelihood of TP being reviewed as part of the audit.

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

The likelihood of a TP methodology being challenged, if TP comes under audit, is also high, as the CRA does challenge methodology depending on the facts.

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

If the methodology is challenged, then the likelihood of an adjustment is 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.

11. APA and MAP 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 charges taxpayers only travel costs it incurs in the completion of 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 TP 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 TP and may not necessarily be the same.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Under subsection 18(4) of the ITA, deductibility of interest paid to related nonresident 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 (TP) regulation or rulings

a) Name of tax authority

National Directorate of State Revenues (Direcção Nacional de Receitas do Estado)

b) Relevant TP section reference

- **Name of TP 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 Financial and Planning Ministry on 31 December 2015 (TP Ministerial Order).

- **Section reference from local regulation**

Article 66 of the CITC

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Cape Verde has not yet adopted BEPS measures in its TP legislation, but 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 the CbC reports 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, as per the TP Ministerial Order, taxpayers must maintain contemporaneous information and documentation.

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

Yes, all taxpayers established in Cape Verde, that undertake related-party transactions with resident or nonresident related entities, need to comply with local TP rules.

[1] **https://mf.gov.cv/web/dnre**

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP 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, there are other entities 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 nonresident 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no specific TP returns (other than the one described above).

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

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 intra-group 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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The end of the seventh month after the corresponding tax year-end

- **Other TP disclosures and return**

The end of the seventh month after the corresponding tax year-end

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

The deadline for submission of the CbC report 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 fifth month, following the fiscal year-end.

b) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific requirement.

- **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. roll forwards and update of the financials**

There is no specific requirement.

- **Simple vs. weighted average**

There is no specific requirement.

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

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

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

There are no specific TP penalties provided in the TP regulations in Cape Verde; therefore, general rules for tax penalties apply (i.e.,, Chapter VI, "Tax Offenses" of the General Tax Code of Cape Verde).

- **If an adjustment is sustained, can penalties be assessed?**

Yes

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

There is none specified.

b) Penalty relief

There is none specified.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

It's medium. We are aware that TP audits are already occurring.

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

It's medium. We are aware that TP audits are already occurring.

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

It's medium. We are aware that TP audits are already occurring.

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

This is not applicable.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

No relevant regulations or rulings are in place.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

General Director of Taxation

b) Relevant TP section reference

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

The TP 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 TP requirements.

2. OECD Guidelines treatment and BEPS implementation

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

Chad is not a member of the OECD.

The OECD Guidelines on TP 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 OECD blacklist for TP purposes.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules?**

No, there are guidelines and rules for a TP return form to be filed and submitted alongside the Annual Tax Return every year by companies.

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

Yes

- **Should TP documentation be prepared annually?**

There is no TP documentation in Chad. There is a TP return form to be prepared annually.

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

Yes, each entity of an MNE is required to prepare stand-alone TP return.

b) Materiality limit or thresholds

- **TP documentation**

This is not applicable. Only TP 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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-specific returns**

Yes, there is a TP 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 TP return form is given in the document named "instruction specifying the procedures for applying the TP rules."

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

This is not applicable.

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

No

5. TP 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 TP 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) TP documentation and local file preparation deadline

The TP return deadline is 30 April of each year with possibility of extension to 15 May if agreed by the tax administration.

c) TP documentation and local file submission deadline

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

The TP 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:

- XAF10,000,000, if submitted after 15 May to 31 May
- XAF20,000,000 if submitted after 1 June to 30 June
- XAF25,000,000 if submitted after 1 July to 31 July
- XAF5,000,000 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 intra-group transactions, not reported in the TP return, the following sanction is applied:

- Rejection of deductibility of intra-group transaction

- Fine of 5% of the total amount of the intra-group 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes**
- **Domestic transactions: No**

b) Priority and preference of methods

No

7. 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. roll forwards and update of the financials**

There is no specified method as per the tax law, but the company should specify the method used.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

The late submission penalty is applied as per the below:

- XAF10,000,000 if submitted after 15 May to 31 May
- XAF20,000,000 if submitted after 1 June to 30 June
- XAF25,000,000 if submitted after 1 July to 31 July
- XAF5,000,000 for each month from 1 August

Non-correct disclosure and absence of TP return is sanctioned as follows:

- Rejection of deductibility of intra-group transaction
- Fine of 5% of the total amount of the intra-group transactions of the company with a minimum of XAF50 million per fiscal year

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **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.

9. Statute of limitations on TP assessments

There is no specific statute of limitation for TP, so the statue of limitation that will be applied is the one for the annual tax return which is three years.

10. Likelihood of TP scrutiny and related audit by the local authority

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

Medium

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

Medium

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

Medium

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

Medium

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 Central bank (BEAC) rate plus two points.

When a loan is concluded with affiliate companies which 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 (TP) regulation or rulings

a) Name of tax authority

Internal Tax Service (Servicio de Impuestos Internos, or SII)

b) Relevant TP section reference

- **Name of TP 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 TP 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. OECD Guidelines treatment and BEPS implementation

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

Chile has been a member of the OECD since May 2010.

Although the TP rules do not mention the OECD Guidelines, the SII applies the OECD Guidelines as a source of interpretation on TP audits.

b) BEPS Action 13 implementation overview

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

No, it's not yet included in the law; however, in the practice, the TP local reports are prepared on the basis of BEPS Action 13.

- 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 your 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.

3. TP documentation requirements

a) Applicability

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

Partially, yes, the TP documentation is recognized by the law as a valid proof during a TP audit. However, the format and content are not determined by law

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

Yes, the law specifically determines that branches are considered as individual entities for TP purpose.

- **Should TP documentation be prepared annually?**

TP documentation does not need to be prepared annually under local jurisdiction regulations; nevertheless, it is usually required under a TP audit by the SII, which gives only 10-30 days to answer its inquiries. The current TP audits are carried out year by year, so an annual TP documentation is highly recommended.

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

The format and content of the TP documentation is not clearly defined by the law; however, the TP audits are carried out entity by entity, so it is recommended to have stand-alone TP reports for each entity.

b) Materiality limit or thresholds

- **TP documentation**

This is not applicable.

- **BEPS master and local files**

So far, Chile has not implemented master file in accordance with OECD BEPS Action 13.

- **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, the annual TP form 1907 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 that consolidates the financial statements in Chile will be in charge of submitting a CbC report (Affidavit No. 1937). According to the Chilean rules, a different entity may be appointed to submit this report. 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. To appoint a surrogate entity, it is not mandatory.

- CbCR notification included in the statutory tax return

Since the commercial year 2018, the CbCR notification is included in the annual TP 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 TP study that includes the economic analysis done in order to prove the prices, values or margins obtained in transactions with foreign related parties. The Chilean IRS may require these analyses for any transaction carried out with a foreign related party. However, for the annual TP Form 1907, it is only necessary to inform the method for those transactions higher than 200 million Chilean pesos (CLP).

c) Specific requirements

- **Treatment of domestic transactions**

Although Chilean TP rules do not include a formal obligation to inform transactions between Chilean related parties, there is a general rule in the Chilean Tax Code that gives the SII the authority to assess whether these transactions were carried out according to the market prices. In practice, a TP team of the SII assesses transactions between Chilean related parties.

- **Local language documentation requirement**

The TP documentation is not initially required in Spanish. But, in the event of a TP audit, all information requested should be prepared in Spanish.

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

The Tax Law establishes that the royalty rate cannot exceed 4% of a 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Taxpayers listed in the large business division (grandes contribuyentes) or classified as large size must file another affidavit No. 1913, "global taxpayer's characterization," which must be submitted before the annual income tax return in any case before 30th April. This affidavit has several questions related with TP matters.

- **Related-party disclosures and TP-related appendices**

The TP return (Affidavit No. 1907) must be filed by the last business day of June with respect to the information of the prior FY (a three-month extension may be obtained, one time only).

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 TP 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 TP return (Affidavit No. 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:

- TP method used
- 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**

This is not applicable.

5. TP 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 TP disclosures and return**

TP return (Affidavit No. 1907) should be filed by the last business day of June, or 90 days after, if an extension is obtained (one time only in the year).

- **Master file**

There's no requirement to file a master file.

- **CbCR preparation and submission**

The CbC report (Affidavit No. 1937) must be prepared and submitted by the last business day of June, or 90 days after, if an extension is obtained (one time only in the 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 Affidavit No. 1907 at the end of June (or September).

b) TP documentation and local file preparation deadline

The TP documentation must be prepared contemporaneously and provided upon request. It is highly recommended that the TP documentation be prepared in Spanish, in case the SII requests it during an audit.

c) TP documentation and local file submission deadline

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

No

- **Time period or deadline for submission on SII request**

The SII allows 10–30 days for delivery from the time of the request.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The TP methods accepted are the same as those established by the OECD Guidelines. Additionally, a sixth or "other" method is acceptable, when none of the other methodologies is applicable.

TP 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.

7. 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 TP 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 TP audits.

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

The Chilean TP rules do not specify whether a fresh benchmarking is necessary every year; nevertheless, the practice follows the OECD recommendations, considering both options.

- **Simple vs. weighted average**

The weighted average is usually used; however, it is not mandatory.

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

It is important that the financial information used for the tested party would be comparable than the financial information used for the benchmark of comparable information; for example, differences in accounting standards used may require some comparability adjustments.

8. TP penalties and relief

a) Penalty exposure

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

The monetary penalty for not having TP Affidavit 1907, submitting it late or filing it 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?**

Regarding TP adjustments, price, value or profit margin differences that result from applying Chilean TP 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 TP adjustment as a result of a TP 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.

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

Interest and readjustments for inflation are determined under the application of Article 53 of the Chilean Tax Code.

b) Penalty relief

There is no prescribed penalty relief for not preparing and submitting TP documentation. However, maintaining contemporary TP documentation would be accepted by the SII as an important proof of the taxpayer's "good faith." In these cases, the TP penalty applicable to the potential adjustments may be reduced.

There are discounts applicable if the payment is made in a short period.

9. Statute of limitations on TP 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 TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

Currently, there is a high probability that the SII will audit TP (most likely if the company has expenses related to services received, royalties paid, or interest paid or is operating in loss).

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

The likelihood is medium, because the TP audit is generally focused on the comparable entities and transactions rather than methodologies.

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

The likelihood is high. If the methodology is challenged, the IRS would probably get a different result than the taxpayer. They usually challenge the method resulting in an adjustment.

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

In Chile, there are specific programs that assess TP transactions in the mining industry. The transactions that the SII assesses in a TP audit are intra-group services (management, technical and routine services), payment of royalties, interest accrued, payments for reimbursement of expenses, commodity transactions, etc., from different industries.

11. APA and MAP 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 request and a TP study. The SII, within six months of the taxpayer sharing 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 this kind of agreements, so it is recommended to use this approach in Chile now.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

MAP process is recognized by the tax treaties signed by Chile; however, it is not currently being applied.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

For TP 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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This chapter relates to the mainland China tax jurisdiction

1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

State Taxation Administration (STA)

b) Relevant TP section reference

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

As of 31 December 2019, there are four STA releases that form the overall framework for TP enforcement in mainland China:

- Bulletin Gonggao [2017] No. 6 (Bulletin 6) – ***Bulletin on Supervisory Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures (MAPs)***
- Bulletin Gonggao [2016] No. 64 (Bulletin 64) – ***Bulletin on Issues Related to Improving the Administration of Advance Pricing Arrangements***
- Bulletin Gonggao [2016] No. 42 (Bulletin 42) – ***Bulletin on Improving Administration of Related-Party Transaction Reporting and Contemporaneous Documentation***
- Circular Guoshuifa [2009] No. 2 (Circular 2) – ***Implementation Measures for Special Tax Adjustments (Trial Implementation)***

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
- 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
- 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
- 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

- **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 shall be 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, 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.

[1] **http://www.chinatax.gov.cn/eng/.**

- 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 deeply 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 deeply involved in the development of the United Nations Practical Manual on Transfer Pricing for Developing Countries (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 countries' 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 believes that local contributions to intangibles are often quite significant. China's "Jurisdiction 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 faces an uncertainty in its view of 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 countries 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.

- CbCR notification included in the statutory tax return

There is none specified.

c) Is your 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 12 May 2016.

3. TP documentation requirements

a) Applicability

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

Yes, there are TP documentation rules which require contemporaneous documentation.

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

Yes, a local branch of foreign company is required to comply with the local TP rules.

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

Refer to the master file and local file thresholds below.

- **BEPS master and local files**

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.

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 lack 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.

- **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.

4. TP return and related-party disclosures

- **TP-specific returns**

China does not have TP-specific returns. However, the return disclosures described below are very 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 and 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return** 31 May

- **Other TP 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP methods

a) Applicability (for both international and 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, although the OECD Guidelines provides a great deal more specific guidance on application of the income method. Bulletin 6 provides that TNMM is not appropriate in transactions where significant intangible assets are involved, but it does not clearly 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, nonpublic 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%.

7. 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 nonpublicly available information, i.e.,, secret comparables. Such nonpublic information is used in practice, especially in a risk assessment context.

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

Multiyear testing (up to three years) is acceptable.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

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

Fresh benchmarking search is the suggested practice; however, there is no specification from the regulation.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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?**

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.

- **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.

9. Statute of limitations on TP assessments

The duration could be as long as 10 years. For example, if the tax authorities initiate a TP audit in 2017, the covered period could be from 1 January 2007 to 31 December 2016.

Article 24 of Bulletin 42 states that contemporaneous documentation should be maintained for 10 years.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is 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 TP methodology being challenged (high, medium or low)**

The likelihood is 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 TP methodology is challenged (high, medium or low)**

The likelihood is high. Even though the TP method can be sustained, the profit margins would usually be adjusted upward. There were almost no TP audit cases concluded without any adjustments during the past five years.

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

In recent years, the STA has put in place a taxpayer monitoring system, leveraging big data capabilities, 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.

11. APA and MAP 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. 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

National Tax and Customs Authority (Dirección de Impuestos y Aduanas Nacionales, or DIAN)

b) Relevant TP section reference

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

The TP 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 sections have references to TP:

- Articles 260-1 to 260-11 of the Colombian Tax Code
- Regulatory Decree 2120, from December 2017

2. OECD Guidelines treatment and BEPS implementation

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

Colombia is a member of OECD, but its Guidelines are not legally binding. Notwithstanding, Guidelines are locale used as by Tax Authorities as technical reference criteria for TP matters.

b) BEPS Action 13 implementation overview

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

Yes

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

  Yes, it covers both the master file and the local file.

- 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 TP study presented by taxpayers until the financial year 2016.

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

This is not applicable as there is no penalty protection in Colombia.

c) Is your 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 21 June 2017.

3. TP documentation requirements

a) Applicability

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

Yes

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

Yes, any local taxpayer is subject to TP rules. Furthermore, branches and permanent

- **Should TP documentation be prepared annually?**

Yes, TP documentation must be prepared annually 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.

[1] **http://www.secretariasenado.gov.co/senado/base doc/estatuto_tributario.htm.**

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

Yes, each local entity of an MNE must prepare and submit its obligations separately.

b) Materiality limit or thresholds

- **TP documentation**

TP 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 local file.

- **Local file**

The gross equity must be equal to or greater than 100,000 tax value units (UVT) (COP3.560 million for the financial year 2020), or the gross revenues must be equal to or greater than 61,000 UVT (COP2.172 million for the financial year 2020).

Transactions above 45.000 UVT (COP1.602 million for FYE 2020) must be analyzed in the local file considering the type of operation carried out.

If the transactions have been carried out with companies located in tax havens the materiality threshold is 10.000 UVT (COP356 million for FYE 2020) even if the gross equity or gross revenue thresholds have not met.

- **CbCR**

It is applicable for multinational groups with consolidated revenues greater than COP 2.775 billion (for FYE 2020). CbCR must be presented in Colombia when the local constituent entities have a joint participation equal to, or higher than, 20% of the group's consolidated revenue.

- **CbCR notification and CbCR submission requirement**

When the taxpayer has the obligation to submit a TP return, the CbCR notification will be part of it. Otherwise, the local entity must submit it via email using the form published by the tax authority.

- CbCR notification included in the statutory tax return

No, it might be included in the TP return. Refer to the section above.

- **Economic analysis**

It must be included in the local file.

c) Specific requirements

- **Treatment of domestic transactions**

Transactions performed by a local taxpayer with a local related party located in a free trade zone in Colombia are subject to TP obligations.

- **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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

As part of the TP 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 TP return includes the type of intercompany transaction, the amount of the transaction, the TP 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 and TP-related appendices**

There are no specific TP disclosures to be included in the corporate income tax (CIT) return. All TP disclosures are to be included in the TP informative return.

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

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

For the financial year 2019, it will be April 2020. Please note that with the COVID-19 situation, FY2019 CIT deadlines have been moved to June 2020. Up to date deadlines for FY 2020 have not stablished yet.

- **Other TP disclosures and return**

For the financial year 2019, local file, TP return and CbCR notification will be due between 7 and 21 July 2020. Master file will be due between 10 and 23 December 2020. The specific date for a taxpayer will depend on the last digit of its TAX ID number. Up to date deadlines for FY 2020 have not stablished yet.

- **Master file**

Master file needs to be prepared as per the OECD BEPS Action 13 Guidance. The master file needs to be filed with the tax authority by a specific deadline (please see above comment). It can be initially submitted either in English or Spanish. Please note that if submitted in English, during its review, the tax authority may request an official translation into Spanish. Up to date deadlines for FY 2020 have not stablished yet.

- **CbCR preparation and submission**

For the financial year 2019, the submission must be in December 2020. Up to date deadlines for FY 2020 have not stablished yet.

- **CbCR notification**

Please see section 5. a).

b) TP documentation and local file preparation deadline

Please see section 5. a).

c) TP documentation and local file submission deadline

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

Please see section 5. a).

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

Taxpayers must file the TP documentation no later than the dates annually published by tax authorities (e.g.,, July 2020 for the financial year 2019). Late filing will trigger penalties.

6. TP methods

a) Applicability (for both international and 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 TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement or tax authority preference for local jurisdiction comparables and all countries 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**

The regulation provides that single-year testing (1x1) should be used generally. A multiple-year analysis could be used in special circumstances, but its use must be strongly supported in the report from technical and economic standpoints.

- **Use of interquartile range**

Yes, interquartile range calculation using Excel Quartile formulas is acceptable. However, the regulations allow the use of other statistical measures (including the total range).

- **Fresh benchmarking search every year vs. roll forwards 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 in order 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 vs. weighted average**

There is none specified.

- **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.

8. TP penalties and relief

a) Penalty exposure

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

TP documentation

Penalty regarding TP 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 will be the penalty. After the five days, it will be 0.2% of the same base, with a limit of 20,000 UVT (COP685 million for the financial year 2019).
- Information inconsistencies: The penalty will be 1% of the value of the transactions reported with inconsistencies that were carried out with related parties, limited to 5,000 UVT (COP171 million for the financial year 2019).
- No submission: The penalty will be 4% of the total amount of the transactions subject to analysis, with a limit of 25,000 UVT (COP857 million for the financial year 2019).
- Omitted information (transactions): The penalty will be 2% of the value of the omitted transactions carried out with related parties, limited to 5,000 UVT. Additionally, the rejection of cost and expense related to omitted operations may apply.
- Omitted information (related parties located in tax havens): The penalty will be 4% of the total value of the transactions carried out with related parties, limited to 10,000 UVT (COP343 million for the financial year 2019). Additionally, the rejection of cost and expense related to omitted operations may apply.
- Amendment of TP documentation: The penalty will be 1% of the amount of the amended transactions, with a limit of 5,000 UVT.

TP return

Penalty regarding TP return is given below:

- Late filing: Within the five days following the deadline, the penalty will be 0.02% of the total amount of the transactions subject to analysis. After the five days, it will be 0.1% of the same base, with a limit of 15,000 UVT (COP514 million for the financial year 2019).
- Information inconsistencies: The penalty will be 0.6% of the total amount of the transactions reported with inconsistencies that were carried out with related parties, limited to 2,280 UVT (COP78 million for the financial year 2019).
- Omitted information (transactions): The penalty will be 1.3% of the value of the omitted transactions carried out with related parties, limited to 3,000 UVT (COP103 million for the financial year 2019). Additionally, the rejection of cost and expense related to omitted operations may apply.
- Omitted information (related parties located in tax havens): The penalty will be 2.6% of the total value of the transactions carried out with related parties, limited to 6,000 UVT (COP206 million). Additionally, the rejection of cost and expense related to omitted operations may apply.
- Non-filing of TP return: The penalty will be 4% of the total value of the transactions carried out with related parties, limited to 20,000 UVT.

The penalties mentioned above do not include additional fines

and penalties that taxpayers incur for the amendment of income tax returns or TP adjustments.

- **If an adjustment is sustained, can penalties be assessed?**

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 TP 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

TP documentation

Reduced penalty (before the tax authority's penalty order):

- When the taxpayer amends its TP 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.

TP return

Reduced sanction (before the tax authority's penalty order):

- When the taxpayer amends its TP 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 TP 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.

9. Statute of limitations on TP assessments

The statute of limitations for TP assessments is five years.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high, tax authorities launch regular audit programs, which may increase the likelihood to be audited.

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

This is the same as in the above section.

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

This is the same as in the above section.

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

Tax authorities have improved 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 prove 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 TP audits.

Methods as Cost Plus or Resale Price are normally challenged it the benchmark is compounded by external comparables.

11. APA and MAP opportunities

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

Yes.

- **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 the section above.

- **MAP opportunities**

There is none specified.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Thin-capitalization rules are applicable specifically for intercompany debt. The ratio allowed by tax regulations is 2:1 (intercompany debt-to-equity)

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Congolese tax authorithies (formely Direction Générale des Impôts et des Domaines (DGID))

b) Relevant TP section reference

- Name of TP regulations or rulings and effective date of applicability

General Tax Code, Articles 120 to 120 H, Volume 1: The law was introduced in 2012. As of to date, there are no rulings or other particular texts regarding TP.

- Section reference from local regulation

Article 120 D of General Tax Code

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP regulations are consistent with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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.

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

It does not have any TP documentation guidelines or rules at the moment. However, a detailed TP instruction is expected to be issued by the Congolese Tax Authorities later this year.

- Should TP documentation be prepared annually?

TP documentation (local file) needs to be prepared annually under local jurisdiction regulations and submitted to the tax authorities. At a very minimum, transaction values must be updated, and a memo that confirms changes to prior-year content should be prepared, if any.

b) Materiality limit or thresholds

- TP documentation

Entities that generate more than XAF500 million of turnover and have at least XAF400 million of gross assets on the balance sheet at the end of the year

- 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

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

There is none specified.

4. TP return and related-party disclosures

- **TP-specific returns**

See the above section about the TP Statement.

- **Related-party disclosures and TP-related appendices**

The TP 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 intra-group 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax (CIT) return**

20 May

- **Other TP disclosures and return**

The TP Statement needs to be submitted within six months of the legal deadline for submitting the CIT return, i.e.,, 20 November.

The format of a TP return has not been specified by the local tax authorities until now. The tax payers are therefore free to use any format to file the TP return.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

TP documentation needs to be provided only upon request in the case of a tax audit. However, as the taxpayer only has 30 days to provide its TP documentation after having received such a request, proactive preparation is recommended.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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**

Taxpayers are obligated to submit the documentation within 30 days of the tax authority's request.

6. TP methods

a) Applicability (for both international and domestic transactions)

It's applicable only for international transactions.

b) Priority and preference of methods

The tax authorities accept the following methods: CUP, resale price, cost plus, profit split and TNMM.

7. 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. roll forwards 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.

8. TP 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 TP documentation requirements apply.

Failure to submit local TP return 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 TP reassessment, TP reassessments from the tax authorities (deemed nonreflecting 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?**

Penalties are generally applied as a result of a TP reassessment, regardless of the compliance with TP documentation requirements.

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 consequences, such as additional CIT (30% of profit) and a deemed transfer of a dividend (20%). 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.

9. Statute of limitations on TP assessments

The statute of limitations for TP adjustments is the same as for all Congolese corporate tax assessments (four years following the year for which the tax is due).

10. Likelihood of TP scrutiny and related audit by local authority

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

The likelihood is 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 TP methodology being challenged (high, medium or low)**

The likelihood is 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

All types of intra-group transactions (e.g.,, management fees, and royalties and licenses) are subject to scrutiny.

11. APA and MAP opportunities

- **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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 TP section reference

- **Name of TP 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 in 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. OECD Guidelines treatment and BEPS implementation

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

Costa Rica is not a member of the OECD, but is in the process for admission.

Costa Rican TP provisions are mainly based on the OECD Guidelines and apply to all the transactions conducted by Costa Rican taxpayers with related entities residing abroad and within Costa Rica. In addition, the OECD Guidelines have been mentioned and used as a reference in official audits and court resolutions.

b) BEPS Action 13 implementation overview

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

No; documentation requirements have incorporated some elements of BEPS Action 13, while also 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 differences between the OECD report template or format and the jurisdiction's regulations.

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

  No

c) Is your 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.

[1] **http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=75647&nValor3=93918&strTipM=TC.**

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality limit.

- **TP return**

Taxpayers that operate under a free trade zone regime, or are classified as large taxpayers or large regional taxpayers, must file the TP information return. The TP Decree (Executive Decree No. 41818-H) expands the scope of the filing obligation for the TP information return by requiring any taxpayer with annual intercompany transactions (whether cross-border or domestic) exceeding the equivalent of 1,000 base salaries to file the information return.

- **Master and local files**

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.

- **CbCR notification and CbC report submission requirement**

On 2 February 2018, the Resolution DGT-R-001-2018, which implements jurisdiction-by-jurisdiction (CbC) reporting, was published in the Official Gazette. According to the Resolution, all Costa Rican tax resident constituent entities that are ultimate parent entities (UPEs) of an MNE group with annual consolidated group gross revenue equal to or exceeding EUR750 million during the reporting fiscal year would need to prepare a CbC report.

The Resolution does not contain local filing rules, but MNE groups from other jurisdictions can appoint a constituent entity in Costa Rica to prepare a CbC report as the surrogate parent entity (SPE). For a reporting fiscal year commencing at any point in 2017, CbC reports shall be filed no later than 31 December 2018. For subsequent reporting fiscal years, a CbC report shall be filed no later than 31 December of the year following the last day of the reporting fiscal year.

According to the Resolution, the Costa Rican entities that are UPEs of an MNE group have to file a notification and should be submitted by the last working day of March each year at the latest, beginning in March 2018, through a digital document signed by the entity's legal representative and addressed to the head of the tax administration. The notification should be sent in the form of a letter signed by the legal representative of the entity to tributacioninter@hacienda.go.cr.

Lastly, failure to submit any of the information contained in the draft rules would trigger monetary penalties of 2% of gross income up to a maximum amount of approximately USD80,000, pursuant to Article 83 of the Income Tax Code.

- CbCR notification included in the statutory tax return

  There is none specified.

- **Economic analysis**

There is no materiality limit.

b) 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 and TP-related appendices**

Related-party disclosures have to be made in specific TP returns. No related-party disclosures need to be made on general income tax returns.

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

This is not applicable.

5. TP 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 TP 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) TP 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP methods

a) Applicability (for both international and 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.

7. 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 Excel Quartile calculation is preferred and common in practice.

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

A fresh benchmarking search every year over the update of the financials of a prior study is required. 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 vs. weighted average**

The weighted average is the common practice.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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 noncompliance set forth in the Tax Code of Standards and Procedures should apply by default.

- **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

- **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.

9. Statute of limitations on TP 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 1 January, following the due date of the tax return.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or low)**

The likelihood is high; in practice, the resolution in most cases results in an adjustment.

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

The companies that are characterized as large taxpayers have a higher likelihood of being audited.

11. APA and MAP opportunities

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

APAs are contemplated under the provisions of the TP Executive Decree. However, the corresponding regulations have not yet been enacted.

- **Tenure**

The duration of an APA is a maximum of three years.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

There is none specified.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

Direction Générale des Impôts

b) Relevant TP section reference

- **Name of TP 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 CbC return 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. 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, there are TP documentation rules and requirements to file a TP return and the CbC return.

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

Yes

- **Should TP documentation be prepared annually?**

There is no specific requirement to prepare the master and 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 affiliates companies, methods of determination of prices, etc.

[1] **http://www.dgi.gouv.ci/.**

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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

A separate TP report is required per legal entity.

b) Materiality limit or thresholds

- **TP 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.

- **Any other disclosure or compliance requirement**

There is no specific requirement.

4. TP return and related-party disclosures

- **TP-specific returns**

The TP return included intercompany transactions with related parties.

- **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.

5. TP 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 TP 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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

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

TP return:

It is 30 June for companies required to provide a certified financial statement; 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: yes

b) Priority and preference of methods

There is none specified.

7. 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**

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. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

CbCR:

A fine of XOF5 million (approximately EUR7,500)

A CbC report 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 expenses

- **If an adjustment is sustained, can penalties be assessed?**

Please refer to our point a) Penalty exposure.

- **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 Director General of Tax Administration.

9. Statute of limitations on TP assessments

The limitation period is set to three years.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is medium; this is a new issue that requires focus during the next three years.

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

Same as the above section

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

Same as the above section

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

There is none specified.

11. APA and MAP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant TP section reference

- Name of TP 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 March 2012)
  - 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 39b of the CIT Bylaw (respective article in force as of 3 January 2019)
  - Article 39c of the CIT Bylaw (respective article in force as of 3 January 2019)
  - Article 40 of the CIT Bylaw (in force as of 2005, latest update of respective article as of 1 June 2012)
  - 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. 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 TP audits, which are also based on the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation (TPD) in your 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 your 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 6 July 2017.

3. TPD requirements

a) Applicability

- Does your jurisdiction have TPD guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

Yes

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

[1] http://www.porezna-uprava.hr/.

Yes

- **Should TPD be prepared annually?**

TPD 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TPD**

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 (i.e.,, if the concerned party pays CIT at lower rates or has tax losses carried forward from previous periods).

- **Local language documentation requirement**

The TPD needs to be submitted in the local language (i.e.,, Croatian).

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

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Other than PagerDuty (PD)-initial public offering (IPO) return, the Croatian 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.

5. TPD 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 TP 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)

b) TPD and local file preparation deadline

There is no TPD preparation deadline. It should be finalized by the time of submission upon request.

c) TPD and local file submission deadline

- **Is there a statutory deadline for submitting TPD or local file?**

There is no statutory deadline for the submission of TPD; 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The Croatian 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.

7. 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.**

Multiyear analysis (up to three years), as per common practice, is applicable.

- **Use of interquartile range**

Excel Quartile is used, as per common practice; however, there is no preference as such.

- **Fresh benchmarking search every year vs. roll forwards 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.

8. TP penalties and relief

a) Penalty exposure

- **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?**

There is none specifically prescribed.

- **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.

9. Statute of limitations on TP 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 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 FY2018 should have been submitted by 30 April 2019, and thus the statute-of-limitations period commences on 1 January 2020.

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, the tax authorities can perform a tax audit in three years following the commencement of the statute of limitations.

10. Likelihood of TP scrutiny and related audit by the local authority

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

Once a tax audit is initiated, there is a high risk of TP being reviewed within the audit.

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

The likelihood is 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

There is none specified.

11. APA and MAP opportunities

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

Article 14a of the CIT Act defines an APA as an agreement among the taxpayer and Ministry of Finance, tax authorities and tax bodies from other countries in which associated parties are residents or perform business activities through a business unit; through which, for transactions between associated parties, before their commencement, an appropriate set of criteria is determined; such as methods, comparative criteria, appropriate harmonization or key suppositions related to future events; in order to determine TP for these transactions during a given time period. As of 29 April 2017, the Bylaw for concluding APA entered into force.

- **Tenure**

APAs are concluded for a period of up to five years.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Yes

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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, 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 nondeductible borrowing costs are those costs exceeding the taxable interest income or other economically equivalent taxable income.

The amount of nondeductible 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 the Croatian CIT legislation, thin-capitalization rules apply to loans provided by nonresidents holding at least 25% of the equity or voting rights in a Croatian taxpayer, loans provided by third parties not being Croatian tax residents which 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 (TP) regulation or rulings

a) Name of tax authority

Cyprus Tax Department, Ministry of Finance

b) Relevant TP section reference

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

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 TP documentation requirement for taxpayers claiming the benefits of the so-called IP Box regime on embedded IP incomes. The TP 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 TP framework for companies carrying out intra-group financing activities in Cyprus. More specifically, the scope of the application of the Circular is limited to intra-group 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 intra-group (back-to-back) financing arrangements with a TP 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 TP requirements in line with the OECD Transfer Pricing Guidelines, as well as guidance to the required content of a TP study. Based on the Circular, the TP 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.

For tax years up to 2019, there are no further specific TP rules or TP documentation requirements in Cyprus. Nevertheless, Cyprus is expected to introduce broader TP legislation and documentation requirements in 2020 with a retroactive effect from 1 January 2020. The updated TP documentation rules are expected to cover all intercompany transactions and shall be based on the OECD Transfer Pricing Guidelines.

- **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. OECD Guidelines treatment and BEPS implementation

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

Cyprus is not a member of the OECD. However, the local TP regulations are expected to be in line with the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 2020 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 2019. Please refer to the above section for details of the upcoming adoption of such rules for the tax year 2020.

- Effective or expected commencement date

  The legislation is expected in 2020.

- 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No

[1] **https://www.mof.gov.cy/mof/tax/taxdep.nsf/index/index?opendocument.**

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

Yes, it was signed on 1 November 2016.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 2019. For documentation requirements on all other types of transactions with respect to tax year 2020 and onward, please refer to the above section for details of the upcoming adoption of new TP legislation.

- **Does a local branch of foreign company need to comply with the local TP 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 TP rules.

- **Should TP documentation be prepared annually?**

With regard to the existing TP documentation rules in place (i.e.,, intercompany loans financed out of debt), the prepared TP 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.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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 TP legislation.

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality threshold for the tax year 2019. For the tax year 2020, 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 2020, effective as of 1 January 2020. 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 2020, effective as of 1 January 2020. 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 2020 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 intra-group financing transactions related to loans financed out of debt. The broader TP rules to be introduced in 2020 are not expected to include an exception for domestic transactions.

- **Local language documentation requirement**

Local TP documentation may be prepared in English. If requested by the tax authorities, taxpayers should also be in position 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.

- **Any other disclosure or compliance requirement**

For the year 2019, 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 2020, 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 TP documentation and the SIT should be signed off by a person in Cyprus with licence to act as an auditor according to Cyprus Companies Law.

4. TP return and related-party disclosures

- **TP-specific returns**

Current TP rules provide for the electronic submission of an SIT, containing basic information on their intercompany transactions concluded within the year.

The submission of the SIT is voluntary for tax year 2019; however, it is expected to be mandatory from year 2020 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 and 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 or documents to be filed**

There are none specified other than the above.

5. TP 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 2019, the deadline is 31 March 2021). It should be noted that for the fiscal year ending 31 December 2018, an extension was granted with the new deadline being 31 May 2020.

- **Other TP disclosures and return**

The SIT should be submitted within nine months from the corresponding year-end (e.g.,, for the tax year 2020, the deadline for the submission of the SIT is 30 September 2021).

With respect to the tax year 2020, based on the draft expected legislation, local file documentation is not submitted electronically, but should be prepared within 12 months from the tax year-end. Local file should also be delivered to the tax authorities within 60 days upon their formal request.

- **Master file**

With an expected effect for tax year 2020 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 2020, the reporting deadline is 31 December 2021).

- **CbCR notification**

The deadline is by the last day of the reporting fiscal year (i.e.,, for fiscal years ending on 31 December 2020, the deadline is by 31 December 2020).

b) TP documentation and local file preparation deadline

Up to tax year 2019, the time frame for the preparation of TP 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 2020 onward, the expected TP regulations indicate that the TP documentation files should be prepared within 12 months from the respective tax year-end.

c) TP documentation and local file submission deadline

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

No

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

The deadline is within 60 days upon the tax authorities' formal request.

6. TP 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 TP methods.

7. 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 2020, with a retroactive effect as of 1 January 2020. For the year 2019, this is not applicable.

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

No relevant guidance has been set out; however, multiple-year (three years) analysis is accepted.

- **Use of interquartile range**

No relevant guidance has been set out; however, Excel Quartile function is generally accepted.

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

This is not applicable for the tax year 2019. Based on the expected legislation to be effective as of 1 January 2020, a search may be used for a maximum of three years with appropriate updates performed each year.

- **Simple vs. weighted average**

Weighted average is accepted.

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

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

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

Any TP adjustments that may arise during a tax audit may trigger additional income tax liability (plus applicable interest and penalties).

There are no specific TP penalties at present. However, it is expected that the Assessment and Collection of Taxes Law of Cyprus will be amended in 2020 to include administrative penalties relative to TP documentation.

More specifically, the upcoming penalties are expected to be triggered in the events of:

- **Late submission of the SIT**
- **Late delivery of TP documentation files to the tax authorities upon official request**
- **Non-submission of the SIT**
- **Non-delivery of TP documentation**
- **Non-accurate or incomplete submission or delivery of the SIT of TP documentation file.**
- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

The statute of limitation is the same as it is for income tax (i.e.,, six years from the end of the year of assessment, which may be increased to 12 years in the case of fraud).

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is medium. No TP audits are currently performed by the tax authorities; however, the authorities usually challenge the pricing applied on intercompany transactions and frequently request documents supporting the pricing.

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

The likelihood is low but expected to be increased in the following years. In case TP is reviewed as part of the audit, the probability that TP methodology will be challenged is currently low since there is currently no detailed TP legislation. Moreover, the introduction of the expected broader local TP requirements in 2020 will likely result in a more in-depth evaluation of the TP methodologies in place by taxpayers .

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

This is not applicable at the present, since there are no specific guidelines yet with regard to which is the most acceptable TP methodology. The applicability of the above will need to be assessed upon the introduction of the broader local TP legislation in 2020.

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

This is not applicable.

11. APA and MAP opportunities

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

APAs are currently not available.

APA procedures for both unilateral, bilateral and multilateral are expected to be introduced during 2020.

Moreover, as of 1 July 2017, the tax authorities have indicated that they will issue rulings for intra-group financing transactions financed by debt.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

MAP opportunities are applicable under the bilateral double tax treaties.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

Ministry of Finance (MF)

b) Relevant TP section reference

- **Name of TP 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); TP obligation applicable since 1993

- **Section reference from local regulation**

Section 23/7 of the Czech Income Tax Act

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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 your 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

3. TP documentation requirements

a) Applicability

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

The Czech Republic tax legislation currently does not have a formalized legal requirement for the existence of TP 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 TP documentation has always been required during tax audits.

Directive D-334 outlines the requirements of the expected scope of documentation of a TP methodology agreed upon between related parties.

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

Yes

- **Should TP documentation be prepared annually?**

TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

No

b) Materiality limit or thresholds

- TP documentation

[1] **https://www.financnisprava.cz/assets/cs/prilohy/d-zakony/D-332.pdf.**

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 CbC report.

- **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 the documents provided to the tax authorities have to be in the Czech language. However, TP documentation is also accepted in English at times.

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

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There is none specified.

- **Related-party disclosures along with corporate income tax return (CITR)**

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 intra-group 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 and annual report**

Yes

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

No

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

This is not applicable.

5. TP 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 TP disclosures and return**

A TP 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) TP documentation and local file preparation deadline

Upon the request of the tax authorities

c) TP documentation and local file submission deadline

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

No

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

The taxpayer has to deliver the TP documentation within the prescribed deadline, which is usually 14 days, but it may be extended to at least 30 days.

6. TP 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.

7. 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**

Multiyear (three years) analysis, as per common practice, is preferred.

- **Use of interquartile range**

Excel Quartile is used as per common practice.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

There are no specific penalties for not having TP documentation.

There is a penalty of up to CZK1.5 million (approximately EUR60,000) for not filing the CbC report.

There is a penalty of up to CZK0.5 million (approximately EUR20,000) for not filing the CbCR notification or the TP appendix to the CITR.

- **If an adjustment is sustained, can penalties be assessed?**

Generally, when the tax authority successfully challenges TP, 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, for a maximum of five years.

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

No

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).

9. Statute of limitations on TP 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 five 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).

10. Likelihood of TP scrutiny and related audit by the local authority

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

Overall, the likelihood is medium. However, the TP 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 TP methodology being challenged (high, medium or low)**

The likelihood is high; as mentioned above, the tax audits are initiated when the tax authorities have a specific suspicion.

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

The likelihood is 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 undergo audit**

Intangibles, royalties, long-term losses and service fees are seen as the most common TP audit issues. Although no specific jurisdiction is targeted for TP audits, transactions with tax-haven countries are closely scrutinized. The scrutiny of TP will only intensify and, in press statements, the MF has directed that the tax authorities should particularly focus on TP. In addition, they have created a specialized group of full-time specialists within the tax authority dedicated to TP issues.

11. APA and MAP 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 TP method that would result in a transfer price determination on an arm's-length basis. As of 2018, Czech tax nonresidents 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible 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 and 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 is 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 (TP) regulation or rulings

a) Name of tax authority

Danish Customs and Tax Administration (Skattestyrelsen)

b) Relevant TP section reference

- **Name of TP 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 Control Act Section 37 has reference to TP.**

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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.

b) BEPS Action 13 implementation overview

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

Denmark has adopted BEPS Action 13 for TP documentation in terms of master file and local file, and CbCR.

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

  It covers the master file and local file.

- 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 your 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.

3. TP documentation requirements

a) Applicability

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

Yes, they need to be prepared contemporaneously. Under the current law, documentation only needs to be submitted upon request, however a draft law is being considered by the parliament that would require TP documentation to be submitted together with the filing of the tax returns.

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

Yes, a local Danish branch is required to prepare TP documentation.

- **Should TP documentation be prepared annually?**

Yes, TP documentation needs to be prepared annually under local jurisdiction regulations. The TP documentation must be prepared by the deadline for the tax return. The documentation need not be filed together with the tax return.

Noncompliance with the deadline may mean that:

- The burden of proof shifts from the tax authorities to the taxpayer.
- Taxable income may be determined on an estimated basis.
- TP penalties are imposed.

Taxpayers must be able to submit documentation fulfilling all requirements under the Danish regulations upon request.

[1] **https://www.skm.dk/.**

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

Yes

b) Materiality limit or thresholds

- **TP documentation**

Companies belonging to a consolidated group with fewer than 250 employees and either less than DKK125 million in assets or DKK250 million in revenue are not required to prepare documentation as per the master file and local file format.

- **Master file**

No separate threshold

- **Local file**

No separate threshold

- **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 single transaction with a limited value. An insignificant transaction is not subject to an economic analysis.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. In reality, the Danish Tax Administration is not interested in transactions between two Danish entities unless the related parties are subject to an asymmetrical tax regime (e.g.,, tonnage, hydrocarbon tax or cooperative taxation). All Danish entities are, as a starting point, subject to joint taxation.

- **Local language documentation requirement**

The TP documentation does not need to be submitted in the local language. English, Swedish, Norwegian and Danish are acceptable.

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

There is none specified.

- **Any other disclosure or compliance requirement**

No other requirement

4. TP return and related-party disclosures

- **TP-specific returns**

Yes, a specific TP return must be filed annexed to the tax return containing information about types of controlled transactions and amounts related to each type of transaction.

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

No

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

No

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

There is none specified. Notification for the CbCR must be filed separately by the end of the fiscal year for that given fiscal year.

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

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 30 June (calendar year). This has been postponed for FY2019 until 1 September 2020.

- **Other TP disclosures and return**

The deadline is 30 June. This has been postponed for FY2019 until 1 September 2020.

- **Master file**

There is no filing deadline under current laws.

- **CbCR preparation and submission**

The deadline is 31 December (or 12 months after the fiscal year-end).

- **CbCR notification**

The deadline is by the end of the fiscal year in question.

b) TP documentation and local file preparation deadline

TP documentation should be finalized at the time the tax return is submitted – i.e.,, the TP documentation should be prepared contemporaneously. Consequently, the documentation should not include any material not available at the time of filing the tax return for a given year. Submitted documentation that is non-contemporaneous increases the risk of penalties. Furthermore, should the Danish Customs and Tax Administration deem the submitted documentation to contain omissions or mistakes rendering the documentation unusable, they may by law be entitled to disregard the applied TP policies and apply a discretionary assessment.

c) TP documentation and local file submission deadline

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

No; however, refer to the below point.

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

The taxpayer has to submit the TP documentation within 60 days once requested by the tax authorities. Note that a proposed law was published recently which would require Danish taxpayers to submit the TP documentation (master file and local file) for FY2020 and future years simultaneous to their filing of the tax returns (usually six months after year-end).

6. TP 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.

7. 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**

Multiple-year testing is generally accepted. However, in principle structures, there is a tendency to request the margins of limited-risk entities (contract manufacturer or limited risk distributor) to be inside the interquartile range every year.

- **Use of interquartile range**

Yes, the interquartile range calculation using Excel Quartile formulas is preferred.

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

A fresh benchmarking search is required every third year, with an update of the financial data in between (consistent with the recommendations in the OECD Guidelines).

- **Simple vs. weighted average**

There is a preference for the weighted average for arm's-length analysis.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

The penalty amounts to DKK250,000 per legal entity per year for which late or insufficient or no TP documentation is submitted.

In addition, if the taxpayer does not fulfil the disclosure requirements as stated in Form 05.021 (refer to the section above on TP-specific returns), or if the information provided in Form 05.021 is not correct, a penalty will be calculated.

- **If an adjustment is sustained, can penalties be assessed?**

If the tax authorities increase the income, an additional fine of 10% may be imposed on the income adjustment. The penalty amounts are nondeductible.

Where there is an income adjustment, a nondeductible surcharge will be levied on all prior-year adjustments of corporate taxes payable.

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

Nondeductible interest of 0.7 % in 2019 (0.7% in 2018, 0.8% in 2017, 2016, 2015 and 2014) is applicable.

b) Penalty relief

If the taxpayer provides insufficient documentation 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.

9. Statute of limitations on TP assessments

The statute of limitations for a TP assessment is 1 May of the sixth year following the income year concerned (e.g.,, the statute of limitations for the income year 2014 is 1 May 2020).

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high; generally, the Danish Customs and Tax Administration is known for taking a firm stand.

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

The likelihood is high; however, in recent years, it has become more common for the Danish Customs and Tax Administration to close cases without any income adjustments.

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

Refer to the section above.

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

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 long intercompany loans, cash pools and guarantees
- Management services – both inbound and outbound
- Licensing (royalty)

11. APA and MAP opportunities

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

Danish legislation provides for unilateral, bilateral and multilateral APAs.

- **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**

The Danish legislation provides for MAPs.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 income year and that the amount of controlled debt exceeds DKK10 million.

The Danish thin-capitalization rules are supplemented through an "interest ceiling rule" and an earnings before interest, taxes, depreciation and amortization (EBITDA) rule.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Administration of the Dominican Republic (Dirección General de Impuestos Internos, or DGII)

b) Relevant TP section reference

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

Article 281 of the Dominican Tax Code and Decree No. 78-14 of the Dominican Republic has reference to TP.

TP regulations have been in effect since fiscal year 2011.

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

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

The Dominican Republic is not an OECD member.

Furthermore, under the current regulations, there is no reference in which the OECD Guidelines can be relied upon for interpretation. However, the TP regulations in the Dominican Tax Code are mainly based on the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes

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

Yes

- **Should TP documentation be prepared annually?**

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 the comparables and the tested party.

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

Yes

b) Materiality limit or thresholds

- **TP documentation**

Taxpayers are exempt from preparing a TP study in certain situations:

- Taxpayers whose total amount of intercompany transactions does not exceed DOP10 million (adjusted every year for inflation) and have no transactions with entities located in tax havens or under preferential tax regimes

[1] **https://dgii.gov.do/Paginas/default.aspx.**

- 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.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

This is not applicable.

- **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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

a) Related-party disclosures and TP-related appendices

No

b) TP-specific returns

Article 18 of Decree No. 78-14 states that taxpayers should file an annual information return.

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. This return shall be filed within 180 days after the closing date of the fiscal year.

- **CbCR notification and CbC report submission requirement**

No

- CbCR notification included in the statutory tax return

  No

c) Other information or documents to be filed

This is not applicable.

5. TP 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 TP disclosures and return**

The filing should be made within 180 days after the fiscal year-end.

- **CbCR notification**

There is no CbCR notification requirement in the Dominican Republic.

- **CbCR preparation and submission**

This is not applicable.

b) TP documentation and local file preparation deadline

The documentation must be readily available by the time the TP information return is filed (180 days after the fiscal year-end), and must be kept as part of the company's accounting books and records. If requested by the tax authorities, the documentation should be provided within the period the tax authorities stipulate in the notice.

c) TP documentation and local file submission deadline

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

There is no statutory deadline for the submission of TP documentation. If requested by the tax authorities, the documentation should be provided within the period the tax authorities stipulate in the notice.

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

The taxpayer has five days to submit the TP documentation once requested by the tax authorities in an audit inquiry.

6. TP methods

a) Applicability (for both international and 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).

7. 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**

Multiple-year testing for the comparables is applicable. In practice, the number of years is three.

- **Use of interquartile range**

Article 12 of the decree requires the application of an interquartile range. Excel Quartile is common in practice.

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

A fresh benchmarking search every year over updating financials of a prior study is required. 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 vs. weighted average**

Weighted average is common in practice.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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 income or from 5 to 30 minimum wages).

- **If an adjustment is sustained, can penalties be assessed?**

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.

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.**

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or low)**

In case TP is scrutinized, the risk 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 is currently paying special attention to, and auditing, MNEs with complex transactions. The methodologies applied by these types of enterprises are usually 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 TP methodology is challenged (high, medium or low)**

The likelihood is high because, in most audits, the DGII challenges either the methodology or the comparables.

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

The hospitality and commodities industries are more likely to undergo audit.

11. APA and MAP 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 considering 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

General Direction of Tax (Direction Générale des Impôts or DGI)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**
  - Law n°004/2003, dated 13 March 2003, as amended and completed to date related to the Reform of the Tax procedure at "Articles 24 bis" (TP documentation requirements)
  - "Article 24 ter" (Filing obligation of TP return)
  - Article 93 bis (TP return penalties)

The effective date of application is 1 January 2015.

- **Section reference from local regulation**

Special tax provisions

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Yes. A local TP documentation has to be provided to the Tax Office only upon request in case of a tax audit.

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

Yes

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity**

No, TP reports aren't required for each entity.

b) Materiality limit or thresholds

- **TP 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 USD1,000,000.

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 Tax Administration.

Local TP documentation has to be provided to the Tax Office 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 intra-group transactions for a period not exceeding four years (since 2020).

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**

French

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

There is no guidance.

- **Any other disclosure or compliance requirement**

As a note, the TP return does not replace the supporting documents relating to each transaction.

4. TP return and related-party disclosures

- **TP-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 (CIT) return**

This is not 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**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **CIT return**

The CIT compliance deadline is 30 April, following each FY end.

- **Other TP 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) TP documentation and local file preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) TP documentation and local file submission deadline

There is no filing requested for the TP documentation.

- **Is there a statutory deadline for submission of TP 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.

6. TP 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.

7. 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

There is no guidance provided.

- Use of interquartile range

There is no guidance provided.

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

There is no guidance provided.

- Simple vs. weighted average

There is no guidance provided.

- Other specific benchmarking criteria, if any

There is no guidance provided.

8. TP penalties and relief

a) Penalty exposure

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

The risk of noncompliance is that in the event of an audit by the Tax Administration, the absence of TP documentation could lead the Tax Administration 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 adjustment is sustained, can penalties be assessed?

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.

- 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 no guidance provided, but we can assume that further discussion can be held with the DGI.

9. Statute of limitations on TP assessments

Five years

10. Likelihood of TP scrutiny and related audit by the local authority

- Likelihood of TP-related audits (high, medium or low)

The likelihood is medium. However, during normal audits, queries on TP are formulated by the tax inspectors.

- Likelihood of TP methodology being challenged (high, medium or low)

The likelihood is medium if they assume that the company chose this method to lower the taxable base.

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

The likelihood is low if the 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 undergo audit**

The industries are large companies – telecommunication, oil and gas, mining, and subcontracting mining companies.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Ecuadorian national taxes are administered by the Internal Revenue Service (Servicio de Rentas Internas, or SRI) and National Customs Service (Servicio Nacional de Aduanas del Ecuador, or SENAE).

b) Relevant TP section reference

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

The TP regime is part of the corporate income tax (CIT) enacted in the Tax Law (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.[2]

As the OECD's Transfer Pricing Guidelines shall be used as a technical reference, the OECD BEPS Actions 8, 9 and 10 shall also be 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 TP obligations.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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.

On 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.

On December 2018, local Government established the creation of a Commission in charge 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 analyze a transaction will be those that were the most current on 1 January of the fiscal year during which the transaction was held. 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

[1,2] **www.sri.gob.ec.**

documentation, including the local tax administration TP guidelines,[3] must be closely followed.

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Ecuador has its own local TP 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 TP technical reference for items not covered by laws, treaties or SRI resolutions.

Tax Law regulation on TP 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 TP regime – may not be part of the threshold calculations if certain conditions are met
- Restrictive deductibility limits for royalties, technical services, management fees and consulting services paid to related parties
- 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 – TP 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 TP regime being waived if certain conditions are met
- Specific regimes applying for crude oil, metallic minerals and banana exports

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

Yes, local branch needs to comply with regulations applicable to any other entity.

- **Should TP documentation be prepared annually?**

Yes, TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

TP documentation rules in Ecuador requires stand-alone TP reports for each entity in the jurisdiction because domestic transactions are affected by the TP regime. They may not be part of the threshold calculations if certain conditions are met.

b) Materiality limit or thresholds

- **TP 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 TP formal obligations, as explained below:

- Taxpayers are required to file the Transfer Pricing Annex (TP Annex) if the relevant transactions exceed USD3 million.
- Taxpayers are required to submit the Transfer Pricing Report (TP Report) if the relevant transactions exceed USD15 million.

[3] According to the technical guideline updated by the tax administration's annually denominated "Ficha Técnica para la Estandarización del Análisis de Precios de Transferencia," the applicable version for the TP documentation 2018 is the version 7.

Notwithstanding the thresholds that trigger documentation submission, the SRI may require, at any time, the TP Annex or the TP 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 TP 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 TP 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

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

The TP 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 compliance assessments and opinions that make it compulsory to communicate the TP analysis outcome before the issuance of the audit report
  - Income tax return, which includes TP-specific fields (amount of related-party transactions that trigger local TP obligations) and the recognition of any potential TP adjustment that affect the income tax calculation
  - Related-parties' operations Annex (TP Annex)
  - TP Report
  - Tax Compliance Report, which must be filed by external auditors each year, including details of TP-related information

The TP Report and the TP 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 advanced 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 TP 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 completion 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

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The exact submission deadline for the specific obligations to be fulfilled by taxpayers regarding the TP regime is defined according to the ninth digit of their tax identification number.

- **Other TP disclosures and return**

The TP Annex and TP Report must be filed no later than two months after filing the CIT return.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

TP 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 TP documentation must be submitted according to what is specified in the previous section.

c) TP documentation and local file submission deadline

Local TP documentation must be submitted according to what is specified in the previous section.

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

The TP Annex and TP 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 noncompliance or late submission of the TP Report and TP Annex, it will establish a deadline of five to ten 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.

6. TP 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 TP 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

In 2016, LORTI regulation reform eliminated 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

The SRI prefers the use of local comparable companies instead of foreign comparable companies.

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

The PLI for analyses must be calculated only with the financial information for the year when transactions were held.

- **Use of interquartile range**

Interquartile ranges are compulsory whenever more than one comparable is available.

- **Fresh benchmarking search every year vs. roll forwards 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 (2019). Tax authority requires the use of contemporaneous financial information 1x1 with the 2019 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 (2018) 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 on the basis of business cycles or other comparability criteria.
  - The use of companies with operating losses are not permitted.
  - 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 not 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 TP documentation 2018 does not exist, there is 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 (just in case the results present an EY interquartile range or weighted average).

8. TP penalties and relief

a) Penalty exposure

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

Ecuador has a specific TP penalty regime. Penalties of up to USD15,000 would be applied if taxpayers do not submit the TP Report or the TP Annex, or if inaccuracies, mistakes, differences, lack of information or false data are detected.

Despite the above, the 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?**

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.

9. Statute of limitations on TP assessments

The statute of limitations is three years from the date of the CIT return filing and six years if material information is missing from the CIT return.

10. Likelihood of TP scrutiny and related audit by the local authority

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

If a taxpayer is selected for a general tax audit, the likelihood that TP is reviewed as part of that audit is high.

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

If TP is reviewed as part of the audit, the likelihood that the TP methodology will be challenged is high. In audits in which TP 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 TP methodology is challenged (high, medium or low)**

The likelihood of a TP adjustment during a TP audit is 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 undergo audit**

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.

11. APA and MAP opportunities

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

There is an APA-like procedure that takes the form of pricing or methodology consultations and information disclosure.

The process and absolution are more like a binding consultation (tax ruling) because their application is obligatory by the local tax authority to the taxpayer but not in the other way.

- **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 favorable 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 favorable answer from the tax administration.

- **MAP opportunities**

No

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible.

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 nondeductible.

Contact

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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 TP section reference

- **Name of TP 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
- **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, intra-group 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. OECD Guidelines treatment and reference

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

Egypt is not a member of the OECD. However, Egypt heavily relied on the OECD Transfer Pricing Guidelines in issuing the Egyptian TP guidelines on 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

[1] **http://www.mof.gov.eg/English/About%20MOF/Pages/Egyptian%20Tax%20Authority.aspx.**

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

Yes

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

  Both master and local files 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.

- **CbCR notification and CbC report submission requirement**

Yes

- CbCR notification included in the statutory tax return

  No, CBCR notification is to be submitted separately before the last day of the fiscal year.

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Yes, it needs to be submitted contemporaneously.

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

Yes, a local branch of foreign company needs to comply with the local TP rules.

- **Should TP documentation be prepared annually?**

Yes, TP documentation has to be prepared annually.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

There is no materiality limit; however, the Egyptian TP guidelines refer to having TP documentation for material transactions.

- **BEPS master and local files**

There is no materiality limit.

- **CbCR**

An Egyptian parent company of a multinational group with consolidated group revenue of at least EGP3 billion will have 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.

- **Any other disclosure or compliance requirement**

There is none specified.

4. TP return and related-party disclosures

- **TP-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 and 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

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

There is none specified.

5. TP 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 TP disclosures and return**

The local file is due within two months of the submission of the taxpayer's CTR.

- **CbCR notification**

CbCR notification shall be submitted not later than the last day of the fiscal year.

- **Master file**

The master file shall be made available to ETA in the due course of the ultimate parent entity's tax return filing date.

- **CbC report preparation and submission**

CbC report shall be filed one year after the end of the reporting fiscal year.

b) TP documentation and local file preparation deadline

There is none specified. The deadlines specified relate to submission of the documentation.

c) TP documentation and local file submission deadline

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

Yes, TP documentation (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.

6. TP methods

a) Applicability (for both international and 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 cancelled. 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.

7. 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**

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. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

According to the ITL, if the tax amount included in the tax return by the taxpayers is less than the amount of the finally estimated tax, the taxpayers shall be liable for a penalty.

- **If an adjustment is sustained, can penalties be assessed?**

Penalties are based on the following:

- Five percent of the tax payable on the non-included amount, if such amount is equivalent to 10% and up to 20% of the legally payable tax
- Fifteen percent of the tax payable on the non-included amount, if such amount is equivalent to more than 20% and up to 50% of the legally payable tax
- Forty percent of the tax payable on the non-included amount, if such amount is equivalent to more than 50% of the legally payable tax

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

Central bank credit and discount rate plus 2% on the due amount

b) Penalty relief

There is none specified.

9. Statute of limitations on TP assessments

The term could be as long as five years.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is 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 new 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 TP methodology being challenged (high, medium or low)**

The likelihood of the methodology being challenged is 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 TP methodology is challenged (high, medium or low)**

If the tax authority has challenged the TP methodology, the likelihood of an adjustment is high.

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

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

11. APA and MAP opportunities

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

Yes, unilateral APAs are available in Egypt.

- **Tenure**

There is none specified.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

No

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Dirección General de los Impuestos Internos (DGII) and Ministerio de Hacienda (MH) (Directorate General of Internal Taxes (DGII) and Ministry of Finance (MH))

b) Relevant TP section reference

- Name of TP 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

TP regulations have been effective as of 29 December 2009.

- Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

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

El Salvador is not a member of the OECD.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 TP documentation within the first five months following the close of the financial year (i.e.,, by 31 May).

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

Yes

- Should TP documentation be prepared annually?

Yes, the minimum requirement to achieve this would be that the TP report and return must be prepared annually, updating all the information that allows a correct TP 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 TP regulations.

[1] https://www.mh.gob.sv/.

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 TP legislation.

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

Yes

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality limit.

- **BEPS master and local files**

El Salvador has not implemented or included master and local file requirements.

- **CbCR**

El Salvador has not implemented or included CbCR requirements.

- **CbCR notification and CbC report submission requirement**

There is no CbCR notification and CbC report submission requirement for El Salvador.

- CbCR notification included in the statutory tax return

  This is not applicable.

- **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 TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 and TP-related appendices**

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 TP legislation.

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

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation has to be filed on or before 30 April.

- **Other TP disclosures and return**

The documentation has to be filed on or before 31 March.

- **CbCR notification**

This is not applicable.

- **CbC report preparation and submission**

This is not applicable.

b) TP documentation and local file preparation deadline

Taxpayers should prepare and maintain contemporaneous TP documentation within the first five months following the close of the financial year (i.e.,, by 31 May).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The law does not regulate specific TP 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.

7. 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 Excel Quartile calculation is indicated in the GO.

- **Fresh benchmarking search every year vs. roll forwards 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.

8. TP penalties and relief

a) Penalty exposure

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

Failure to maintain TP 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]

[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.

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 noncompliance 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 noncompliance 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?**

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.

- **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 from 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 (approximate time of two to six months). 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).

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-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 TP regulations. Thus, the likelihood that TP will be scrutinized as part of a general tax audit is high.

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

In case TP is scrutinized, the likelihood that the TP methodology will be challenged is medium. In practice, the DGII consistently has been questioning the application of TP 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 TP 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 undergo audit**

There is none specified.

11. APA and MAP opportunities

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

There is none specified.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

No

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

No

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Estonian Tax and Customs Board

b) Relevant TP section reference

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

The following articles of the Estonian Income Tax Act relate to TP:

- 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 TP 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 TP.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Current TP regulation, in effect since 2007, has been deemed to be generally compliant with BEPS Action 13.

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

The regulation covers both master file and local file.

- **Effective or expected commencement date**

This is not applicable.

- **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.
- List of expense distribution agreements should be provided along with preliminary decisions regarding transfer prices.
- Group's TP 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**

[1] **https://www.riigiteataja.ee/en/eli/516012017002/consolide.**

Considering the above should be sufficient.

c) Is your 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.

3. TP documentation requirements

a) Applicability

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

Yes, TP documentation must be submitted upon request.

Does a local branch of foreign company need to comply with the local TP rules?

Yes, all Estonian group companies and permanent establishments are obliged to prepare TP documentation to prove the arm's-length nature of the intercompany transactions.

- **Should TP documentation be prepared annually?**

Yes, the TP documentation should 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?

Yes

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality limit based on transaction value; however, TP 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 nonresident with a permanent establishment in Estonia meeting the following criteria:
  - Number of employees (including associated persons) is at least 250.
  - Turnover of the financial year preceding the transaction with associated persons was at least EUR50 million.
  - Consolidated balance sheet total assets were at least EUR43 million.

- **BEPS master and local files**

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**

The TP documentation needs to be submitted in the local language (i.e.,, Estonian). The TP 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.

- **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.

- **CbCR notification and CbC report submission requirement**

There is CbCR notification and CbC report submission requirement for Estonia. CbC report must be submitted within 12 months after end of the reporting year.

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

No, CbCR notification is submitted separately on annual basis within six months after the end of the reporting year.

4. TP return and related-party disclosures

- **TP-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 the taxpayer has the obligation to prepare the TP documentation, such documentation must be completed every financial year.

The 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

It should be filed by the 10th date of each month.

- **Other TP 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) TP documentation and local file preparation deadline

TP documentation should be finalized by the time of submitting upon request.

c) TP documentation and local file submission deadline

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

There is no statutory deadline for the submission of TP documentation, but it needs to be prepared annually.

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

Taxpayers are obligated to submit the documentation within 60 days of the tax authority's request.

6. TP 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.

7. 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 determines the full range as an arm's-length range. However, interquartile range is commonly applied in practice.

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 (performed from scratch) must be performed every two to three years.

- **Simple vs. weighted average**

A simple average is used in common practice.

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

There is none specified.

8. TP 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?**

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 TP 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high in the case of intra-group loans, management and support services, restructurings, intellectual property transactions, large-amount transactions, and primary business transactions; it is high in the case of large multinationals.

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

The likelihood is medium; refer to the section above.

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

The likelihood is medium to high; refer to the section above.

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

Intra-group 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 nonresident 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.

11. APA and MAP opportunities

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

Currently, Estonian tax laws do not provide any 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Exceeding borrowing costs are taxable if they exceed EUR3 million and 30% of EBITDA.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Fiji Revenue and Customs Services (FRCS)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EUJTPF

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 your jurisdiction adopted or implemented BEPS Action 13 for transfer pricing documentation (TPD) in your 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

No

d) Signatory to the MCAA on the exchange of CbCR

No

3. TPD requirements

a) Applicability

- **Does your jurisdiction have TPD guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

A recent clarification from the tax office is that it must be prepared.

- **Does a local branch of foreign company need to comply with the local TP 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).

- **Should TPD be prepared annually?**

Yes, the minimum requirement to achieve this is a TP analysis or TPD of the foreign jurisdiction benchmarking documentation.

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

Yes

b) Materiality limit or thresholds

- **TPD**

There is no materiality limit

- **Master file**

This is not applicable.

- **Local file**

[1] **https://www.frcs.org.fj/.**

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 TPD 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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-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 nonresidents, 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 and annual report**

Yes, there is a requirement for such disclosure.

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

This is not applicable.

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

This is not applicable.

5. TPD 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 TP 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) TPD and local file preparation deadline

The TPD 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) TPD and local file submission deadline

- **Is there a statutory deadline for submitting TPD or local file?**

The TPD should be submitted each year, along with the tax return.

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

The taxpayer has 14 days to submit the TPD once requested by the tax authorities, but an extension can be requested.

6. TP methods

a) Applicability (for both international and domestic transactions)

It applies to international transactions. However, 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

A local benchmarking can be used for benchmarking requirements in Fiji.

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

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. roll forwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year, and financial updates are acceptable.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 TPD is an offense, and upon conviction, the person is liable for a fine of at least FJD100,000.

  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 above-mentioned 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?**

Refer to the section above.

- **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

  Or

- 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.

9. Statute of limitations on TP 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 taxpayer

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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
- Intra-group 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 TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

Manufacturing and services, such as banking and insurance (refer to the section above for more details), are more likely to undergo audit.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulations or rulings

a) Name of tax authority

Finnish Tax Administration

b) Relevant TP section reference

- **Name of TP 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 TP rules entered into force on 1 January 2007. The current provisions concerning the master and local file 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. OECD Guidelines treatment and BEPS implementation

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

Finland is a member of the OECD.

The Finnish TP regulations and tax practice in general follow the OECD Guidelines.

b) BEPS Action 13 implementation overview

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

Finland has adopted BEPS Action 13 for TP 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 TP documentation that supports the arm's-length nature of the intra-group 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 TP cases where the taxpayer has adequately followed the arm's-length principle in intra-group pricing.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 TP documentation. No contemporaneous documentation during the tax year would be required. The Finnish tax authorities have also issued separate guidelines concerning TP.

Finland has implemented the master and local file requirements as well as CbCR as proposed in BEPS Action 13.

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

Yes

- **Should TP documentation be prepared annually?**

[1] https://www.vero.fi/en/businesses-and-corporations/about-corporate-taxes/transfer_pricing/.

Yes; however, there is no annual obligation to submit TP documentation. The completed TP 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 your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

The obligation to prepare TP documentation is stated in Section 14a of the Act on the Tax Assessment Procedure, and the TP 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 above-mentioned 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 files**

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 TP 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 TP documentation obligation for domestic transactions. Arm's-length pricing should nevertheless also be applied in domestic transactions.

- **Local language documentation requirement**

TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

If a taxpayer (including a Finnish branch of a foreign company) is obligated to prepare the TP 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 intra-group transactions, which normally cannot be directly found in the company's financial statements, is reported on Form 78.

However, information regarding the TP 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.

5. TP 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 TP 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 2019 for a financial year that ends on 31 December 2018).

- **CbCR notification**

CbCR notification should be submitted by the last day of the financial year of the ultimate parent entity. For example, if FY2018 of the ultimate parent entity ends on 31 December 2018, the CbCR notification for that financial year should be submitted by 31 December 2018.

b) TP documentation and local file preparation deadline

There is no specific deadline for the preparation of TP documentation (master file and local file), but a taxpayer should be prepared to provide the TP documentation within 60 days if requested by the tax authorities. However, a taxpayer is not obligated to provide the TP documentation earlier than six months after the end of the accounting period.

c) TP documentation and local file submission deadline

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

There is no statutory requirement to submit TP documentation to the tax administration every year.

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

A taxpayer must deliver the TP documents within 60 days upon request. However, a taxpayer is not obligated to provide the TP documentation earlier than six months after the end of the accounting period.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: Yes, there is a TP documentation obligation.**

- **Domestic transactions: There is no TP 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 TP 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.

7. 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**

Multiyear (e.g., three-year) analysis is followed, as per common practice.

- **Use of interquartile range**

Both EY and Excel Quartiles are used, as per common practice.

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

There is no requirement to conduct a fresh benchmarking search every year.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 TP documentation requirements, even if the pricing of intra-group transactions has been at arm's length.

- **If an adjustment is sustained, can penalties be assessed?**

Adjustment of taxable income may result in a separate tax penalty of up to 30% until 2017 and up to 10% from 2018 onward of the adjusted amount of income, as well as penal interest.

- **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 2018.

b) Penalty relief

It is possible that the penalties can be reduced or removed if the taxpayer presents supplementary TP documentation that supports the arm's-length nature of the intra-group 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 TP cases where the taxpayer has adequately tried to follow the arm's-length principle in its intra-group 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high, as TP is one of the key topics of the tax authorities.

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

The likelihood of a challenge to the TP 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

Transactions involving transfer of intellectual property rights and business restructurings

11. APA and MAP 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).

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) 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 TP section reference

- **Name of TP 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 intra-group financing arrangements such as intra-group interest payments or intra-group 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 Excel).
- 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 your 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.

3. TP documentation requirements

a) Applicability

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

Yes, and the TP documentation needs to be contemporaneous.

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

Yes, local branches are under the scope of French TP documentation requirements.

- **Should TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, each entity should prepare a stand-alone TP report.

b) Materiality limit or thresholds

- TP 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

  Or

- 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 intra-group 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 intra-group 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.

- **Any other disclosure or compliance requirement**

The local entity must provide in the local file the reconciliation between management accounts used for TP purposes and statutory accounts.

4. TP return and related-party disclosures

- **TP-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 and 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 or documents to be filed**

This is not applicable.

5. TP 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 TP 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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.

7. 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**

Multiple-year testing (three years) is preferred.

- **Use of interquartile range**

The Excel Quartile range is preferred.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

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).

8. TP penalties and relief

a) Penalty exposure

- **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?**

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 wilful 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.

- **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 wilful offense (40%) or penalties for fraudulent activities (80%) in court if such penalties are maintained at the end of the usual tax audit procedures.

9. 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is 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 is 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 is 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 undergo audit**

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.

11. APA and MAP 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).

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 towards 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 above-mentioned 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).

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Public Revenue Office

b) Relevant TP section reference

- **Name of TP 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 TP reporting for legal entities whose total annual income exceeds MKD300,000,000 (approximately EUR4.8 million). Local taxpayers shall file the annual TP report until 30 September in the year following the reporting year.

The TP report shall be provided in an official form prescribed by the Ministry of Finance with a TP Rulebook.

For facilitating TP reporting obligations, it is envisaged that taxpayers whose volume of related-party transactions do not exceed the amount of MKD10,000,000 per annum (approximately EUR162,000) should submit a "short" TP report.

Taxpayers that have annual income below MKD300,000,000 (approximately EUR4.8 million) or have transactions with related parties that are Macedonian companies do not fall under the criteria for mandatory TP 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. OECD Guidelines treatment and BEPS implementation

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

Macedonia is not a member of the OECD.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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 differences from OECD report template.

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

  There is none specified.

c) Is your 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

3. TP documentation requirements

a) Applicability

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

The general TP rules are embodied in the CIT Law.

The TP Rulebook prescribes the form and content of the TP 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 foreign company need to comply with the local TP rules?**

[1] http://www.ujp.gov.mk/en.

Yes, provided that the company meets the criteria for mandatory TP reporting

- **Should TP documentation be prepared annually?**

Yes

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

The obligation for preparation of a TP report is prescribed for each local entity that fulfils the criteria prescribed under the CIT Law. The CIT Law does not prescribe preparation of a joint TP report if there are several local entities that are part of the same group; further to this, each of the entities is obliged to prepare a separate local file.

b) Materiality limit or thresholds

- **TP documentation**

The materiality limit of an annual turnover of MKD300,000,000 (approximately EUR4.8 million) for the entity makes it obliged to file a TP documentation. However, no materiality limits or thresholds per related-party transaction are provided.

- **Master file**

As indicated above, the TP 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 TP 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 TP Rulebook. Although it is not specifically mentioned, in our view, the TP provisions and the TP Rulebook will prevail, further to which it is recommendable that the taxpayer perform a TP study on the intracompany financing arrangements, regardless of whether the same are compliant with the safe harbor rule described above.

- **Any other disclosure or compliance requirement**

There are no specific prescriptions in respect to the disclosure or compliance requirements other than the one prescribed in the TP Rulebook.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no specific TP returns.

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

Based on the provisions of the TP Rulebook and CIT Law, the local TP 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 and annual report**

The following documents should be enclosed to the TP 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, which 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 or documents to be filed**

Please see above in section "Related-party disclosures in financial statement and annual report."

5. TP 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 TP disclosures and return**

The TP 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) TP documentation and local file preparation deadline

The TP documentation needs to be finalized not later than 30 September in the year following the reporting year.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 TP 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 TP report in a period ranging from 7 to 14 working days or the tax authorities will review the intracompany prices applied and make TP adjustments. In addition, please see section 8 regarding penalty exposure for failure of submission of the TP report.

6. TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables are generally preferred, if available. The TP 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 TP 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 the 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. roll forwards and update of the financials**

A fresh benchmarking search needs to be performed every year.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

A penalty in the amount of EUR300–EUR1,000 for micro company; EUR600–EUR2,000 for small company; EUR1,800–EUR6,000 for medium-size company; and EUR3,000–EUR10,000 for big companies 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?**

Provided that the tax authorities challenge the TP 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.

- **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.

9. Statute of limitations on TP 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 re-audited further based on the decision of the tax authority, as long as the five-year time period has not elapsed.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 is medium.

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

The likelihood that controlled financial transactions may be reviewed as part of that audit is characterized as high, and the likelihood that the TP methodology may be challenged is characterized as medium. The chances for auditing the related-party transactions are high, as under the local CIT Law, TP adjustments represent permanent tax adjustments, included in the taxable income. As for the likelihood for challenging the TP methodology, the same is medium.

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

If the TP methodology is challenged, the likelihood of an adjustment can be characterized as medium.

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

There is none specified.

11. APA and MAP 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 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Interest expense incurred on loans granted by shareholders holding at least 20% of the capital of the company is nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

Direction Générale des Impôts, Cellule Prix de Transfert (in French), which is the TP desk of the Tax Administration

b) Relevant TP section reference

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

TP reference has been included in the General Tax Code as early as 2009. However, effective TP rules, documentation filing obligations and deadlines, and 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 TP documentation package.

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 legislative provisions concerning TP, effective from 1 January 2017.

- **Section reference from local regulation**

Under the General Tax Code, there are Section 12 (definition of the TP scope); Sections P 831, P 831 bis, P 831 ter, P 832 and P 860 (TP documentation content, filing obligation and deadlines); Sections P-1010 bis and P-1010 ter (noncompliance 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 TP documentation is detailed.

2. 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 TP regulations.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP returns, namely "PT01" and "PT02," to respectively synthetize information from the master file and the local file.

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Yes, the master file, the local file and the TP returns (PT01 and PT02) need to be submitted contemporaneously.

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

[1] **http://www.dgi.ga/.**

Yes

- **Should TP documentation be prepared annually?**

Prepared and filed annually

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

Yes, stand-alone local files need to be prepared for each entity.

b) Materiality limit or thresholds

- **TP documentation**

This is not applicable.

- **Master file and local file**

This is not applicable. We confirm that no threshold is applicable for master 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 TP documentation.

- **Local language documentation requirement**

The TP 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.

- **Any other disclosure or compliance requirement**

Not to our present knowledge of the applicable rules

4. TP return and related-party disclosures

- **TP-specific returns**

The TP 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 and 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

30 April of each year

- **Other TP disclosures and return**

This is not applicable.

- **Master file**

30 April of each year; find tax alert attached

- **CbCR preparation and submission**

31 December of the following year, suspended since 2018

- **CbCR notification**

Same as the above

b) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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. Noncompliance 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.

6. TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no preference considering there is no official local database.

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

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. roll forwards and update of the financials**

There is no need to conduct fresh benchmarking search every year; roll forwards and update of the financials are acceptable.

- **Simple vs. weighted average**

Both are acceptable.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

With the draft of the Finance Law for 2017, for failure to submit the TP 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?**

Any adjustment will be apprehended in the frame of a tax audit.

Tax adjustments for TP 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% on the basis of 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.

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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high. Although TP legislation is relatively new in Gabon, tax audits are increasingly focusing on related-party transactions.

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

Refer to the above section.

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

Refer to the above section.

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

The situations are recurrent loss position and failure to file TP documentation.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Revenue Service of Georgia (RS)

b) Relevant TP section reference

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

The TP 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] (TP Instruction).

- **Section reference from local regulation**

Article 126 and Article 127.5[4] of GTC.

2. OECD Guidelines treatment and BEPS implementation

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

Georgia is not a member of the OECD.

Georgian TP rules generally follow the OECD Guidelines. The TP Instruction contains a direct reference to the OECD Guidelines and sets forth that issues not regulated by the GTC or the TP Instruction shall be regulated by the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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, local file and CbCR 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 your 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.

3. TP documentation requirements

a) Applicability

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

Yes, the TP Instruction[5] determines the information to be included in the TP documentation.

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

Yes

- **Should TP documentation be prepared annually?**

TP documentation needs to be prepared annually under local jurisdiction regulations. Taxpayers with a turnover of less than GEL8 million (about 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.

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[1] **https://dor.georgia.gov/taxes.**

[2] Law of Georgia #5202 of 8 November 2011, **https://matsne.gov.ge/ka/document/view/1043717.**

[3] Approved by Decree #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 #615 of 30 December 2016 of the Georgian Government, **https://matsne.gov.ge/ka/document/view/3523434.**

[5] Article 17.

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

This is not specified.

b) Materiality limit or thresholds

- **TP 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**

The Georgian TP rules are not applicable to domestic transactions. Thus, there are no documentation requirements in this regard.

- **Local language documentation requirement**

The TP 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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable; however, any TP adjustment by the taxpayer shall 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 and annual report**

No

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

No

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

No

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

This is to be filed on a monthly basis.

- **Other TP disclosures and return**

This is to be filed upon request.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

TP documentation should be finalized by the time of submission upon request.

c) TP documentation and local file submission deadline

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

There is no statutory deadline for submission of TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: no

b) Priority and preference of methods

The TP law includes five methods similar to those used in international TP 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 above-mentioned 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 are not accurate or reliable enough), the taxpayer may use external comparables from the foreign markets. Under the TP Instruction, use of secret comparables is prohibited.

7. 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 TP 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 Excel Quartile is used as per the Georgian TP rule specifying calculation approach.

- **Fresh benchmarking search every year vs. roll forwards 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 (about 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 vs. weighted average**

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 TP Instruction.[6] The applicable independence criterion is 50% or less.

8. TP penalties and relief

a) Penalty exposure

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

No specific penalties are defined for when a taxpayer does not submit TP 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 TP 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.

- **If an adjustment is sustained, can penalties be assessed?**

[6] Articles 5 and 6.

If the tax authorities reassess the transaction, penalties of 50% of the adjusted sum will apply.

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

Interest is not charged on penalties. However, late-payment interest of 0.5% per overdue day may apply.

b) Penalty relief

No specific penalty relief is available. However, in practice, having proper TP documentation reduces the risk of TP adjustments.

9. Statute of limitations on TP assessments

There is no specific statute of limitations on TP assessments. The general statute of limitations in Georgia is three years. It shall 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is 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 TP audit may further increase.

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

The likelihood is high; refer to the section above.

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

The likelihood is high; refer to the section above.

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

This is not applicable.

11. APA and MAP opportunities

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

A unilateral APA (between a resident taxpayer and the RS) is available only for transactions that separately or in the aggregate exceed GEL50 million.

The TP 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**

There is none specified.

- **MAP opportunities**

There is none specified.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

No

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1. Tax authority and relevant transfer pricing (TP) 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 TP section reference

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

German TP 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, § 8 (3) Corporate Income Tax Act[2]
- Hidden capital contribution, § 4 (1) Income Tax Act[3] and § 8 (1) Corporate Income Tax Act[4]
- Contribution or withdrawal, § 4 Income Tax Act[5], (e.g.,, for partnerships)
- Section 1, Foreign Tax Act[6]

Although only applicable on a subsidiary basis to the other adjustment provisions, 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, § 1 (1) Sentence 3 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).

Detailed TP regulations concerning the cross-border transfer of functions were incorporated into § 1 Foreign Tax Act on 1 January 2008. An Executive Order Law providing details on how the new TP provisions relate to business restructurings and transfer of functions is effective from 2008 (gesetze-im-internet.de/fverlv/).

As of 1 January 2013, a law amending § 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 TP documentation becomes crucial to defend the transfer prices applied for internal dealings. The new 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 (gesetze-im-internet.de/bsgav/). 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 (FYs) beginning after 31 December 2014.

With regard to TP documentation and jurisdiction-by-jurisdiction reporting, the following provisions are relevant:

- German TP documentation requirements are stipulated in § 90 (3) German General Tax Act (TP documentation – gesetze-im-internet.de/ao_1977/__90.html) as well as in an Executive Order Law to § 90 (3) (gesetze-im-internet.de/gaufzv_2017/). Section 90 (3) General Tax Act was amended in December 2016 with effect for tax periods starting after 31 December 2016 in order to include the requirement to prepare jurisdiction-specific (local file) and global (master file) documentation. In addition,

[1]Foreign Tax Act, Section 1.

[2]**https://www.gesetze-im-internet.de/kstg_1977/__8.html.**

[3]**https://www.gesetze-im-internet.de/kstg_1977/__4.html.**

[4]**https://www.gesetze-im-internet.de/kstg_1977/__8.html.**

[5]**https://www.gesetze-im-internet.de/kstg_1977/__4.html.**

[6]**https://www.gesetze-im-internet.de/kstg_1977/__8.html.**

the respective Executive Order Law to § 90 (3) German General Tax Act was also updated with effect as of 20 July 2017.

- In addition, the German legislator introduced nonpublic CbCR standards as proposed by the OECD in its report on Action 13 of the BEPS project with mandatory CbCR for FYs beginning after 31 December 2015 in § 138a German General Tax Act (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.

- § 162 (3) and 162 (4) of German General Tax Act stipulate penalties in case of noncompliance with TP documentation rules (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 TP 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 TP cases, and to ensure a uniform application of rules and methods. For TP purposes, the following circulars are of particular relevance:

- ***"Principles for the Examination of Income Allocation in the case of internationally related Enterprises"***, dated 23 February 1983, known as "Administrative Principles," was published.

- On 12 April 2005, the Administrative Principles, including the tax authorities' interpretation of the TP documentation requirements as stipulated in § 90 (3) General Tax Code and the Executive Order Law, were published.

- On 13 October 2010, new Administrative Principles for the Examination of Income Allocation between related parties in cases of cross-border Transfer of Business Functions were released, which include 81 pages of clarifications on applying § 1(3) Foreign Tax Act and the Executive Order Law on Transfer of Business Functions. The Administrative Principles details, for example, circumstances under which a business restructuring and transfer of function would be exempt from the taxable valuation of the "transfer package."

- In March 2017, new Administrative Principles on the Profit Attribution to Permanent Establishments were published, which include 152 pages of details and clarifications of the AOA that is implemented in § 1(5) Foreign Tax Act and the Executive Law.

Other relevant circulars include interalia administrative circulars concerning income allocation with regard to cross-border CSAs (dated 30 December 1999)[7], cross-border secondment of personnel (dated 9 November 2001), mutual agreement and arbitration procedures in the field of taxes on income and capital (dated 13 July 2006) 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 TP rules. § 1 (2) Foreign Tax Act provides for a minimum direct or indirect shareholding of 25%. However, if this threshold is not met, TP adjustments can nevertheless be made on the basis of § 8 (3) Corporate Income Tax Act (constructive dividend) or § 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 other party or has an interest in the income generated by the other party.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP 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 TP 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 is 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.

[7]The administrative circular dated 30 December 1999 concerning cross-border CSAs is only applicable until the end of FY2019. For FYs thereafter, chapter VIII of the OECD Transfer Pricing Guidelines 2017 is applicable. Specific reference to the OECD guidelines is made in administrative circular dated 5 July 2018.

b) BEPS Action 13 implementation overview

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

Yes, Germany has adopted BEPS Action 13 for TP documentation, effective from 1 January 2016. For this purpose, § 90 (3) General Tax Act has been amended.

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

Yes, § 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 were exceeded.

Rules regarding CbCR are governed by § 138a General Tax Act.[8]

- **Effective or expected commencement date**

German TP documentation obligations have already been implemented in 2003. As of FYs starting after 31 December 2016, German taxpayers are obliged to prepare a master file- or local file-type TP 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 TP 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 Executive Order Law slightly differs from the OECD local file template. For example, § 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 as well (§ 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 § 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 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 TP 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, there are TP documentation guidelines or rules. The obligation to prepare TP documentation is included in § 90 (3) General Tax Act. Documentation must be prepared within a reasonably short period (i.e.,, within six months after the end of the business year) for extraordinary transactions, such as corporate restructurings as well as material long-term contractual relationships.

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 § 138a General Tax Act.

[8] **https://www.gesetze-im-internet.de/ao_1977/__138a.html.**

The statutory rules on TP documentation are supplemented by an Executive Order Law as well as an administrative circular dated 12 April 2005 *(Verwaltungsgrundsätze-Verfahren)*.

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

Yes, the rules were expanded to cover the income allocation between an enterprise and its foreign branch.

- **Should TP documentation be prepared annually?**

According to German TP documentation rules, tax auditors have the right to request TP 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 TP 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 TP 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), TP documentation has to be prepared contemporaneously, i.e.,, at the latest within six months after the end of the FY in which the transaction took place. TP 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 your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

There is a materiality limit for preparing TP documentation. Exception for small- and medium-sized companies apply. The company does not have to prepare TP documentation if annual consideration (paid or received) from intercompany transactions with foreign related parties do not exceed EUR5 million. The same goes for transactions involving goods and for a threshold of (cumulatively) EUR500,000 for other intercompany transactions, e.g.,, services. As of FY 2017, these thresholds have been increased to EUR6 million (for goods) and EUR600,000 (for other intercompany transactions). Once these "de minimis" thresholds are exceeded, the TP documentation obligations apply on a transaction-by-transaction basis without a separate materiality threshold per transaction. Therefore, in principle, TP 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 FY.

- **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 FY 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 TP 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 TP 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 in order 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 questions of the tax authorities regarding these transactions. For domestic transactions, only the general adjustment provisions are applicable but not § 1 Foreign Tax Act.

- **Local language documentation requirement**

In principle, the TP documentation has to be submitted in German (ref. Section 2 para 5 of the Executive Order Law on transfer pricing documentation). However, the taxpayer can apply for the TP 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 TP documentation. In practice, many German tax auditors accept English TP 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 TP documentation mentioned above, there are no safe harbor rules on which the taxpayer could rely upon.

- **Any other disclosure or compliance requirement**

There are some specific TP-related Directive on Administration Cooperation (DAC 6) mandatory disclosure requirements that may be applicable.[9]

4. TP return and related-party disclosures

- **TP-specific returns**

There are no specific TP-related returns. However, in October 2014, an Executive Order Law with regard to the application of the arm's-length principle to permanent establishments was released (gesetze-im-internet.de/bsgav/). 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 FYs beginning after 31 December 2014. Other than that, there are no other specific TP-related returns required.

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

Apart from the general, standard documentation and notification requirements under the German General Tax Act and the German Foreign Tax Act, there are no specific disclosure requirements specifically related to TP. However, the relevant tax return forms may include certain questions or information relevant for TP as well (e.g.,, interalia, 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 and 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

With the Law on Modernization of the Taxation Procedure of 18 July 2016, the deadlines for filing corporate income tax returns for tax periods beginning after 31 December 2017 and taxation times after 31 December 2017 have been fundamentally changed. Since then, the corporate income tax return generally must be filed by 31 July of the year following the tax year (for previous tax years, 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).

- **Other TP disclosures and return**

TP 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. TP documentation for extraordinary business transactions has to be submitted within 30 days upon request by the tax authorities.

- **Master file**

[9]See § 138d – 138k German General Tax Code; **https://www.gesetze-im-internet.de/ao_1977/__138d.html.**

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 FY.

- **CbCR notification**

The CbCR notification has to be filed with the tax return for the relevant FY.

b) TP documentation and local file preparation deadline

Ordinary intercompany transactions do not have to be documented contemporaneously, and it is sufficient if the TP documentation is finalized within 60 days upon request of the TP documentation by the tax authorities.

Extraordinary business transactions need to be documented contemporaneously, i.e.,, at the latest within six months after the end of the FY in which the transaction took place. TP documentation for extraordinary transactions has to be submitted within 30 days upon request.

c) TP documentation and local file submission deadline

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

There is no statutory deadline for submission of TP documentation, but it 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**

TP 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.

6. TP 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.

- **Domestic transactions**

Although § 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 § 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 § 1 Foreign Tax Act. Therefore, the application of TP methods is dependent on the availability and quality of third-party comparable data. Three situations are distinguished: full comparability of the data, limited comparability of the data and nonavailability of third-party comparable data.

When full comparability of third-party data exists (after making appropriate adjustments with regard to the functions exercised, the assets used, and the associated opportunities and risks), the law prioritizes the traditional transaction methods: CUP, resale price and cost plus. Any price within the full range of fully comparable third-party data meets the arm's-length principle.

If limited comparability exists, all OECD methods (whose application is appropriate in the case under review) are allowed, i.e.,, the aforementioned traditional methods and the transactional profit methods (TNMM and profit split). In case of limited comparability, the range of available third-party comparable data must be limited by applying statistical measures (e.g.,, the interquartile range).

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. Accordingly, in compliance with the so-called prudent and diligent business manager principle, and based on the functional analysis and internal projections, the taxpayer has to establish a range of hypothetical arm's-length 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 value within the range of negotiation that has the highest probability of complying with the arm's-length principle. If the taxpayer provides no reasoning behind choosing that value, the arithmetic mean of the range of values is assumed to be the arm's-length transfer price for the transaction under review.

7. 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**

Single-year testing is preferred for tested arm's-length analysis, but multiyear analyses are usually 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.

- **Fresh benchmarking search every year vs. roll forwards 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.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

If a taxpayer does not comply with the TP documentation requirements to the extent outlined in § 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 TP adjustment.

The tax authorities may apply § 162(3) German General Tax Code 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 TP documentation, or if the documentation submitted is insufficient or essentially unusable, a penalty of 5% to 10% on the income adjustment will be applied, with a minimum penalty of EUR5,000.

In addition, for late filing, the taxpayer faces a penalty of up to EUR1 million (minimum penalty of EUR100 per day of delay, § 162 (4) General Tax Act).

Penalties are imposed after the closing of a tax audit. The aforementioned penalties constitute nondeductible expenses for tax purposes. Section 146(2b) of the German Federal 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.

Noncompliance with the CbCR obligation may be subject to a penalty of up to EUR10,000.

- **If an adjustment is sustained, can penalties be assessed?**

Penalties can be assessed based on the taxpayer's noncompliance with the documentation requirements. An actual income adjustment is not subject to penalties. If the taxpayer fails to submit TP documentation or if the documentation provided is unusable or insufficient, a penalty of 5% to 10% on the income adjustment will be applied, with a minimum penalty of EUR5,000.

If no or insufficient TP 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 TP documentation is complete and includes all intercompany transactions they are involved in, e.g.,, including intercompany financial transactions.

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

Interest is only assessed on the additional tax payments (6% per annum, which is nondeductible for tax purposes). Interest starts accruing 15 months after the end of the calendar year in which the tax liability arose. The penalties constitute nondeductible expenses for tax purposes.

b) Penalty relief

The taxpayer is required to present compliant TP documentation to the German tax authority in order 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 TP documentation any time prior to a ruling of a lower tax court. In this case, the court will not apply § 162 (3) General Tax Act in his 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, which 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.

9. Statute of limitations on TP assessments

In general, the assessment period for taxes (§ 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 10 years in cases where a significant intangible asset has been transferred between related parties (§ 1 (3) sentence 11 et seq., German commensurate-with-income rule).

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). There are a number of statutory exceptions to 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 175a of the General Tax Act stipulates that tax assessments can be amended due to the result of an MAP or EU arbitration procedure up to one year after the effective date of such agreement, regardless of whether the aforementioned statutes of limitations have expired before.

10. Likelihood of TP scrutiny and related audit by local authority

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

The likelihood of a tax audit in Germany is 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 TP issues being scrutinized during a tax audit is also high and continuously rising. It is expected that TP 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.

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 TP methodology being challenged (high, medium or low)**

The likelihood that the TP mechanism will be challenged if TP 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 TP methodology is challenged (high, medium or low)**

In case the TP 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 undergo audit**

The likelihood of a TP 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

11. APA and MAP opportunities

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

In Germany, taxpayers may apply for a bilateral or multilateral APA in relation to TP questions. German tax authorities usually do not grant unilateral APAs on TP questions in case 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, the Annual Tax Act 2007 introduced fees for APAs: EUR20,000 for a new APA, EUR15,000 for a renewal and EUR10,000 for a modification during the term of the APA. For small taxpayers (i.e.,, those with intercompany tangible goods transactions below EUR5 million and other intercompany transactions below EUR500,000), the filing fee is half of the above amounts. 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. 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, but German tax authorities usually accept a rollback if the taxpayer can provide evidence that the assumptions, facts and circumstances stated within the APA are also fulfilled in previous years. Technically, the rollback years are processed under a separate MAP that is conducted together with the APA procedure.

- **MAP opportunities**

Yes, the taxpayer must be eligible under one of Germany's double taxation treaties, or the EU Arbitration Convention (90/436/EEC) 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. Furthermore, according to some older German double taxation treaties, access is limited to cases of actual double taxation. 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.

Most of Germany's double taxation treaties permit a taxpayer to present their case to the tax authority within three years from the first notification to the taxpayer of the actions giving rise to taxation not in accordance with the double taxation treaty. However, time limits may vary, particularly in older treaties, and the relevant double taxation treaty should be consulted for the applicable time limit.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are specific interest barrier rules (so called German "Zinsschranke"), see § 4h Income Tax Act[10] and § 8a Corporate Income Tax Act.[11]

[10] **https://www.gesetze-im-internet.de/estg/__4h.html.**

[11] **https://www.gesetze-im-internet.de/kstg_1977/__8a.html.**

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Ghana Revenue Authority (GRA)

b) Relevant TP section reference

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

Transfer Pricing Regulations, 2012 (L.I. 2188), effective from 14 September 2012

- **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 2 of the Transfer Pricing Regulations, 2012

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, the TP documentation needs to be contemporaneously maintained.

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

Yes

- **Should TP documentation be prepared annually?**

TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

There is no official guidance in this area.

b) Materiality limit or thresholds

- **TP documentation**

There's no materiality limit.

- **Master file**

This is not applicable.

- **Local file**

There is no materiality limit.

[1] https://gra.gov.gh/.

- CbCR

This is not applicable.

- Economic analysis

There's no materiality limit.

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 TP documentation needs to be submitted in English.

- Safe harbor availability, including financial transactions, if applicable

This is not available.

- Any other disclosure or compliance requirement

No

4. TP return and related-party disclosures

- TP-specific returns

The filing of an annual TP return is required. The return must be filed no later than four months after the end of the taxpayer's financial year.

- Related-party disclosures along with corporate income tax return

See previous answer.

- Related-party disclosures in financial statement and annual report

In the financial statements

- CbCR notification included in the statutory tax return

This is not applicable.

- Other information or documents to be filed

No

5. TP documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

Four months following the end of the taxpayer's year of assessment

- Other TP disclosures and return

Four months following the end of the taxpayer's year of assessment

- Master file

This is not applicable.

- CbCR preparation and submission

This is not applicable.

- CbCR notification

This is not applicable.

b) TP documentation and local file preparation deadline

The TP file must be prepared by the time of lodging the tax return to comply with the contemporaneous documentation requirement.

c) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP documentation or local file?

No

- Time period or deadline for submission on tax authority request

There is no specified time in legislation. In practice, the TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes

- Domestic transactions: yes

b) Priority and preference of methods

The TP methods approved by the CG include the CUP, resale price, CPM, transaction profit split and TNMM. Taxpayers are to use the "most appropriate" method.

Notwithstanding the TP methods stated, the CG may use a different method or, in writing, permit a taxpayer to use another method. Although not binding on the taxpayer, the practice notes on the TP regulations state that when the CUP and another TP method are equally reliable, the CUP is preferred by the CG. Similarly, in applying the CUP, the CG prefers the use of internal comparables.

7. 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**

None are specified, but in practice, multiyear analysis is used.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

In practice, the weighted average is used.

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

Independence threshold of 50%

8. TP penalties and relief

a) Penalty exposure

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

The provisions of the Income Tax Act, 2015 (Act 896) (as amended) on fraud, failure to file returns, failure to maintain records, penalty for underpayment of taxes and offenses also apply to the TP regulations.

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high. There has been a very significant increase in the number of TP audits launched by the TP unit in the last year. The revenue authority has also signed a cooperation agreement with the Dutch tax authority to conduct risk-based audits. The agreement runs for 18 months from March 2020.

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

The likelihood of the pricing method being challenged in a TP audit is low to medium and depends on client-specific circumstances.

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

The likelihood is high. Many audit cases have seen adjustments by the GRA.

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

Under the cooperation agreement mentioned above, petroleum, banking and telecoms were mentioned as specific focus sectors.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nonresident parent) to equity exceeds 3:1. Interest deductions or exchange losses arising on debt in excess of the 3:1 ratio are disallowed.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Commissioner of Income Tax, Income Tax Office

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 shall be construed in a manner that best secures consistency among those powers, 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

No

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

This is not applicable.

- **Should TP documentation be prepared annually?**

This is not applicable.

[1] **https://www.gibraltar.gov.gi/income-tax-office.**

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

This is not applicable.

b) Materiality limit or thresholds

- **TP 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 TP 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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-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 and 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 or documents to be filed**

No

5. TP 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 FY ends.

- **Other TP 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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

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

No

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

The authorities may impose a deadline of 30 days (or more) for providing information when an inquiry is made.

6. TP 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.

7. 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. roll forwards 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.

8. TP penalties and relief

a) Penalty exposure

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

There are no specific TP 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?**

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.

9. Statute of limitations on TP 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 wilful default or negligent conduct has been committed.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 (10% for most companies), the requirement to justify TP 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 TP methodology being challenged (high, medium or low)**

The likelihood is low, as audits are very rare occurrences. If they occur, it is likely that a potential issue has been identified.

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

The likelihood is 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 undergo audit**

There is none specified.

11. APA and MAP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant TP section reference

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

TP 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 TP 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 TP documentation file for intercompany transactions referring to FYs 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Greece has adopted the three-tier approach (i.e.,, master file, local file and CbCR) as described in OECD BEPS Action 13.

- 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 (no threshold applies).

- 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.

[1] **https://www.aade.gr/epiheiriseis/forologikes-ypiresies/eisodima/endoomilikes-synallages.**

- Material differences from OECD report template or format

  The main differences of the minimum required content of the master file for Greek TP 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 TP 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 TP 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 TP 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 flow chart 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**

There is no penalty protection available.

c) Is your 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. The MCAA on the exchange of CbC reports was ratified by L. 4490/2017.

3. TP documentation requirements

a) Applicability

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

Yes, there are TP documentation guidelines or rules in Greece. The TP documentation file has to be prepared annually up to the deadline for the submission of companies' corporate income tax (CIT) return; while it has to be submitted to the Greek tax authorities within 30 days following their request.

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

Yes, a local branch of a foreign company which is subject to documentation requirements has to prepare a TP documentation file and disclose its intra-group transactions by filing a summary information table (SIT).

- **Should TP documentation be prepared annually?**

Yes, the TP documentation has to be prepared annually under local jurisdiction regulations. Furthermore, all sections of the TP 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 FYs. 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 FY.

The TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, its entity subject to documentation requirements is required to prepare a stand-alone TP documentation file.

b) Materiality limit or thresholds

- **TP 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 TP documentation requirements.

- **BEPS master and local files**

There is none specified.

- **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.

- CbC report filing

  Under local rules, the ultimate parent entity (UPE) of an MNE group or any other reporting entity, established in Greece, is required to submit the CbC report – for each FY – electronically to the competent authority within 12 months from the end of the MNE group's reporting FY.

- CbC report notification procedure

  Greek tax resident entities forming part of an MNE group that are subject to the aforementioned requirements must notify the AADE of the identity and tax residence of the reporting entity no later than the last day of the reporting FY.

- CbCR notification and CbC report submission requirement

  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

- **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 TP documentation requirements similar to cross-border transactions.

- **Local language documentation requirement**

On the basis of Decision 1097/2014, the TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Companies must submit a SIT of their intercompany transactions to the tax administration up to the deadline for the submission of companies' CIT returns.

- **Related-party disclosures and TP-related appendices**

Taxpayers disclose their intra-group transactions by annually filing electronically a SIT of TP information. For intra-group transactions taking place from 1 January 2015, the SIT must be filed up to the deadline for the submission of companies' CIT returns.

- Other information or documents to be filed

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- CIT 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 TP 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 file the TP file consisting of a master file and a local file within 30 days upon tax authorities' request.

- CbCR preparation and submission

The UPE of an MNE group or any other reporting entity, established in Greece, must submit the CbC report for each FY electronically to the competent authority within 12 months from the end of the MNE group's reporting FY. If the application for submitting the CbC report 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 CbC report submission (i.e.,, for MNE groups with a reporting FY ending on 31 December 2016, the first notification must be filed by 31 December 2017).

b) TP documentation and local file preparation deadline

The TP 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) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP documentation or local file?

No

- Time period or deadline for submission on tax authority request

The taxpayer should be able to present the TP file to the audit authorities within 30 days following their request (requests always require the files to be submitted in Greek).

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes, there is no differentiation with regard to the applicability of the TP methods during the documentation of international or domestic transactions.

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 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 TP methods, such as the TNMM and profit split, can be used only in cases in which the above traditional TP methods are considered ineffective because of the absence of available or sufficient comparables, provided that a detailed justification is included in the documentation files.

7. 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 TP file. In practice, the Greek tax authorities accept pan-European benchmarking studies.

- Single-year vs. multiyear analysis

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 FYs 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 MS Excel's formula "=quartile. exc(array;quart)."

- **Fresh benchmarking search every year vs. roll forwards 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 FYs; 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 FY (this is a legal requirement).

- **Simple vs. weighted average**

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 Microsoft Excel's formula "=quartile. exc(array;quart)."

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.

8. TP penalties and relief

a) Penalty exposure

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

TP 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 TP documentation within 30 days from the official request, a penalty of EUR5,000 applies, which is increased to EUR10,000 if TP 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 CbC report 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?**

In the case of noncompliance with the arm's-length principle, the difference in taxable profits shall 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.

- **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 shall 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.

9. Statute of limitations on TP 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 2020 are, in principle, the financial year 2014 and onward, whereas the statute of limitations is, in principle, six years following year-end.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP 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' TP 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 TP 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 TP issues among local tax auditors.

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

The likelihood is medium; the Greek tax auditors are focused more on the results of the TP 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 TP methodology.

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

The likelihood is high; usually, the authorities challenge the TP methodology only if it leads to an adjustment.

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

There is none specified.

11. APA and MAP 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 intra-group pricing.

These criteria mainly include the TP method, the comparable data to be used and any relevant adjustments to be made as well as the critical assumptions under which the approved TP 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 TP cases should be addressed to the Independent Authority for Public Revenue's International Economic Relations Directorate – Tax Affairs Section.
- MAP requests for TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 €3.000.0000. 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 etc.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Administration Superintendence (Superintendencia de Administración Tributaria, or SAT)

b) Relevant TP section reference

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

There are Articles 54 to 67 of LAT or Tax Legislation Update or 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 TP technical guidelines that establish parameters related to the presentation, content, calculation formulas and analysis to perform an adequate and standardized TP analysis. But most importantly, they refer to BEPS initiatives such as the master file requirement as part of TP 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 TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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.

The TP provisions in the regulations are mainly based on the OECD Guidelines and apply to all of the transactions conducted between Guatemalan taxpayers and their related parties abroad. The TP rules also present an additional non-OECD method (the import and export valuation method, or "sixth method"), which is intended to be used for transactions involving imports or exports of goods with well-known prices in international markets.

b) BEPS Action 13 implementation overview

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

It has not been formally implemented in the TP legislation. However, in October 2016, the tax authorities published TP technical guidelines that refer to BEPS initiatives such as the master file requirement as part of the TP documentation. In such guidelines, the tax authorities indicate that the TP documentation must contain information related to the MNE group. Such information is very aligned with the information listed in the OECD master file for BEPS purposes.

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

  It has not been formally implemented in the TP legislation. However, in October 2016, the tax authorities published TP technical guidelines that refer to BEPS initiatives such as the master file requirement as part of the TP documentation. In such guidelines, the tax authorities indicate that the TP documentation must contain information related to the MNE group listing the information to be included. Such information is very aligned with the information listed in the OECD master file for BEPS purposes.

- Effective or expected commencement date

  The master file requirement is applicable for transactions from fiscal year 2016 onward.

- Material differences from OECD report template or format

  There are no material differences regarding the master file.

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

  This is not applicable.

c) Is your 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/.

3. TP documentation requirements

a) Applicability

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

Yes, and the TP documentation needs to be contemporaneous.

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

Yes

- **Should TP documentation be prepared annually?**

The TP report and return must be prepared annually, updating all the information that allows to a correct TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP 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 TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 TP information return.

From FY2015 onward, taxpayers are required to file a TP 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

[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

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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be submitted on or before 31 March.

- **Other TP disclosures and return**

The documentation 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) TP documentation and local file preparation deadline

The TP documentation needs to be prepared by the time of lodging the tax return.

c) TP documentation and local file submission deadline

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

No

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

The taxpayer needs to submit the TP documentation within 20 days once requested by the tax authorities.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**
- **Domestic transactions: no**

b) Priority and preference of methods

Acceptable TP methods are the CUP, resale price, 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.

7. 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**

Excel Quartile is preferred, as per common practice.

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

The TP report and return 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 vs. weighted average**

The weighted average, as per common practice, is preferred.

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

There is none specified.

8. TP 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 TP obligations correspond to the general tax penalties. According to Article 94 (13) of the Tax Code, penalties for failure to present the TP 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 TP 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?**

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

- **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, the taxpayers may express their disagreement with the position taken by the tax authorities. In the first stage, the administrative procedure is available prior to the judicial process.

9. Statute of limitations on TP assessments

The statute of limitations on assessments is four years from the date of filing the tax return.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of a general tax audit and TP assessments as part of a general tax audit is high. The SAT has been active in performing TP audits on taxpayers and sending massive requests to submit TP documentation from most taxpayers that inform intercompany transactions each year.

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

When TP is scrutinized, the likelihood that the TP methodology will be challenged is high. In practice, the SAT consistently has been questioning the application of TP methods (i.e.,, sixth method instead of the CUP method), comparables with losses, the formulas and interest rate for capital adjustments to the comparables, among others.

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

In most audits where the SAT challenges either the methodology or the comparables, the likelihood of an adjustment is high.

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

Taxpayers that have not complied with previous TP obligations, experiencing losses and transactions regarding the import and export of commodities, are more likely to undergo audit.

11. APA and MAP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

Guinean Revenue Authorities (GRA) (Direction Nationale des Impôts)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 intra-group transaction with central supply entities.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

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

Yes

b) Materiality limit or thresholds

- **TP 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 a thousand billion (GNF1,000,000,000,000) 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 a thousand billion (GNF1,000,000,000,000) Guinean francs
- 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 thousand billion Guinean francs, i.e.,, GNF1000,000,000,000

In addition, entities that do not meet the threshold requirements for documentation obligation (i.e.,, GNF1000 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 one hundred billion Guinean francs (GNF100,000,000,000).

- **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.

- **Any other disclosure or compliance requirement**

There is none specified.

4. TP return and related-party disclosures

- **TP-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 (CIT) 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 and annual report**

No

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

Yes

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

None

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 30 April following each FY end.

- **Other TP 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**

CbC report 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) TP documentation and local file preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no specific indication. However, local comparables are 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. roll forwards and update of the financials**

There is no guidance provided.

- **Simple vs. weighted average**

There is no guidance provided.

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

There is no guidance provided.

8. TP penalties and relief

a) Penalty exposure

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

Failure to respond or a partial response is subject to the following sanctions:

- **A maximum fine of 1% of the amount of the transactions concerned by the documents which 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**

Or

- **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?**

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%.

- **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

9. Statute of limitations on TP assessments

Three years

10. Likelihood of TP 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 the these business sectors – mining, oil and gas, banking, insurance, and telecommunications – are much more likely to be controlled.

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

See below answer.

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

See below answers.

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

The likelihood is high.

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

The industries are large companies – telecommunications, oil and gas, mining, and financial institutions and insurance companies.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 Guinean Central Bank 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 Central Bank of the Republic of Guinea (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

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Administration of Honduras (Servicio de Administración de Rentas, or SAR)

b) Relevant TP section reference

- Name of TP 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 TP, 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines and rules? If yes, do they need to be submitted or prepared contemporaneously?

Yes, TP documentation must be prepared contemporaneously.

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

Yes

- Should TP documentation be prepared annually?

Yes, the TP report and return must be prepared annually, updating all the information that allows a correct TP analysis. Use of the most recent available financial information for the comparables and the tested party is requested.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

Yes

b) Materiality limit or thresholds

- TP documentation

This is not applicable.

- Master file

This is not applicable.

- Local file

[1] https://www.sar.gob.hn/.

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.

- **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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

An information return on the transactions conducted with related parties should be filed annually, as follows:

  - For FYs that end in December, taxpayers must file the TP return between 1 January and 30 April.

For a special FY that does not end in December, taxpayers must file the TP 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 income, purchases or other expense items.

- **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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The corporate income tax return should be filed annually, as follows:

  - For FYs that end in December, taxpayers must file the return between 1 January and 30 April.
  - For a special FY that does not end in December, taxpayers must file the return within three months after the fiscal year-end.

- **Other TP 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) TP documentation and local file preparation deadline

Taxpayers are required to prepare TP documentation annually by the due date of the income tax return. The documentation should be filed only if requested by the SAR.

c) TP documentation and local file submission deadline

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

No

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

10 working days

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**
- **Domestic transactions: not applicable after FY 2017**

b) Priority and preference of methods

The provisions require the application of the most appropriate TP 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.

7. 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**

Multiple-year testing (three years) is acceptable for the comparables only.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is requested by regulations.

- **Fresh benchmarking search every year vs. roll forwards 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 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 vs. weighted average**

Weighted average is preferred, as per common practice.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

Refer to the section above.

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

In the case of a TP income adjustment, interest applies (3% on a monthly basis, up to 36%), per the general provisions of the Tax Code.

b) Penalty relief

Taxpayers can benefit from reductions of the surcharges assessed for noncompliance of a formal obligation:

- Fifty percent reduction, if the taxpayer rectifies before any competent authority proceeding
- Thirty percent 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

- Ten percent 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

9. Statute of limitations on TP assessments

The term could be five to seven years. It can be extended with the filing of an amended return.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of a general tax audit is high, as is the likelihood of TP 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 TP audits.

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

The likelihood is medium.

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

The likelihood is high, given the overall firm stance of tax authorities.

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

Recently, the SAR has focused its TP 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.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

This is not applicable.

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This chapter relates to the tax justification of the Hong Kong Special Administrative Region (SAR) of China

1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Inland Revenue Department (IRD)

b) Relevant TP section reference

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

On 13 July 2018, the Government of Hong Kong Special Administrative Region (the Government) gazetted Inland Revenue (Amendment) (No. 6) Ordinance 2018 (the Amendment Ordinance).

The main objectives are to codify certain TP principles into the Inland Revenue Ordinance (Cap. 112) (IRO) and implement the minimum standards of the BEPS project. The effective dates for the regulations are staggered across the accounting period beginning on or after 1 January 2018 (for CbC reports), 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 DIPNs include:

- DIPN 45: Relief from Double Taxation due to Transfer Pricing or Profit Reallocation Adjustments, issued in April 2009
- DIPN 46: Transfer Pricing Guidelines – Methodologies and Related Issues, issued in December 2009
- DIPN 48: Advance Pricing Arrangement, issued in March 2012
- 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, issued in February 2017
- DIPN 58: Transfer Pricing Documentation and Jurisdiction-by-Jurisdiction Reports, issued in July 2019
- DIPN 59: Transfer 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**

Section 50AAG of the Amendment Ordinance defines the participation condition that needs to be met, for a person to be taken to be associated with another person. According to this section, the participation condition is met if:

- One of the affected persons was participating in the management, control or capital of the other affected person.

  Or

- The same person or persons were participating in the management, control or capital of each of the affected persons.

Section 50AAH further defines "participation."

2. OECD Guidelines treatment and BEPS implementation

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

Hong Kong is a BEPS Associate jurisdiction (announced in June 2016). The Hong Kong TP framework is largely based on the OECD Guidelines, and the IRD generally will not differ from the TP methodologies recommended by the OECD Guidelines. The Amendment Ordinance specifically references the 2017 OECD Guidelines within the legislation and indicates that the arm's-

[1] **https://www.ird.gov.hk.**

length provision (along with other rules) should be consistently determined in accordance with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 both the master file and the local file.

- 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 TP examinations, is basically a function of the nature of TP treatment and the effort spent to determine the arm's-length amount. The availability of documented TP 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 8b for further details.

- **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Hong Kong.

- CbCR notification included in the statutory tax return

  A Hong Kong enterprise which is a constituent entity subject to CbCR requirements will be required to file a notification to the IRD within three months after the end of the ultimate parent entity's accounting period. Separately, 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.

c) Is your 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.

3. TP documentation requirements

a) Applicability

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

Yes, the Amendment Ordinance gazetted on 13 July 2018 introduced mandatory TP documentation requirements and rules in Hong Kong. The documentation is required to be prepared contemporaneously if the Hong Kong entity meets certain thresholds (as detailed in Section 3b) and is to be submitted upon request.

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

Yes, a local branch will need to comply with the local TP rules.

- **Should TP documentation be prepared annually?**

The Amendment Ordinance assesses the taxpayers' obligation for preparing TP documentation on an annual basis. Taxpayers that exceed the documentation threshold in the specific accounting period are required to prepare TP 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 are at arm's length.

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

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has related-party transactions that meet the materiality thresholds.

b) Materiality limit or thresholds

- **TP documentation**

For fiscal years starting on or after 1 April 2018, Hong Kong taxpayers are required to prepare master file and local file documentations. Exemptions based on business size and on 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 documentations 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
  - Transfers 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.

- **BEPS master and local files**

Please refer to the requirements on materiality limit and threshold for TP 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 TP 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 TP 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 TP documentation.

- **Any other disclosure or compliance requirement**

There is none specified.

4. TP return and related-party disclosures

- **TP-specific returns**

Supplementary Form S2 is an additional form to the profits tax return for TP purposes.

- **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 nonresident associated persons) and confirm their TP documentation compliance in the BIR51 and Supplementary Form S2 — Transfer Pricing.

- **Related-party disclosures in financial statement and 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 or documents to be filed**

There is none specified.

5. TP 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 2019–20 tax returns by tax representatives can be found here: **https://www.ird.gov.hk/eng/ese/bes.htm.**

Accounting date	Extended due date
For N codes Return (accounting date between 1 April and 30 November)	2 May
For D Code Return (accounting date between 1 and 31 December)	15 August
For M Code Return (accounting date between 1 January and 31 March)	15 November
For M Code Return and current year loss cases	31 January

- **Other TP disclosures and return**

It is included within the profits tax return (i.e.,, Supplementary Form S2), and therefore the same dates apply.

- **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 CbC report 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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**

There is no specific guidance on the time to submit TP documentation. However, typically, in an audit or inquiry, a taxpayer is given 30 days (extensions are available) to reply to the tax authorities.

6. TP 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 TP 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.

7. 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. roll forwards and update of the financials**

Financials should be updated every year, and new searches should be performed every three years.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 explanation. 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 explanation 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 wilful 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 TP penalties stated above, the IRD can impose penalties for the broader corporate tax-related issues.

- **If an adjustment is sustained, can penalties be assessed?**

Yes, for TP-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[2]

The scale of penalty to be imposed on a person is a function of the nature of TP treatment and the effort spent to determine the arm's-length amount. In order to have a documented TP 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.

[2] **https://www.ird.gov.hk/eng/pol/ppo.htm#H.**

TP treatment	Normal loading	Normal loading
No documented TP treatment	50%	75%
Documented TP treatment without reasonable efforts	25%	50%
Documented TP 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is medium to high, because the IRD has increased its attention on related-party transactions. While there are no TP-specific field auditors, and there is no separate division within the IRD that deals specifically with TP cases, TP may be reviewed as part of an audit if the IRD discovers 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 TP 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. TP 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 TP methodology being challenged (high, medium or low)**

The likelihood of the TP methodology being challenged is medium to high, depending on the complexity of the related-party transactions. This is because TP-associated audits or enquiries 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 TP structure and methodology.

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

The likelihood of an adjustment is medium to high if a TP 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 undergo audit**

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.

11. APA and MAP opportunities

- **APA 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There is no thin-capitalization rule in Hong Kong.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

National Tax and Customs Administration (NTCA)

b) Relevant TP section reference

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

Section 18 of the Act on Corporate Income Tax (CIT) (application of the arm's-length principle) has been applicable from 1992.

- **Section reference from local regulation**

Section 4.23 of the Act on CIT (definition of related parties) has the reference.

2. OECD Guidelines treatment and BEPS implementation

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

Hungary is a member of the OECD.

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.,, the 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

BEPS Action 13 has been implemented for TP documentation in Hungary.

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

  This covers all three: 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 TP decree. It is mandatory to prepare the TP 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, and 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 (i.e.,, the local file shall contain in this respect: the name and seat of the court or authority (the name of the state in the case of a foreign jurisdiction) and the case number; the date of commencing and closing the procedure; and the arm's-length price that has been presented for approval to the authority, or has been challenged or determined (approved) by the authority)**

Furthermore, the amounts of intra-group payments and receipts should be broken down by at least the associated counterparties involved in the intercompany transactions under review for the tax year concerned. The local file should contain the copies of all versions of the material intercompany agreements, which were in effect during the financial year under review. If the relevant intercompany agreements were not concluded in writing, a detailed description of the agreements should be presented in the local file.

Since 2015, the application of the interquartile range is also mandatory. Based on the legislation implementing Action 13, if separate activities can be identified based on the functional analysis examining the business activity of the taxpayers, separate business segments should be formed in line with these identified business lines. A segmented profit or loss statement has to be prepared with respect to each documented transaction, and the financial data used in applying the relevant TP method has to be tied to the segmented profit or loss statement (the segmentation must

[1] **https://en.nav.gov.hu/.**

reconcile foreign GAAP segment results with local GAAP segment results, if applicable). The segmented financials should be presented in the currency of accounting records, which is, in most cases, Hungarian GAAP.

It should be considered in the context of the master file that is in line with the Hungarian regulations; the date of preparation has to be presented in the master file. Furthermore, as the master file should contain information on the whole group, it should also include information on the relevant Hungarian value chain and the transactions concluded by the Hungarian entities. If the master file does not contain relevant and important information from a Hungarian TP perspective, the Hungarian entities should supplement the master file by the relevant deadline separately.

- 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Hungary 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 1 December 2016

3. TP documentation requirements

a) Applicability

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

Yes, contemporaneous requirement

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

Yes, local branches of foreign companies have to comply with the TP documentation and CbCR-related obligations if they conclude that intercompany transactions and their volume exceed the materiality threshold in a given year.

- **Should TP documentation 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 TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

The TP decree prescribes that local documentation has to be prepared for each taxpayer for each intercompany transaction. If the 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

- **TP documentation**

There is a materiality limit for the preparation of TP documentation. The materiality limit is HUF50 million (approximately EUR142,000). 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 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**

CbC reports have 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.

c) 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 TP 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 TP 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 TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There is none specified.

- **Related-party disclosures along with CIT 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 TP documentation they have elected to prepare.

According to Hungarian TP regulations, the taxpayer is not required to file the TP documentation with the NTCA; however, the taxpayer needs to present the documentation during a tax audit upon request.

- **Related-party disclosures in financial statement and 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 FY.

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

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **CIT return**

The CIT return deadline is 31 May.[2] 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 TP 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 FY.

- **CbCR preparation and submission**

[2]Due to the COVID-19 pandemic, the Hungarian Government recently introduced a new legislation allowing taxpayers to push back their CIT return filing deadline to 30 September 2020 for FY2019, and in line with this, the TP documentation deadline for FY2019 was extended to 30 September 2020 as well.

Reporting entities have to file the CbCR with the Hungarian Tax Authority within 12 months of the last day of the reporting FY.

- **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: 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) TP documentation and local file preparation deadline

The TP documentation (i.e.,, the local file together with the master file) needs to be prepared by the time of lodging the tax return to achieve penalty protection (e.g.,, where there is a contemporaneous requirement). 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 after the last day of the tax year in question.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submission TP documentation or local file?**

No

- **Time period or deadline for submission on 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 TP documentation is not available upon request, default penalties for noncompliance 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 noncompliance.

6. TP 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, the taxpayers are required by law to apply the interquartile range in their pricing and assess their Hungarian tax liabilities accordingly.

7. 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**

A multiyear analysis is preferred in testing the arm's-length analysis in terms of the PLI 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. roll forwards 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 TP decree, the former practice of the Hungarian Tax Authority is supported by legislation in this respect.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

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

A default penalty of up to HUF2 million (approximately EUR6,700) may be levied for not fulfilling the TP documentation requirements. Repeated infringement of the documentation requirement may trigger a default penalty of up to HUF4 million (approximately EUR13,400). Repeated default on fulfilling the documentation requirement on the same TP 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 TP documentation per FY under a tax audit.

- **If an adjustment is sustained, can penalties be assessed?**

If a TP 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 point from 2019).

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

Yes, it is charged at the prime rate of the National Bank of Hungary plus five percentage point. 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The risk of TP 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 TP specialists. Consequently, the NTCA's knowledge of the application of TP methods has increased significantly. Since 2009, targeted TP 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 TP issues. One group has specialized mainly in TP audits of large taxpayers, while the other deals solely with APA and TP-related MAP requests. Another specialist group was set up in late 2017 with the intention to double TP audit capacity nationwide.

The likelihood of comprehensive NTCA audits is characterized as medium overall.

For medium and large taxpayers, however, the risk of an audit with a TP 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 TP methodology being challenged (high, medium or low)**

The NTCA habitually challenges the TP 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 TP auditing practices as well, through which it constantly develops its dedicated TP 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 TP methodology being challenged is characterized as medium to high.

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

Such a likelihood is 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 undergo audit**

See the "Likelihood of TP-related audits" section above.

11. APA and MAP 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 NTCA's 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 TP documentation for the transactions covered by the APA.

- **Rollback provisions**

There are no rollback provisions 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).

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Directorate of Internal Revenue

b) Relevant TP section reference

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

Reference to TP 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 TP 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 TP.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP rules, it is unclear how business restructurings will be affected.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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. However, as the Icelandic TP rules stand as of the time of this publication, there is no penalty for having insufficient TP documentation.

c) Is your 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

3. TP documentation requirements

a) Applicability

[1]https://www.rsk.is/english/tax-offices/.

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

Yes, the TP documentation needs to be prepared before the deadline of the annual tax return.

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

Yes

- **Should TP documentation be prepared annually?**

The TP 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 TP documentation is to be submitted upon request from the Directorate of Internal Revenue.

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

No one report is sufficient for the group.

b) Materiality limit or thresholds

- **TP documentation**

There is a materiality limit for TP 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 TP documentation for the subsequent financial year.

- **BEPS master and local files**

The BEPS master and local file approach is applicable for taxpayers required to prepare TP documentation under Article 57(4) of the Icelandic Income Tax Act.

- **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 TP 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 TP documentation should be available in Icelandic or English.

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

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

- **CbCR notification and CbC report submission requirement**

There is a CbCR notification requirement for Iceland and the notification should be filed no later than 12 months from the end of the FY. The same deadline applies for submission of CbC report. Taxpayers falling within the scope of Regulation No. 1166/2016 should file form RSK 4.30.

4. TP return and related-party disclosures

- **TP-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 and 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 or documents to be filed**

This is not applicable.

5. TP 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 TP disclosures and return**

The filing deadline for other TP 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 deadline is no later than 12 months from the end of the FY.

b) TP documentation and local file preparation deadline

The TP 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 TP documentation once requested by the tax authorities in an audit or inquiry.

6. TP 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.

7. 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 TP 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. roll forwards 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 vs. weighted average**

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%.

8. TP penalties and relief

a) Penalty exposure

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

There is no penalty for failure to provide documentation. A bill has been put forward regarding fines but it has not been approved yet.

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **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.

9. Statute of limitations on TP assessments

The statute of limitations period is six years prior to the year of assessment.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-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 TP team. Therefore, the likelihood that a TP audit will be initiated is considered medium.

- **Likelihood of TP 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 TP methodology being challenged.

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

See the previous section.

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

See the previous section.

11. APA and MAP 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 TP purposes (equivalent to unilateral APAs).

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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:

- **Interest expense of taxable party from loan agreements between related parties is less than ISK100 million**
- **Interest expense of taxable party is from loan agreements between consolidated companies that are jointly taxed or meet the criteria for joint taxation**
- **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**
- **The taxable party is a financial institution or an insurance company**

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1. Tax authority and relevant transfer pricing (TP) 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 TP section reference

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

TP 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).

TP legislation in India is effective from financial year FY2001-02 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 TP provisions in India. Further, Sections 270A, 271, 271AA, 271BA, 271G and 271GB provide for various types of penalties in cases of noncompliance with the prescribed TP provisions. The rules for interpretation and implementation of the provisions are rules 10A to 10THD, 44G and 44GA of the Rules.

2. OECD Guidelines treatment and BEPS implementation

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

Indian TP 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 has been recognized as providing useful aid in applying the Indian TP rules to the extent they are not inconsistent with the income tax law. During the examination process, transfer pricing officers (TPO) have generally acknowledged and placed reliance on the OECD Transfer Pricing Guidelines, United Nations Practical Manual on Transfer Pricing for Developing Countries (UN TP Manual) as well as other foreign jurisdiction TP rules, case law and practices when applying domestic TP rules, as long as these are not inconsistent with any specific provision contained in the Indian TP rules. Similarly, courts in India have acknowledged the relevance of the OECD Transfer Pricing Guidelines for understanding Indian TP 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 would take precedence over the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

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

BEPS Action 13 requires countries to adopt a standardized three-tiered approach to documentation which includes master file, local file and CbCR.

As regards local file, India has not formally adopted Action 13 local file template; however, the Indian TP regulations have specifically prescribed contemporaneous documentation requirements since the introduction of TP regime in India. The contents are largely in line with the OECD Transfer Pricing Guidelines with certain modifications.

Master file and CbCR were introduced in the Indian TP 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**

TP 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 Action 13 local file template; however, the Indian TP regulations have specifically prescribed contemporaneous documentation requirements since the introduction of TP regime in India. The contents are largely in line with the OECD Transfer Pricing Guidelines 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.

[1] https://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx.

- 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 TP policies relating to 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 TP documentation rules. Accordingly, the expectation is to align the documentation in line with the Rule 10D requirement in order to mitigate penalty risk.

c) Is your 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

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 (BCAA) 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 nonresident MNE groups who have constituent entities in India.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 (approximately USD155,000). However, basic documents and information justifying the intercompany transfer prices need to be maintained in all cases.

Indian TP 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 FY 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 TP documentation by such due date is critical since it ensures that taxpayers give appropriate consideration to TP 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

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

Yes

b) Materiality limit or thresholds

- **TP 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 (approximately USD155,000).

[2]Finance Act 2020 advanced the due date for maintenance of TP documentation by one month (i.e.,, 31 October in place of 30 November).

However, basic documents and information justifying the intercompany transfer prices need to 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 of the international group, of which such taxpayer is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds INR5,000 million (approximately USD66 million).
- Either of the below transactional threshold 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 (approximately USD7 million).
  - The purchase, sale, transfer, lease or use of IP as per the books of accounts maintained by the taxpayer exceeds INR100 million (approximately USD1 million).

- **Local file**

As mentioned earlier, the Indian TP regulations have specifically prescribed contemporaneous documentation requirements since the introduction of TP regime in India. The contents are largely in line with the OECD Transfer Pricing Guidelines with certain modifications.

- **CbCR**

CbCR provisions are applicable if the consolidated group revenue as reflected in the consolidated financial statement for the preceding accounting year exceeds INR55 billion (approximately 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 TP regulations do apply to domestic related-party transactions where one of the entities involved enjoys tax holiday. However, the aggregate value of such transactions should exceed INR200 million (approximately 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 TP declared by the taxpayer.

The Central Board of Direct Taxes (CBDT) issued TP 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 FYs from FY2016–17 through FY2018–19. Further, CBDT extended the safe harbour rules for FY 2019-20[3].

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 intra-group 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 intra-group 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

[3]Notification No. 25/2020/ F. No. 370142/14/2020-TPL dated 20 May 2020

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 who 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 FY 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 who has entered into an eligible international transaction and who 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:

- The relevant FY (1 April to 31 March), in case the option is exercised only for that FY

  Or

- The first of the FYs, in case the option is exercised for more than one FY

  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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-specific returns**

Taxpayer 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 TP 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.

- **Related-party disclosures and TP-related appendices**

The contemporaneous local documentation contains all the disclosures and TP-related appendices.

- **Related-party disclosures in financial statement and 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 or 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

30 November following the relevant FY for taxpayers where TP provisions are applicable

- **Other TP 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[4] of the following FY 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 FY.

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 FY.

- **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:

- The UPE is not obligated to file a CbCR

  Or

[4]Finance Act 2020 advanced the due date for maintenance of TP documentation by one month (i.e.,, 31 October in place of 30 November).

- India does not have an arrangement for the exchange of CbCR

  Or

- The jurisdiction or tax jurisdiction 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)

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[5] (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) TP documentation and local file preparation deadline

Please refer to the section below.

c) TP documentation and local file submission deadline

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

Contemporaneous local TP documentation should be maintained and finalized by the taxpayer by 31 October[6] of the following FY in which such international transactions or SDTs take place.

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

Under the Act, the prescribed documentation or information maintained by the taxpayer in respect of its TP 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.

6. TP methods

a) Applicability

- **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 TP 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.

[5]Defined as period from 1 April to 31 March of next year in case of UPE resident in India.

[6]Finance Act 2020 advanced the due date for maintenance of TP documentation by one month (i.e.,, 31 October in place of 30 November).

7. 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**

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. roll forwards and update of the financials**

Requires fresh benchmarking every year

- **Simple vs. weighted average**

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 TP documentation as well as during TP audits.

8. TP penalties and relief

a) Penalty exposure

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

Default	Nature of penalty
In case of a post-inquiry adjustment, deemed to have been under-reporting or misreporting of income	▸ No penalty, where TP documentation maintained, transactions declared and material facts disclosed ▸ 50% of tax on TP adjustment, where TP documentation has not been maintained ▸ 200% of tax on TP adjustment, where the same is in consequence of not reporting an international transaction
Failure to maintain TP 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 CbC report (subject to certain conditions)	▸ INR500,000
Failure to submit CbC report by the reporting entity: ▸ Where period of failure ≤ 1 month ▸ Where the period of failure > 1 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 CbC report-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?**

Yes; however, penalty proceedings are separate from regular audit and assessment proceedings. Accordingly, taxpayer has a separate right to appeal for penalty cases.

- **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 under-reporting 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.

9. Statute of limitations on TP 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 FY	45 months from the close of relevant FY
For FY2017-18	40 months from the close of relevant FY	42 months from the close of relevant FY
From FY2018-19 onward	34 months from the close of relevant FY	36 months from the close of relevant FY

In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliance requirements due to the outbreak of novel 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	5 years from the end relevant FY
If the escaped is or likely to exceed INR0.1 million	7 years from the end of relevant FY
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 FY

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is generally high. The CBDT provides internal instructions on selection of cases for TP audits. Earlier, the selection criteria was based on monetary threshold of the value of the international transactions entered into during a particular FY. Currently, the selection is based on "TP 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 TP audits lies with specialized TPOs. The current selection of cases for TP 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 TP methodology being challenged (high, medium or low)**

The likelihood of TP methodology being challenged by the tax authorities is high. Among other things, the BEPS principles are being applied during the course of TP 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 TP 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 TP methodology is challenged (high, medium or low)**

The likelihood is high, for the reasons specified above.

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

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 TP 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

- TP aspects of marketing intangibles have been a focus area for the Indian TP 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 TP 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), TP concerning financial transactions, remuneration model in case of procurement structures, aggregation versus transaction by transaction approach, etc.

11. APA and MAP 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 who 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 FY starting from 1 April 2020. Formal APA application needs to be filed before the beginning of the FY (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, covering effectively nine years.

- **APA 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 TP 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 shall attempt to resolve the tax disputes, arising from the actions of the tax authorities, within an average time of 24 months.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There is no prescribed debt-to-equity ratio or thin-capitalization rules 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 TP 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 TP 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 nonresident 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 carryforward 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[7]

[7]Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (the Ordinance) on 31 March 2020 and Notification No.35 /2020/ F. No. 370142/23/2020-TPL dated 24 June 2020

Compliances	Existing due date as per the ITL	Is there an extension of timeline?
Filing of tax return for FY 2019-20 for cases involving TP	30 November 2020	No
Filing of Form 3CEB for FY 2019-20	31 October 2020	No
Maintenance of TP documentation for FY 2019-20	31 October 2020	No
Filing of Form 3CEAA (master file) for FY 2019-20	30 November 2020	No
Filing of Form 3CEAB (master file designation form) for FY 2019-20	31 October 2020	No
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 (31 March 2020 for accounting year ending 31 March 2019)	31 March 2021 for the accounting year ending 31 March 2019

[8]Defined as period from 1 April to 31 March of next year

Compliances	Existing due date as per the ITL	Is there an extension of timeline?
▸ ARE is resident in India	▸ 12 months from the end of the reporting accounting year followed by the MNE.	▸ 31 March 2021 where the existing due date falls between 20 March 2020 and 31 December 2020
▸ 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.	▸ 31 March 2021 where the existing due date falls between 20 March 2020 and 31 December 2020
▸ 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.	▸ 31 March 2021 where the existing due date falls between 20 March 2020 and 31 December 2020
Filing of APA application covering FY 2020-21	▸ 31 March 2020	▸ 31 March 2021
Time limit to opt for safe harbour for FY 2019-20	▸ 30 November 2020	▸ No
▸ TP Audit – Tax authority centric	▸ Passing of TP assessment order for assessment year (AY) 2017-18 by transfer pricing officer (TPO) – 31 October 2020	▸ Yes, by 31 January 2021
	▸ Passing of draft assessment order by assessing officer (AO) for AY 2017-18 by AO – 31 December 2020	▸ Yes, by 31 March 2021
	▸ Passing of directions by the dispute resolution panel (DRP) for AY 2016-17 by DRP – 9 months from end of month in which the draft AO order is forwarded to the taxpayer – Generally, by 30 September 2020	▸ Yes, by 31 March 2021
	▸ Further 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 specified law. Thus, any such compliance which falls due between 20 March 2020 till 31 December 2020 can be made by the Tax Authority till 31 March 2021.	

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Directorate General of Taxes (DGT)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**
  - Law Number 7 Year 1983 regarding Income Tax (amended by Law Number 36 Year 2008) (PPh Law)
  - Law Number 6 Year 1983 regarding General Taxation Provisions and Procedures (amended by Law Number 16 Year 2009) (KUP Law)
  - Law Number 8 Year 1983 regarding Value-Added Tax of Goods and Services and Sales Tax on Luxury Goods (amended by Law Number 42 Year 2009) (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 TP 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 new regulation issued by the Minister of Finance in response to the implementation of BEPS Action 13 in Indonesia. PMK-213 provides new 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 TP documentation:

- Master file
- Local file
- CbC report

The issuance of PMK-213 marks the beginning of a new era for transparency in related-party transaction disclosures and contemporaneous TP documentation requirements in Indonesia. However, PMK-213 neither revokes nor replaces the current TP 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 TP audit processes and technical TP 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. OECD Guidelines treatment and reference

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

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.

[1] **https://www.pajak.go.id/en.**

b) BEPS Action 13 implementation overview

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

Indonesia has adopted BEPS Action 13 for TP 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.

- **CbCR notification and CbC report submission requirement**

Filing of a group CbCR in Indonesia is required for:

- An Indonesian taxpayer that is classified as the parent entity of a business group with consolidated gross revenues exceeding the threshold
- An Indonesian taxpayer in a multinational business group that exceeds the relevant turnover threshold, whose parent company is a foreign taxpayer resident in a jurisdiction or jurisdiction that:
  - Does not require the parent company to submit a CbC report
  - Does not have a qualifying competent authority agreement (QCAA) covering exchange of CbCR with the Indonesian Government
  - Has an agreement with the Indonesian Government on exchange of information for taxation purposes; however, the CbCR information could not be obtained by the Indonesian Government from that jurisdiction or jurisdiction (i.e.,, systemic failure)

As an alternative, surrogate parent filing in a QCAA jurisdiction can relieve the Indonesian local filing requirement, subject to conditions.

CbCR notifications need to be made by any Indonesian entities or branches that are constituent entities of a business group or have related-party transactions, using a prescribed form in Indonesian language.

- CbCR notification included in the statutory tax return

  Yes

c) Is your 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 26 January 2017.

3. TP documentation requirements

a) Applicability

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

The TP documentation guidelines and rules for Indonesia fall under PMK-213.

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

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Should TP documentation be prepared annually?**

The documentation needs to be prepared annually under Indonesia's local jurisdiction regulations. At a minimum, the contents of the TP documentation must be contemporaneous for each year.

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

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

- **TP documentation**

Based on PMK-213, there is a materiality limit for preparing TP documentation. If the taxpayer conducts a related-party transaction and:

- Has gross revenues of more than IDR50 billion (approximately 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 (approximately USD1.4 million) for tangible goods transactions

  Or
  - More than IDR5 billion (approximately 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 year 1983 as last amended by Law No. 36 of year 2008

- **BEPS master and local files**

There is no threshold applied for preparation of BEPS master and local files once the taxpayer has met the requirements to prepare TP 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 TP 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 TP 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.

- **Any other disclosure or compliance requirement**

None

4. TP return and related-party disclosures

- **TP specific returns**

There are no TP-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 TP method applied and the reason for the application of the method. Additionally, taxpayers are required to disclose whether they have TP 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 and 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 or documents to be filed**

None

5. TP 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 TP disclosures and return**

Disclosures related to TP 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) TP documentation and 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) TP documentation and local file submission deadline

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

There is no statutory deadline for submitting TP documentation.

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

The taxpayer has seven days upon request by the tax office or 30 days if it is in the tax audit process.

6. TP 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 TP 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

7. 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**

Single-year or three-year analyses are most commonly applied.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable and commonly used.

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

There is a need to perform fresh benchmarking every year. According to Article 3 paragraph 1 of PMK-213, TP 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 vs. weighted average**

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 based on common practice are also applied.

8. TP penalties and relief

a) Penalty exposure

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

Inappropriate disclosure of information regarding related-party transactions by a taxpayer in a corporate income tax return may be construed as an act of fraud that could lead to an administrative penalty of up to 400% of the tax underpayment.

- **If an adjustment is sustained, can penalties be assessed?**

There will be penalties of 2% per month – up to 48% – 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 above-mentioned documentation-related penalties.

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

The 2% per month penalty mentioned above reflects an interest charge.

b) Penalty relief

There are no provisions for penalty relief in Indonesia.

9. Statute of limitations on TP assessments

There is no separate statute of limitations for TP. The statute of limitations for TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

Likelihood of TP-related audits (high, medium or low)

In general, the likelihood of an annual tax audit is 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 TP will be reviewed as part of a regular and special tax audit is high.

Tax audit cases are typically commenced in the taxpayer's relevant tax office, with the exception of the special audit cases. A TP audit, unless it is a special audit, will occur as a part of an all-taxes audit. The DGT has a central TP team or a valuations team that is assigned to cases as needed. The central TP team or valuations team might also be involved in assisting a tax auditor team in their respective tax office in performing TP 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 TP 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 TP compliance. ARs have been actively risk-profiling taxpayers' TP audits by audit teams.

In undertaking TP audits, tax auditors will follow guidance contained in PER-22 and SE-50.

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

The likelihood that the tax authority will challenge the TP methodology is also high, as Indonesia takes a firm stand on TP 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 TP methodology is challenged (high, medium or low)**

The likelihood is high (on account of the reasons mentioned in prior sections).

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

There are no specific transactions, industries and situations.

11. APA and MAP 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 has been replaced by the issuance of Ministry of Finance Regulation No. 22/PMK.03/2020 (PMK-22) regarding implementation procedures in APA. This regulation comes 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 has been 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.,, 5 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:

- TP issues
- PE issues
- Other income tax issues

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

General Commission for Taxes (GCT)

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability

Iraq's income tax law does not currently follow the OECD Guidelines. However, the GCT expects that all transactions with related parties should be entered under the usual commercial rates that apply to contracts with unrelated third parties.

- Section reference from local regulation

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

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

Iraq is not a member of the OECD. Iraq's income tax law does not currently follow the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in Iraq.

  - CbCR notification included in the statutory tax return

    This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

No

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

This is not applicable.

- Should TP documentation be prepared annually?

This is not applicable.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

This is not applicable.

b) Materiality limit and thresholds

- TP documentation

This is not applicable.

- BEPS master and local files

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

This is not applicable.

- Safe harbor availability, including financial transactions, if applicable

This is not applicable.

- Any other disclosure or compliance requirement

This is not applicable.

4. TP return and related-party disclosures

- TP-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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

The deadline is 31 May.

- 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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP documentation or local file?

This is not applicable.

- Time period or deadline for submission on tax authority request

This is not applicable.

6. TP 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.

7. Benchmarking requirements

- Local vs. regional comparables

This is 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. roll forwards and update of the financials**

This is not applicable.

- **Simple vs. weighted average**

This is not applicable.

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

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

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

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

This is not applicable.

10. Likelihood of TP scrutiny and related audit by the local authority

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

11. APA and MAP opportunities

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

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Iraq does not have any debt-to-equity rules. The only restrictions on debt-to-equity ratios are those stated in the articles and memoranda of association. However, the GCT may disallow claims of interest expense if it deems the expense to be excessive or unreasonable.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Irish Revenue Commissioners (IRC)

b) Relevant TP section reference

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

Reference to TP can be found in the following:

- Section 835C of Taxes Consolidation Act (TCA) 1997 (Section 835C), Part 35A, sets out the primary TP regulations in Ireland. These regulations became effective for all accounting periods beginning on or after 1 January 2011.
- On 17 October 2019, Ireland's Department of Finance published Finance Bill 2019. The Finance Bill introduces changes to the TP rules in Ireland.

  For accounting periods commencing on or after 1 January 2020, the relevant TP guidelines applicable under Irish law is the 2017 version of the OECD Transfer Pricing Guidelines.
- Section 835G of TCA 1997 (Section 835G) imposes an obligation on companies to have available such records as may reasonably be required for determining whether the company's trading income has been computed in accordance with the requirements of Section 835G. The records referenced in s835G shall include a master file and local file.

- **Section reference from local regulation**
  - 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 relevant persons
  - 835EA Small or medium-sized enterprise
  - 835F Small or medium-sized enterprise (subject to Commencement Order)
  - 835G Documentation and enquiries

[1]**https://www.revenue.ie/en/companies-and-charities/international-tax/transfer-pricing/index.aspx**

2. OECD Guidelines treatment and BEPS implementation

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

Ireland is a member of the OECD. Irish regulations follow the arm's-length principle and adopt the 2017 OECD Guidelines into the domestic legislation for accounting periods beginning on or after 1 January 2020.

b) BEPS Action 13 implementation overview

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

Yes

Master file and local file

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 introduced 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 introduced for groups with annual consolidated revenues in excess of EUR50 million.

The new TP rules introduce a statutory deadline for master file and local file which is on a go-forward basis. The statutory deadline for preparing master file and local file is in line with the corporation tax return filing deadline, e.g.,, for a company with an FY ending 31 December 2020, it is expected that TP documentation would be in place by 23 September 2021.[2]

CbCR

An Irish resident ultimate parent entity of an MNE group (one with annual consolidated revenue in excess of EUR750

[2]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 21st of the month.

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

  The OECD report template is acceptable in Ireland.

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

  BEPS Action 13 format will provide penalty protection.

c) Is your 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.

3. TP documentation requirements

a) Applicability

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

Yes, changes have recently been made in Irish statute with respect to Irish TP rules that introduce the 2017 OECD Transfer Pricing Guidelines for accounting periods beginning on or after 1 January 2020. Documentation should be prepared at the time the terms of the transaction are agreed upon.

The TP 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 in order 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:[3]
  - 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 TP documentation in line with the Irish corporation tax return filing deadline
  - An important exemption for non-trading transactions where both parties to the transaction are within the charge to Irish tax (i.e.,, Irish domestic transactions), subject to certain anti-avoidance rules
  - Extension of TP rules to capital transactions; the application of TP 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, TP to be applicable where the amount of expenditure on acquisition exceeds EUR25 million, specifically including intangible assets
  - TP 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 which are grandfathered under existing legislation (i.e.,, outside the scope of Irish TP 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 foreign company need to comply with the local TP rules?**

[3] **https://www.ey.com/en_gl/tax-alerts/ey-ireland-publishes-finance-bill-2019-transfer-pricing-updates.**

Current Irish TP rules do not extend to branches.

The Department of Finance has indicated that further consultation is required for the extension of TP rules to branches.

- **Should TP documentation be prepared annually?**

For financial periods beginning on or after 1 January 2020, the supporting documentation should be prepared no later than the due date for the tax return for the taxable period in question and must be available upon a request by Irish Revenue in writing. According to the IRC, transfer prices should be reviewed at regular intervals to determine that pricing remains at arm's length.

For financial periods beginning on or after 1 January 2020, TP documentation requested by Irish Revenue must be delivered to them within 30 days of such request. Failure to do so would trigger the statutory TP documentation penalties.

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

While this is not explicitly referenced in the Irish regulations, we do not foresee the burden to prepare TP local files for each individual entity — as long as the local file report encompasses transactions under Irish TP scope and documented in line with the rules per the 2017 OECD Guidelines.

b) Materiality limit or thresholds

- **TP documentation**

It is proposed the TP rules will be extended to small and medium-sized enterprises (SMEs)[4] which are currently not subject to Irish TP legislation. However, the date of implementation is subject to Ministerial Order and will not apply for accounting periods beginning on or 1 January 2020.

Section 835EA outlines the rules with respect to SMEs.

The Department of Finance indicated that the extension of TP rules to SMEs will be implemented in the future by way of Ministerial Commencement Order.

When it has been implemented, a relevant person who is a small enterprise in a chargeable period is excluded from the TP documentation requirements set out in Section 835G. A relevant person who is a medium enterprise in a chargeable period is only required to provide TP documentation in respect of relevant arrangements, and specified information in satisfaction of that person's obligation to provide TP documentation under Section 835G. The TP documentation requirements for medium enterprises are simplified and reduced as compared with enterprises that are not SMEs.

- **Master file**

There is a requirement to prepare master file documentation for accounting periods on or after 1 January 2020, subject to an EUR250 million annual group consolidated revenue threshold.

- **Local file**

There is a requirement to prepare local file documentation for accounting periods on or after 1 January 2020, 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. The TP rules in Ireland apply to both domestic and international transactions.

- **Local language documentation requirement**

The TP documentation needs to be submitted in the local language, meaning English or Irish.

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

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 intra-group services. In particular, the guidance outlines that in situations where a cost-based method is determined to be the most appropriate TP method for determining an arm's-length price for low-value intra-group services, the IRC is prepared to accept a markup of 5% of the relevant cost base without the need for a benchmarking study. The guidance also sets out the documentation requirements for the taxpayer in order to avail of this simplified approach for low-value intra-group services.

[4]This comprises groups of companies where the group employs less than 250 employees and either has a turnover of less than EUR50 million or assets of less than EUR43 million.

As the 2017 OECD Transfer Pricing Guidelines is adopted into Irish law for accounting periods on or after 1 January 2020, the pricing of low value-adding services is also included therein (Section 7.43) and in line with the guidance note above.

There are currently no safe harbors for financial transactions.

- **Any other disclosure or compliance requirement**

See above.

4. TP return and related-party disclosures

- **TP-specific returns**

No TP-specific returns are required to be filed in Ireland, except those related to CbCR. All other TP documentation needs to be provided on request.

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

It is considered best practice (as per the guidance note on documentation) that documentation be prepared at the time the terms of the transaction are agreed upon, and that documentation should exist no later than the time the tax return for the period is due to be made in order for the taxpayer to be in a position to make a correct and complete tax return.

Tax returns in Ireland are generally due to be filed within nine months after the end of the taxpayer's accounting period.

- **Related-party disclosures in financial statement and 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.

5. TP 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 21st of the month.

- **Other TP disclosures and return**

This is not required in Ireland.

- **Master file**

There is no requirement to submit TP documentation to Irish Revenue unless such documentation is requested by them.

For financial periods beginning on or after 1 January 2020, master file documentation requested by Irish Revenue must be delivered to them within 30 days of such request. Failure to do so would trigger the statutory TP documentation penalties.

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.

Where information to support the TP policies of a company is requested by Irish Revenue and not provided within a 30-day statutory timeline, a penalty of EUR4,000 will apply.

- **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 FY ended 31 December 2019 report, this will be submitted on or before 31 December 2020.

- **CbCR notification**

All notifications must be made no later than the last day of the FY 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 FY ended 31 December 2019, notifications must be made to Irish Revenue no later than 31 December 2019.

b) TP documentation and local file preparation deadline

According to the IRC, it is considered best practice that the documentation is prepared at the time the terms of the

transaction are agreed upon. For a company to be in a position to make a correct and complete tax return for an accounting period in which there were trading transactions with associates, the documentation should exist by the time the tax return must be made.

Tax returns in Ireland are generally due to be filed within nine months after the end of the taxpayer's accounting period.

c) TP documentation and local file submission deadline

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

See above.

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

For accounting periods commencing on or after 1 January 2020, master file and local file documentation must be made available upon request in writing by Irish Revenue within 30 days.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**
- **Domestic transactions: yes**

b) Priority and preference of methods

The Irish TP 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.

7. 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. roll forwards and update of the financials**

In line with Section 5.38 of the 2017 OECD, as long as the operating conditions remain unchanged, the searches in databases for comparables supporting part of the local file should be updated every three years rather than annually. Financial data for the comparables should nonetheless be updated every year in order to apply the arm's-length principle reliably.

- **Simple vs. weighted average**

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 not accepted.

8. TP penalties and relief

a) Penalty exposure

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

Where information to support the TP policies of a company is requested by Irish Revenue and not provided within a 30-day statutory timeline, a penalty of EUR4,000 will apply.

Where a local file and 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.

- **If an adjustment is sustained, can penalties be assessed?**

Protection from tax-geared penalties, in the careless behavior category, applies where a taxpayer prepares TP documentation on time and provides it on a timely basis to Irish Revenue when requested, and the documentation demonstrates that reasonable efforts have been made to comply with this part.

The following grid summarizes the corporate tax penalties regime and shows the penalties charged for each of the three categories of default on the part of the taxpayer:

No qualifying disclosure	Category of default	No cooperation	Cooperation only
All defaults where there is no qualifying disclosure	Careless behavior without significant consequences	20%	15%
	Careless behavior with significant consequences	40%	30%
	Deliberate behavior	100%	75%

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

Under the general corporate tax penalty provisions, 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

Where the company prepares its documentation on or before the documentation deadline, provides such documentation to Irish Revenue within the 30-day statutory timeline and demonstrates reasonable efforts to comply with TP legislation, then any TP adjustment will be ignored for purposes of determining whether a tax-geared penalty applies to the company.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is medium. There has been a noted increase in IRC activity and staffing levels in recent times.

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

The likelihood is medium. There are a number of TP 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 TP methodology is challenged (high, medium or low)**

The likelihood is medium. This will ultimately depend on the merits and economic circumstances of the transaction.

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

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.

11. APA and MAP 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 and formalize Irish Revenue's APA practice, which had previously operated informally. 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 as a result 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are currently no specific thin-capitalization rules in Ireland.

Following the introduction of new TP legislation in Ireland (effective for accounting periods commencing on or after 1 January 2020), there is additional requirement under Irish TP rules to consider whether the legal form of a transaction (including its capital structure) is aligned with the substance of the transaction.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Israeli Tax Authority (ITA)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

  This is not applicable.

- Effective or expected commencement date

  It has been expected that it would take effect from financial year 2017.

- 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 your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation 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 is 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

It is not obligatory.

b) Materiality limit or thresholds

- **TP 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**

Sections 85b and 85c include reference to the threshold (but they were in draft form at the time this was published).

- **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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Commencing from the financial year 2007, taxpayers must attach to the annual tax returns a specific TP form (#1385), 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 the intercompany transactions. New elements to be 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 and annual report**

None

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

This is not applicable.

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

None

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 31 May.

- **Other TP 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**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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 of the circulars 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is benchmarking requirement using local comparables, tax authorities expect an effort to find local comparables.

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

A single-year analysis is preferred.

- **Use of interquartile range**

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

The weighted average is preferred.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

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.

- **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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of an annual tax audit in general is 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 is high.

- **Likelihood of TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or low)**

The likelihood is high (refer to the section above).

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

There are no specifications; the ITA challenges all TP transactions, industries and situations.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

None

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Italian Revenue Agency (Agenzia delle Entrate, or AdE)

b) Relevant TP section reference

- **Name of TP 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 TP 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 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,". Still, the Italian tax authorities have not issued additional regulations and guidance on the provisions yet.

With specific reference to documentary requirements on transfer prices, in 2010, TP regulations for penalty protection purposes were issued (i.e.,, Decision of the Commissioner of the Italian Revenue Agency of 29 September 2010). The preparation of TP documentation for such purposes remains optional.

- **Section reference from local regulation**

In Italy, there are several definitions of related parties. For TP, 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.

2. OECD Guidelines treatment and BEPS implementation

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

Italy is an OECD member. Italian TP 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 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Refer to the section below for details.

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

  No, the preparation of the master file and the local file according to BEPS Action 13 has not been implemented in Italy so far. However, the Italian legislation requires the taxpayer to prepare CbC report correspondent to Annex III of Chapter V of the Transfer Pricing Guidelines.

- Effective or expected commencement date

  This is not applicable.

- 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 your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

[1] **https://www.agenziaentrate.gov.it/portale/.**

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

3. TP documentation requirements

a) Applicability

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

The preparation of master file and local file according to BEPS Action 13 has not been implemented in Italy so far.

The guidelines for TP documentation for penalty protection purposes were issued on 29 September 2010 by the tax authorities ("Decision of the Commissioner of the Italian Revenue Agency dated 29 September 2010," also available in English) and are basically consistent with the principles set out in the Code of Conduct issued by the EUJTPF.

According to those guidelines, the TP documentation is composed of:

- A master file, which collects information regarding the group
- Jurisdiction-specific documentation, which contains information regarding the enterprise

The master file and the jurisdiction-specific documentation must be drafted in Italian, however, in case the taxpayer submits the master file of the whole group, it can be drafted in English.

It is not mandatory to file TP documentation in Italy. However, the taxpayer has 10 calendar days to submit the TP documentation once requested by the tax authorities in an audit or inquiry.

Since TP documentation for penalty protection purposes is optional, taxpayers that would like to apply for such regime need to communicate the possession of TPD in the yearly tax return.

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

Yes, branches are considered as individual entities and are subject to TP obligations and local TP rules.

The issue of attribution of profit to a local branch of 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 TP documentation be prepared annually?**

If a taxpayer opts for the mentioned penalty protection regime, the complete TP documentation needs to be drafted annually under Italy's local jurisdiction regulations.

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

All entities within a group are required to file TP documentation separately.

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality limit or threshold for TP documentation.

- **Master file**

The preparation of master file according to BEPS Action 13 has not been implemented in Italy so far.

- **Local file**

The preparation of local file according to BEPS Action 13 has not been implemented in Italy so far.

- **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 CbC report in Italy or to make the proper notification in the yearly tax return. Noncompliance with such requirements is subject to the payment of penalties from EUR10,000 to EUR50,000.

- **Economic analysis**

There is a materiality limit for performing an economic analysis; however, the latter is not specified under a quantitative perspective. The Italian requirements affirm that "omissions or partial inaccuracies related also to residual transactions, which are unlikely to affect the analysis by the tax auditors and the accuracy of the results of such analysis" are possible and do not jeopardize the recognition of penalty protection. The Decree also clarifies that the presence of omissions or partial inaccuracies in the TP documentation, which are not apt to jeopardize the analysis of the tax auditors, cannot lead to the inappropriateness of the same.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

The TP documentation for penalty protection purposes needs to be submitted in the local language. The master file and the local file must be drafted in Italian, as per Paragraph 8.1. of the Decision of the Commissioner of the Italian Revenue Agency of 29 September 2010.

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

The Decree embodies 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 provides 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.

- **Any other disclosure or 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 Law No. 117 of 4 October 2019, which entered into force on 2 November 2019. The regulations address only general principles; further operational and procedural guidance will be issued.

4. TP return and related-party disclosures

- **TP-specific returns**

In Italy, there are no specific TP 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) to the Italian Revenue Agency.

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 nonresident related parties
- The amount of costs and revenues from cross-border intra-group transactions

- **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 TP penalty protection regime or not.

- **Related-party disclosures in financial statement and 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 or documents to be filed**

This is not applicable.

5. TP 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 TP disclosures and return**

This is not applicable.

- **Master file**

Please refer to the indications relating to the optional penalty protection regime.

- **CbCR preparation and submission**

For FY 2016, the deadline for submitting the CbC report 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) TP documentation and 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 TP documentation is already available, but it does not have to be submitted until a formal request comes from the tax inspector.

c) TP documentation and local file submission deadline

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

No

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

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

6. TP 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 TP 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 TP 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 the latter 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 TP methods to be used for the evaluation of 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 CUP method, the resale price method (RPM), the cost-plus method (CPM), the TNMM and the transactional profit-split method (PSM).

7. 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 Excel Quartile formulas is acceptable.

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

The Italian TP 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, 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 vs. weighted average**

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%.

8. TP penalties and relief

a) Penalty exposure

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

If and when the above-mentioned optional TP 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 (IRES) and Regional Production Tax (IRAP) purposes. According to Circular Letter 58/E, higher penalties may be applicable, in principle, when the documentation is not deemed complete and appropriate.

- **If an adjustment is sustained, can penalties be assessed?**

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 TP 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).

9. Statute of limitations on TP assessments

There is no specific statute of limitations on an assessment for TP. The general statute-of-limitations period for tax purposes applies. Up to FY 2015 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.

For tax inspections relating to FY 2016 onward, the mentioned terms are increased by one year for unfaithful tax returns, and by two years for omitted tax returns.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The risk of a general tax audit is high, as is the risk of being audited specifically for TP. 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 TP methodology being challenged (high, medium or low)**

The likelihood of the TP methodology being challenged is also high, as tax officers often try to challenge all the various aspects of TP – i.e.,, not only the methodology, but also the functional analysis and comparables.

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

The likelihood is medium to high. For details, refer to the reasons mentioned above.

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

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).

11. APA and MAP 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:

- TP 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 blacklist 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. In addition, the new provision explicitly regulates rollback effects.

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.

- **Tenure**

For details, refer to the section above.

- **Rollback provisions**

It is possible for unilateral APAs, and automatic for bilateral or multilateral APAs.

- **MAP opportunities**

Yes, 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 TP 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).

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulations or rulings

a) Name of tax authority

National Tax Agency (NTA)

b) Relevant TP section reference

- **Name of TP 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)

STML Article 68-88/66-88-2: Special Taxation Measures of Transactions between Consolidated Corporations and Foreign Related Persons

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

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

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)

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

2. OECD Guidelines treatment and reference

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Japan has adopted BEPS Action 13 for TP documentation in the local laws and regulations.

- Coverage in terms of master and local files

  It covers the master file and local file.

- 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 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 will reduce the likelihood of presumptive taxation (see section 8(a) below).

- **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Japan.

- CbCR notification included in the statutory tax return

  No, the notification should be submitted electronically via e-tax (the same system as other items such as the master file and tax return).

[1] **https://www.nta.go.jp/english/index.htm.**

c) Is your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Should TP documentation 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 which are not subject to a contemporaneous local file is advised 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 your jurisdiction, is it required to have stand-alone TP 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 file a stand-alone corporate tax return.

b) Materiality limit or thresholds

- **TP documentation**

There is none specified.

- **BEPS master and local files**

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 except 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 of the foreign related party
- The 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 a 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 and 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**

This is not applicable.

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

This is not applicable.

5. TP 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 TP 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 CbC report 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 on tax authority request**

The time period or deadline is same as above.

6. TP 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.

7. 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 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 even when comparability adjustments are made, differences which 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. roll forwards and update of the financials**

TP examiners would match the year of the taxpayer to the same financial 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 CbC report 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, unlike in many other countries, 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. ("Presumptive taxation" occurs when Japanese tax examiners perform their own analysis, possibly based on non-public information such as secret comparables, in order to impose an assessment on the taxpayer.) 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?**

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 average contractual interest rate on short-term bank loans for the period from October (two years prior) to September of the prior year, as announced by the Minister of Finance on 15 December of the prior year.

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 1% for the period after 1 Jan 2014. The special reference ratio is the ratio of the contracted average interest rate of banks' new loans in each month from October (two years prior) to September of the prior year divided by 12, as announced by the Minister of Finance on 15 December of the prior year. 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%

- **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 8(a)). 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

There were only about 16 litigation cases as a result of TP assessments, and the court ruled in favor of the taxpayer in

only two of those. There were several other TP cases in which the taxpayers filed the requests for reconsideration. However, the National Tax Tribunal has granted "nullified all" and "partially nullified" decisions for only a few cases.

- Accordingly, most of the taxpayers seek the relief from economic double taxation through the competent authority procedures.

9. Statute of limitations on TP 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)).

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is 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 TP methodology being challenged (high, medium or low)**

The likelihood is 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 TP methodology is challenged (high, medium or low)**

The likelihood is high (same reason as above).

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

The risk is 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.

11. APA and MAP 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 as long as 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 has to apply both sets of rules outlined above. The taxpayer has to disallow the higher amount in the corporate tax return. More details can be found in:

- *Special Taxation Measures Law (STML) Article 66-5(1) and related provisions stipulate the thin capitalization rules*
- *Special Taxation Measures Law (STML) Article 66-5(2) and related provisions stipulate the earning stripping rules*

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Income and Sales Tax Department (ISTD)

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability

The only guidance regarding TP rules in Jordan is provided under Article 20 (d). This article does not set rates or specifications to calculate the profit margin with regard to related parties' transactions. It only specifies that related-party transactions should be entered into, under similar commercial terms and rates as in contracts with unrelated third parties, on the basis of the standard market practice.

- Section reference from local regulation

Refer section above.

2. OECD Guidelines treatment and BEPS implementation

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

Jordan is not a member of the OECD. Jordan's Income Tax Law does not currently follow the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

No

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

This is not applicable.

- Should TP documentation be prepared annually?

This is not applicable.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

This is not applicable.

b) Materiality limit or thresholds

- TP 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

This is not applicable.

- Local language documentation requirement

This is not applicable.

- Safe harbor availability, including financial transactions, if applicable

This is not applicable.

- Any other disclosure or compliance requirement

This is not applicable.

4. TP return and related-party disclosures

- TP-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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

30 April

- 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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP documentation or local file?

This is not applicable.

- Time period or deadline for submission on tax authority request

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions: not applicable
- Domestic transactions: not applicable

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

- Local vs. regional comparables

This is 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. roll forwards and update of the financials

This is not applicable.

- **Simple vs. weighted average**

This is not applicable.

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

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

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

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

This is not applicable.

10. Likelihood of TP scrutiny and related audit by the local authority

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

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

This is not applicable.

11. APA and MAP opportunities

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

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

The thin-capitalization rule in Jordan is 3:1.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

State Revenue Committee of the Ministry of Finance

b) Relevant TP section reference

- **Name of TP 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 TP law). Additionally, TP 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)

- **Section reference from local regulation**

Per the TP 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 TP Law.

2. OECD Guidelines treatment and BEPS implementation

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

Kazakhstan is not a member of the OECD. However, the TP Law has some features in common with the OECD Guidelines. At the same time, there are also many differences: the key one of them is that the TP Law applies to all international transactions, regardless of whether the parties are related or not.

b) BEPS Action 13 implementation overview

Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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. 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 your 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

3. TP documentation requirements

a) Applicability

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

Subject to certain conditions, Kazakhstan taxpayers may be obliged to submit the following documents:

[1] **http://kgd.gov.kz/en.**

- 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
- TP monitoring reporting: to be submitted on annual basis
- TP documentation (including information and documents supporting applied prices, and economic justification supporting price differential and TP method): to be submitted upon request

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

Yes

- **Should TP documentation be prepared annually?**

Yes.

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

Yes

b) Materiality limit or thresholds

- **TP documentation**

No materiality limit.

- **Master file**

Consolidated group revenue for the year preceding the reporting financial year for which the master file is filled is EUR 750 million or more (or the threshold established for master file filling in the jurisdiction of a nonresident parent company or surrogate parent).

- **Local file**

Company's revenue for the fiscal year preceding the reporting year is greater than 5 million monthly calculation index (approx. USD 30 million).

- **CbCR**

Consolidated group revenue for the year preceding the reporting financial year for which CbCR is filled is EUR 750 million or more (or the threshold established for CbCR filling for the jurisdiction of a nonresident parent company or surrogate parent).

c) Specific requirements

- **Treatment of domestic transactions**

If a domestic transaction falls under TP control, general TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 and annual report**

Yes

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

No

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

This is not applicable.

5. TP 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 TP disclosures and return**

TP 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.

b) TP documentation and local file preparation deadline

Local file has to be prepared annually within 12 months following the reporting period.

TP documentation has to be prepared upon request of the tax authorities within 90 business days.

c) TP documentation and local file submission deadline

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

Local file has to be filed annually within 12 months following the reporting period.

TP documentation has to be provided upon request of the tax authorities within 90 business days.

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

TP documentation has to be filed within 90 calendar days upon request of the tax authorities.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: yes

b) Priority and preference of methods

The TP Law provides for five TP methods that should be applied in the following order: (1) comparable uncontrolled price method, (2) cost plus method, (3) resale price method, (4) transactional net margin method and (5) profit split method.

7. Benchmarking requirements

- **Local vs. regional comparables**

No specific provisions.

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

Single-year analysis is preferable.

- **Use of interquartile range**

The full range from maximum to minimum is allowed.

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

No specific provisions.

- **Simple vs. weighted average**

No specific provisions.

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

A 10% independence threshold.

8. TP penalties and relief

a) Penalty exposure

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

Special penalties are in place for failure to comply with the TP monitoring reporting requirements and failure to provide documents required to perform TP control. The maximum penalty is set at KZT 972,300 (approx. USD 2,300).

Non-submission of CbCR, a master file or a local file is subject to penalties with a maximum penalty of KZT 1,389,000 (approx. USD 3,300).

- **If an adjustment is sustained, can penalties be assessed?**

The penalty resulting from a TP adjustment is up to 80% of unpaid tax amount. TP penalties are also imposed on individuals for personal liability of an administrative violation, including criminal liability, if an unpaid tax exceeds KZT 138.9 million (approx. USD 331,000).

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

Interest for late payment of tax resulting from a TP adjustment is calculated as 1.25 times the Kazakhstan National Bank refinancing rate (approx. 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.

9. Statute of limitations on TP assessments

The general statute of limitation period for tax purposes is five years after the end of a respective tax period (but it may be extended to seven years in certain cases for TP).

10. Likelihood of TP scrutiny and related audit by the local authority

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

It depends on an industry (high for export of commodities).

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

The likelihood is high based on practice.

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

The likelihood is high based on prevailing audit practice.

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

Export of commodities is under higher scrutiny.

11. APA and MAP opportunities

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

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 TP.

- **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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

The deduction of interest is generally limited by a specific debt-to-equity formula set by the tax legislation (the thin capitalization rule).

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Kenya Revenue Authority (KRA)

b) Relevant TP section reference

- **Name of TP 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
  - 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Kenya has not adopted BEPS Action 13 for TP documentation in the local regulations. However, Kenya is a BEPS associate committed to implement BEPS Action 13.

The Income Tax Bill 2018 proposes to introduce a requirement for the ultimate parent entity or constituent entity of a multinational group not resident in Kenya for tax purposes to file a CbC report not later than 12 months after the last day of the reporting financial year of the multinational group.

It is not yet certain when the bill will be passed into law.

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

  This is not applicable. However, a taxpayer is required to prepare a TP documentation where related-party transactions are entered.

- Effective or expected commencement date

  This is not applicable.

- Material differences from OECD report template or format

  There is no prescribed format. OECD report format is used in practice.

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

  This is not applicable.

c) Is your 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.

3. TP documentation requirements

a) Applicability

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

Yes; however, there is no contemporaneous documentation requirements. Submission is upon request usually within 14 days.

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

Yes

- **Should TP documentation be prepared annually?**

No; however, the Income Tax Bill 2018 (which will replace the current ITA) proposes a requirement for taxpayers to prepare contemporaneous TP documentation to indicate consistency with the arm's-length principle.

It is not yet certain when the bill will be passed into law.

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

Yes

b) Materiality limit or thresholds

- **TP 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**

There's no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. This is required when an entity operating in a preferential tax regime (such as special economic zones) enters into transactions with a related party in the normal tax regime.

- **Local language documentation requirement**

TP documentation needs to be prepared in English language.

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

There is none specified.

- **Any other disclosure or compliance requirement**

There are no additional disclosure or compliance requirements.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no TP-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 and 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 or documents to be filed**

There is no other TP information to be filed.

5. TP 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 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) TP documentation and local file preparation deadline

There are no deadlines, but a TP policy document must be prepared and submitted upon request, usually within 14 days.

c) TP documentation and local file submission deadline

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

No

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

There is no prescribed duration by law. However, the tax authorities normally give up to two weeks. An entity may be granted an extension upon application to the tax authority.

6. TP 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 TP 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 TP rules were amended to give the Commissioner for Domestic Taxes power to prescribe the application of the above-mentioned methods. However, KRA is 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local jurisdiction comparables. In practice, there is a preference for the Asia-Pacific and Pan-European regions.

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

Multiyear analysis

- **Use of interquartile range**

Interquartile range is acceptable.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

There is a preference for the weighted average for arm's-length analysis.

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

75% independence is applied when searching for comparables.

8. TP penalties and relief

a) Penalty exposure

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

The Commissioner 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?**

TP 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.

Late payment of WHT on deemed dividend will attract a penalty equal to 10% of the tax due to a maximum of KES1,000,000 (USD10,000).

TP 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.

- **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 remission of penalty (excluding tax avoidance penalty) and interest payable citing relevant grounds.

The Commissioner may remit in whole or part penalty and interest not exceeding KES1,500,000 (USD15,000) and seek approval from the Cabinet Secretary of National Treasury, where the penalty and interest exceeds KES1,500,000 (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 tribunal is dissatisfactory

  Or
- The Court of Appeal, if the ruling from the High Court is dissatisfactory

9. Statute of limitations on TP assessments

It is five years. However, there is no time limit in case of fraud, evasion, gross or wilful neglect by taxpayer.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of tax audits is 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 TP review as part of a general tax audit is also high.

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

The likelihood is high, given the recent trend mentioned above.

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

If a TP methodology is challenged, then the likelihood of an adjustment is high. This is based on our experience in handling TP 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 undergo audit**

Generally, all related-party transactions are viable for auditing; however, intra-group services and intangibles have a higher likelihood.

11. APA and MAP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Section 16 (j) of the ITA prescribes restriction on interest expenses in cases where a company is thinly capitalized.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Administration of Kosovo

b) Relevant TP section reference

- **Name of TP 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: TP
- 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 TP, providing further guidance on the application of the arm's-length principle and the preparation of the TP 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 TP – Article 3, Paragraph 1.5 – definition of related persons for TP purposes

2. OECD Guidelines treatment and BEPS implementation

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

Kosovo is not a member of the OECD; however, the Kosovar legislation on TP makes reference to the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, it has. There are no explicit requirements to prepare the TP 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 foreign company need to comply with the local TP rules?**

Yes, a local branch of a foreign company needs to comply with the local TP rules.

- **Should TP documentation be prepared annually?**

TP documentation has to be prepared annually.

[1] **http://www.atk-ks.org/wp-content/uploads/2017/07/Udhëzimi-Administrativ-MF-Nr.-02-2017-për-Transferimin-e-Çmimit.pdf.**

b) Materiality limit or thresholds

- TP documentation

This is not applicable.

- BEPS master and local files

This is not applicable.

- CbCR

This is not applicable.

- CbCR notification and CbC report submission requirement

There is neither a CbCR notification nor a CbC report submission requirement in Kosovo.

- CbCR notification included in the statutory tax return

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 TP 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 TP mandates the use of local language in TP 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.

- Any other disclosure or compliance requirement

This is not applicable.

4. TP return and related-party disclosures

- TP-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 and TP-related appendices

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.

- Other information or documents to be filed

This is not applicable.

5. TP 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 TP 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.

- CbCR preparation and submission

This is not applicable.

- CbCR notification

This is not applicable.

b) TPD and local file preparation deadline

There is no statutory deadline for the preparation of the TP 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) TP documentation and local file submission deadline

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

There is no specific deadline for the submission of TP documentation.

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

TP documentation must be submitted within 30 days once requested by the tax authorities in an audit or inquiry.

6. TP 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 TP methods.

7. Benchmarking requirements

- **Local vs. regional comparables**

Article 15, Paragraph 5 of the 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**

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**

The TP 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 TP method for a number of uncontrolled transactions in which each is almost equally comparable with the controlled transaction based on a comparability analysis. The TP 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. roll forwards and update of the financials**

There is no requirement to conduct a fresh benchmarking search every year. Provided that the 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 vs. weighted average**

The TP rules do not provide any specific provision regarding the use of a simple or a weighted average. In the examples provided in the 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.

8. TP penalties and relief

a) Penalty exposure

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

Failure to prepare and to timely submit TP documentation or to fulfill the requirements provided in the 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?**

The legislation does not provide for specific penalties in case of TP 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 he 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 he receives a tax audit notification but before the tax audit commences, such penalty is capped at 50% of the penalty that would otherwise apply.

- **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.

9. Statute of limitations on TP assessments

The statute of limitations on TP assessments is six years from the CIT return filing due date, i.e.,, 31 March of the following year.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood of a TP audit in Kosovo is high.

In light of the TP rules entered into force on July 2017, the Kosovo tax authorities have initiated several TP audits and TP is expected to continue to attract significant attention.

- **Likelihood of TP methodology being challenged (high, medium or 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 TP method applied by the taxpayer, to the extent that it is the most appropriate one for that transaction.

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

The likelihood is medium; refer to the section above.

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

There are no differences among transactions, industries and situations.

11. APA and MAP opportunities

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

Kosovo's current TP 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 which Kosovo has with its treaty partners.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no thin-capitalization rules in Kosovo.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Department of Inspections and Tax Claims (DIT)

b) Relevant TP section reference

- **Name of TP 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 treatment of related companies.

2. OECD Guidelines treatment and BEPS implementation

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

Kuwait is not a member of the OECD.

The domestic regulations do not explicitly refer to the OECD Guidelines. On 7 June 2017, Kuwait signed (not yet ratified) the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS, along with 67 other countries. As part of the BEPS project, states are required to adopt certain regulations to maintain minimum standards, which includes CbCR. While the Action 13 requirements have not been implemented in Kuwait's local tax regulations, the jurisdiction is committed to meeting the BEPS minimum standard requirements.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

  It's not applicable for now; the BEPS Action 13 format report might be sufficient to achieve penalty protection.

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

No

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

No

3. TP documentation requirements

a) Applicability

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

Kuwait does not have specific TP documentation rules.

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

It is required to comply with Executive Rule No. 49 of Law No. 2/2008 which specifically refers to the treatment of related companies.

- **Should TP documentation be prepared annually?**

TP documentation should be drawn up and updated to limit the exposure to controversy.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

  There are no prescribed rules for TP documentation in Kuwait. MNEs may prepare or maintain documentation in line with the wider group's policies and standards.

b) Materiality limit or thresholds

- **TP documentation**

There are no materiality limits.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

This is not applicable.

- **CbCR notification and CbC report submission requirement**

Currently, there is no CbCR notification or CbC report submission requirement in Kuwait.

- CbCR notification included in the statutory tax return

  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 TP 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.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no specific TP 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 and TP-related appendices**

There is a general obligation to disclose the transactions (including the related-party transactions) in connection with tax retention duties. The taxpayers are obligated to disclose some of the related-party transactions as part of the annual corporate income tax return with respect to material cost, design and consultancy fees incurred; related-party leases; intra-group financing; intellectual property; and other items.

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

There is none specified.

5. TP 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 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) TP documentation and local file preparation deadline

There is no statutory deadline or recommendation for preparation of TP documentation.

c) TP documentation and local file submission deadline

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

No; but in practice, it is advisable to prepare and update the documentation before the annual inspection so that it can be admitted as evidence in the proceedings in a timely manner.

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

Once TP documentation is requested by the tax authorities, taxpayers have approximately one to two weeks to submit it.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

In practice, it may be useful in discussions with the DIT if the TP method used is based on internationally accepted principles and standards, and the TP documentation shows that the taxpayer adhered to the method.

7. 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. roll forwards 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 rest of the years.

- **Simple vs. weighted average**

There is none specified.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

There is none specified.

- **If an adjustment is sustained, can penalties be assessed?**

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 TP adjustments resulting in an assessment of additional income.

b) Penalty relief

Kuwaiti tax regulations do not offer any penalty relief mechanisms.

9. Statute of limitations on TP assessments

General regulations apply. Law No. 2 of 2008 provides a statute-of-limitations period of five years (generally calculated from the date the annual tax return is filed, unless a tolling or discovery rule can be applied).

10. Likelihood of TP scrutiny and related audit by the local authority

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

It's high, because the taxing authority adds special scrutiny for intercompany transactions relating to material supply cost, design and consultancy fees incurred abroad, related-party leases, intra-group financing, and intellectual property.

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

It's high, as the tax authorities request substantial documentation to justify related-party transactions.

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

See the above section.

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

There is none specified.

11. APA and MAP opportunities

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

There are no specific provisions allowing APAs in Kuwaiti domestic regulations.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no such formal rules in Kuwait.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

State Revenue Service

b) Relevant TP section reference

- **Name of TP 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. TP documentation requirements are laid down in Article 152 of the Law on Taxes and Duties.

Cabinet Regulation No. 677, promulgated on 14 November 2017, set the TP 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 TP documentation and conclusion of APAs.

- **Section reference from local regulation**

The related party is defined in Section 1, paragraph 18, of the Law on Taxes and Duties.

2. OECD Guidelines treatment and BEPS implementation

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

Latvia has been a member jurisdiction of the OECD since 1 July 2016.

Latvian TP legislative acts contain a reference to the OECD Guidelines in applying the TP methods, as long as it does not contradict the local TP laws. In most cases, the State Revenue Service accepts the principles stipulated in the OECD Guidelines regarding the structure of TP 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 noncompliance of the TP documentation (effective for related-party transactions carried out in 2018 and beyond). Penalty protection with regard to noncompliance of transfer prices applied with the arm's-length principle is not available.

- CbCR notification and CbC report submission requirement

  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 an ultimate parent entity (UPE) or surrogate parent entity (SPE) or that the CbC 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.

  There is a CbC report submission requirement in Latvia.

- CbCR notification included in the statutory tax return

  No

[1] **https://www.vid.gov.lv/en.**

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Yes

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

In accordance with part two of Article 15,2 of the Law on Taxes and Duties, the TP 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 are not under the scope of TP 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 TP 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 TP documentation, the profit attribution must be carried out at arm's length.

- **Should TP documentation 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 the section "Materiality limit or thresholds," subsection of "TP documentation") is set in local tax laws.

The minimum requirement for annual update of TP documentation entails reviewing the fact pattern and relevant conditions of the transactions indicated in the TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has engaged in cross-border related-party transactions and meets the TP documentation preparation thresholds indicated below.

b) Materiality limit and thresholds

- **TP documentation**

According to the Latvian statutory TP 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 TP documentation is reached, economic analysis should be prepared for related-party transactions exceeding EUR20,000.

- **BEPS master and local files**

For related-party transactions carried out in 2018 and beyond, local entities meeting thresholds of annual turnover or related-party transaction volume indicated above have to prepare BEPS local file, or local file and master file.

c) Specific requirements

- **Treatment of domestic transactions**

The arm's-length nature of domestic transactions is 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 language.

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 TP 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 intra-group services. The OECD-based approach for determining arm's-length nature of transfer prices (applied for low value-adding intra-group services) is established in Cabinet Regulation No. 677, paragraphs 18.1 to 18.9.

- **Any other disclosure or compliance requirement**

There are no other specific local disclosure or compliance requirements.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no TP-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 TP adjustments, the taxpayer must disclose the income which it would have received, or the expenditure which 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 TP method in the annual CIT return of the respective reporting year (row 6.5 of CIT declaration).

- **Related-party disclosures in financial statement and 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 or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

TP 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 TP 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 CbC report 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 CbC report with Latvia. In the notification, that entity and its residence should be identified.

b) TP documentation and local file preparation deadline

For transactions carried out until 31 December 2017, the TP documentation has to be finalized, upon request, by the time of submission.

For transactions carried out starting 1 January 2018, TPD preparation deadlines indicated in the section "Materiality limit or thresholds," subsection of "TP documentation" apply.

c) TP documentation and local file submission deadline

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

There is no statutory deadline for the submission of TP documentation for transactions carried out until 31 December 2017.

For transactions carried out from 1 January 2018 onward, TP documentation submission deadlines indicated in the section "Materiality limit or thresholds," subsection "TP documentation" 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 TP documentation within one month, once requested by the tax authorities in an audit or inquiry.

For transactions carried out from 1 January 2018 onward, TP documentation submission deadlines on tax authority request indicated in the section "Materiality limit or thresholds," subsection "TP documentation" apply.

Additionally, TP 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.

6. TP 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.

7. 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**

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. roll forwards and update of the financials**

If the relevant fact pattern and the conditions of the controlled transactions have remained unchanged, a new benchmarking study has to be prepared once in three years, and the financials of comparables have to be updated each year, for consecutive two years, after a new benchmarking study is performed.

- **Simple vs. weighted average**

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%, and should be excluded from the comparables search.

8. TP penalties and relief

a) Penalty exposure

- **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 TP 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 TP 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 TP documentation or substantial breaches on preparation of TP documentation or the content of TP 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?**

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 penalty relief with respect to TP adjustments. Per ordinary procedure, a penalty imposed as the result of a tax audit may be reduced by 50%. In practice, having proper TP documentation reduces the risk of TP adjustments.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or low)**

On the basis of tax audit practice, there is a medium risk for all taxpayers that if the TP is reviewed as a part of the audit, the TP methodology will be challenged.

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

On the basis of tax audit practice, there is a medium to high risk for all taxpayers of an adjustment if the TP methodology is challenged.

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

There is none specified.

11. APA and MAP 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.

- **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 which 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 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 (TP) regulation or rulings

a) Name of tax authority

Ministry of Finance

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.
- **CbCR notification and CbC report submission requirement**

This is not applicable.

- CbCR notification included in the statutory tax return

  Not applicable.

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

No

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

No

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

No

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

This is not applicable. However, a local branch should comply with local tax regulations.

- Should TP documentation be prepared annually?

No

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

This is not applicable.

b) Materiality limit or thresholds

- TP documentation

There is no materiality limit.

- Economic analysis

There is no materiality limit.

- BEPS master and local files

This is not applicable.

- CbCR

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.

4. TP return and related-party disclosures

- TP-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 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

None

5. TP documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

31 May following the end of the fiscal year

- Other TP disclosures and return

This is not applicable.

- CbCR notification

This is not applicable.

- Master file

This is not applicable

- CbC report preparation and submission

This is not applicable.

b) TP documentation and local file preparation deadline

TP documentation must be submitted upon request.

c) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP documentation or local file?

No

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

There is none specified.

6. TP methods

a) Applicability (for both international and domestic transactions)

There is none specified.

b) Priority and preference of methods

This is not applicable.

7. 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 the Middle East and North Africa 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. roll forwards 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 the financial data for the rest of the years.

- **Simple vs. weighted average**

There is none specified.

- **Other specific benchmarking criteria**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

There were no TP-specific penalties applicable at the time of this publication. However, normal tax penalty provisions could be applicable.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

There is none specified.

10. Likelihood of TP scrutiny and related audit by the local authority

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

It's 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 TP methodology being challenged (high, medium or low)**

Refer to the section above.

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

Refer to the section above.

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

None

11. APA and MAP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There is no thin-capitalization rule in Lebanon.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Department of the Ministry of Finance

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability

Currently, there are no local TP regulations in Libya, but Libya has concluded about 17 tax treaties that contain an article resembling Article 9 of the OECD Model Treaty (on associated enterprises).

- Section reference from local regulation

Income Tax Law (Law 7/2010)

2. OECD Guidelines treatment and BEPS implementation

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

Libya is not a member of the OECD, and there are no TP regulations.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

No

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

This is not applicable.

- Should TP documentation be prepared annually?

This is not applicable.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

This is not applicable.

b) Materiality limit or thresholds

- TP documentation

This is not applicable.

- BEPS master and local files

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**

This is not applicable.

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

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Within four months from the end of the tax FY

- **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) TP documentation and local file preparation deadline

TP documentation must be submitted upon request.

c) TP documentation and local file submission deadline

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

This is not applicable.

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

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. 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. roll forwards and update of the financials**

There is no specific requirement to conduct a fresh benchmarking search every year. However, conducting a fresh search once every three years and updating the financial data for the rest of the years are recommended.

- **Simple vs. weighted average**

There is none specified.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

Currently, there are no TP-specific penalties applicable. However, normal tax penalty provisions could be applicable.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

This is not applicable.

10. Likelihood of TP scrutiny and related audit by the local authority

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

There is no specific TP audit in Libya.

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

The likelihood is low, as there has been no specific TP audit in Libya.

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

See the section above.

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

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

Ministry of Finance of the Republic of Lithuania and the State Tax Inspectorate

b) Relevant TP section reference

- **Name of TP 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-470 as of 31 December 2018 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 defines "related party" and "associated enterprise."

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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 25 October 2016.

[1] **http://finmin.lrv.lt/.**

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

No, the local legislation has no such obligation.

b) Materiality limit or thresholds

- **TP 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 TP documentation local file.
  - If the sales revenue of a company, which belongs to an international group, exceeded EUR15 million in a previous year, then the company has to prepare 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
  - 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 EUR750,000,000

- **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**

All domestic transactions (as well as international transactions) need to be documented in the TP documentation. The domestic transactions and international transactions are documented alike.

- **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**

There is none specified.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-specific returns**

The rules for completing Form FR0528 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 15 days of the 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 CIT 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 and 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 or 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **CIT return**

CIT return must be submitted within 15 days of the six months at the end of each tax period.

- **Other TP disclosures and return**

Other FR0528 forms (transaction with associated entities) must be submitted within 15 days of the six months at the end of each tax period.

- **Master file**

This applies for fiscal years beginning on or after 1 January 2019. It must be prepared no later than the 15th day of the sixth month of the next fiscal 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 CbC report 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) TP documentation and 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 by the 15th day of the six month at the end of each tax period. Taxpayers that are engaged only in domestic transactions may abide by the above provided deadline. 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 taxpayer has to submit the TP documentation within 30 days from the corresponding notice by the tax authorities in an audit or an inquiry.

6. TP 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 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.

7. 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**

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. roll forwards and update of the financials**

The benchmarking results have to be updated once every three years.

- **Simple vs. weighted average**

There is a preference for a simple average (based on jurisdiction practice).

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

Noncompliance with TP documentation regulations exposes a taxpayer to a penalty that may vary from EUR1,890 up to EUR5,800.

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?**

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.

9. Statute of limitations on TP assessments

TP assessments may apply to the five years prior to the year in which the assessment takes place.

10. Likelihood of TP scrutiny and related audit by the local authority

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

Medium: The TP audit is part of the general tax audit. The latter 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 TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or 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 undergo audit**

There is none specified.

11. APA and MAP 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**

5 years with rollover possibility.

- **Rollback provisions**

There is none specified.

- **MAP opportunities**

Lithuanian tax authorities do enter into MAPs

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible. 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 nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

Luxembourg Tax Authority (Administration des Contributions Directes)

b) Relevant TP section reference

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

The Luxembourg Income Tax Law (ITL) contains three articles related to TP – Articles 56 and 56bis dedicated to the arm's-length principle, and Article 164(3) 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 (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 (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, not only will this provision cover 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 intra-group transaction.

Article 56bis of the ITL, applicable from 1 January 2017, contains the basic principles that must be respected in the context of a TP 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 TP. 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 risks assumed and managed

[1] **http://www.impotsdirects.public.lu/content /dam/acd/fr/legislation/LIR/LIR2017.pdf.**

- 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 intra-group 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. OECD Guidelines treatment and BEPS implementation

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

Luxembourg has been a member of the OECD since 7 December 1961.

The OECD Guidelines is 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 TP principles.

b) BEPS Action 13 implementation overview

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

Luxembourg has adopted BEPS Action 13 for TP 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 CbC report 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 CbC report with the Luxembourg tax authorities in one of the following cases:

- The UPE is not obligated to file a CbC report in its jurisdiction of residence.
- The UPE is obligated to submit a CbC report, 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 CbC report, 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 CbC report 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 your 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.

3. TP documentation requirements

a) Applicability

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

Luxembourgian tax law includes general documentation requirements but does not provide specific TP 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 TP 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 TP documentation for associated enterprises in the EU, dated 2006, aimed at harmonizing the TP 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, TP documentation has to be prepared annually under local jurisdiction regulations. No further specific guidance is available.

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

There is no specific requirement in this respect; however stand-alone TP report is preferred in practice.

b) Materiality limit or thresholds

- **TP 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 TP 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 TP 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 TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Currently, there are no TP-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 L.I.R. No 56/1 – 56bis/1 on intra-group financing.

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

Yes, it is in line with local accounting requirements.

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

No

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

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

No specific submission requirement, but the TP documentation should be available upon tax return submission i.e., 31 May.

- **Other TP disclosures and return**

This is not applicable.

- **Master file**

The deadline is by the end of the reporting fiscal year.

- **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) TP documentation and local file preparation deadline

There is no statutory deadline for the preparation of TP documentation, but TP 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) TP documentation and local file submission deadline

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

Luxembourg's tax law does not include a deadline to produce TP documentation. However, taxpayers must be able to justify the data contained in their tax returns with appropriate information and TP documentation.

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

Luxembourg's tax law neither contains specific TP documentation regulations nor includes a deadline to produce TP 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 TP documentation be provided within a certain time frame. This time frame may be as short as 14 days but may be extended upon request.

6. TP methods

a) Applicability (for both international and 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 for the determination of 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.

7. 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. roll forwards and update of the financials**

OECD guidance should be followed.

- **Simple vs. weighted average**

OECD guidance should be followed.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

As a general rule (not specific but also applicable to TP 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.

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **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).

9. Statute of limitations on TP assessments

There are no specific limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

There are no specific rules regarding TP audits in Luxembourg. TP normally should be reviewed as part of a regular tax audit, respectively, when assessing the tax return for a specific year. The risk of TP 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 TP methodology being challenged (high, medium or low)**

The likelihood is medium for the same reason stated above.

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

The likelihood is medium for the same reason stated above.

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

Financing activities transactions and management-related fees (within asset management structures) are more likely to undergo audit.

11. APA and MAP 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 intra-group 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 TP rules provide for three types of APAs: unilateral, bilateral and multilateral agreements.

- **Tenure**

The tenure is five years.

- **Rollback provisions**

Rollback to prior years is not available.

- **MAP opportunities**

On 28 August 2017, Luxembourg issued a Circular (No. 60) on procedures for the implementation of the MAP for bilateral tax treaties concluded by Luxembourg. In order to apply the procedure, corresponding documentation requirements and time limits should be respected. Luxembourg had a total of 37 active MAP applications concerning TP as of 31 December 2018.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no specific local TP regulations at this stage, but further developments after the issuance of the OECD TP guidance on financial transactions are to be monitored.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Malagasy tax authorities (Ministry of Finance and Budget; Direction Générale des Impôts)

b) Relevant TP section reference

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

The General Tax Code (since the Financial Act for 2014), Articles 01.01.13-I-$2 (arm's-length principle), 01.01.10-1° (no deduction on abnormal or unreasonable expenses), 20.06.08 (documentation requirements and deadlines), 20.01.56.8 (penalties) and 20.06.23 (on-site tax audit regime and deadlines)

Executive decision No. 4 – MFB/SG/DGI, dated 24 January 2014, on TP rules (TP tax audit, pricing methods and tax haven details)

- **Section reference from local regulation**

Article 3 of executive decision No. 4 – MFB/SG/DGI, dated 24 January 2014, on TP rules (TP tax audit, pricing methods and tax haven details)

2. OECD Guidelines treatment and BEPS implementation

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

Madagascar is not a member of the OECD.

The OECD Guidelines and the French tax law inspired Malagasy laws on TP, although there are no direct references.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

No

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

The local branch of a foreign company is considered as a permanent establishment and is subject to local corporate income tax if its turnover is greater than or equal to MGA200 million (±USD52,626.87). Therefore, in principle, it must also comply with local TP rules.

- **Should TP documentation be prepared annually?**

There is no requirement to prepare TP documentation annually in Madagascar, but documentation has to be available in case of a tax audit.

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

Yes, the information and documents requested by the tax authorities relate to a specific company.

b) Materiality limit or thresholds

[1]www.impots.mg.

- **TP documentation**

There are no limits or thresholds for intra-group transactions to be supported by TP documentation.

- **Economic analysis**

This is not applicable.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

This is not applicable.

- **CbCR notification and CbC report submission requirement**

There are no CbCR notification and CbC report submission requirements in Madagascar.

  - CbCR notification included in the statutory tax return

    This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

There are no specific TP requirements or provisions on domestic transactions.

- **Local language documentation requirement**

There is no local language documentation requirement. However, the tax authorities require a French version of English-written documents.

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

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable.

- **Related-party disclosures and TP-related appendices**

There are no related-party disclosures, TP-related appendices, additional forms or documents on TP required by the General Tax Code to be provided in the corporate income tax return.

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

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

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 4th month following the year-end.

- **Other TP disclosures and return**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TPD and local file preparation deadline

There is no mandatory preparation deadline for TP documentation in the General Tax Code. However, documentation must be available upon request from the tax authorities within two months (extendable to three months).

c) TP documentation and local file submission deadline

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

This is not applicable.

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

Documents and information required by the tax authorities have to be provided upon request from the tax authorities within two months (extendable to three months).

6. TP methods

a) Applicability (for both international and 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

This is not applicable. 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**

Refer to the section above.

- **Use of interquartile range**

Refer to the section above.

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

Refer to the section above.

- **Simple vs. weighted average**

Refer to the section above.

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

Refer to the section above.

8. TP penalties and relief

a) Penalty exposure

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

If a company provides insufficient or no documentation by the aforementioned deadlines (the three-month first-request period or the 30-day additional-information period), it is subject to a penalty of MGA5 million.

- **If an adjustment is sustained, can penalties be assessed?**

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

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

This is not applicable.

b) 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

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is low. Tax audits and tax reassessments related to TP are not frequent yet. Malagasy TP law and practice are still recent; therefore, field tax auditors are not quite familiar with its principles or pricing methods.

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

The likelihood is medium. Although it is up to the taxpayer to select and justify the most suitable method, a field tax auditor can demand that the taxpayer use a method that the tax auditor is more comfortable with and assess accordingly.

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

The likelihood is 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 undergo audit**

None

11. APA and MAP 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.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 are fully deductible.
  - The interest of loans paid to shareholders are partially deductible. The deductible interest is limited to the interest calculated on twice the equity, at a rate which must not be higher than the rate at the Central Bank of Madagascar plus 2%. Currently, the rate at the Central Bank is 9.50%. Therefore, the deductible interest rate plus 2% at the Central Bank rate is 11.50%.

- **Debt capacity**

Madagascar has no specific rules.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Malawi Revenue Authority (MRA)

b) Relevant TP section reference

- **Name of TP 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 TP, 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 Documentations) Regulations 2017, are secondary legislations, respectively.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing guidelines, UN tax manual or 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 refers to the OECD Guidelines as applicable for the purposes of interpretation only.

b) BEPS Action 13 implementation overview

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

No, Malawi has not adopted BEPS Action 13 for TP 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.

- **CbCR notification and CbC report submission requirement**

There is no CbCR notification and CbC report submission requirement.

- CbCR notification included in the statutory tax return

  This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

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

Yes

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

Yes

- **Should TP documentation be prepared annually?**

Under the 2017 Regulations, the documentation to support TP transactions in the financial statements has to be maintained contemporaneously. While there is no explicit obligation to submit the TP document with the annual income tax return, it is advisable for the taxpayer to do so. The Commissioner General of the MRA may demand TP-related information to be submitted within 45 days.

[1] **https://www.mra.mw/.**

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

Yes

b) Materiality limit or thresholds

- **TP documentation**

The limit applies to domestic transactions with a value of more than USD135,000.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is applicable.

c) Specific requirements

- **Treatment of domestic transactions**

TP 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 TP documents should be maintained in English.

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

There is no safe harbor in Malawi.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 TP document is a requirement.

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

This is required.

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

This is not applicable.

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

No

5. TP 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 TP 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) TP documentation and 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.

c) TP documentation and local file submission deadline

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

There is no statutory deadline for submission of TP 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.

6. TP methods

a) Applicability (for both international and 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.

7. 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 (TP Regulation 9).

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

Multiyear analysis is preferred, but not required under the rules.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

Weighted average is preferred.

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

There is none specified.

8. TP penalties and relief

a) Penalty exposure

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

Penalty for failure to submit TP 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.

- **If an adjustment is sustained, can penalties be assessed?**

As for adjustments to income tax payable, including tax adjustments relating to TP, normally, 100% of the taxes is involved, or 200% of the taxes is involved if the case is considered fraudulent in nature.

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

Interest is due on overdue taxes, including additional taxes assessed in terms of TP 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.

9. Statute of limitations on TP assessments

The assessments can be raised going back six years, but in cases of fraud, the MRA can raise assessments going back indefinitely.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high; currently, there are frequent TP audits by the MRA.

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

The likelihood is 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 TP methodology is challenged (high, medium or low)**

The likelihood is high; from experience, when a methodology is challenged, then a tax adjustment is likely.

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

There is none specified.

11. APA and MAP opportunities

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

Malawian law does not provide for APAs, 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Inland Revenue Board (IRB) of Malaysia (IRBM)

b) Relevant TP section reference

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

TP 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 TP 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 (Jurisdiction-by-Jurisdiction Reporting) (Amendment) Rules 2017 (P.U. [A] 416)
  - Labuan Business Activity Tax (Jurisdiction-by-Jurisdiction Reporting) Regulations 2017 (P.U. [A] 409) [Labuan CbCR Regulations]
  - Income Tax (Multilateral Competent Authority Agreement on the Exchange of Jurisdiction-by-Jurisdiction Reports Order 2016) [P.U.(A) 358] (Malaysian MCAA)

2. OECD Guidelines treatment and BEPS implementation

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

The 2012 Malaysian Transfer Pricing Guidelines are largely based on the governing standard for TP, 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Malaysia adopted and implemented BEPS Action 13 effective from 1 January 2017 for TP 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 TP documentation requirements.

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

  Taxpayers should prepare master file and local file TP documentation that fulfils 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.

- **CbCR notification and CbC report submission requirement**

There is a CbCR notification requirement in Malaysia. CbCR notification should be submitted in writing on or before the last day of the reporting FY and further conditions have been detailed below:

- The CbCR notification should be submitted not only by the Malaysian reporting entity that is the ultimate parent entity (UPE) or surrogate parent entity (SPE), but also by the Malaysian constituent entities (CEs) of such Malaysian UPE or SPE, specifying that they are non-reporting entities.

[1] **http://www.hasil.gov.my/index1.php?bt_lgv=2.**

- A CE in Malaysia is allowed to submit one consolidated notification on behalf of all the other Malaysian non-reporting CEs only if the reporting entity is a Malaysian entity.
- A CE in Malaysia is required to submit separate CbCR notifications if the reporting entity is a foreign entity (i.e.,, not a Malaysian entity).
- The reporting of any CbCR data in Malaysia should be in the local currency, i.e.,, Malaysia Ringgit (MYR).
- For foreign MNE groups where the UPE or SPE has filed the CbC report in a tax jurisdiction outside Malaysia, no local filing of the CbC report is required by the Malaysian CEs. The IRB obtains the report through the available exchange mechanism. CbC report will only be exchanged through competent authorities of countries who are parties to the Convention on Mutual Administrative Assistance (CMAA) or other international agreement, and have a qualifying MCAA with Malaysia.

CbCR is filed by the reporting entity which is either:

a) The ultimate holding entity of an MNE group that is resident in Malaysia

Or

b) The CE of an MNE group that is resident in Malaysia and has been appointed by the MNE group as the surrogate holding entity

Under the Labuan CbCR Regulations, the obligation to file CbCR lies with the ultimate holding entity (a Labuan entity carrying on a Labuan business activity) alone as the Labuan Regulations do not provide for the appointment of a surrogate holding entity.

In cases where systemic failure occurs, the Director General of the Inland Revenue (DGIR) will inform the CE that is a resident in Malaysia for tax purposes of the incidence. The MNE group is required to appoint a CE in another tax jurisdiction who is a party to the international agreement as a surrogate parent.

CbCR must be filed no later than 12 months after the last day of the reporting FY. The CbCR must be furnished to the DGIR on an electronic medium, or through electronic transmission.

- CbCR notification included in the statutory tax return

  No, CbCR notification is not included in the statutory tax return.

  There are three separate CbCR notification forms prescribed by the IRB as follows:

  - For reporting entity (Annex B)
  - For non-reporting entities (Annex C1): applicable for all non-reporting entities where the reporting entity is based within Malaysian tax jurisdiction
  - For non-reporting entities (Annex C2): applicable for all non-reporting entities where the reporting entity is based outside Malaysian tax jurisdiction

c) Is your 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.

3. TP documentation requirements

"Contemporaneous" documentation pertaining to TP need not be submitted with the tax return, but it should be made available to the IRB upon request.

- **TP 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 TP 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
  - 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 give impact to the functional analysis or TP 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 TP policy**
- **Mergers and acquisitions**

Examples of changes in economic conditions include foreign exchange, economic downturn or natural disasters.

A contemporaneous TP 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 TP method**
- **Application of the TP method**
- **Documents that provide the foundation for, or otherwise support or were referred to in, developing the TP 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 your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, Malaysia has TP documentation guidelines and rules. Taxpayers are required to prepare contemporaneous TP documentation and submit within 30 days upon request by the tax authorities.

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

Yes, a local branch of foreign company is required to comply with the Malaysian TP regulatory requirements.

- **Should TP documentation be prepared annually?**

Malaysia requires preparation of TP documentation annually under its local jurisdiction regulations. Preparation of contemporaneous TP 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 TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

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

- **TP documentation**

The Malaysian Transfer Pricing Guidelines provides for de minimis rules and exceptions whereby taxpayers with the following threshold may opt for minimal TP documentation or maintain complete TP 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 TP documentation requirements in the IRB guidelines. Alternatively, the person may opt to comply with maintaining the minimum TP documentation, which consists of the following three components:

- Organizational structure
- Controlled transactions
- Pricing policies

The de minimis rules do not apply to transactions between permanent establishment and its head office or other related branches.

- **Economic analysis**

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.

- **BEPS master and local files**

Malaysia adopted BEPS Action 13 in its local regulations:

- Master file: Taxpayers that are obliged under the income tax (CbCR) rules 2016 to prepare the CbC report shall prepare the master file and submit it together with the TP 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 TP documentation prepared in accordance with the Malaysian Transfer Pricing Rules and Guidelines issued by the IRBM.

- **CbCR**

Malaysia introduced the CbCR rules effective from 1 January 2017. The CbCR applies to MNCs for which:

- The consolidated revenue of the MNC group is at least MYR3 billion in the FY preceding the reporting FY
- Any of its CEs:
- Is an ultimate holding entity which 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 which 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**

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 TP documentation obligation for domestic transactions

- **Local language documentation requirement**

The TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

The IRB requires selected MNE taxpayers to complete a specific form [Form MNE (Pin 1/2017)] 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 whom 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 they operate and associated industry code**
- **Details on transactions with countries having lower tax rates than Malaysia**
- **Confirmation of whether they have prepared TP documentation for the relevant year**

The issuance of Form MNE is an indication of the IRB's increasing attention to TP. The purpose of the form is to assess taxpayers' risk profiles as well as their level of compliance with the TP 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 TP 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 and annual report**

Taxpayers are required to disclose all related-party transactions in their financial statements.

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

Taxpayers are required to declare in the statutory tax return whether it is filing CbCR notification as a reporting entity or non-reporting entity; and if it is filing the CbCR notification, whether the CbCR notification is filed on or before the last day of the reporting FY.

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

CbCR notification filed as a reporting entity or non-reporting entity

5. TP 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 FY – i.e.,, 31 December 2017 year-ending companies to file the corporate tax return by 31 July 2018.

- **Other TP disclosures and return**

In 2014, the IRBM introduced a section in Form C (Corporate Tax Return Form) asking the taxpayers to declare if they have maintained a TP 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, if the taxpayer maintained a TP report, they can select "Yes." If the taxpayer does not have a TP 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 30 days upon request of the tax authorities.

- **CbCR preparation and submission**

The CbC report must be filed no later than 12 months after the last day of the reporting FY of the MNC group (e.g.,, MNC groups with FY ending on 31 December 2017 will be required to file the CbC report by 31 December 2018 at the latest).

- **CbCR notification**

The deadline is before the last day of the FY for which the CbC report has to be filed (e.g.,, a Malaysian CE with an FY ending on 31 December 2017 will be required to notify the Director General prior to 31 December 2017).

b) TP documentation and local file preparation deadline

Taxpayers are required to prepare contemporaneous TP documentation. Contemporaneous TP documentation means TP 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 are required to submit TP documentation within 30 days upon request of the tax authorities.

6. TP methods

a) Applicability (for both international and 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

The IRB gives priority to the available sufficient and verifiable information on both tested party and comparables (para 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:

- **TP documentation of the foreign-tested party**
- **Financial statements and detailed accounts of the tested party**
- **Financial statements of comparables used in the TP 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 TP 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. roll forwards and update of the financials**

As long as operational conditions remain unchanged, the comparable searches in databases supporting part of the TP 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 vs. weighted average**

The Malaysian Transfer Pricing Guidelines does 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.

8. TP penalties and relief

a) Penalty exposure

There are no specific penalties for TP. 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.

There are no penalties for not preparing a TP report. The penalty will only be levied if the tax authorities make a TP adjustment. In such a case, the following penalties will be applicable:

- **No contemporaneous documentation prepared — 50% of the undercharged tax**
- **TP documentation prepared but not according to the requirement of the IRB TP guidelines — 30% of the undercharged tax**

Based on the updated 2012 Malaysian Transfer Pricing Guidelines, penalties will not be imposed if the TP documentation is submitted within 30 days upon request by the IRB, provided that the documentation fulfills the requirements as required in the rules and guidelines.

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 (SCIT)) to seek any relief.

9. Statute of limitations on TP assessments

There is a seven-year statute of limitations for additional assessment issued pursuant to TP adjustments, and documentation must be kept for seven years. There is no statute of limitations in instances of fraud, willful default or negligence.

10. Likelihood of TP scrutiny and related audit by the local authority

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

For companies with significant related-party transactions, the likelihood is that TP audits will be characterized as high. Every MNC that was audited during the last 12 months had its TP policy scrutinized.

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

As mentioned above, the IRB indicated via the TP 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 is high.

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

The likelihood is high (refer to "Likelihood of TP methodology being challenged" section above for details).

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

The IRB during a TP audit would focus on the following:

- Companies with high value of related-party transactions
- Companies that are having significant intra-group transactions, i.e.,, 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

11. APA and MAP 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 the 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 TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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. 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 (TP) regulations or rulings

a) Name of tax authority

Maldives Inland Revenue Authority (MIRA)

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability

Maldives Income Tax Act (Law No. 25/2019) contains TP provisions under its "Tax Avoidance" section.

- Section reference from local regulation

Refer to the above section.

2. OECD Guidelines treatment and BEPS implementation

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

The Maldives is not a member of the OECD.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- CbCR notification and CbC report submission requirement

This is not applicable.

  - CbCR notification included in the statutory tax return

This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

Yes, for the year 2020, the TP documentation 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.

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

Yes

- Should TP documentation be prepared annually?

Yes

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

The entities which have a company or a branch registration in Maldives are required to submit the TP report to MIRA.

b) Materiality limit or thresholds

- TP documentation

TP shall not apply if the transaction undertaken by a business is categorized as either a micro-, small- or medium-sized business under the Law on Small and Medium Enterprises (Law No. 6/2013); or if the below conditions are met:

[1] https://www.mira.gov.mv/.

Category	Full-time employees	Annual income or turnover (in MVR)
Micro enterprise	0-5	0-500,000
Small enterprise	6-30	500,001-5,000,000
Medium enterprise	31-100	5,000,001-20,000,000

For SMEs to be classified, it has to be registered with the ministry in some form, for example, as sole proprietorship or as a partnership or as a company.

- **BEPS master and local files**

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**

This is not applicable.

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

This is not applicable.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Currently, there is no requirement to prepare a separate tax return for related-party transactions.

There is no specific return format available for TP documentation for now; however, every person liable to income tax, under Income Tax Act, shall prepare and maintain documentation (herein referred to as "TP documentation").

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

The following information should be disclosed in the final business profession tax (BPT) return:

  - Related-party expenses other than directors' remuneration
  - Loan interest payable to related parties for the period

- **Related-party disclosures in financial statement and 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 or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

So far, there is no specific return format published by MIRA for TP; however, we expect MIRA to publish clear guidelines and returns in due course.

- **Other TP disclosures and return**

Transactions and arrangements entered into between associates and the documentation shall include the following information:

(1) Details of the commercial and financial relations between the two parties involved, with respect to the transaction

(2) The terms and conditions made or imposed between the two parties involved, with respect to the transaction or arrangement

(3) An explanation as to why the terms of the transaction are concluded at arm's length

(4) Any other information as prescribed in the regulation made pursuant to this act

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

30 June of the following year to which the transaction relates to

c) TP documentation and local file submission deadline

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

The deadlines for preparation and submission is the same as mentioned above.

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

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is applicable for both domestic and international transactions.

b) Priority and preference of methods

The arm's-length price is determined on the basis of a comparison with similar goods or services provided among unrelated parties.

7. Benchmarking requirements

- **Local vs. regional comparables**

This is 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. roll forwards and update of the financials**

This is not applicable.

- **Simple vs. weighted average**

This is not applicable.

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

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

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

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed?**

This is not applicable.

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

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on TP assessments

The MIRA may serve a notice of inquiry to the taxpayer within 12 months from the date of submission of the business profits tax return. They could conduct tax assessments up to three years from the date of the service of the notice of inquiry.

A TP assessment is part of the regular business profits tax assessments conducted by the MIRA. The MIRA may conduct a tax audit for all taxes or certain types of taxes (i.e.,, withholding tax (WHT), goods and services tax (GST), and BPT). The tax audit covers a "tax period," which may be annual (usually the case for BPT) or monthly (usually the case for WHT and GST). After an audit, a tax assessment is issued. However, if new relevant data is subsequently discovered after an assessment has been issued, the MIRA may revisit a tax period that was previously audited. Data that was not previously disclosed during the tax audit process would be considered new data.

In cases where a taxpayer has deliberately or fraudulently evaded tax, a notice of inquiry may be served within three

years of the date on which sufficient information becomes available to the MIRA.

10. Likelihood of TP scrutiny and related audit by the local authority

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

The likelihood is high; the MIRA conducts a tax audit of tax returns as part of a regular audit.

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

The likelihood is low to medium provided sufficient documentation is available.

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

The likelihood is medium; the MIRA shall tax the relevant transaction on the basis of the OECD Guidelines.

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

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Thin capitalization was introduced to 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.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Direction General des Impôts (DGI)

b) Relevant TP section reference

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

Procedure tax book: Articles 57-A to 57-E (since 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

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

Yes, the TP documentation must be submitted and prepared annually.

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

Yes, the documentation obligation concerns legal entities established in Mali regardless of their nationality.

- **Should TP documentation be prepared annually?**

Yes

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

Yes

b) Materiality limit or thresholds

- **TP documentation**

Legal entities established in Mali that fulfil 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 nonresident 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 rega rding 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.

- **Any other disclosure or 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 nonresident companies
- A description of activities with nonresident companies
- The TP method used to determine prices for transactions with nonresident companies
- The foreign tax treatment of operations undertaken with nonresident dependent companies

4. TP return and related-party disclosures

- **TP-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 and 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 or 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.

5. TP 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 TP 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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).

6. TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no guidance provided.

- **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. roll forwards and update of the financials**

There is no guidance provided.

- **Simple vs. weighted average**

There is no guidance provided.

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

There is no guidance provided.

8. TP penalties and relief

a) Penalty exposure

- **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 in the event of 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?**

This is not applicable.

- **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.

9. Statute of limitations on TP assessments

The limitation period is set to three years (common tax regime).

10. Likelihood of TP scrutiny and related audit by the local authority

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

Medium

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

Medium

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

Medium

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

Medium

11. APA and MAP opportunities

TP legislation has introduced the possibility of an advanced 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 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 (TP) regulations or rulings

a) Name of tax authority

Commissioner for Revenue (CfR)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS reference

a) Extent of reliance on OECD Transfer Pricing guidelines, UN tax manual or 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 the arm's length. In the absence of domestic detailed TP guidelines, reference is generally made to the OECD Transfer Pricing Guidelines.

In theory, these however are not binding but due consideration should be given to the fact that all the 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. 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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 26 January 2017

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

This is not applicable.

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP 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

- **TP 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.

- **Any other disclosure or compliance requirement**

Nothing in particular

4. TP return and related-party disclosures

- **TP-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, but:

- 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, 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 and annual report**

Related-party transactions are accounted for in accordance with the requirements of the International Financial Reporting Standards (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 or documents to be filed**

This is not applicable.

5. TP 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 TP 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) TP documentation and local file preparation deadline

There is no statutory deadline or recommendation for preparation of TP documentation.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on 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, and hence the time provided to reply is generally at the discretion of the Maltese tax authorities.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

- **Local vs. regional comparables**

This is 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. roll forwards and update of the financials**

This is not applicable.

- **Simple vs. weighted average**

This is not applicable.

- **Other specific benchmarking criteria, if any**

This is not applicable

8. TP penalties and relief

a) Penalty exposure

- **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 one-time 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, one-time 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 noncompliance, a penalty of EUR50,000

When a Maltese constituent entity fails to comply with a request for information by the Commissioner, it shall be subject to a one-time 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.

The penalties listed above do not seem to specify the relevant penalties for noncompliance with respect to the CbCR notification requirement. Therefore, the general provisions contemplated by Article 49 of the ITMA should apply.

- **If an adjustment is sustained, can penalties be assessed?**

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 Commissioner 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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Given that there are no detailed TP rules in Malta, the likelihood of TP-related audits under the generic provisions is low.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is low, for the same reason stated above.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is low, for the same reason stated above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified; each case is examined on its own merits.

11. APA and MAP 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 Commissioner 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 Contention would apply in Malta have been published by the Competent Authority. The said guidelines provide a number of details pertinent to the whole process, including the additional information required in case of a TP MAP request.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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**

Or

- **EUR3,000,000**

Limitation above would not apply in certain instances, including:

- **Where the taxpayer is a "standalone entity"**
- **Where the borrowing costs are incurred on loans which were concluded before 17 June 2016 and which 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**

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Mauritanian Revenue Authorities (MRA) (Direction Générale des Impôts or DGI)

b) Relevant TP section reference

- **Name of TP 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 (TP documentation obligation), 22-2 (thin-capitalization legislation, applied in the context of certain intra-group financing arrangements only, e.g.,, intra-group interest payments on intra-group debt), L.131-4 (annual TP return fines), L.131-5 (TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Mauritania is neither a member of the OECD, nor a member of the inclusive framework. However, Mauritania has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters on 12 February 2019. In addition, the TP regulations put in place in Mauritania are clearly inspired from the OECD Principles. Hence, we can expect the tax authorities to rely on OECD Transfer Pricing Guidelines to some extent.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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 TP 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 TP regulations are clearly inspired from the ones 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 your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

The GTC does not provide any guidance on the applicability of the TP rules to foreign branches. But, in practice, TP rules are applied to foreign branches.

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

Taxpayers that fulfil at least one of the following conditions need to prepare the TP documentation:

  - Turnover, excluding taxes or gross assets, equal to MRU30 million at least
  - Holding, at the end of the FY, directly or indirectly more than half of the share capital or voting rights of a company, located in Mauritania or abroad, which 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**

CbC reporting filing applies in line with the OECD Guidelines. The threshold for CbCR is MRU22 billion.

Taxpayers that fulfil at least one of the following conditions need to file the CbC reporting:

  - The Mauritanian tax-resident company has been elected by the multinational group to file a CbC reporting and has informed the Mauritanian Tax Administration.
  - 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 CbC reporting.

- **Economic analysis**

The GTC does not provide for any materiality limit with regard to the intercompany transactions to be reported in the TP 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 of domestic transactions 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 harbour availability, including financial transactions, if applicable**

There is no specific guidance.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

The TP 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 TP 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 and 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 which 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 or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 31 March, following each FY end.

- **Other TP disclosures and return**

The annual TP return due date is 31 March of each year.

- **Master file**

There are no filing requirements

- **CbCR preparation and submission**

CbC report submission is to be submitted within 12 months following the FY end.

- **CbCR notification**

The deadline is by the last day of the MNE's fiscal year (31 December).

b) TP documentation and local file preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 TP documentation.

6. TP 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.

7. 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. roll forwards and update of the financials**

There is no guidance provided.

- **Simple vs. weighted average**

There is no guidance provided.

- **Other specific benchmarking criteria, if any**

There is no guidance provided.

8. TP penalties and relief

a) Penalty exposure

- **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 TP return. MRU4 million applies for the failure or delay to submit the CbC report.

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?**

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 and withholding tax (WHT) on the amounts deemed distributed, as well as the related penalties.

- **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.

9. Statute of limitations on TP assessments

Three years

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is medium as it will allow tax authorities to assess the effective profit which should be taxed locally.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is medium if they assume that the company chose this method to lower the taxable base.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is medium as we assume that challenging the TP method may entail for MRA an increase of the taxable base.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The industries are large companies – telecommunication, oil and gas, mining, and companies in the hospitality industry.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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:

1. **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 by more than two percentage points.**

2. **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 which 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 (TP) regulation or rulings

a) Name of tax authority

Servicio de Administración Tributaria (SAT)

Tax Administration Service (SAT)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

A single Central Transfer Pricing Administration (TP Administration), which is part of the Large Taxpayers Administration, within the SAT, is responsible for enforcing the TP rules in Mexico, established since 1997. The TP Administration is in charge of TP audits as well as unilateral, bilateral and multilateral TP procedures, such as TP rulings. Nevertheless, other administrations within the Large Taxpayers Administration could review TP issues with the support of the TP Administration.

Income Tax Law (ITL):

TP regulations for corporations: Articles 76, first paragraph, Sections IX, X and XII, 76-A, Sections I, II, and III, 179, 180, 181, 182 and 184

TP regulations for individuals: Articles 90 and 110, Section X

- ITL, Article 76 (Sections IX, X and XII): contemporaneous TP documentation (cross-border), TP 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 TP CbC informative returns, which is in force from fiscal year 2016 going forward
- ITL, Article 179: "related party" definition, comparability, business cycles, permanent establishments and TP, tax havens, and OECD Guidelines
- ITL, Article 180: TP methods, ranges and selection of the most appropriate method
- ITL, Article 181: permanent establishment and maquiladoras
- ITL, Article 182: TP 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: TP obligations for individuals
- ITL, Article 110, Section X: TP disclosure (cross-border)

Federal Fiscal Code (FFC):

TP rulings: Article 34-A

Fines related to TP: certain sections of Articles 81, 82, 83 and 84.

- FFC, Article 34-A: TP 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 TP 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 TP 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 TP 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 TP informative returns (ITL, Article 76-A)
- Miscellaneous Tax Resolution (Resolución Miscelánea Fiscal, hereinafter MTR) for 2019 published in the official Mexican Gazette:
- MTR, Rule 2.8.5.5: option for taxpayers to omit to file the appendices of the information of transactions with related parties of statutory tax audit report (Tax Report) or of tax situation informative return (ISIF), as long as they file the Exhibit 9 of the TP informative return (Article 76, section X), including information of intercompany transactions with local related entities

[1] **http://www.diputados.gob.mx/LeyesBiblio/pdf/LISR_091219.pdf.**

- MTR, Rule 2.12.8: functional analysis related to TP rulings
- MTR, Rule 3.9.3: extension for taxpayers that file a Tax Report to comply with Article 76, Section X, of ITL (TP disclosure)
- MTR, Rule 3.9.4: extension for taxpayers that do not file a Tax Report to comply with Article 76, Section X, of ITL (TP disclosure)
- MTR, Rule 3.9.5: exception to obtain and keep TP supporting documentation for certain taxpayers (accruable income in the previous fiscal year below thirteen millions of pesos 00/100 MN); this rule does not exempt taxpayers from conducting transactions at market value
- MTR, Rule 3.9.11: requirements to file annual TP CbC, master file and local file
- MTR, Rule 3.9.12: information regarding TP return for taxpayers with the obligation to file a TP return but that do not have an active tax identification number, due to suspension of activities
- MTR, Rule 3.9.13: information regarding how to file master file and CbC report for several Mexican members of the multinational group.
- MTR, Rule 3.9.14: timeline to file CbC report
- MTR, Rule 3.9.15 to 3.9.17: information that must be included as part of the master file, local file and CbC
- MTR, Rule 3.9.1: rules related to TP adjustments (3.9.1.1. to 3.9.1.5.)
- MTR, 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 hydrocarbons exploration and extraction activities. The regulation included in the HRL examines the relevant TP aspects that should be considered by every contractor in addition to specific TP 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 participate, 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Legislation was adopted on 29 October 2015, to take effect from 1 January 2016.

- Coverage in terms of master and local files

  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 filling 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 TP regulations listing the specific requirements to comply with Article 76-A of the ITL, and 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 TP 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 TP informative returns are an additional obligation to the contemporaneous TP documentation that must be maintained by the taxpayers in Mexico.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Contemporaneous documentation might reduce tax penalties by 50%, as long as the taxpayer complies with the formal requirements established in Article 76 (IX) of the ITL. In the case of overdetermined net operating losses (NOLs), penalties could be reduced to 15% to 20% of the overstated NOL. A local file report that complies with all the contemporaneous TP documentation and Article 76-A requirements could be sufficient for the abovementioned purposes.

c) Is your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, Mexico has TP documentation rules. Although TP 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 (TP informative return) of Multiple Informative Return (DIM), which disclose the information of the TP report, should be filed before tax authorities. Depending on the taxpayer, master file, local file and CbC (Article 76-A, Sections I, II and III, respectively) must also be filed. Please note that even some companies are not obliged to prepare and file a local file and master file; they are obliged to prepare and keep a TP report, as well as to file the Exhibit 9 previously mentioned.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Local branches must comply with the same TP obligations for local entities mentioned above.

- **Should TP documentation be prepared annually?**

TP documentation must be prepared annually under Mexico's local regulations. Documentation must include the name, address and tax residency of the nonresident related parties with whom 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 TP documentation.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

  It is mandatory for each taxpayer to prepare and keep TP documentation, as well as for some taxpayers, to prepare and file master file, local file and CbC. TP documentation is not an obligation as a multinational group in Mexico, but as an individual taxpayer. Therefore, a stand-alone TP 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

- TP 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 TP 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.

- BEPS master and local files

Starting fiscal year 2016, Mexican taxpayers with entities that conducted transactions with related parties and surpasses 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 FY2019's obligation is MXN791,501,760 (approximately USD40 million) in FY 2018, while FY2018's obligation was triggered with MXN755,898,920 (approximately USD38 million) in FY2017. 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 obliged to file the master and local file informative returns are the following: legal entities within the optional tax regime (integration system), Government-controlled corporations, and residents abroad with permanent establishment in Mexico.

- CbCR

The CbC report has to be filed by Mexican MNE-controlling entities with consolidated income equal to or greater than MXN12,000 million.

- CbCR notification and CbC report submission requirement

There are no specific CbCR notification requirements in Mexico regarding the CbCR filing process of the MNE's ultimate parent entity. However, in the ISIF (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 CbC report. 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 CbC report.

- CbCR notification included in the statutory tax return

  Yes, either in the tax situation informative return (ISIF, 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 is aware of the ultimate parent entity to which the taxpayer belongs is obliged to file, directly or through any surrogate entity, the master file as well as the CbCR.

- Economic analysis

The obligation to conduct transactions with related parties (foreign and domestic) at arm's-length values applies to all the intercompany transactions with no minimum thresholds applicable.

c) Specific requirements

- Treatment of domestic transactions

There is a TP documentation obligation for domestic transactions. Intercompany transactions with local related parties must be documented (Article 76, Section XII, of the ITL). Temporary Rule 3.9.5 of MTR for 2020 allows entities that conduct intercompany transactions with domestic related parties to opt out of preparing contemporaneous TP documentation based on the same threshold amounts considered in Article 76 (Section IX) of ITL, i.e.,, in those cases where prior-year income did not exceed MXN13 million in regular business activities or MXN3 million for the provision of professional services. Important to note that this rule does not exempt taxpayers from conducting transactions at market value and to be able to demonstrate it in case of an audit.

- Local language documentation requirement

As mentioned before, TP documentation is prepared and kept in the taxpayers' facilities, however, if it is requested by tax authorities, the TP 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 TP 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 3.9.15 of MTR for 2020) through the specific software tools provided by the SAT. BEPS local file must be filed in Spanish based on the Mexican regulations (Temporary Rule 3.9.16 of MTR for 2020).

- **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 an Industria Manufacturera, Maquiladora y de Servicios de Exportación (IMMEX) program have to choose between pursuing an APA with the SAT and applying 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). More unilateral and bilateral APAs are expected to be derived from this obligation for maquiladora companies.

Safe harbour for financial transactions is not considered in Mexican Regulations.

- **Any other disclosure or 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 articles of the FFC 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 (REFIPRE)
- Those that involve transactions with related parties, where:
  - Hard-to-value intangibles are transferred, in accordance with OECD Transfer Pricing Guidelines
  - Entrepreneurial reorganizations take place, where there is no consideration for transferring assets, functions and risks; or where as a result of such reorganization, taxpayers subject to tax reduce operating profits in 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 noncompliance. 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%–70% of the tax benefits that were obtained or expected to be obtained in all tax years. The tax authorities also could impose penalties up to MXN$20,000,000 (approximately USD$877,000).

4. TP return and related-party disclosures

- **TP-specific returns**

Refer to the section above.

- **Related-party disclosures and TP-related appendices**

Specific TP informative returns or related-party disclosures of information include the following:

- Exhibit 9 of the Multiple Informative Return (DIM) for transactions carried out with foreign related parties
- Manufacturing, Maquiladoras and Export Services' Informative Return (DIEMSE) for transactions carried out under the maquiladora regime
- Transfer Pricing Exhibits and Questionnaires as part of the Tax Report or the ISIF — as part of these exhibits, the tax ID of the individual (not the firm tax ID) that prepared the TP documentation or BEPS local file to be disclosed
- Relevant Operations Disclosure Return (Formato 76)
- BEPS TP Informative Returns: CbCR, master file and local file informative returns

- **Other information or documents to be filed**

As part of the ISIF and the Tax Report, both which are filed before tax authorities on an annual basis, the tax ID of the individual (not the firm tax ID) that prepared the TP documentation or BEPS local file must be disclosed. Please also refer to Reportable Transactions section.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 March of the following year

- **Other TP 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 to 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 to be filed by June 30 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 3.9.4 of MTR for 2020)
  - DIEMSE 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.
  - TP exhibits and questionnaires as part of the ISIF along with the corporate income tax return, i.e.,, 31 March of the following year
  - TP 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 based on their financial statements prepared by an external auditor (Dictamen Fiscal), the taxpayer's external auditor is required to disclose the company's compliance with all tax obligations, including those related to TP. 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 ISIF or may choose to have a Tax Report (Dictamen Fiscal) conducted by an external auditor if they do not want to file the ISIF 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 ISIF 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 TP obligations because the contemporary TP documentation must be prepared by no later than the corresponding due date of the Tax Report or ISIF 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 CbC and master file deadline).

- **CbCR notification**

No specific CbCR notification requirements have been established in Mexico. Taxpayers must disclose either in the ISIF or the Tax Report whether the Mexican taxpayer is aware of the ultimate parent entity, to which the taxpayer belongs to, obliged to file, directly or through any surrogate entity, the master file as well as the CbCR.

b) TP documentation and local file preparation deadline

TP 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, TP documentation could be prepared by 15 July of the following year. If the taxpayer does not file a Tax Report, an extension to 30 June of the following fiscal year could apply.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

There is no formal statutory deadline for the submission of contemporaneous TP documentation, since it is not filed before the tax authorities; however, either in the ISIF (31 March of the following fiscal year) or in the Tax Report (15 July of the following fiscal year), taxpayer must disclose if TP contemporaneous documentation was prepared, as well as if TP adjustments were suggested in such documentation, among others. Moreover, in the Exhibit 9, the information of the TP documentation must be included.

In addition, taxpayers obliged to file a BEPS local file usually file the corresponding fiscal year's TP 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 10 working days if it is other documentation or information related to the annual Tax Report, but it is in possession of the taxpayer.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The TP 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 TP methods, with a particular preference for the CUP method, and then the traditional transactional methods over the transactional profit methods.

7. Benchmarking requirements

- **Local vs. 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**

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 Regulations. In particular, the Excel Quartile calculations are acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

In practice, it is recommended to conduct a fresh benchmarking search every year.

- **Simple vs. weighted average**

In practice, there is a preference for the weighted average for TP analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

A penalty of MXN77,230 to MXN154,460 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 CbC report, master file and local file informative returns triggers penalties ranging from MXN154,800 to MXN220,400, 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 TP 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 TP adjustments that result in higher deductions for the taxpayer or in 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 ensuring consistency between accounting and tax records. Furthermore, detailed TP support documentation must be prepared to demonstrate the requirement to implement the TP adjustment to ensure arm's-length compliance.

- **If an adjustment is sustained, can penalties be assessed?**

If the SAT decides that a TP 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 TP 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%.

b) Penalty relief

Contemporaneous documentation might reduce tax penalties by 50%, as long as the taxpayer complies with the formal requirements established in Article 76 (IX) of the ITL. In the case of overdetermined NOLs, penalties could be reduced to 15% to 20% of the overstated NOL.

9. Statute of limitations on TP 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 TP audit.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is high, considering a broader TP team within the SAT and the TP controversy trends derived from BEPS in Mexico.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is high, because there is usually a preliminary analysis already conducted by the SAT before an audit is initiated.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

When a TP audit is initiated, there is usually a preliminary analysis already conducted by the SAT. If the focus of such audit is in the stage of challenging the overall TP methodology, then the likelihood of an adjustment tends to be high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is a high audit risk focusing on business restructuring (limited risk structures, migration of intangible property, and centralization of functions and risks in favorable tax jurisdictions), highly leveraged structures, 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 TP 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 TP authorities.

11. APA and MAP 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.

As of 14 July 2016, temporary Rule 2.12.8 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 2.12.8 of MTR, with a requirement of an extensive list of minimum information that shall be included in TP inquiries made by the taxpayers, including a description of the relevant factors that generate profits for the MNE; TP 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 TP methodology subject to analysis; and support TP 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 TP. According to OECD MAP statistics, the average time needed to close MAP cases is 21.07 months for TP cases, and 11.44 months for other cases.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 into with foreign-resident related parties, pursuant to Article 179 of the Law, are considered as a nondeductible expense.

Interest expense deduction limitation

Tax Reform 2020 subjects taxpayers with interest expense over MXN20 million to a net interest expense deduction limitation equal to 30% of "adjusted taxable income." Nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

General Department of National Taxation (GDNT)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

With new Mongolian TP law, there is a single, all-encompassing TP 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**

Article 27 of New GTL – Related parties

The entities listed below shall be considered to be related parties who possibly influence each other on the conditions or economic outcome of a transaction by 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:

- **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**
- **Members of the same group – a group defined in the law as the related people who are related in their ownership or management and consolidated for financial reporting purposes**
- **If one person directly or indirectly holds 20% or more of the share, participation or voting rights in other entity**
- **If one person has a right to directly or indirectly participate in 20% or more of the profits or liquidation proceeds in other entity**
- **Entities who are controlled by third same person who directly or indirectly holds 20% or more of the share, participation or voting rights in such entities**
- **Entities who are controlled by third same person who has a right to directly or indirectly participate in 20% or more of the profits or liquidation proceeds in such entities**
- **Entities stipulated in item numbers 3 to 6 above if controlled by individuals specified in item number 1, i.e.,, entities in separate groups which are under common control by same individuals**
- **Representatives, nominees or assignees of the parties stipulated in this section**
- **Branch office or other forms of permanent establishments of related parties**
- **An unrelated person with a main purpose of reducing taxable income or increasing tax losses of Mongolian tax residents**
- **Other people similar to preceding nature**

In addition, unrelated parties may be treated as related parties if they have entered into an arrangement for which the parties have agreed to a common position or common interest for a particular transaction.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Mongolia is not a member of the OECD.

Under the TP 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 TP methods and data available.

Consistent with the OECD, Mongolia will now require taxpayers with related-party transactions to adopt the internationally standardized master file, local file and CbCR three-tiered approach to TP documentation. The main objectives of the updated TP documentation requirements are to ensure that taxpayers give appropriate consideration to TP requirements in establishing prices between related parties, to provide tax administrations with the information necessary to conduct an informed TP risk assessment and to provide tax administrations with useful information to conduct an appropriately thorough audit of the TP practices of entities subject to tax in their jurisdiction.

GDNT will be further introducing detailed tax and TP reporting forms on the above TP reports.

b) BEPS Action 13 implementation overview

[1] **http://en.mta.mn/.**

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 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 TP 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 TP documentation requirements, i.e.,, if TP documentation is not filed with the tax authorities within the specified deadline, there will be automatic penalties. These automatic administrative penalties are equal to 2%–4% of transaction value (as set out in the table below), apart from penalties and fines resulting from TP adjustments (if any).

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, under the TP 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 TP methods and data available.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

Smaller and medium enterprise group companies under MNT6 billion annual turnover are exempt from certain TP documentation requirements (i.e.,, local file and master file).

- **Master file**

Companies or groups with annual turnover of more than MNT6 billion for the preceding tax year; or foreign-invested companies irrespective of size

- **Local file**

Companies or groups with annual turnover of more than MNT6 billion for the preceding tax year; or foreign-invested companies irrespective of size

- **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**

TP 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.

- **Safe harbor availability, including financial transactions, if applicable**

There are no specific safe-harbor rules in Mongolia.

- **Any other disclosure or compliance requirement**

Taxpayers are required to provide Transfer Pricing Transactional Report (an annual report) by 10 February following the year-end. This is an additional TP report required by the local regulation.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no specific TP returns.

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement and annual report**

Taxpayers are required to disclose related-party transactions in the financial statements.

- **CbCR notification included in the statutory tax return**

By 10 February following the year-end

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 TP disclosures and return**

Taxpayers are required to provide Transfer Pricing Transactional Report (an annual report) by 10 February following the year-end.

- **Master file**

10 February following the year-end

- **CbCR preparation and submission**

Within the 12-month period after the last day of group financial year

- **CbCR notification**

By 10 February following the year-end

b) TP documentation and local file preparation deadline

There is no specific preparation deadline.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Refer to the section above.

- **Time period or deadline for submission on tax authority request**

Refer to the section above.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**

- **Domestic transactions: yes**

b) Priority and preference of methods

The CUP method is preferred.

The CUP method is the most appropriate method for transactions that involve selling or buying mining products according to the local guideline on the selection and the application of the most appropriate method for TP adjustment.

7. Benchmarking requirements

- **Local vs. regional comparables**

Comparables of Pan Asia-Pacific are preferable to the extent possible and if they are available.

- **Single-year vs. multiyear analysis**

Multiyear analysis (three to five years) is acceptable.

- **Use of interquartile range**

Calculation using Excel Quartile is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is none specified. The most up-to-date information is preferred, if available to taxpayers.

- **Simple vs. weighted average**

Weighted average is preferred.

- **Other specific benchmarking criteria, if any**

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The Transfer Pricing Transactional Report (an annual report): 2% of respective related-party transaction value (per noncompliance)

Master file: 3% of respective related-party transaction value (per noncompliance)

Local file: 3% of respective related-party transaction value (per noncompliance)

CbC report: 4% of respective related-party transaction value (per noncompliance)

- **If an adjustment is sustained, can penalties be assessed?**

TP adjustments are subject to 30%–50% penalty of tax payable.

- **Is interest charged on penalties or payable on a refund?**

Daily interest is charged on TP adjustments, based on a predetermined interest rate that is an average of commercial banking lending rates.

b) Penalty relief

There is no penalty relief available in Mongolia for TP adjustments made by the GDNT. Tax-related disputes can be resolved at the Tax Dispute Resolution Committee at the GDNT and then brought up in Administrative Court proceedings.

9. Statute of limitations on TP assessments

This is four years, with the period starting on the next working day from the date when the due tax in question should have been filed and paid.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is high because comprehensive tax and TP audit occur depending on the GDNT's risk assessment of a taxpayer. Tax authorities are increasingly focusing on TP investigations.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is high.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

It is unclear what has a higher likelihood of undergoing audit.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

An APA regime is not available.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

Tax Administration of Montenegro

b) Relevant TP section reference

- Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Montenegro is not a member of the OECD.

Montenegrin TP provisions are only loosely based on the OECD Guidelines and do not refer to their application.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

Montenegrin TP legislation does not include TP documentation guidelines or rules.

- Does a local branch of foreign company need to comply with the local TP rules?

Yes

- Should TP documentation be prepared annually?

The Montenegrin CIT Law does not prescribe any TP documentation requirements.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

This is not applicable.

b) Materiality limit or thresholds

- TP documentation

This is not applicable.

- BEPS master and local files

This is not applicable.

- CbCR

This is not applicable.

- Economic analysis

[1] http://www.poreskauprava.gov.me/.

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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There is no specific TP 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 the 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 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.

5. TP 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 a fiscal year ending on 31 December 2018).

- **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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

This is not applicable. The Montenegrin CIT Law does not prescribe deadlines for the submission of TP documentation.

- **Time period or deadline for submission on tax authority request**

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is not applicable. Montenegrin legislation does not contain detail provisions related to TP 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 TP method. If the CUP cannot be applied, the CIT Law allows for

two other traditional transaction methods: the cost plus and resale price. Montenegrin TP regulations do not recognize transactional profit-based methods (i.e.,, the TNMM and profit split method).

7. 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. roll forwards and update of the financials**

This is not applicable.

- **Simple vs. weighted average**

This is not applicable.

- **Other specific benchmarking criteria, if any**

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

- **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 TP documentation.

- **If an adjustment is sustained, can penalties be assessed?**

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 TP adjustments in its tax base).

- **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.

9. Statute of limitations on TP assessments

The general statute of limitations period of five years for taxes in Montenegro would also apply to TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

It's low, as Montenegrin tax authorities conduct random audits. Typically, audits take place not often than once in three to five years. Value-added tax (VAT) audits are more frequently conducted.

- **Likelihood of TP methodology being challenged (high, medium or low)**

This is not applicable.

- **Likelihood of an adjustment if TP methodology is challenged (high, medium or low)**

This is not applicable.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

This is not applicable.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

Moroccan Tax Administration (Direction Générale des Impôts)

b) Relevant TP section reference

- **Name of TP 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 : Jurisdiction-by-jurisdiction 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 the TP regulations

2. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Morocco is not a member of the OECD.

However, the Moroccan Tax Administration generally accepts references to the OECD Guidelines regarding TP.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 January 1, 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 your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

No

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

  Yes

b) Materiality limit or thresholds

- **TP documentation**

There are no materiality limits.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

The CbCR obligation is applicable for accounting years beginning on or after January 1, 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 MAD 8,122,500,000 (excl. 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.

Besides, this obligation is also applicable to any enterprise which 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 whom Morocco has not signed an exchange of information agreement for tax purposes;

  or

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.

- **CbCR notification and CbC report submission requirement**

This reporting must be submitted electronically within 12 months as from the financial year end his is not applicable.

- CbCR notification included in the statutory tax return

  This is not applicable.

- Economic analysis

  This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

The 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There is no TP-specific return to be filed before the tax authorities.

- **Related-party disclosures and TP-related appendices**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Within three months following the closing date

- **Other TP disclosures and return**

This is not applicable.

- **Master file**

This is not applicable.

- **CbCR notification**

This is not applicable.

- **CbC report preparation and submission**

This is not applicable.

b) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for the submitting TP 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.

6. TP 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 Moroccan tax administration favors profit-based methods.

7. 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**

Multiyear analysis is acceptable.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

Fresh benchmarking searches should be conducted regularly. Update of the financial data should be performed annually.

- **Simple vs. weighted average**

Both are acceptable.

- **Other specific benchmarking criteria, if any**

There are no other specific benchmarking criteria

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

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 Moroccan 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?**

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 Moroccan 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 Moroccan Tax Administration and the taxpayer in the frame of a tax audit.

9. Statute of limitations on TP 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 carry-forward losses or VAT credit).

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of TP issues being raised within a tax audit is high. In fact, in most MNC tax audits, transfer prices are challenged.

- **Likelihood of TP methodology being challenged (high, medium or low)**

It is the same as in the above section.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

It is the same as in the above section.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

This is not applicable.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is an APA program available in Morocco covering unilateral, bilateral and multilateral agreements, for countries which have 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 provision for the purposes of avoiding the double taxation.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 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 (TP) regulation or rulings

a) Name of tax authority

Autoridade Tributária de Moçambique

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

Regime de Preços de Transferência, effective from 1 January 2018

- **Section reference from local regulation**

Decree no. 70/2017, dated 6 December

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Mozambique is not a member of the OECD.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?

  Yes, all taxpayers established in Mozambique that undertake related-party transactions with resident or non-resident entities need to comply with the local TP rules.

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

  Yes

b) Materiality limit or thresholds

- TP documentation

  TP legislation is only applicable to taxpayers whose annual net turnover and other income is equal to, or exceeds, MT2.5 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 TP regulations.

- CbCR

  This is not applicable.

  Economic analysis

  There's no threshold specified.

c) Specific requirements

- Treatment of domestic transactions

  Yes, TP rules apply also to domestic transactions.

- Local language documentation requirement

  Portuguese

- Safe harbor availability, including financial transactions, if applicable

  This is not applicable.

- Any other disclosure or compliance requirement

  This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Approval is pending. Taxpayers will have to include the following with the return on tax and accounting information, related to transactions with related parties:

- Identification of the parties
- Transaction value per product or service
- TP adjustments
- TP method selected per transaction

- **Related-party disclosures along with corporate income tax (CIT) return**

This is not 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**

This is not applicable.

5. TP 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 TP 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) TP documentation and local file preparation deadline

Sixth months after year-end

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

This is not applicable.

- **Time period or deadline for submission on tax authority request**

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

CUP, resale price, CPM, profit split or TNMM applicable to both international and domestic transactions

b) Priority and preference of methods

This is not applicable.

7. 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. roll forwards and update of the financials**

This is not applicable.

- **Simple vs. weighted average**

Weighted

- **Other specific benchmarking criteria, if any**

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

No specific penalties provided in the regulations – general from MT6,000 to MT600,000 (nonexistence of documentation) or MT13,000 to MT700,000 (omissions or inaccuracies)

- **If an adjustment is sustained, can penalties be assessed?**

Yes – fine and interest

- **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

9. Statute of limitations on TP assessments

Five years

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Medium

- **Likelihood of TP methodology being challenged (high, medium or low)**

Medium

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Medium

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

Unknown

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Thin-capitalization rules are generally applicable to credits and loans granted by a related nonresident 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 which 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 nonresident entity exist when:

- **The nonresident entity has, directly or indirectly, a shareholding of at least 25% of the share capital of the resident entity**

- **The nonresident entity, without reaching that share level, has, in fact, significant influence in the management**
- **The nonresident entity and the resident entity are under the control of the same entity, namely by virtue of both being participated 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 Authorities within 30 days after the end of the respective financial year.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Directorate Inland Revenue (Inland Revenue)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

Section 95A of the Income Tax Act 24 of 1981 (Income Tax Act) authorizes the Inland Revenue 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Namibia is not a member of the OECD; however, Inland Revenue accepts the OECD Guidelines and has largely based its practices on them.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- CbCR notification and CbC report submission requirement

  There is no guidance available yet.

  CbCR notification included in the statutory tax return

- There is no guidance available yet.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Namibia does not have guidelines or rules in terms of which TP documentation is required to be submitted. That being said, Practice Note 2/2006 states that it is in the taxpayers' interests to prepare TP documentation to demonstrate that they have developed sound TP policies. By such policies, the taxpayer should demonstrate that the transfer prices are determined in accordance with the arm's-length principle – they need to document the policies and procedures for determining those prices.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, Income Tax Practice Note 2/2006 specifically provides that the contents of the practice note apply to branches, and 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.

- **Should TP documentation be prepared annually?**

No

[1] **https://www.itas.mof.na/.**

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

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

- **TP documentation**

This is not applicable.

- **BEPS master and local files**

Namibia joined the BEPS Inclusive Framework on 9 August 2019. No filing thresholds have been communicated to date.

- **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.

- **Local language documentation requirement**

The TP documentation must be in English.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

Disclosure requirement in the corporate income tax return are as detailed below.

4. TP return and related-party disclosures

- **TP-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 last year, for the first time, containing certain TP-specific disclosures, particularly:

- The identity of related parties with which the taxpayer transacts
- The nature of the transactions
- The amounts involved
- The TP method used to determine the arm's-length nature of the transactions
- Related-party disclosures in financial statement and annual report

Disclosure in accordance with IAS 24 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 or documents to be filed**

No

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is due within seven months from the year-end.

- **Other TP 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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on tax authority request**

Taxpayers must deliver the TP documentation within 30 days if requested by Inland Revenue.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

Inland Revenue 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.

7. 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**

Generally, a three-year testing is applicable.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year; financial updates are acceptable.

- **Simple vs. weighted average**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

No specific TP penalties are imposed by the Income Tax Act. With this said, taxpayers face the following possible penalties upon a TP 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?

  Refer to the section above.
- Is interest charged on penalties or payable on refund?

An interest of 20% per year is charged on late payment. 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, Inland Revenue will likely take the view that the taxpayer's TP practices represent a lower tax risk. Such evidence may provide some mitigation against the 200% penalty.

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.

9. Statute of limitations on TP assessments

Namibia does not have a statute of limitations. Inland Revenue may indefinitely conduct reviews and audits. However, in terms of the act, records must be maintained for five years. So it is unlikely that periods older than five years will be reviewed.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

This is not applicable. Inland Revenue was not conducting TP reviews or audits at the time of this publication and did not have a dedicated TP team.

- **Likelihood of TP methodology being challenged (high, medium or low)**

Refer to the above section.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Refer to the above section.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 acceptable.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Dutch Tax Administration (Belastingdienst)

b) Relevant TP section reference

- **Name of TP 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.

- **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.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Netherlands is member of the OECD.

The tax authority generally follows the OECD Guidelines.

The Dutch TP decree (as published by the Under-Minister 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 leaves room for interpretation or requires clarification on several issues. The goal of the decree is to provide insight into the position of the Dutch Tax Administration regarding these issues.

The 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, intra-group services and shareholder activities, including low value-add services, contract research, 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 tax authority generally follows the OECD guidance on business restructurings.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- **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 protection for having noncompliant TP documentation in place if the BEPS Action 13 or Article 8b (3) regulations are being complied with.

c) Is your 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 27 January 2016

[1]For Dutch language version, see: **https://wetten.overheid.nl/BWBR0040893/2018-05-12.**

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

These rules 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. Although not mandatory in the other situations, it is highly recommended to prepare TP documentation.

- **Should TP documentation 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 tax 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 your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

This is not applicable.

- **BEPS master and local files**

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 existing 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.

- **CbCR**

The requirement to prepare a CbC report 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 CbC report 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 need not be prepared in the local language. In practice, a common language such as English will be accepted. The master file, local file and CbC report can be submitted in Dutch or in English.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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.

- **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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed within five months after the end of the FY, but this can be extended.

- **Other TP 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 documentation should be filed within 12 months after the end of the FY.

- **CbCR notification**

By the last day of the FY

b) TPD and 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) TPD and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on 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.

6. TP methods

a) Applicability (for both international and 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 does 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

Pan-European benchmarks are accepted.

- **Single-year vs. multiyear analysis**

Multiple-year analysis is preferred, as per common practice.

- **Use of interquartile range**

Interquartile range is preferred, as per common practice.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

In line with the OECD TP Guidelines, a fresh 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 authorities as well as taxpayers.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The Dutch general penalty regime is also applicable for TP. Noncompliance is a criminal offence and penalties can go up to detention for a maximum of six months or a fine up to EUR8,700. More severe penalties are applicable if the offenses are i) intentional and ii) result in the appropriate amount of tax not being levied. In this case, the penalties can be 1)

imprisonment for a maximum of four years or 2) a fine of maximum EUR21,750 or 3) if the amount is higher at most the amount of tax that was not levied. In case of a felony (e.g.,, making documentation available in a false or falsified form), if i) intentional and ii) resulting in appropriate amount of tax not being levied, the sanctions can be a) imprisonment for maximum six years or b) a fine of EUR87,000 or c) maximum one-time amount of additional tax to be paid.

In case of failure to submit the required notification or CbC report as a result of an intentional act or gross negligence, the offense penalty can be maximum EUR870,000. Alternatively, criminal prosecution may be applied with sanctions (fines or imprisonment as described above).

- **If an adjustment is sustained, can penalties be assessed?**

During the 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 Under-Minister 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). Noncompliance 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 the Parliament's discussion related to this proposal, it was mentioned that criminal charges will be reserved for the most severe cases.

- **Is interest charged on penalties or payable on a refund?**

No interest is charged on penalties. However, late payment interest will be due on the extra tax due resulting from TP adjustments. The interest rate is 8%. In case of a refund, in principle, no interest is paid, unless the refund by the tax administration is late. The interest in such case is 8%.

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 treaty
- MAP with binding arbitration, under EU Arbitration Convention and few bilateral treaties
- MAP with binding arbitration, under Wet op fiscal arbitrage (implementation in Dutch legislation of EU Directive on tax dispute resolution mechanisms in the EU (PbEU 2017, L 265)

9. Statute of limitations on TP 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 making 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 (respectively, 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.

  Or

- The taxpayer acted in bad faith.

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).

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of being audited by the tax authority is considered medium. However, during an audit, the likelihood of TP issues being scrutinized is high; consequently, the controversy risk is high, as well.

- **Likelihood of TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or 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 undergo audit**

The tax administration, among others, has shown interest in performing head-office audits (which include intra-group 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.

11. APA and MAP 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 authorities process many unilateral and bilateral APAs annually. The Dutch competent authority has bilateral 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 which in the end did not lead to a tax ruling.

II. Process of granting tax rulings

- A new body, i.e.,, College Internationale Fiscale Zekerheid, is introduced to ensure 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 term for an APA is maximum of five years. If facts and circumstances justify an exception (e.g.,, long-term contracts), the term may be maximum of 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**

The Netherlands has concluded tax conventions 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 fiscal arbitrage) and effective from 1 July 2019.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

The Dutch TP decree (as published by the Under-Minister 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 leaves room for interpretation or requires clarification on several issues. The goal of the decree is to provide insight into the position of the Dutch Tax 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.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Inland Revenue Department (IRD)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**
  - Sections YD 5, GB 2 and GC 6 to GC 19 of the Income Tax Act 2007 (ITA)
  - Tax Administration Act 1994 (TAA)
  - New Zealand's double tax agreements

    New Zealand introduced a 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

New Zealand is a member of the OECD.

New Zealand's TP 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.

That said, the local TP 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Inland Revenue 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. Inland Revenue expects New Zealand taxpayers to maintain contemporaneous TP documentation in two forms:

- **A master file, providing an overview of the multinational's global business operations and TP 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 TP 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 being required to lodge CbC reports**
  - 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.

c) Is your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, it is so as of 12 May 2016.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 12 May 2016.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

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 TP 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.

IRD provides guidelines detailing the expectations while producing local TP documentation.

- **Does a local branch of foreign company need to comply with the local TP rules?**

The same rules apply to local branch of foreign company in conjunction with the branch attribution rules.

- **Should TP documentation be prepared annually?**

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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

The TP reports should cover all the cross-border transactions that the MNE entities enter into. There are no hard and fast rules on having separate TP documents. Normally, MNEs prepare individual TP reports for each entity.

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality for TP documentation. However, a cost-risk assessment when producing TP 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.

- **BEPS master and local files**

There is no materiality limit; the BEPS master file and local file are 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 CbC reports in New Zealand.

- **Economic analysis**

There is no materiality limit in connection to economic analysis. Having said that, 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 TP documentation is prepared in local language (English) – 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:

  - Services (de minimis – total value below NZD1 million)
  - Small-value loans (i.e.,, cross-border associated-party loans by groups of companies for up to NZD10 million principal in total)

- **Any other disclosure or compliance requirement**

Taxpayers are required to complete 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**

4. TP return and related-party disclosures

- **TP-specific returns**

There is no separate TP return required to be filed in New Zealand (notwithstanding the disclosures outlined above). However, the IRD regularly does require that multinational companies and branches complete detailed TP questionnaires as part of their routine TP risk assessment activities.

- **Related-party disclosures along with corporate income tax return**

A company's income tax return requires disclosure of:

- Whether the taxpayer made payments to nonresidents (such as dividends, interest, management fees, "know-how" payments, royalties or contract payments)
- Whether the taxpayer holds an interest in a CFC

More detailed disclosure of various financial information and other data are required for interests held in CFCs.

- **Related-party disclosures in financial statement and annual report**

It's in accordance with the financial reporting disclosure standards.

- **CbCR notification included in the statutory tax return**

Yes, groups with 31 December balance dates are impacted first, with data to be collected for the 12 months beginning from 1 January 2016. For 31 March balance date and 30 June balance date groups, data needs to be collected for the 12 months beginning from 1 April 2016 and 1 July 2016 respectively.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 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 TP disclosures and return**

The lodging of TP documentation and specific TP forms is not required in New Zealand.

- **Master file**

It's to be submitted upon request.

- **CbCR preparation and submission**

A CbC report, if required, must be filed within 12 months after the relevant balance date.

- **CbCR notification**

There are no notification requirements.

b) TP documentation and local file preparation deadline

Although there is no explicit legislative requirement for a taxpayer to document its TP policies and practices, local taxpayers that prepare and maintain accurate and contemporaneous TP documentation are less likely to be exposed to penalties. The IRD will generally request a copy of a taxpayer's TP documentation as part of an income tax audit or TP risk assessment. The TP documentation supporting the tax position should be prepared before the date the relevant tax return is filed.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

This is not applicable.

- **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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes, it is applicable only for international transactions.

b) Priority and preference of methods

New Zealand legislation presents five available TP 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.

7. 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**

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, 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. roll forwards 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 vs. weighted average**

Generally, weighted average and Excel Quartiles are used for economic analysis when relevant.

- **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.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Even though there are no specific submission documents, any failure to provide information or documentation when requested can constitute an offense.

- **If an adjustment is sustained, can penalties be assessed?**

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

- **Is interest charged on penalties or payable on a refund?**

Interest would be usually imposed by the IRD at a rate of 8.22% (rate applying from May 2017).

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.

9. Statute of limitations on TP 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 general four years' time bar has been extended to seven years for the purposes of the TP rules. This extension applies only in cases where an audit or investigation has commenced within the standard four-year period.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP scrutiny 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 TP matters. A review can lead to an audit.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood of the TP methodology being challenged depends on the complexity of the cross-border associated-party transaction. Transactions involving provision of intangibles, financing and intra-group services tend to receive higher scrutiny during a TP 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 TP 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 TP methodology is challenged (high, medium or 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 undergo audit**

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

11. APA and MAP 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**

There is no fixed term; however, they are usually agreed upon for five-year periods.

- **Rollback provisions**

There are no rollback provisions in New Zealand for unilateral APAs. However, 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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).

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Tax Administration of Nicaragua (Dirección General de Ingresos, or DGI)

b) Relevant TP section reference

- Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Nicaragua is not a member of the OECD. Neither does it refer to nor follow the OECD Guidelines in practice.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

Yes

- Does a local branch of foreign company need to comply with the local TP rules?

Yes

- Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?

Yes, each taxpayer must comply with TP obligations on documentation.

b) Materiality limit or thresholds

- TP documentation

This is not applicable.

- BEPS master and local files

This is not applicable.

- CbCR

This is not applicable.

- Economic analysis

This is not applicable.

c) Specific requirements

[1] http://www.dgi.gob.ni/.

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **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 harbour available in Nicaragua.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed on or before 31 March for fiscal years that end in December; for special periods, three 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) TP documentation and local file preparation deadline

The TP documentation report must be readily available by the time the tax return is filed.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

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.

7. 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**

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 Excel interquartile range is common practice.

- **Fresh benchmarking search every year vs. roll forwards 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 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 vs. weighted average**

Weighted average is common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

Yes, penalties include 25% of the omitted taxable income.

- **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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 is low.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood that the TP methodology will be challenged is not yet known.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no thin-capitalization provisions in place in Nicaragua.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Federal Inland Revenue Service (FIRS)

b) Relevant TP section reference

- **Name of TP regulations or rulings and effective date of applicability**

The Income Tax (Transfer Pricing) Regulations, 2018 (new Regulations), is effective from the date of 12 March 2018. The new Regulations repealed the Income Tax (Transfer Pricing) Regulations, 2012, which took effect on 2 August 2012. The new Regulations have a commencement date of 12 March 2018 and will apply to financial years beginning after that date.

- **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 establishments can be within the scope of the TP Regulations.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 Guidelines do not have a force of law, they are persuasive. Based on the TP Regulations, the provisions of the relevant domestic laws prevail if there are any inconsistency with the OECD Guidelines or UN TP Manual.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

The new regulations incorporate the master file and local file as recommended under BEPS Action 13 on TP documentation.

- **Coverage in terms of master and local files**

Yes, please see response above.

- **Effective or expected commencement date**

It is effective as of 12 March 2018.

- **Material differences from OECD report template or format**

There are no material differences. TP documentation template or format adopted is as specified in BEPS Action 13 on TP documentation.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

A TP report that is compliant with the BEPS Action13 format should meet the requirement of the FIRS.

c) Is your 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, Nigeria became a signatory on 27 January 2016.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

[1] **https://www.firs.gov.ng/sites/Authoring/contentLibrary/a7b75064-cd91-4135-ae14 b3b4b8662409Income%20Tax%20(Transfer%20 Pricing)%20Regulations%202018.pdf.**

A local branch is not legally permitted in Nigeria; a foreign company can only incorporate as a subsidiary. Considering the aforementioned, a subsidiary and permanent establishment of a foreign company is required to comply with the local TP rules. Regulation 3(2) of the TP Regulations addresses this.

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP 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 like this. In practice, some taxpayers with multiple entities operating in Nigeria prepare a consolidated TP local file for all entities. However, the FIRS may challenge this practice in the future.

b) Materiality limit or thresholds

- **TP 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.

- **Base Erosion and Profit Shifting (BEPS) master and local files**

BEPS master and local files are currently required. The TP Regulations introduced the obligation for connected persons to prepare a master file and local file as part of their annual TP documentation. The 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.

- **Jurisdiction-by-jurisdiction reporting (CbCR)**

The Federal Government of Nigeria released the CbCR Regulations with an effective date of 1 January 2018. The Regulations 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 CbC report 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 who has the responsibility to file the CbC report 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 are resident for tax purposes in Nigeria, the MNE group may designate one of the constituent entities to file the CbC report and to 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.

- **CbCR notification and CbC report submission requirement**

The CbC report is required to be filed no later than 12 months after the last day of the MNE group's accounting year-end while the notification requirement should be made to the FIRS no later than the last day of the MNE's accounting year-end.

The CbCR notification is required to be filed no later than the last day of the MNE group's accounting year-end; and the notification requirement should be made to the FIRS no later than the last day of the MNE's accounting year-end.

- **CbCR notification included in the statutory tax return**

No

- **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.

[1] https://www.ey.com/Publication/vwLUAssets/Nigeria_releases_Jurisdiction-by-Jurisdiction_Reporting_regulations/$FILE/2018G_010021-18Gbl_TP_Nigeria%20releases%20CbCR%20regulations.pdf

- **Safe harbor availability, including financial transactions, if applicable**

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.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

- **TP-specific returns**

Taxpayers are required to complete the TP declaration and disclosure forms, which are to be submitted as part of an annual TP return, due at the same time that the tax return is filed. The tax return will be deemed incomplete without the TP return. The TP return consists of the TP disclosure form, the TP declaration form (for the first annual filing only, unless there are material changes to the information disclosed on the first form submitted), a copy of audited financial statements, a copy of the income tax self-assessment, and the income tax computation and all relevant schedules.

- **Related-party disclosures and TP-related appendices**

Taxpayers are required to complete and attach a TP declaration form to the annual tax return, as well as a TP disclosure form. The TP declaration form requires taxpayers to provide nonfinancial information about the taxpayer, such as details on the directors, parent company, related parties, auditors, tax consultants, company secretary and contact persons in the company. The TP disclosure form requires the taxpayer to indicate whether it has complied with the TP regulations and prepared TP documentation. The TP disclosure form also requires disclosure of financial information about intercompany transactions and business restructuring.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 eighteen months after the date of incorporation, whichever is earlier.

- **Other TP disclosures and return**

The return should be filed on or before 30 June for companies with a year-end of 31 December or eighteen months after the date of incorporation, whichever is earlier.

- **Master file**

All taxpayers with related-party transactions are now required to maintain master file and submit 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 CbC report 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.

- **Exemption from documentation preparation**

The new Regulations stipulate that 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 FIRS.

b) TP documentation and 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 of the income tax returns.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

TP documentation should be in place prior to the due date of filing the income tax return for the year in which the documented transactions occurred.

- **Time period or deadline for submission on tax authority request**

The TP documentation is required to be submitted to the FIRS within 21 days upon request. For a company with total intercompany transactions of less than NGN300 million, they must prepare and submit the TP documentation within 90 days from the date of receipt of a notice of request from FIRS.

6. TP methods

a) Applicability (for both international and domestic transactions)

The Nigerian TP Regulations do not differentiate between domestic and international transactions in their treatment of ensuring 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.

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.

7. 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 (exclusion of Japan, Hong Kong, mainland China and Singapore) and Eastern Europe — as Nigeria is faced with a lack of data.

- **Single year vs. multiyear analysis**

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 Excel 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. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 NGN10,000,000 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 six months after the end of each accounting year or eighteen 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 shall apply, except where there is an extension date granted 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 NGNGN10,000 for every day in which the failure continues, 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 of time for making a TP declaration, TP disclosures or submission of TP documentation. However, failure to meet the extended submission date granted shall attract the penalties for TP disclosures, declarations and TP documentation respectively.

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **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.

9. Statute of limitations on TP 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 wilful default, there is no statute of limitations.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is medium. The FIRS is now very active on audits especially given their experience and the volume of information at their disposal which enables them to perform risk assessment. They have also increased their 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.

a) Likelihood of TP methodology being challenged (high, medium or low)

The likelihood is medium. 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.

b) Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)

The likelihood is high, because many taxpayers are unwilling to refer a matter to court, so they may agree to reasonable adjustments to close the audits.

c) Specific transactions, industries and situations, if any, more likely to undergo audit

All cross-border receipts of services 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
- Intra-group services

11. APA and MAP 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 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.

- **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 a 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 the procedures for obtaining assistance from the 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

- **The Finance Act 2019 (the Act) was signed into law in January 2020 with the intention of reforming the domestic tax laws to better align them with international standard practices, among other reasons. The Finance Act restricts interest 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 five years immediately succeeding the assessment year.**

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Norwegian Tax Authority (NTA)

b) Relevant TP section reference

- **Name of TP 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 TP 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 Sections 8-11 and 8-12 have the references.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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
- Transaction analysis, including a two-sided function, asset and risk (FAR) analysis, and a description of the TP 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

[1]The Tax Assessment Act: **https://lovdata.no/dokument/NL/lov/2016-05-27-14/KAPITTEL_8#KAPITTEL_8.**

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

This is not relevant as there are no direct penalties for noncompliant TP documentation. A surtax may apply if there is a tax adjustment and the taxpayer has provided incomplete or insufficient information.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, in principle, TP documentation should be prepared contemporaneously. However, TP documentation has to be submitted only upon request from the tax authorities.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

In principle, Norway requires the preparation of TP documentation annually. However, companies have 45 days to submit TP documentation upon request from the tax authorities. There is a requirement to retain TP documentation for 10 years.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Stand-alone TP report is not required. However, every local entity has to be documented in accordance with the TP documentation requirements.

b) Materiality limit or thresholds

- **TP documentation**

There is a materiality threshold for TP 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**

TP documentation can be prepared in Norwegian, Swedish, Danish or English.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There is one TP-specific return to be submitted together with the tax return – RF-1123.

- **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 TP tax audits. The filing requirements apply to all transactions reported in the tax return.

- **Related-party disclosures in financial statement and 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 or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 31 May.

- **Other TP 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 financial year.

- **CbCR notification**

CbCR notification is part of the tax return and is to be submitted by 31 May.

b) TP documentation and local file preparation deadline

TP 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP 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 TP methods, including methods not described in the OECD Guidelines, if those methods provide arm's-length results.

7. 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. roll forwards 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.

- **Simple vs. weighted average**

Weighted average, as per common practice, is applicable.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are no specific TP 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 an adjustment is sustained, can penalties be assessed?**

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?**

Nondeductible 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 TP case. The assessment of penalties is becoming increasingly common.

9. Statute of limitations on TP assessments

The general statute of limitations for tax assessments in Norway is five years. TP documentation must be retained for at least 10 years.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of a TP tax audit is considered high.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

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 TP project involving all the major tax offices to further its focus on TP. This focus continues to

increase, in line with the rising number of dedicated TP 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.

11. APA and MAP 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.

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 TP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) 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 Tax Authority is of ministerial rank and has a designation of "Chairman."

Relevant TP section reference

- **Name of TP 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.

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Oman is not a member of the OECD, and OECD Guidelines is not binding on Oman. However, in the past, the Tax Authority has taken OECD Guidelines into account.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Oman has not yet implemented BEPS Action 13 for TP documentation.

- 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

No, however, in October 2017, Oman joined the BEPS Inclusive Framework, committing to the implementation of the four minimum standards, including TP documentation and CbCR (BEPS Action 13).

The Omani tax authorities expect that appropriate TP documentation will be made available under a tax audit or investigation. With the increased focus on TP as part of the BEPS measures, and CbCR as one of the minimum standards, it is likely that explicit documentation requirements may be introduced in Oman in the near future.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

It is not mandatory that TP documentation is prepared annually. However, it is recommended that it be prepared and maintained on an annual basis.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

In absence of regulations relating to TP documentation, it is not mandatory for such an MNE to have stand-alone TP reports for each entity. However, the same is recommended to substantiate pricing of related-party transactions.

b) Materiality limit or thresholds

- **TP documentation**

This is not applicable.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

This is not applicable.

- **CbCR notification and CbC report submission requirement**

There are no CbCR notification or CbC report submission requirements in Oman.

- CbCR notification included in the statutory tax return

  This is not applicable.

- Economic analysis

  This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

The Tax Authority does not distinguish domestic transactions from overseas transactions in scrutinizing charges from related parties during a tax assessment. However, on a case-to-case basis, due consideration may be given to the fact that both companies in a domestic transaction are taxpayers in Oman.

- **Local language documentation requirement**

The TP documentation need not be submitted in the local language; documentation in English is acceptable. However, a summary in Arabic could be requested by the Tax Authority.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

4. TP return and related-party disclosures

- **TP-specific returns**

Under the Executive Regulations, the formats of the tax returns have been modified to collect information from the taxpayer about related-party transactions. The disclosure requirement has been in effect since 2012.

- **Related-party disclosures and TP-related appendices**

Oman follows International Financial Reporting Standards (IFRS). Therefore, the Tax Authority expects taxpayers to disclose related-party transactions in their financial statements in accordance with IFRS. Tax returns that are filed by taxpayers are required to be supplemented with certain schedules, among which one such schedule is that of related-party transactions of the taxpayer.

- **Other information or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The filing deadline is 30 June.

- **Other TP disclosures and return**

They should be filed along with the corporate income tax return.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable as of now; however, it is expected to be announced shortly.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

The TP file needs to be prepared and maintained contemporaneously and can be submitted upon request.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

No pricing methods have been prescribed in the law or under the existing regulations. The law mentions that pricing shall be taken into account, assuming the terms upon which transactions would have been entered into by independent persons. This suggests that the CUP method may be preferred. The Tax Authority is expected to enact more rules and publish more guidance in the coming years. The 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.

7. 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. roll forwards 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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Currently, there are no specific TP penalty provisions prescribed in the law. However, normal tax provisions will be applicable.

- **If an adjustment is sustained, can penalties be assessed?**
- **The Tax Authority looks at each case independently.**
- **Is interest charged on penalties or payable on a refund?**

This is not specified.

b) Penalty relief

There are currently no specific TP penalties. Hence, penalty relief for TP is not applicable.

9. Statute of limitations on TP assessments

There are no separate TP assessments conducted in Oman. The TP assessment will be conducted as part of the regular tax assessment for a tax year. The statute of limitations to complete the regular tax assessment is three years from the end of the year for which a tax return is submitted.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of TP being reviewed as part of an audit is characterized as high because TP is a key area of focus, and has been the subject of inquiries and tax assessments by the Oman Tax Authority.

- **Likelihood of TP methodology being challenged (high, medium or low)**

Considering that the domestic tax law does not prescribe pricing methodologies, the likelihood of the methodology being challenged in a TP audit is also high.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The absence of TP guidelines makes it difficult for a taxpayer to prove the arm's-length basis of a related-party transaction. Hence, in case the Tax Authority challenges the TP methodology, adjustments to related-party transactions are highly likely to arise during a tax audit.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

There is no APA program available in Oman.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

This is not applicable.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 does 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. In view of this, any interest paid to related parties will be disallowed by the Tax Authority, applying the above thin-capitalization regulations.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Federal Board of Revenue (FBR)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

In 2016, the Pakistani Government approved new legislation to effectively implement CbCR and introduce formal TP 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 TP 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. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Pakistan is not a member of the OECD.

The legislation on TP documentation has implemented the OECD's model legislation into the Pakistan income tax law, including the three-tiered approach for TP documentation.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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, 21 June 2017

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, a branch or permanent establishment of a nonresident entity is required to comply with local TP rules.

- **Should TP documentation be prepared annually?**

Yes

- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

  Yes, each entity must prepare a separate local file.

b) Materiality limit or thresholds

- **TP documentation**

For local file: PKR50 million (approximately USD475,000)

For master file: every constituent entity having a revenue threshold of PKR100 million

- **BEPS master and local files**

Master file: local entity turnover of more than PKR100 million (approximately USD950,000)

Local file: needs to be maintained if related-party transactions exceed PKR50 million (approximately USD475,000)

- **CbCR**

MNE group's turnover should be EUR750 million or equivalent in PKR.

- **CbCR notification and CbC report submission requirement**

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.

- CbCR notification included in the statutory tax return

  No, CbC reporting 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).

- **Economic analysis**

Required

c) Specific requirements

- **Treatment of domestic transactions**

There is none specified.

- **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.

4. TP return and related-party disclosures

- **TP-specific returns**

No specific TP returns

- **Related-party disclosures and TP-related appendices**

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.

- **Other information or documents to be filed**

No documents are required to be filed.

5. TP 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 TP disclosures and return**

The TP 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**

12 months after the last day of the reporting fiscal year of the MNE group

- **CbCR notification**

By the tax return due date of the notifying entity

b) TP documentation and local file preparation deadline

There is no statutory deadline for preparation of TP documentation.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) 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, shall be applied. The fourth method shall apply only if the other methods cannot be reliably applied.

7. 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. roll forwards 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 vs. weighted average**

There is none specified.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to furnish a CbC report 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 shall also be subject to penalties mentioned under Section 182.

- **If an adjustment is sustained, can penalties be assessed?**

Yes

- **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.

9. Statute of limitations on TP assessments

The general statute of limitation, that is five years, shall apply.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Since the regulations are in place, the likelihood of TP audits may be high in the future.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is 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 TP methodology is challenged (high, medium or low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nonresident 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:

(a) The balance outstanding at that time on any debt obligation owed by the foreign-controlled resident company to a foreign controller or nonresident 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

(b) 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 nonresident 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:

(a) The paid-up value of all shares in the company owned by the foreign controller or a nonresident associate of the foreign controller at the beginning of the tax year

(b) 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 nonresident associate would be entitled to if the company were wound up at that time

(c) The accumulated profits and asset revaluation reserves of the company at the beginning of the tax year as the foreign controller or a nonresident 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:

(i) 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 nonresident associate of the foreign controller

(ii) 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 nonresident associate of the foreign controller would be reduced by virtue of the losses if the company were wound up at that time

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Administration of Panama (Dirección General de Ingresos, or DGI)

b) Relevant TP section reference

- **Name of TP 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 TP 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 TP, 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 TP 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 TP 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 TP 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 TP 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 TP 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. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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

  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

  A TP study and return will also be required.

c) Is your 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://dgi.mef.gob.pa/.

Yes, it is so as of 24 January 2019.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, the TP report and return must be prepared annually, updating all the information that allows a correct TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?

  Yes

b) Materiality limit or thresholds

- **TP documentation**

This is not applicable.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

Entities whose global and accumulated 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 jurisdiction-by-jurisdiction report.

- **CbCR notification and CbC report submission requirement**

On 27 May 2019, Panama's Government published, in the Official Gazette, Executive Decree No. 46, which addresses the disclosure of information in the jurisdiction-by-jurisdiction report (CbC report) 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 Jurisdiction-by-Jurisdiction Reports, which covers the standards for the automatic exchange of information of related parties or CbC report, on 24 January 2019.

Any ultimate parent entity of a multinational group is required to file the CbC report 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 CbC report 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.

Filing format and due date

The reporting entity must submit the CbC report annually in an "XML Schema" file within 12 months of the tax year-end. The CbC report must meet the guidelines and regulations, which will be defined by the Panamanian Tax Administration.

Tax year 2018 is the first CbC report required to be filed.

Sanctions for noncompliance in the supply of information

Failure to comply with the CbC report obligations 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 fifteen days will apply.

- CbCR notification included in the statutory tax return

  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, except for intercompany transactions conducted with, by and between preferential tax regimes in Panama.

- **Local language documentation requirement**

The TP documentation needs to be submitted in the local language, per Decree 390, Article 10.

- **Safe harbor availability, including financial transactions, if applicable**

There are no prescribed safe-harbor rules in Panama's TP regulations.

4. TP return and related-party disclosures

- **TP-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 and TP-related appendices**

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, purchases or other expense items.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 TP 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 CbC report annually within 12 months of the tax year end.

- **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) TP documentation and local file preparation deadline

The TP documentation report must be finalized by the time the TP return is filed.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

This is not applicable.

- **Time period or deadline for submission on tax authority request**

The taxpayer has 45 days to submit the TP documentation report once requested by the tax authorities in an audit or inquiry. However, in case the tax authorities request the master file, the taxpayer has only 10 days, approximately, to submit it.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes, it is applicable for both international and domestic transactions.

b) Priority and preference of methods

The TP 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.

7. 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**

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 Excel Quartile formulas is used.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is fresh benchmarking search every year. A TP 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 vs. weighted average**

Weighted average is common in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to file the TP 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 TP documentation report, no express monetary penalties are specified in the TP rules when taxpayers fail to maintain contemporaneous TP documentation. Nevertheless, the monetary penalties for noncompliance set forth in the Tax Code should apply by default.

- **If an adjustment is sustained, can penalties be assessed?**

TP 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)

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of a general tax audit currently is categorized as medium, whereas the likelihood of a TP assessment as part of a general tax audit is high. As part of a general tax audit, the tax authorities usually review compliance with TP regulations. The DGI requests TP documentation from most taxpayers annually and has been performing tax audits regarding TP issues. The DGI has a specialized TP unit within the Tax Administration and is active in tax audits regarding TP issues.

- **Likelihood of TP methodology being challenged (high, medium or low)**

When TP is scrutinized, the likelihood that the methodology will be challenged is high. In practice, the DGI has been questioning the use of the TP methods (i.e.,, the TNMM instead of resale price or cost plus) and comparables with losses, mainly.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

It is high, because in most audits, the DGI challenges either the methodology or the comparables.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

Internal Revenue Commission (IRC)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 files are not covered. CbCR has been adopted.

- **Effective or expected commencement date**

The first CbC reports are 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, the documentation does not need to be submitted but disclosure of the extent of documentation to support TP transactions is required in the annual income tax return.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation 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 TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

No

b) Materiality limit or thresholds

- **TP 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 PGK2.3 billion and above.

There is a CbCR notification and CbC report 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 FY 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 FY of the MNE.

The CbC report needs to be lodged no later than 12 months after the reporting FY of the MNE group. The CbC report 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 CbC reports 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**

Multinational groups with consolidated group revenue of less than PGK2.3 billion are excluded from CbC notification and reporting.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 and 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 or documents to be filed**

This is not applicable.

5. TP 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 TP 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 CbC report is required to be lodged within 12 months following the end of the reporting FY of the MNE.

- **CbCR notification**

It is required by the end of the reporting FY of the MNE.

b) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

TP 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 on tax authority request**

The normal time limit for responding to a request for information is 14 days.

6. TP methods

a) Applicability (for both international and domestic transactions)

There are no methods prescribed in the legislation. As per the Circular, the appropriate method as per the OECD Guidelines should be acceptable.

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.

7. 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**

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. roll forwards 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 vs. weighted average**

There is none specified; it depends on the reliability of data.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

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 TP.

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.

- **Is interest charged on penalties and payable on a refund?**

There is no provision for interest to be paid on refunds of overpaid tax or penalties.

b) 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.

9. Statute of limitations on TP assessments

There generally is no statute of limitations with respect to TP adjustments.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of an audit is low because limited resources are available to the IRC. But, if an audit is initiated, the likelihood of TP being reviewed as part of an audit is characterized as high.

- **Likelihood of TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or 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 is high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

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.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible. 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 (TP) regulations or rulings

a) Name of tax authority

Paraguayan Tax Authority (Subsecretaría de Estado de Tributación)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**
- **Law No. 5061/13: sale price adjustments on soybeans and their sub-products exclusively for fiscal year 2020**
- **Law No. 6380/19: transfer pricing regulations for fiscal year 2021**
- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Paraguay became an associate member of the OECD Development Centre in February 2017.

The local law also doesn't refer to or follow the OECD Guidelines in practice, given that it doesn't have a specific TP regulation.

The local law does not refer to the implementation of BEPS, nor to the use of the UN tax manual, nor does it mention adherence to provisions of the EU Joint Transfer Pricing Forum.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- **CbCR notification and CbC report submission requirement**

There is no CbCR notification and CbC report submission requirement in Paraguay.

- CbCR notification included in the statutory tax return

This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

It is not required to date. The TP rules will apply from fiscal year 2021.

- **Does a local branch of foreign company need to comply with the local TP rules?**

This is not applicable.

- **Does TP documentation have to be prepared annually?**

This is not applicable.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality limit.

- **Master file**

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

CbCR has not been introduced in Paraguay.

- **Economic analysis**

There is no materiality limit.

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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed on or before 31 December.

- **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) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

This is not applicable.

- **Time period or deadline for submission on tax authority request**

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. Benchmarking requirements

- **Local vs. regional comparables**

Local comparables prevail over international comparables.

- **Single-year vs. multiyear analysis**

Multiple-year analysis is preferred; three years is the common practice.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

A fresh benchmarking search is not required every year; roll forwards and updates are acceptable.

- **Simple vs. weighted average**

The weighted average for arm's-length analysis is preferred. In practice, three-year weighted average arm's-length ranges are frequently calculated.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed?**

This is not applicable.

- **Is interest charged on penalties or payable on refund?**

This is not applicable.

b) Penalty relief

This is not applicable.

9. Statute of limitations on TP assessments

This is not applicable.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is low, as there is no specific TP law in place.

- **Likelihood of TP methodology being challenged (high, medium or low)**

This is not applicable.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

This is not applicable.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

National Superintendency of Tax Administration (Superintendencia Nacional de Administración Tributaria, or SUNAT)

b) Relevant TP section reference

- **Name of TP 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 TP regulations in Peru.

TP 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. Most recently, on 31 December 2016, Legislative Decree 1312 was published, amending the Peruvian TP reporting requirements by implementing the changes proposed by the OECD under the BEPS Action 13 final report, in force since 1 January 2017.

Peruvian TP rules apply both to cross-border and domestic transactions between related parties and all transactions with residents in tax-haven jurisdictions.

The TP 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 TP 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

On 18 January 2018, the Resolution 014-2018 set forth the rules to submit the local file in Peru. The Resolution establishes the criteria to determine which taxpayers must submit the local file as well as the cases in which there is no obligation to submit it. The Resolution lists the information that must be included in the local file, which mainly refers to intercompany transactions, and whether they meet the arm's-length principle. Also, it contains the requirements for submission, and the cases in which the filing may be rejected.

On 24 August 2018, Peru published Legislative Decree No. 1381 (Legislative Decree) amending the applicability of the Peruvian TP rules and the treatment of import and export transactions.

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP analysis, as long as they do not contradict the PITL.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

In December 2016, through Legislative Decree 1312, Peru introduced a three-tiered TP documentation structure, consisting of a local file, a master file and a CbC report, 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 CbC report.

- **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 Annex I of the Superintendence Resolution N.º 014 -2018/SUNAT. The master file must be prepared in accordance with the format detailed in Annex I of the Superintendence Resolution N.º 163 -2018/SUNAT.

[1] **http://www.sunat.gob.pe/legislacion/renta/ley/capv.pdf.**

The CbC report must be prepared in accordance with the format detailed in Annex I of the Superintendence Resolution N.º 163 -2018/SUNAT and Annex I of the Superintendence Resolution N.º 188 -2018/SUNAT.

- **Sufficiency of BEPS Action 13 format report to achieve penalty protection**

Refer to the section "Penalty relief."

c) Is your 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 9 November 2018

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Peru has TP documentation guidelines and rules. The documentation needs to be filed in June of the following fiscal year.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Peru requires TP documentation preparation annually under its local jurisdiction regulations. All taxpayers that exceed the threshold levels need to prepare and submit a full TP documentation report for each fiscal year.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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 CbC report, in accordance to the dispositions included in the Superintendence Resolution N.º 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

- TP documentation

As of 2017, Peruvian TP 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 (approximately USD25 million) will be required to submit a master file with high-level information of the group's business operations, its TP policies, and its global allocation of income and economic activity. 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 (approximately USD2.9 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 filling should be done in June of the following year.

- CbCR

In Peru, a CbC report 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 PEN2.7 billion (approximately USD830 million). 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.

The deadline for the submission of the 2017 CbCR has been postponed to March 2019. The following reports should be filed in October of the following year.

- **Economic analysis**

The local file documentation requirement will apply only to taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (approximately USD2.9 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 (approximately USD129,000) but less than 400 tax units (approximately USD515,000). 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 (approximately USD515,000). 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 TP documentation needs to be submitted in the local language. According to Legislative Decree 1312, in general, the master file, the local file and the CbC report 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.

- **Any other disclosure or compliance requirement**

According to Legislative Decree No. 1312, an entirely new requirement to deduct intra-group service charges has been introduced. In this regard, as of 2017, taxpayers must also comply with the following requirements in order to deduct the costs and expenses for services received from its related parties:

1. **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.**

2. **Value for deductibility purposes is determined based on the sum of the costs and expenses incurred by the service provider plus a profit margin. For such purposes, evidence should also be shown on the reasonable criteria for allocating costs and expenses of the service provided.**

3. **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%.**

4. TP return and related-party disclosures

- **TP-specific returns**

Up to FY2015, an annual TP informative return had to be filed by taxpayers in June, if they met the following conditions:

- The amount of intercompany transactions exceeds PEN200,000.
- The company has been engaged in transactions from, to or through a low-tax jurisdiction for which the market value is less than the computable cost.

From FY2016, the reporting requirements are as follows:

- Local file: Taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (approximately USD2.9 million) and transactions with related parties exceeds 400 tax units (approximately USD 430k) 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) an Excel file supporting the calculations detailed in Annex III.
- Local file: Taxpayers whose annual revenue for the fiscal year exceeds 2,300 tax units (approximately USD2.9 million) and transactions with related parties between 100 tax units (approximately USD 123k) and 400 tax units (approximately USD 430k) 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 (approximately USD25 million) must file a master file informative return.
- The CbC report 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 (approximately USD830 million).

- **Related-party disclosures along with corporate income tax return**

This is not applicable.

- **Related-party disclosures in financial statement and annual report**

In accordance with Peruvian GAAP requirements

- **CbCR notification included in the statutory tax return**

This is no requirement to file CbCR notification.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 TP disclosures and return**

The date for the filing of the first local file for FY2016 is in April 2018. Beginning in FY2017, the submission deadline is in June of the following year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

- **Master file**

Master file should be filed in October of the following fiscal year.

- **CbCR preparation and submission**

The deadline for the submission of the 2017 CbCR has been postponed to March 2019. For remaining years, the deadline is in October of the following year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

- **CbCR notification**

There is no requirement.

b) TP documentation and local file preparation deadline

The date for filing of the first local file for FY2016 is in April 2018. From FY2017 and onward, the submission deadline is in June of the following year. The exact filing date for each taxpayer depends on an official schedule based on the taxpayer's identification number.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

The date for filing of the first local file for FY2016 is in April 2018. Beginning in FY2017, the submission deadline is in June of the following 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 on tax authority request**

On the assumption that the taxpayer did not file the TP documentation when it was due, the time given to submit it depends on each audit or inquiry.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes, it is applicable for both international and domestic transactions.

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 TP 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 TP 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 confirmed 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

Use of local, regional and global comparable operations are accepted by the law.

- **Single-year vs. multiyear analysis**

Multiyear testing is preferred.

- **Use of interquartile range**

Use of interquartile range is mandatory for the application of TP methods, as set forth by the PITL, whenever there are two or more comparable operations.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

The weighted average is preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Noncompliance with the obligation to file a TP 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, noncompliance with the obligation to file the TP 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?**

The adjustments to annual taxable income resulting from the tax authority's application of the TP 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 14.4%, whereas the annual interest rate on any overpayment of tax on refund is 6.0%.

b) Penalty relief

The penalty reductions that a taxpayer can be subject to for not complying with the obligation to have a TP technical study or present the TP information return are:

- A 100% penalty reduction if the taxpayer files the TP informative return after the due date but before it is detected and compelled to do so by SUNAT
- An 80% (with a TP study) or 90% (with a TP 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 TP study) or 80% (with a TP return) penalty reduction if the taxpayer rectifies the infraction but does not pay the corresponding fine within the time frame established by SUNAT

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of an annual tax audit is characterized as medium, as is the likelihood of TP issues being reviewed as part of a general audit.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The Peruvian Tax Administration increasingly conducts TP audits. Also, it has issued letters requesting that taxpayers amend their tax returns based on the results of the TP studies previously presented or fill the local reports that have not been filed on time. The likelihood that the TP methodology will be challenged during a TP review is characterized as high.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is high – refer to the section above for details.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The mining industry is more likely to undergo audit given that 60% of Peru's exports are minerals and approximately 30% are sold to related parties.

11. APA 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 December 31, 2020, interests paid are not deductible in the portion that exceeds the result of applying a coefficient 3:1 (debt: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.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Bureau of Internal Revenue (BIR)

b) Relevant TP section reference

- **Name of TP 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 Internal Revenue the power to allocate income and expenses between, or among, related parties and taxpayers, or make TP 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 TP regulations apply to cross-border transactions between associated enterprises and domestic transactions between associated enterprises.

The TP 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 audit procedures and techniques in the conduct of audit of 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 intra-group 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.

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

The Philippines is not a member of the OECD.

The TP regulations are largely based on the OECD Guidelines, and refer to them for further guidance and examples.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

The Philippines has not yet adopted BEPS Action 13 for TP documentation.

- Coverage in terms of master file, local file and CbCR

  This is not applicable.

[1] **https://www.bir.gov.ph/.**

- 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.

- **CbCR notification and CbC report submission requirement**

No

- CbCR notification included in the statutory tax return

  This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, a TP report has to be prepared contemporaneously.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Should TP documentation be prepared annually?**

TP 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 TP documentation on year one, and the benchmarking updates on years two and three, should be sufficient.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

There is none specified, although stand-alone TP report for each entity is done in practice.

b) Materiality limit or thresholds

- **TP documentation**

There is none specified.

- **BEPS master and local files**

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 TP documentation is prepared in English which is an official language in the Philippines.

- **Safe harbor availability, including financial transactions, if applicable**

There is no specific safe harbor available.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There is no requirement for filing TP-specific returns.

- **Related-party disclosures along with corporate income tax return**

There is no related-party disclosures requirement in the annual income tax return.

- **Related-party disclosures in financial statement and annual report**

Related-party disclosures are required only in the notes to the audited financial statements, which are filed with the BIR together with the annual income tax return.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 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) TP documentation and local file preparation deadline

The TP 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 TP issues. These arrangements should be reviewed when preparing tax returns.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

TP documentation is not required to be submitted together with the income tax return, but should be submitted to the BIR when authorities require or request it.

- **Time period or deadline for submission on tax authority request**

The documentation should be submitted within five working days from receipt of the letter request.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The TP 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.

7. 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 there are no local comparables available.

- **Single-year vs. multiyear analysis**

The regulations do not specify, but the Transfer Pricing Audit Guidelines provides the use of multiple-year data to increase comparability.

- **Use of interquartile range**

The Transfer Pricing Audit Guidelines suggests the use of an interquartile range to enhance the reliability of the analysis.

- **Fresh benchmarking search every year vs. roll forwards 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 TP 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 vs. weighted average**

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 provides selection criteria, which are commonly used in practice, including criteria on independence and level of revenue.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The TP regulations adopt the provisions of the Tax Code and other applicable laws in imposing penalties on any person who fails to comply with, or violates, the regulations.

- **If an adjustment is sustained, can penalties be assessed?**

In the case of a deficiency assessment because of a TP adjustment, the general penalties apply – a 25% surcharge (50% in fraud cases) and 12% interest per annum.

- **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 TP regulations. The regulations provide for an MAP mechanism, but this has not been implemented yet.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is 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 TP methodology being challenged (high, medium or low)**

The likelihood is high. If TP is reviewed, then the TP methodology may be challenged.

- **Likelihood of an adjustment if TP methodology is challenged (high, medium or low)**

The likelihood is high for the same reason as given above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

The TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no formal thin-capitalization rules in Philippines. However, the Transfer Pricing Audit Guidelines provides that the audit of intra-group 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 intra-group loan transaction that are charged to the taxpayer.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

- Tax Inspection Department in the Ministry of Finance coordinates and supervises the work of the local tax inspection offices and bureaus.
- Tax System Department in the Ministry of Finance, created in April 2018, is a department dealing with tax avoidance, APAs and supervision of the uniform application of the tax law.
- National Revenue Administration is a specialized authority tasked with realizing tax revenue and supporting taxpayers in proper execution of their tax obligations.

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

Tax laws and decrees that govern TP 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)
- TP Decree of the Minister of Finance from 21 December 2018 on the TP documentation with regard to CIT (Journal of Laws 2018, Item 2479, as amended)
- TP Decree of the Minister of Finance 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
- TP Decree of the Minister of Finance from 21 December 2018 regarding TP with regard to CIT (Journal of Laws 2018, Item 2491, as amended)
- TP Decree of the Minister of Finance from 21 December 2018 regarding the information about TP with regard to CIT (Journal of Laws 2018, Item 2487, as amended)

Article 11a of the CIT Act and Article 23 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 11a of the CIT Act and Article 23 of the PIT Act. TP penalties are defined in Articles 58a and 58b of the Tax Ordinance Act.

According to Article 11a and Article 23 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 17 May 2017 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.

TP 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 TP requirements (as mentioned below). Additionally, since January 2019, new TP regulations came into force in Poland as outlined in this document.

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Poland is a member of the OECD.

The Polish tax authorities sometimes refer to the OECD Guidelines when applying TP principles (e.g.,, during APA negotiations).

Also, reference to the OECD Guidelines is made with respect to tax havens. According to Article 11j and Article 23 of the PIT Act, the list of countries recognized as tax havens is issued in regard to settlements made by the OECD. At the same time, the TP methods presented in the Polish rules are based on the authorized OECD approach.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Yes, Poland has adopted and implemented it. 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 the 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 do not fully cover explicit local file requirements (examples above).

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, TP regulations (binding from January 2017, and from January 2016 for CbCR) introduced fundamental changes to the scope of the mandatory TP 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 TP documentation
- Group TP 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 obliged to prepare the documentation

- CbCR: for capital groups with consolidated revenues or costs of more than EUR750 million, the parent company to prepare the CbC report

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 foreign company need to comply with the local TP rules?**

Yes, branches need to comply with local TP rules.

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, it is. According to the Polish TP requirements, each taxpayer engaged in the transactions exceeding the thresholds described below is obliged to prepare a stand-alone TP report and benchmarking analysis.

b) Materiality limit or thresholds

- **TP 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:

a) The entity is required to prepare local documentation

b) The entity belongs to the group of related entities for which consolidated financial statements are prepared

Consolidated revenues of the group exceeded PLN200 million (approx. USD50.4 million) in the previous financial year.

- **Local file**

For 2019, the obligation to prepare local file documentation applies to related entities that conducted transactions meeting the thresholds presented below.

The materiality threshold for particular transactions to include in the local file for 2019 are:

- PLN100,000: transactions conducted with entities from tax havens
- 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 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. At the moment 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.

- **Any other disclosure or compliance requirement**

Apart from the specific requirements described above, there are no additional disclosure or compliance requirements.

4. TP return and related-party disclosures

- **TP-specific returns**

Since 2019, a new TP-R form has been introduced. All taxpayers obliged 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, taxable person must include detailed information (including results of benchmarking analysis or TP adjustments in applicable, 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. The taxpayer is also required to indicate in the return whether they were required to prepare a TP 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 TP documentation of transactions with related entities**
- **Reporting agreements with nonresidents 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 nonresident exceeds EUR5,000 and the nonresident owns an enterprise, branch or representative office in Poland.
  - The total amount of liabilities or receivables resulting from all agreements concluded with the same nonresident 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 nonresidents 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 14 days 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 31 May 2006, which contains the model report on the implementation of a selected TP method for CIT purposes (Journal of Laws No. 99, Item 687).

- The obligation of preparing TP documentation would not apply to transactions for which a taxpayer obtains an APA.
- Poland's CIT law restrictions 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.

The bill transposes a number of the measures set out in the European Union Anti-Tax Avoidance Directive (ATAD). As such, this bill includes, among other things, a PLN3 million plus 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. The majority of royalties and service fees might become nondeductible (restrictions go much further than the OECD BEPS recommendations), if exceeding certain thresholds.

- **Related-party disclosures in financial statement and 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 or documents to be filed**

There are no additional information or documents to be filed apart from those presented above.

5. TP 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 TP disclosures and return**

Taxpayers are also required to submit an electronic form (TP-R form). The form 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 year-end for the master file.
- **CbCR preparation and submission**
  - The filing deadline for the CbC report is 12 months from the year-end.
- **CbCR notification**
  - The filing deadline for the CbC notification is three months from the year-end.

b) TP documentation and local file preparation deadline

- It is 9 months from year-end for the local file and 12 months from year-end for the master file.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 on tax authority request**

The documentation should be submitted within seven days of the request.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Yes

- **Domestic transactions**

The local TP documentation does not have to include 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 TP documentation requirements are also provided.

b) Priority and preference of methods

Generally, the TP 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 TP 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 the first-choice methods. Currently, the division of methods into two groups has been terminated; taxpayer can choose independently the most appropriate method for them.

Also, if the use of these five methods is impossible, taxpayer 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.

7. 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**

There is a preference for multiyear testing although not expressed in the regulations. EY Poland usually provides 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. roll forwards and update of the financials**

No, fresh benchmarking needs 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 vs. weighted average**

There is a preference for the weighted average for arm's-length analysis (not mentioned in the regulations).

- **Other specific benchmarking criteria, if any**
  - Taxpayer should present financial indicators both accepted and rejected during the preparation of benchmarking analysis.
  - Taxpayer is obliged to present part of the information used for benchmarking analysis in electronic form, which enables editing, formatting and sorting data.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The questioning of some costs as tax-deductible by the tax authorities may result in their exclusion from the cost base and an increase of the profit taxed. Such a write-up will be taxed.

Since 2019:

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 PLN15,000,000 – 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 noncompliance (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 PLN3.36 million) (Article 80 Section 1 KKS)
- Unreliable preparation of documentation: fine of up to 720 daily rates (i.e.,, up to PLN20.16 million), imprisonment or both (Article 54 Section 1 KKS)
- Submission of false information: a fine of up to 240 daily rates (i.e.,, PLN6.72 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 TP 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 (i.e.,, up to PLN3.36 million) (Article 80e Section 1 KKS)

- **If an adjustment is sustained, can penalties be assessed?**

Yes, but there are no particular regulations in place.

- **Is interest charged on penalties or payable on a refund?**

Yes, the current rate is 8%.

b) Penalty relief

It will be there if 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).

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of an annual TP 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 (i.e.,, 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 TP methodology being challenged (high, medium or low)**

There is a high likelihood that the TP methodology will be challenged if TP is reviewed as part of the audit. The tax authorities usually engage in a dedicated TP audit if they notice irregularities in intercompany settlements or believe that the financial result is biased by TP. In such cases, they often challenge the TP methodology applied.

The 2019 rules introduced the possibility of recharacterization of a transaction or even declaring a transaction non-existent (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 TP methodology is challenged (high, medium or low)**

The likelihood is high. During TP 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.,, as a result of business restructurings); and year-end adjustments (especially if they are one-off profit transfers).

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

In practice, there is no focus on particular industries. The authorities try to focus on an automated approach, i.e.,, using databases to find loss makers or limited risk companies with highly variable financial results or companies with high spending on intra-group services.

11. APA and MAP 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 Tax Ordinance 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**

There is none specified.

- **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 his 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:

- TP documentation
- Financial statement
- Relevant agreements
- Benchmarking analysis
- Protocols from tax control or tax decisions regarding double taxation
- Correspondence with foreign tax authorities concerning adjustments

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

From 2019, the taxpayer is obliged 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.,, treat 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.

What is more, according to Article 15c of the CIT Act, the taxpayers shall be obliged to exclude (not treat as tax-deductible) the costs of debt financing in the part in which a surplus of the costs of debt financing exceeds 30% of EBITDA.

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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 TP section reference

- **Name of TP 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.

Ministerial Order 1446-C/2001 of 21 December (TP Ministerial Order) sets the rules for the application of Article 63 and the TP documentation requirements for eligible taxpayers.

Articles 121-A and 121-B of the CITC cover the obligation for multinational groups to submit CbC reports and, for its constituent entities, to communicate the reporting entity.

A detailed APA procedure, setting out the APA submission requirements, process and fees, was implemented by Ministerial Order 620-A/2008 on 16 July 2015 (effective on 17 July 2015) and is currently foreseen in Article 138 of the CITC (updated by Law No. 119/2019 on 18 September 2019).

Furthermore, a general anti-tax avoidance provision applies to all simulated transactions, and the rules embodied in the interest limitation, CFCs and anti-tax haven regimes may be used in the general context of TP.

- **Section reference from local regulation**

See details above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Portugal is a member of the OECD. The Portuguese regulations and tax practice follow the OECD Guidelines and the TP Ministerial Order indicates that in cases of greater technical complexity, 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 the CbC reports has been introduced in Portugal.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Portugal adopted the global minimum standard included in Action 13 of the OECD BEPS project for the international automatic exchange of CbC reports.

- Coverage in terms of master file, local file and CbCR

  The documentation must follow the format prescribed in TP Ministerial Order 1446-C/2001 of 21 December.

- Effective or expected commencement date

  CbCR rules apply to FYs starting on or after 1 January 2016.

- Material differences from OECD report template or format

  The documentation must follow the format prescribed in TP Ministerial Order 1446-C/2001 of 21 December. Full local TP documentation, which combines information from both the master file and local file in terms of contents, in addition to specific local requirements, should be prepared.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  There is no penalty protection regime in Portugal. The documentation will be accepted if fully compliant with the format prescribed in TP Ministerial Order 1446-C/2001 of 21 December.

c) Is your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, the Portuguese TP rules require taxpayers, with turnover and other income equal to or exceeding EUR3 million in the prior year, to prepare contemporaneous documentation in the Portuguese language. The documentation should provide evidence of market parity regarding the terms and conditions agreed, accepted and practiced in the transactions performed with related parties, as well as evidence that the best method was selected and used.

In addition, taxpayers under the authority of the Large Taxpayers Unit have to submit TP documentation prepared according with the format prescribed in TP Ministerial Order 1446-C/2001 of 21 December, within the deadline for submission of the Annual Tax and Accounting Return (IES), on or before 15 July (7 months and 15 days after tax year-end).

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

This is applicable for entities with a turnover of EUR3 million in net sales and other revenue in the previous tax year.

- **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**

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.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Only the annexes referred below (within the Annual Tax and Accounting Information Return or "IES"):

The main disclosure requirements at this level are contained in annex H (TP annex) of the Annual Tax and Accounting Information Return (or IES), which include (on a yearly basis) the following information:

- Identification of the related entities
- Transactions conducted with each of the related parties
- The nature of the transaction, with emphasis on the inclusion of details regarding guarantees or collateral received or granted
- Whether the counterparty entity is subject to a more favorable tax regime

- Amounts in respect of any TP adjustments made as a result of noncompliance with the arm's-length principle
- Any changes to the TP methods applied, from one year to the other
- if applicable, a declaration of any change in the business model that occurred during the FY
- 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**

This is not applicable.

- **Related-party disclosures in financial statement and 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 or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The CIT return should be filed on or before 31 May (last day of the fifth month following tax year-end).

- **Other TP disclosures and return**

The Annual Tax and Accounting Information Return should be filed on or before 15 July (7 months and 15 days after tax year-end).

- **Master file**

This is not applicable.

- **CbC report preparation and submission**

The deadline for submission of the CbC report 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Yes, taxpayers under the authority of the Large Taxpayers Unit have to submit TP documentation prepared according with the format prescribed in TP Ministerial Order 1446-C/2001 of 21 December, within the deadline for submission of the Annual Tax and Accounting Return (IES), on or before 15 July (7 months and 15 days after tax year-end).

- **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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

The TP methods described in the Portuguese legislation are based on the OECD Guidelines and therefore do not introduce changes to the widely accepted methods recognized among TP administrators and practitioners.

In fact, Portuguese rules also state (in paragraphs 1 and 2 of Article 4 of the Transfer Pricing Ministerial Order) 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.

This principle reflects a best-method rule. This implies that a taxpayer is expected to use the method or methods most suitable to each case, explaining not only the reason a certain method is considered the most appropriate to test whether the controlled transactions comply with the TP rules, but also why other methods are rejected.

7. 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**

There is no reference to any preferences regarding single-year vs. multiyear analysis in the local legislation. The practical approach has been to apply a multiyear analysis.

- **Use of interquartile range**

Interquartile range calculations are used following general statistics rules for respective calculations.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

The use of fresh benchmarking derives directly from the requirements that documentation must be contemporaneous. However, there are no direct references in the law as to whether fresh benchmarking is required or not, or if updated financials are acceptable or not. Fresh benchmarking is advised.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to comply with documentation requirements may result in a possible shift of 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 CbC report is 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 (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 noncompliance 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 noncompliance related to improper fulfilment 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 noncompliance 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?**

TP adjustments are subject to the general tax penalty regime. A late-payment interest penalty is also applicable for TP adjustments per year.

- **Is interest charged on penalties or payable on a refund?**

Refer to the section above.

b) 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 administrative level and at tax court.

9. Statute of limitations on TP 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 a 10-year period.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of an annual tax audit, in general, is 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.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is medium that the TP methodology will be challenged if TP is reviewed as part of the audit.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood of an adjustment, if TP methodology is challenged, is high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

Recurrent loss-making companies which often perform significant cross-border transactions: contradictions disclosed in the IES 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.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

An APA program was included in the Portuguese CITC in 2008 (Article 138), which was amended by Law No. 119/2019 on 18 September 2019. Ministerial Order 620-A/2008 allows taxpayers to negotiate the unilateral, bilateral and multilateral APAs.

- **Tenure**

APAs cannot exceed a four-year period, which may be renewable upon a written request to the tax authorities. The Portuguese legal time frame foresees the following phases:

  - Pre-filing phase: entails a preliminary evaluation of the initial taxpayer proposal and may involve joint meetings with the tax authorities
  - Submission phase: involves analysis of the APA proposal, which, in any case, should be presented at least 180 days before the beginning of the applicable tax year; tax authorities' time frame to evaluate the content of an APA proposal being within 180 days in the case of unilateral agreements and extending to a 360-day period in the case of bilateral and multilateral agreements
  - Negotiation phase
  - Conclusion of the APA process

- **Rollback provisions**

There are no rollback provisions.

- **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)

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Puerto Rico Treasury Department

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

There are regulations to implement the provisions of Sections 1046 and 1047 of the 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 the said Code (1994 Code Regulations).

This was effective 30 days after its publication on 22 December 2000.

Although the 1994 Code was repealed by Act No. 1 of 31 January 2011, as amended, known as the Puerto Rico Internal Revenue Code of 2011 (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.

- **Section reference from local regulation**

Article 1047-1 through Article 1047-4 of the 1994 Code Regulations are the references.

Such articles regulate the current provisions of Section 1040.09 of the 2011 Code.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 were modeled after Section 482 of the United States Internal Revenue Code of 1986, as amended, and its regulations.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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) is incurred by the taxpayer unless such taxpayer voluntarily provides, along with its income tax returns, a TP Study which 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 United States Internal Revenue Code of 1986, Title 26 of the United States Code, as amended (US Code).

The aforementioned TP provisions are applicable from tax years beginning after 31 December 2018. Up to this date, the Puerto Rico Treasury Department has not issued regulations to interpret these provisions.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Local branches who wish to fully deduct the allocated expenses from their Home Office located outside of Puerto Rico, must submit, along with their income tax returns, the TP Study under Section 482 of the US Code which includes an analysis of the operations taking place in Puerto Rico as provided above.

- **Should TP documentation be prepared annually?**

Up to this date, the Puerto Rico Treasury Department has not issued regulations with respect to the TP Study provisions. It is unclear whether companies will need to prepare a TP Study annually in order to be able to fully deduct their intercompany expenses subject to the 51% disallowance each tax year.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Up to this date, the Puerto Rico Treasury Department has not issued regulations with respect to the TP Study provisions. It is unclear whether MNEs with multiple entities may be able to submit consolidated TP studies to cover all the entities operating in Puerto Rico.

b) Materiality limit or thresholds

- **TP 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**

This is not applicable.

- **Local language documentation requirement**

Documentation may be submitted in English or Spanish.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 and annual report**

No

- **CbCR notification included in the statutory tax return**

No

- **Other information or documents to be filed**

This is not applicable.

5. TP 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.

- **Other TP disclosures and return**

No

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

No

- **CbCR notification**

No

b) TP documentation and local file preparation deadline

No

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

The TP Study related to the 51% disallowance must be filed along with the income tax return of the entity.

- **Time period or deadline for submission on tax authority request**

- **This is not applicable.**

6. TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

This is 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. roll forwards and update of the financials**

This is not applicable.

- **Simple vs. weighted average**

This is not applicable.

- **Other specific benchmarking criteria, if any**

This is not applicable.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

This is not applicable.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

Generally, the Puerto Rico Treasury Department may assess tax deficiencies up to four years after filing the income tax return. Since the TP Study related to the 51% disallowance must be filed with the income tax return, it would appear, the Secretary may challenge a TP Study within the four-year period for assessment of deficiencies.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Low

- **Likelihood of TP methodology being challenged (high, medium or low)**

Low

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Low

- **Specific transactions, industries and situations, if any, more likely to undergo audit Entities that are considered large taxpayers may be subject to increased likeliness of a tax audit. However, the general audit risk is low.**

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

State tax regime: General Tax Authority (GTA)

Qatar Financial Centre (QFC) tax regime: QFC Authority (QFCA) Tax Department

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

State tax regime: Income Tax Law No. 24 of 2018 (Qatar Income Tax Law), effective from 13 December 2018, and its related Executive Regulations that were issued on 11 December 2019 should be applied to taxpayers in Qatar, except for those registered in the QFC.

"Related party" is defined under Article 52 of the Executive Regulations of the Qatar Income Tax Law No. 24 of 2018.

QFC tax regime: This tax regime is separate and distinct from the state tax regime. The QFC Regulations, which were enacted pursuant to Law No. 7 of 2005 on the promulgation of the law for the QFC, and the QFCA Tax Manual (TP Manual), should be applied to QFC-registered entities.

"Associated person" is defined under Section 56 of the QFC Regulations.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Qatar is not a member of the OECD but is a member of the BEPS Inclusive Framework. In practice, Qatar generally follows the OECD Guidelines.

On 19 December 2017, Qatar signed the Multilateral Competent Authority Agreement on the exchange of jurisdiction-by-jurisdiction reports.

On 9 September 2018, Qatar published new jurisdiction-by-jurisdiction reporting (CbCR) requirements that are in line with the OECD's BEPS Action 13 Final Report in the Official Gazette. These requirements also apply to entities that are registered under the QFC.

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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Yes

- Coverage in terms of master and local files

  The master file and local file requirement has been recently introduced within the Executive Regulations of the Qatar Income Tax Law. As of May 2020, further guidance and clarification are expected to be issued by the GTA.

- Effective or expected commencement date

  Effective from the financial or taxable year beginning on or after 13 December 2018

- 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 should be sufficient.

c) Is your 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 19 December 2017.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

State tax regime: The master file and local file requirements have been recently introduced within the new Executive Regulations of the Qatar Income Tax Law. Subject to certain

conditions, they should be submitted by the corporate income tax return filing deadline.

QFC tax regime: The burden of proof is on the QFC-registered taxpayer to establish that the actual conditions are consistent with the arm's-length conditions. There are four classes of records or evidence that will need to be considered, which are:

- Primary accounting records
- Tax adjustment records
- Records of transactions with an associated business
- Evidence to demonstrate an arm's-length result (including a description of the intercompany transactions and a functional analysis)

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TPD be prepared annually?**

State tax regime: Yes, it should be.

QFC tax regime: A TP report is specifically recommended when there is a risk that it may be perceived that the QFC-registered taxpayer's intercompany transactions are not based on the arm's-length principle (e.g.,, the taxpayer is incurring losses during the taxable year, or profits appear lower than in previous years or when compared with competitors in the industry, among other exceptional circumstances).

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

State tax regime: The requirement to submit TP documentation is subject to total revenues or total assets threshold. The amount will be determined by the GTA soon.

If the threshold is not met, a TP documentation should still be prepared and available upon request by the GTA.

QFC tax regime: No amount has been specified.

- **BEPS master and local files**

State tax regime: Yes, they are acceptable.

QFC tax regime: BEPS local file should be acceptable.

- **CbCR**

The materiality limit is an annual consolidated group revenue of QAR3 billion (approximately USD824 million) in the preceding fiscal year.

- **CbCR notification and CbC report submission requirement**

Multinational enterprise (MNE) groups whose ultimate parent entities are tax residents in Qatar and have annual consolidated group revenues that exceed QAR3 billion in the preceding fiscal year are required to comply with CbCR notification and CbC report submission requirements for fiscal years commencing on or after 1 January 2017 (FY2017) in Qatar.

The CbCR requirements for Qatar tax-resident entities that are members of MNE groups whose ultimate parent entities or surrogate parent entities are tax residents outside Qatar are currently suspended or deferred.

- CbCR notification included in the statutory tax return

  There is none specified.

- Economic analysis

  There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

There is no distinction between domestic and international transactions under the current TP regulations. Therefore, it is expected that all related-party transactions comply with the arm's-length standard and TP rules.

- **Local language documentation requirement**

State tax regime: TP documentation prepared in English is currently acceptable by the GTA. However, in practice, in the event of a preapproval application to use an OECD method other than CUP, a summary memorandum should be prepared in Arabic and submitted to the GTA.

However, it remains to be seen whether the master file and local file requirements prepared in English under the new Executive Regulations are acceptable or not.

QFC tax regime: English documents are acceptable to the QFC.

- **Safe harbor availability, including financial transactions, if applicable**

State tax regime: There is no explicit reference to safe-harbor rules in the new Regulations. However, it sets out a limit on

the deductibility of interest on related-party loans, i.e.,, up to three times the shareholders' equity recorded in the financial statements for the accounting period.

QFC tax regime: Under the TP Manual, the safe-harbor debt and equity ratios are as follows:

- The ratio is 2:1 for a nonfinancial institution.
- The ratio is 4:1 for a financial institution.

The safe-harbor debt and equity ratios relate only to the quantum (not the interest rate) of the loan.

- Any other disclosure or compliance requirement

1. **TP form has recently been introduced within the Executive Regulations of the Qatar Income Tax Law. However, as at May 2020, the template and the threshold has not yet been provided by the GTA. The TP form is required to be submitted by the tax return deadline of Qatar entities.**
2. **There is a TP application with the GTA to use an OECD Transfer Pricing method, other than CUP method, in determining the arm's-length pricing of related-party transactions.**

4. TP return and related-party disclosures

- TP-specific returns

State tax regime: There is a requirement to complete a TP form.

QFC tax regime: There is currently no requirement to prepare a TP-specific return separately or with the corporate income tax return.

- Related-party disclosures and TP-related appendices

State tax regime: Related-party disclosures are expected to be required in the TP form in addition to the related-party information in the notes to the audited financial statements which are filed with the GTA in support of the annual tax declaration.

QFC tax regime: Related-party transactions must be disclosed in the notes to the audited financial statements, which are filed with the QFC Tax Department, along with the income tax return. A QFC branch is not required to submit full financial statements.

There are currently no related-party disclosures or TP-related appendices, additional forms and documents in the QFC.

- Other information or documents to be filed

State tax regime: TP application with the GTA to use an OECD Transfer Pricing method, other than CUP method

QFC tax regime: none

5. TP documentation and disclosure timelines

a) Filing deadline

- Corporate income tax return

It should be filed within four months of the end of the accounting period. For taxable year ended 31 December 2019, the deadline has been extended to 30 June 2020.

- TP form

It should be submitted by the corporate income tax return deadline.

- 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 required MNE groups whose ultimate parent entities are tax residents in Qatar to file CbCR notification with Qatar's authority 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) TP documentation and local file preparation deadline

It is recommended that the TP documentation be prepared and be readily available on or before the annual tax return is filed with the local authorities.

c) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP documentation or local file?

Yes, master file, local file and TP form should be submitted by the corporate income tax return filing deadline.

- Time period or deadline for submission on tax authority request

In the event where the Qatar entities do not meet the conditions or prescribed thresholds and hence are not required to submit the master files and local files within the statutory

deadline, the TP documentation should be readily available for submission within two to four weeks upon request.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

There is no distinction between domestic and international transactions under the current TP legislation. Therefore, it is expected that TP methods would equally apply.

State tax regime: Under the Executive Regulations to the Qatar Income Tax Law, the arm's-length price should be determined using the CUP method. This price is determined on the basis of a comparison with similar goods or services provided among unrelated parties, particularly accounting for the:

- Characteristics of the goods or service
- Contractual terms
- Functions performed, assets used and risks incurred
- Economic circumstances

When the CUP method cannot be applied, any other OECD method can be used, which is subject to approval by 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 in preference to European comparables.

7. 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**

A multiyear analysis is adopted.

- **Use of interquartile range**

The interquartile range is used.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

Roll forwards and update of the financials of a prior study is used provided the benchmarking search is not more than three years old.

- **Simple vs. weighted average**

The weighted average is adopted.

- **Other specific benchmarking criteria, if any**

Independence threshold of 50% and above is applicable.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are currently no specific TP penalties for failure to maintain TP documentation. In practice, the general late filing penalties may apply.

The TP assessment of the Qatar tax authorities may become final in the event of failure to provide TP documentation and supporting information upon request.

- **If an adjustment is sustained, can penalties be assessed?**

State tax regime: Financial penalties, in the form of interest imposed for noncompliance with income tax rules under the Qatar Income Tax Law, may apply in the case of a deficiency assessment due to TP adjustments.

Interest on any additional income tax due resulting from a TP 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 tax understated. 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 TP 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).

- **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 Qatar.

An appeal may be lodged to the Qatar tax authorities or to a body designated by the relevant local tax regulations.

9. Statute of limitations on TP assessments

State tax regime: A TP 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.

10. Likelihood of TP scrutiny or related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

State tax regime: The likelihood is medium to high.

QFC tax regime: The likelihood is high; the QFCA Tax Department has a rigorous process in place compared with GTA with respect to TP reviews and audits to date.

- **Likelihood of TP methodology being challenged (high, medium or low)**

State tax regime: The likelihood of a challenge to the TP methodology is characterized as low to medium, provided that sufficient TP documentation is available.

QFC tax regime: The likelihood of a challenge to the TP methodology is characterized as medium.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

State tax regime: The likelihood of an adjustment is characterized as low to medium, provided that sufficient TP 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 undergo audit**

State tax regime: The GTA recently has challenged management fees and head office cost allocations.

QFC tax regime: The QFCA Tax Department has recently focused significantly on intra-group services, intercompany loans and thin capitalization.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

State tax regime: There is currently no formal APA program in place. However, an APA regulation is 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Refer to the sections above.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tax Administration of Serbia

b) Relevant TP section reference

- **Name of TP 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 TP documentation (latest update effective from 1 January 2020).

The rule book on TP and 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 (effective from 30 January 2014).

- **Section reference from local regulation**

Article 59 of the CIT Law defines related parties and associated enterprises.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Serbia is not an OECD member; however, Serbian TP provisions and documentation requirements are generally based on the OECD Guidelines.

Similarly, EUJTPF and UN tax manual are not directly recognized by Serbian TP legislative.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

No

- Coverage in terms of master file, local file and CbCR

  Latest amendments of the CIT Law have introduced the obligation of filing CbCR.

- Effective or expected commencement date

  The obligation of filing the CbCR is effective as of FY 2020.

- Material differences from OECD report template or format

  The relevant rule book is not introduced yet.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  This is not applicable.

c) Is your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports

No

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, the rule book on TP and methods for the determination of arm's-length prices in intra-group transactions provides rules for TP documentation in Serbia which provides for a contemporaneous document preparation.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, every section of TP documentation should be updated with the latest available information.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

If a taxpayer did not realize intercompany transactions exceeding RSD8 million (approximately EUR65,000) with either of the related parties, its TP 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 (FY) amounted to at least EUR750 million.

- **Economic analysis**

The threshold is RSD8 million (approximately EUR65,000).

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 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 shall 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 prescribed safe harbor interest rates for intercompany loans, which are updated every year.

- **Any other disclosure or compliance requirement**

Serbian legislative does not explicitly prescribe the currency in which the TP documentation should be prepared, however implicitly it may be concluded that the TP documentation should be prepared in local currency (RSD) and that the stated amounts should be consistent with the information from the official financial statements.

4. TP return and related-party disclosures

- **TP-specific returns**

There is no specific TP return in Serbia.

- **Related-party disclosures along with CIT return**

Taxpayers are obligated to disclose their annual CIT return revenues and expenses resulting from transactions with related parties, as well as disclose tax-based adjustments based on the TP analysis.

In addition, related-party disclosures and details of transactions are to be documented through obligatory TP documentation, which needs to be prepared and filed along with the CIT return.

- **Related-party disclosures in financial statements and annual report**

There is none prescribed.

- **CbCR notification included in the statutory tax return**

To be determined when relevant rule book is introduced

- **Other information or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **CIT return**

The deadline for submission of the CIT return is set within 180 days from the date of expiration of the period for which the tax is assessed.

In line with previously stated, the deadline is 28 June 2020 for year ending on 31 December 2019. However, due to the COVID-19 pandemic, a special COVID-19-related act has been introduced by which the deadline for the submission of the FY2019 CIT return and consequently FY2019 TP documentation is postponed for 90 days from the state of emergency termination date, which was introduced in Serbia due to COVID-19 pandemic.

The state of emergency was officially terminated on 6 May 2020; thus, the taxpayers may effectively submit the FY2019 CIT return and TP documentation until 4 August 2020 (including this date).

- **Other TP disclosures and return**

The prescribed deadline is the same as for CIT 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 FY to the competent authority within 12 months from the end of the MNE group's reporting financial year.

Please note that CbCR has just been introduced in Serbian legislation and further elaborations regarding the practical implementation are yet to follow when relevant rule book is introduced.

- **CbCR notification**

Please refer to the previous comment.

b) TP documentation and local file preparation deadline

There is a statutory deadline and recommendation for the preparation of TP documentation – by the time of lodging the tax return to achieve penalty protection (e.g.,, where there is a contemporaneous requirement).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Yes, TP documentation must be submitted with the CIT return. The deadline for submission of the CIT return and TP 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 on tax authority request**

If TP documentation is not submitted, the CIT Law prescribes that the tax authorities could ask in writing for a taxpayer to submit TP documentation and are obligated to give a deadline of 30 to 90 days to act upon the request.

6. TP 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 TP 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.

7. 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**

Use of a multiyear analysis is mandatory.

- **Use of interquartile range**

Use of the interquartile range is mandatory.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year. TP documentation has to be prepared and submitted annually, and there is no need to conduct a fresh benchmarking search every year – i.e.,, a roll forward (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 vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

Consequences of failure to submit, late submission or incorrect disclosures

Generally, each taxpayer is obligated to file annual TP documentation together with the annual corporate profits tax return. However, penalties are prescribed only if the taxpayer fails to submit the TP 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 noncompliance is between RSD100,000 (approximately EUR800) and RSD2 million (approximately EUR16,500) for the legal entity and up to RSD100,000 (approximately EUR800) for the responsible individual in the legal entity.

- **If an adjustment is sustained, can penalties be assessed?**

In addition, the possible adjustment of taxable income on a TP 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 TP 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 TP documentation requirements (i.e.,, to submit to the tax authorities the prescribed TP document).

9. Statute of limitations on TP assessments

The general statute-of-limitations period of five years for taxes in Serbia also applies to TP assessments. A five-year period starts from the beginning of the year following the year in which the respective tax liability arose.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is 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. TP is likely to be within the scope of most tax audits.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is medium; currently, tax authorities have a limited level of practice with TP methodology, but they have raised pertinent questions in certain previous situations.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is medium, for the same reasons given above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

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 TP than other taxpayers.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Thin-capitalization rules are prescribed in Article 62 of the CIT Law.

In general, in order 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 nondeductible expense for Serbian CIT purposes.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

National Agency for Fiscal Administration (ANAF), part of the Ministry of Public Finance

b) Relevant TP section reference

- Name of TP 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 TP documentation file applicable for administrative procedures initiated before 1 January 2016
- ANAF Order 442/2016, on the content of the TP 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
- Section reference from local regulation

Refer to the section above.

[1]https://www.anaf.ro/anaf/internet/ANAF/acasa/!ut/p/a0/04_Sj9CPykssy0xPLMnMz0vMAfGjzOI9DD3MPIwsjLwsHF2dDBydLfx-CLZyBAu7G-sGpefoF2Y6KACMC1qA!/.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP documentation requirements in Romania refers to the EU Code of Conduct on TP documentation (C176/1 of 28 July 2006). No reference to the UN tax manual is made under the Romanian TP legislation.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?

Romanian TP regulations have been amended in view of implementing the changes introduced by BEPS Action 13 for TP documentation.

In 2016, the Romanian regulations regarding the required content of the TP documentation have been revised in consideration of the elements recommended by the master file and local file under the OECD TP Guidelines to BEPS Action 13; such revised TP 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-tier documentation format as per BEPS Action 13 (master file, local file and CbCR) has not been formally prescribed in the local legislation, the TP 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 TP legislation refers to and is considered to be in line with the OECD TP Guidelines as amended or revised, and the EU Code of Conduct on TP documentation. No specific thresholds are applicable for differentiating between the types of elements to be included in the TP documentation or to be prepared in line with the Romanian TP documentation requirements.

- Effective or expected commencement date

  Revised TP 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 TP 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 TP documentation prepared in accordance with the local regulations in Romania (e.g.,, actual payments made for related-party transactions).

c) Is your 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 19 December 2017

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, there are local TP documentation rules. TP documentation compliant with the specific TP documentation regulations in Romania (i.e.,, ANAF Order 442/2016) must be provided to the Romanian tax authorities upon their request in order to maintain 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 TP documentation file for the periods and transactions covered by the APA. TP documentation may need to be prepared contemporaneously by Romanian large taxpayers, but no taxpayer is required to submit TP documentation in the absence of a specific request from the tax authorities.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, permanent establishments in Romania of foreign companies are subject to the same TP documentation requirements as any Romanian legal entities.

- **Should TP documentation be prepared annually?**

Yes, the requirement to prepare TP 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 TP 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 TP 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).

In all other cases, TP documentation has to be prepared upon specific request from the tax authority and within the required term specified by the authorities.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

As TP documentation requirements are applicable at individual taxpayer level in Romania, each entity is in principle expected to be able to provide TP documentation that is fully compliant with the Romanian TP documentation requirements upon the request from the tax authorities issued at an individual entity or taxpayer level. While no provision under the Romanian TP regulations prohibits to cover the content requirements for more than one Romanian taxpayer in the same TP report, it may be rather recommendable from a practical perspective to prepare stand-alone TP reports for each entity.

b) Materiality limit or thresholds

- **TP 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**

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. No distinction is made with respect to the content of TP documentation required for cross-border vs. domestic related-party transactions.

- **Local language documentation requirement**

The TP documentation (including all appendices attached to the TP documentation, 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.

- **Any other disclosure or compliance requirement**

There is none in particular.

4. TP return and related-party disclosures

- **TP-specific returns**

No specific TP returns for related-party transactions are currently in place under the TP 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 and 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 or documents to be filed**

The Romanian legislation provides for the following general disclosure requirements:

- Disclosure of transactions performed by Romanian entities with nonresident companies for which the Romanian company has an obligation to withhold taxes
- Disclosure or registration of contracts concluded by Romanian entities with nonresident 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 nonresident companies or individuals

5. TP 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

- **Other TP 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 FYs ending 31 December) – generally, the deadline being within 12 months from the last day of the reporting FY of the group

- **CbCR notification**

Notification to the competent authority in Romania is required to be submitted until the last day of the reporting FY 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) TP documentation and local file preparation deadline

TP 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. In all other cases, TP 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No, submission is to be performed only upon request from the tax authorities.

- **Time period or deadline for submission on tax authority request**

In cases in which the annual TP documentation is required to be prepared by large taxpayers by the legal deadline of filing the tax return, such TP 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 TP 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 TP documentation that can be of 30 to 60 days (one extension of up to 30 days can be obtained upon request).

6. TP 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 TP 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.

7. 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**

There is a preference for single-year testing; multiyear analysis might also be acceptable if properly justified.

- **Use of interquartile range**

The Romanian TP documentation regulations prescribe the use of the interquartile range for TP analyses.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

A fresh benchmarking search is required to be performed periodically; a roll forward 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 TP 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 vs. weighted average**

No preference is indicated based on the Romanian TP regulations. Romanian tax authorities have been observed to conduct TP 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**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Large-, medium- and small-sized taxpayers failing to provide the TP documentation to the tax authority upon request are sanctioned as follows:

- In the case of non-submission of the TP documentation by large taxpayers (that have the obligation to prepare the TP 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 between RON25,000 and RON27,000 will be imposed.
- In the case of non-submission of the TP documentation upon the request of the tax authority during a tax audit, a penalty between RON12,000 and RON14,000 will be imposed on the large- and medium-sized taxpayers, respectively, and between RON2,000 and RON3,500 on small taxpayers.

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

In case a TP 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.

9. Statute of limitations on TP assessments

No specific statute of limitations exists for TP 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).

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Considering the current TP environment in Romania and the declared focus of the Romanian tax authorities on TP matters, the likelihood of a TP-related audit, in general, can be characterized as high.

- **Likelihood of TP methodology being challenged (high, medium or low)**

Based on the observed practice of the tax authorities, the likelihood is medium to high that the TP methodology will be challenged if TP is reviewed as part of the audit.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Based on the observed practice of the tax authorities, the likelihood of an adjustment in case the TP methodology is challenged is rather high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There are no such specific transactions and industries.

11. APA and MAP 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 TP 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 which 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 which 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).

Nondeductible 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 (TP) regulation or rulings

a) Name of tax authority

Federal Tax Service of the Russian Federation (FTS)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

There is the 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**

Major TP regulations are contained in Articles 105.1 to 105.25 of the Tax Code (which were introduced by Federal Law No. 227-FZ of 18 July 2011). Regulations regarding TP penalties are also contained in Articles 129.3, 129.4 and 126 of the Tax Code.

There is no system of rulings in Russia. Private letters issued by the FTS or the Ministry of Finance at the request of taxpayers are not binding for the tax authorities or companies.

Besides the articles in the Tax Code mentioned above, the Ministry of Finance and the FTS regularly issue letters that provide clarifications on their positions in applying the arm's-length principle in general and on specific questions of taxpayers regarding the application of current regulations. These letters provide the formal positions of the Ministry of Finance and the FTS, but do not legally bind taxpayers.

2. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on the OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Russia is not a member of the OECD.

The Russian TP 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 TP 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Yes, Russia adopted BEPS Action 13 documentation requirements in November 2017.

- Coverage in terms of master file, local file and CbCR

  Yes, both the master file and local file are covered. The threshold is the same as established for the CbCR in the jurisdiction of the ultimate parent entity (UPE). If the UPE is a Russian taxpayer, the threshold is RUB50 billion.

- 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 and mainly relate to the master file content:

- 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.

- 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.

[1] **https://www.nalog.ru/html/sites/www.eng.nalog.ru/Tax%20Code%20Part%20One.pdf.**

For a local file, penalty protection should be available, provided that all local documentation requirements are met, including Russian translation, local comparability analysis and 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 your 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 26 January 2017.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, TP documentation needs to be submitted only upon request.

As an exception, TP 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 antimonopoly 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 TP documentation under Russian law: traditional TP documentation and BEPS Action 13-compliant local file. The local file is also known as the national TP documentation which has replaced, starting from 2018, the traditional TP documentation when it comes to cross-border transactions of the Russian constituent entities of the qualifying groups.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, if the local branch is involved in controlled transactions, it needs to comply with local TP rules. Additionally, a TP analysis is needed in order to justify the amount of taxable profits attributable to a permanent establishment.

- **Should TP documentation be prepared annually?**

Yes, the full-scope TP documentation should be prepared annually; a mere update will not be accepted by the tax authorities.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

It is required to have a stand-alone TP documentation for each legal entity in Russia.

b) Materiality limit or thresholds

- TP 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 TP control. Starting from 1 January 2019, a threshold of RUB60 million applies for cross-border transactions to be classified as controlled for TP purposes.

  Cross-border transactions between unrelated parties concerning sale 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.

- **BEPS master and local files**

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.

- **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.

- **CbCR notification and CbC report submission requirement**

There is a CbCR notification requirement in Russia. A CbCR notification should be submitted within eight months after the end of the reporting financial year. The first mandatory filing period is a financial year starting on or after 1 January 2017, with years starting in 2016 available for optional reporting.

Entities are required to complete XML forms of CbCR notification.

- CbCR notification included in the statutory tax return

No

- **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 TP control in Russia. Related-party transactions remaining under TP control 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 which fall outside the TP control, 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 TP methods.

As an exception, certain domestic transactions are not subject to TP control:

- 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 have economically autonomous subdivisions in other regions of Russia nor pay income tax to the budgets of other regions, where none of the parties have 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) which 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 proven that the relationship between the parties influenced the terms and results of transactions.

- **Local language documentation requirement**

The TP 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.

- **Any other disclosure or compliance requirement**

Please refer to section 4 below regarding the TP notification form.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no other specific TP returns in Russia.

- **Related-party disclosures and TP-related appendices**

Disclosure of transactions with related parties and third-party transactions that are subject to TP control is required by way of filing a TP notification. This notification is due for each year by 20 May of the following year (e.g.,, by 20 May 2020 for 2019).

- **Other information or documents to be filed**

No

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

28 March

- **Other TP 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 3 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 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) TP documentation and local file preparation deadline

There is no statutory deadline and recommendation for preparation of TP documentation (local file). It only needs to be finalized by the time of submitting upon request.

- Both the TP 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 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 of request. The first master file may be requested for financial years starting on or after 1 January 2017.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No, TP documentation should not be provided along with the tax return but may be requested by the tax authorities.

- **Time period or deadline for submission on tax authority request**

Both the TP documentation and BEPS Action 13-compliant local file should be submitted within 30 days of request.

A BEPS Action 13-compliant master file should be submitted within three months of request.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes, TP methods are applicable for both international and domestic transactions.

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 TP methods can be applied.

As part of implementing BEPS Action 8 requirements addressing TP implications related to intangible assets, there are new requirements to a TP 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.

7. 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, e.g.,, Pan-European search and Pan-Asian search).

- **Single-year vs. multiyear analysis**

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. roll forwards 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 vs. weighted average**

The law is not specific on this; however, 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.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**
  - Failure to submit, late submission or inaccurate information submitted with respect to the TP disclosure (notification) may result in a penalty of RUB5,000.

- Failure to submit, late submission or inaccurate information submitted with respect to the CbCR notification may result in a penalty of RUB50,000 (applies for financial years starting in 2020).
- Failure to submit, late submission or inaccurate information submitted with respect to the CbC report may result in a penalty of RUB100,000 (applies for financial years starting in 2020).
- Failure to submit or late submission of a master file may result in a penalty of RUB100,000 (applies for financial years starting in 2020).
- Failure to submit or late submission of the Action 13 BEPS local file may result in a penalty of RUB100,000 (applies for financial years starting in 2018).

- **If an adjustment is sustained, can penalties be assessed?**

If a tax assessment is made by the tax authority as a result of a TP 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 1/300 of the Central Bank of Russia key (refinancing) rate (up to 30 days of delay) and 1/150 of the Central Bank of Russia refinancing rate (starting from the 31st day of delay).

- **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 which 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 TP audit, and if the taxpayer did not provide the TP documentation 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.

9. Statute of limitations on TP assessments

The general rule is that the tax authority may audit the controlled transactions within two years from the moment of submission of a TP disclosure (notification) form (due by 20 May following the reporting year). Any amendment of the TP notification form or the profits tax return resulting in a decrease of the profits tax liability (increase of a tax loss) because of a TP adjustment, if submitted, will renew the statute of limitation from the amendment date. Additionally, a TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Russian tax authorities use a risk-oriented approach to open a TP audit. As a result, the number of TP audits is limited in practice. Once a TP audit is launched, and if it results in a TP assessment, it would normally be expected to repeat annually until pricing in controlled transactions is confirmed to be at arm's-length.

A TP audit may cover only three preceding calendar years. Controlled transactions may be audited only once for a specific calendar year.

- **Likelihood of TP methodology being challenged (high, medium or low)**

Considering the risk-oriented approach of the Russian tax authorities, the likelihood that a TP methodology will be challenged is high. If tax authorities are able to apply a comparable price method that is a priority method under Russian TP rules, the likelihood of an alternative methodology, if any, to be challenged would normally increase in practice.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or 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 which 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 undergo audit**

TP matters in controlled transactions are subject to special TP 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 TP 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 TP methods.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

The APA program has been available since 1 January 2012 and is only for "major taxpayers." The unilateral APAs were made possible from 1 January 2012, while bilateral and multilateral APAs were enabled only on 4 June 2018 when a special procedure for such APAs was issued by the Russian competent authority.

A non-Russian company cannot apply for an APA. The Tax Code envisages a possibility to conclude multilateral APAs when the transactional counterparties are located in a jurisdiction with which Russia has a double tax treaty.

- **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 which Russia has with its treaty partners. The competent authority which 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). The detailed MAP procedures are yet to be prescribed.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 nondeductible and is treated as a dividend paid to the organization in relation to which controlled indebtedness exists and is taxed accordingly.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Rwanda Revenue Authority (RRA)

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability

Article 33 of the Rwanda Income Tax Act and the draft Rwanda Ministerial Order Establishing General Rules on Transfer Pricing (TP Rules)

- Section reference from local regulation

Related people are defined under Article 3 16° of the Rwanda Income Tax Act.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Rwanda is a member of the OECD. The draft TP rules significantly borrow from and rely on the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?
  - Coverage in terms of master file, local file and CbCR

Jurisdiction-by-jurisdiction report, where the ultimate parent of the taxpayer is required to prepare such a report

  - Effective or expected commencement date

The proposals are not yet effective; however, they are currently used for guidance in complying with Article 33 of the Rwanda ITA.

  - 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 information is however required based on the draft rules.

c) Is your 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

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

Yes, it is required, though in draft. Ministerial Order on Transfer Pricing Rules (Draft 2018), was issued in September 2018 and took effect on the publication date. Based on the draft rules, the document needs to be prepared contemporaneously and submitted upon requested within seven days.

- Does a local branch of foreign company need to comply with the local TP rules?

Yes

- Should TP documentation be prepared annually?

Yes, the draft 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?

Yes

b) Materiality limit or thresholds

- TP documentation

Under the draft TP rules, taxpayers with a turnover below RWF400,000,000 are not required to prepare the TP documentation. However, they must comply with the arm's-length principle.

- Master file

This is not applicable.

[1] https://www.rra.gov.rw/.

- **Local file**

This is not applicable.

- **CbCR**

Jurisdiction-by-jurisdiction report, 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 draft rules cover people involved in the related-party transactions where it 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, TP documents are normally completed in English.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

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. However, this is currently not mandatory.

- **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**

None

5. TP 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 TP disclosures and return**

As noted above

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

As under 3 above

- **CbCR notification**

As under 3 above

b) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

None

- **Time period or deadline for submission on 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- International transactions: yes
- Domestic transactions: yes

b) Priority and preference of methods

The draft rules provide for the most appropriate method.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is a preference for local comparables; however, it is not mandatory.

- **Single-year vs. multiyear analysis**

There is a preference for multiple-year testing (preferably three years).

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

A fresh benchmarking search is needed every year.

- **Simple vs. weighted average**

There is a preference for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

The draft 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.

8. TP penalties and relief

a) Penalty exposure

- **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?**

Yes

- **Is interest charged on penalties or payable on a refund?**

No

b) Penalty relief

No

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is moderate. The tax authority issued draft TP rules in late 2018. We have seen requests for TP documents for some companies. We expect this to see more activity on TP audits.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is moderate. Refer to the section above.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is moderate. Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There have been no active TP audits in the market.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Interest arising from loans between related people either paid or due on a total loan which is greater than four times the amount of equity is nondeductible.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

General Authority of Zakat and Tax (GAZT)

b) Relevant TP section reference

- **Name of TP 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 GAZT to reallocate revenues and expenses in transactions between related parties to reflect the returns that would have resulted if the parties were independent or unrelated.
- Article 58 requires a taxpayer to maintain documentation (in Arabic) to support the "precise determination of tax payable by it."
- Article 61 provides the GAZT with the authority to examine a taxpayer's records.
- Article 10(11) of the bylaws to the tax law contains a prohibition on tax deductibility of expenses that are not at arm's length.

  On 15 February 2019, GAZT published the final TP bylaws (TP bylaws) (pursuant to Board Resolution No. (6-1-19) dated 25/05/1440H, corresponding to 31/01/2019) along with frequently asked questions (FAQs). Further, the KSA tax authorities also published the detailed TP guidelines which elucidates TP best practices in terms of documentation maintenance, economic analysis, etc.

- **Section reference from local regulation**

Article 64 of the KSA ITL and the TP bylaws issued on 15 February 2019.

2. OECD Guidelines treatment and reference

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP bylaws mostly follow the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

The TP bylaws has introduced TP documentation (master file, local file) and CbCR requiremECD's BEPS Action 13 Final Report.

- Coverage in terms of master file, local file and CbCR

The TP bylaws incorporates the master file, local file and CbCR concept as recommended under BEPS Action 13 on TP documentation.

- Effective or expected commencement date

This is applicable for fiscal years ending on or after 31 December 2018.

- Material differences from OECD report template or format

As per the TP bylaws, the following difference can be noticed:

Local file: In addition to the OECD local file template, the TP bylaws prescribe to include a comprehensive industry analysis.

- 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.

- **CbCR notification and CbC report submission requirement**

KSA taxpayers that are members of an MNE group, with a consolidated group revenue exceeding SAR3.2 billion during the year immediately preceding the current reporting year as reflected in its consolidated financial statement, will be subject to CbC reporting in Saudi Arabia and will be required to notify the GAZT regarding the submission of the CbC report within 120 days following the end of the reporting year. The CbCR shall be filed not later than 12 months after the last day of the reporting year of the MNE group. In cases of more than one constituent entities operating in KSA, a designated entity can file CbCR notification on behalf of all other entities by notifying about the same to the tax authority.

- Cb CR notification included in the statutory tax return

Yes; however, while uploading the CbCR on the online portal, one has to fill in a notification form on the specific portal as well.

[1] **https://gazt.gov.sa/.**

c) Is your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbC reports.

Yes, as of 6 August 2019

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

The TP bylaws have introduced the three-tiered TP documentation, including master file, local file and CbC report broadly aligned with the OECD Transfer Pricing Guidelines.

Article 2 of the TP bylaws state that the TP provisions apply to all taxable persons under the ITL. Hence, entities or persons that are subject only to Zakat are not subject to the TP bylaws. Further, FAQs also 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 TP documentation and indicate in its annual tax return whether such documentation has been maintained or not. On GAZT's request, TP documentation needs to be submitted within 30 days of such request.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, a local branch will need to comply with the local TP 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).

- **Should TP documentation be prepared annually?**

Yes; however, the master file need not be prepared on an annual basis if the taxpayer can determine that it reflects the most recent information pertaining to the group.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

As per the TP guidelines section 5.3.2, it might be acceptable to prepare one combined local file for multiple taxpayers who 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

- **TP 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.

- **Economic analysis**

This is not applicable.

- **BEPS master and local files**

Both master file and local file need to be prepared and maintained if arm's-length value of controlled transactions during any 12 months period is SAR6 million or above.

- **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 (approximately EUR750 million).

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are not excluded from the scope of TP provisions as per the TP bylaws.

- **Local language documentation requirement**

Regarding CbCR, the TP 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 TP 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.

4. TP return and related-party disclosures

- **TP-specific returns**

Disclosure form (as explained below)

- **Related-party disclosures along with corporate income tax return**

All income tax payers in Saudi Arabia will be required to submit to the GAZT, together with their annual income tax declaration, a disclosure form containing information related to their controlled transactions. Saudi Arabian taxpayers that have controlled transactions will have to submit the disclosure form within 120 days after the last day of the fiscal year (i.e.,, by 30 April 2019, for fiscal year ending 31 December 2018).

- **Related-party disclosures in financial statement and annual report**

Yes

- **CbCR notification included in the statutory tax return**

Yes

- **Other information or documents to be filed**

The KSA TP laws also require an annual affidavit signed by a licensed auditor in the jurisdiction through which the auditor certifies that the TP policy of the MNE group is consistently applied by, and in relation to, the taxpayer.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

It should be filed 120 days from the end of the taxable year.

- **Other TP disclosures and return**

The annual tax return includes disclosure form along with CITR.

- **Master file**

The master file needs 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.

b) TP documentation and local file preparation deadline

The preparation of contemporaneous TP local file is recommended along with disclosure form due to the shorter period (minimum 30 days) available for submitting local file upon request from the tax authority. It is possible to apply for extensions on a case-by-case basis.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No, there is currently no statutory deadline for the submission of TP documentation. It will need to be submitted upon request.

- **Time period or deadline for submission on tax authority request**

The TP documentation shall be provided to GAZT upon request within the specified duration (which shall be not lesser than 30 days from the date of request). It is possible to apply for extensions on a case-by-case basis.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes, Article 7 of the TP 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 TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

Article 13 C of the TP 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**

Multiple-year analysis for comparable companies is acceptable. 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.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

Taxpayers are required to perform comparability analysis on a tri-annual basis, if there is no change in the conditions and circumstances of the taxpayer, and its controlled transactions.

- **Simple vs. weighted average**

Weighted average is preferred.

- **Other specific benchmarking criteria, if any**

Article 13 A and B provide that secret comparables cannot be used. Additionally, KSA TP guidelines expect that comparable persons do not report any losses in the years under review.

8. TP penalties and relief

a) Penalty exposure

- **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?**

Currently, there is no specific TP penalty prescribed under the ITL. However, all penalties and fines under the ITL are applicable to all income tax matters, including TP.

- **Is interest charged on penalties or payable on a refund?**

There is none specified.

b) Penalty relief

No penalty relief is currently specified under KSA ITL.

9. Statute of limitations on TP assessments

There is no specific statute of limitations set out in KSA ITL regarding TP assessments. The general statute of limitations (Article 65) for GAZT 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 GAZT 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

High

- **Likelihood of TP methodology being challenged (high, medium or low)**

High

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

It's high. The risk is increased in case of inadequate TP documentation.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

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.

11. APA and MAP 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.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunity**

This is not applicable.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Senegalese Revenue Authorities (SRA) (Direction Générale des Impôts et Domaine or DGID)

b) Relevant TP section reference

- **Name of TP 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 (TP documentation obligation), 9-2 (thin capitalization legislation, applied in the context of certain intra-group financing arrangements only, e.g.,, intra-group interest payments on intra-group debt), 667-III.a (annual TP return fines) 667-III.c (TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP 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 intra-group transactions, such as management fees. This position seems marginal.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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 intra-group transactions) needs to be sourced from the Senegalese statutory accounts.

c) Is your 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 4 February 2016.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

[1] http://www.impotsetdomaines.gouv.sn/.

b) Materiality limit or thresholds

- TP documentation

Taxpayers that fulfill at least one of the following conditions need to prepare the TP 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 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 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 CbC report:

- The Senegalese tax-resident company has been elected by the multinational group to file a CbC report 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 CbC report.
- 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 TP 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.

- Any other disclosure or compliance requirement

This is not applicable.

4. TP return and related-party disclosures

- TP-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.

- Related-party disclosures along with corporate income tax return

There is no filing obligation for the TP 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 and 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 or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 30 April following each fiscal year-end.

- **Other TP disclosures and return**

The annual TP return due date is 30 April of each year.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

CbC report 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) TP documentation and local file preparation deadline

It should be available by the time of a tax audit (accounts examination on site).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No, there is no submission deadline.

- **Time period or deadline for submission on tax authority request**

The deadline is 20 days following the tax auditor's request of the TP documentation.

6. TP 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.

7. 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. roll forwards and update of the financials**

There is no guidance provided.

- **Simple vs. weighted average**

There is no guidance provided.

- **Other specific benchmarking criteria, if any**

There is no guidance provided.

8. TP 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 TP return. It is also to be noted that the TP return is used as a "risk assessment tool" by the tax authorities.

In cases where the TP 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 CbC report. As for the TP 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?**

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 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.

- **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

9. Statute of limitations on TP assessments

Four years

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is medium as it will allow tax authorities to assess the effective profit which should be taxed locally.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is medium if they assume that the company chose this method to lower the taxable base.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is medium as we assume that challenging the TP method may entail for SRA an increase of the taxable base.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The industries are large companies: telecommunication, oil and gas, mining, and companies in the hospitality industry.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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:

1. **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 three percentage points.**
2. **The interest referred to in (1) may be deducted only if the capital is fully paid-up.**
3. **The deduction of interest paid to an individual is limited to the interest attributable to loans not exceeding the amount of the share capital.**

4. **Interest, referred to in (1) when paid to companies, is not deductible to the extent it is paid on loans that exceed one-and-a-half 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.**

5. **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 (TP) regulation or rulings

a) Name of tax authority

Inland Revenue Authority of Singapore (IRAS)

b) Relevant TP section reference

- **Name of TP 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.

In addition, on 23 February 2018, the IRAS released the fifth edition of the Singapore TP 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 TP and empowers the IRAS to make TP adjustments in cases where a Singapore taxpayer's TP practices are not consistent with the arm's-length principle.

Section 34E allows the comptroller to impose a surcharge of 5% on the TP adjustments made by the comptroller with effect from the YA 2019.

Section 34F legislates the mandatory requirement for contemporaneous and adequate TP documentation, and penalties for noncompliance from YA 2019 onward.

- **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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 2018 Singapore Transfer Pricing Guidelines are generally consistent with the OECD Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**
  - 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 TP documentation are largely aligned to the OECD approaches.

  - Effective or expected commencement date

This is already in place (under the requirements for local Singapore TP 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 TP 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 noncompliance with TP documentation requirements.

However, it will not mitigate the surcharge of 5% on the amount of the TP adjustment under Section 34E (applicable from YA 2019 onward). This is because Singapore surcharge provisions apply when there is an adjustment made regardless of whether the taxpayer has prepared the documentation or not.

- **CbCR notification and CbC report submission requirement**

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[1] **https://www.iras.gov.sg/.**

[1] 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-c42dc45d377c%20Depth%3A0%20Status%3Ainforce;rec=0.

As mentioned above, the CbCR requirements in Singapore are effective from the financial years beginning on or after 1 January 2017.

Singapore's CbCR requirements are only applicable to Singapore-headquartered MNEs. There is no secondary mechanism in Singapore, and the IRAS will not accept surrogate filing by foreign MNEs in Singapore.

- CbCR notification included in the statutory tax return

This is not applicable.

c) Is your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, it is.

d) Signatory to the Multilateral Competent Authority Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 21 June 2017.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, with effect from YA 2019, Singapore has compulsory TP documentation requirements. And it is mandatory to prepare a TP report on a contemporaneous basis which should be ready when submitting the TP disclosure form.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, they need to comply.

- **Should TP documentation be prepared annually?**

TP documentation should be prepared annually under the 2018 Singapore Transfer Pricing Guidelines. However, to reduce taxpayers' compliance burden, IRAS allows them to use the TP documentation they have prepared previously to support the transfer price in the basis period concerned if it is a qualifying past TP documentation.

Qualifying past TP documentation means:

- Past TP documentation prepared for the first basis period immediately preceding the basis period concerned and which satisfies certain conditions

  Or

- In the absence of subparagraph (a), past TP documentation prepared for the second basis period immediately preceding the basis period concerned and which satisfies certain conditions

Hence, the TP documentation is required to be refreshed only once every three years if the existing one qualifies as past TP documentation.

For existing TP documentation to be qualify as past TP documentation, the following conditions must be satisfied:

- The transaction for which the past TP documentation was prepared must be of the same type as the transaction undertaken in the basis period concerned.
- The transaction for which the past TP documentation was prepared and the transaction in the basis period concerned must have been undertaken with the same related parties.
- The past TP documentation must contain documentation at group level and entity level as prescribed in the TPD Rules.
- The past TP documentation must be dated and prepared in English.
- The information contained in the past TP 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 TP method that is used for the transaction
  - The arm's-length conditions

To make use of qualifying past TP documentation for a related-party transaction undertaken in the basis period concerned, taxpayers only need to prepare simplified TP documentation for that transaction. The simplified TP documentation need only:

- Contain a declaration by the taxpayer that it has prepared qualifying past TP documentation
- Include, by way of an attachment, a copy of the qualifying past TP documentation

However, it is still required to conduct annual testing of the actual results against the arm's-length results in the qualifying past TP documentation.

As mentioned above, with effect from YA 2019, Section 34F legislates the requirement for Singapore taxpayers to prepare contemporaneous TP documentation. They must prepare TP documentation if they meet certain conditions. And 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 2018 Singapore Transfer Pricing Guidelines, the preparation of contemporaneous TP documentation is important to help avoid the consequences of being unable to deal with TP enforcement actions by tax authorities and the double taxation arising from those actions. This includes:

- Defending the taxpayer's TP in the event of a TP audit by tax authorities
- Helping tax authorities resolve potential TP issues under the MAP
- Facilitating the discussion and conclusion of APAs
- For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?

Yes, each entity of an MNE is required to prepare stand-alone TP reports if it has related-party transactions.

b) Materiality limit and thresholds

TP documentation

Unless exemption from TP documentation for specified transactions applies, taxpayers must prepare TP 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 TP 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 TP documentation for a previous basis period would continue to be required to do so for the subsequent basis period, and so on.

TP 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 2018 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.

- **BEPS master and local files**

The IRAS has not adopted the application of the BEPS master file and local file concepts as separate documents. Nonetheless, the information requirements for Singapore TP documentation are largely aligned to the OECD approaches, though the details requested are for the applicable Singapore entity. The 2018 Singapore Transfer Pricing Guidelines contains a two-tiered approach in which both group and entity-level details are required when preparing Singapore TP 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 TP 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 TP documentation needs to be prepared in English. Paragraph 6.40(c) of the 2018 Singapore Transfer Pricing Guidelines specifies that the IRAS may request translation of any TP 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 12.26 of the 2018 Singapore Transfer Pricing Guidelines for routine services and paragraph 13.28 of the same for related-party loans).

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

There is no TP 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 YA 2018, a new 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 YA. 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 and 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 or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

Corporate income tax return should be filed by 30 November (paper filing) or 15 December (electronic filing).

- **Other TP disclosures and return**

With effect from YA 2018, it should be filed by 30 November (paper filing) or 15 December (electronic filing) 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 your reply)

b) TP documentation and local file preparation deadline

To be considered contemporaneous, the TP documentation is required to be prepared no later than the statutory deadline for the filing of the income tax return.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Taxpayers should have evidence that their TP documentation was prepared in accordance with the contemporaneous requirements (e.g.,, dating of the report).

- **Time period or deadline for submission on tax authority request**

TP documentation should be submitted within 30 days upon request.

6. TP methods

a) Applicability (for both international and 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 TP method that produces the most reliable results should be selected and applied. However, there is an exception for loan transactions, and the 2018 Singapore Transfer Pricing Guidelines states that the CUP method is preferred for substantiating the arm's-length nature of interest charges.

To apply the arm's-length principle, the 2018 Singapore Transfer Pricing Guidelines recommends a three-step approach:

1. **Conduct a comparability analysis**
2. **Identify the most appropriate TP method and tested party**
3. **Determine the arm's-length results**

7. 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 region).

- **Single-year vs. multiyear analysis**

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. roll forwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year; however, the 2018 Singapore Transfer Pricing Guidelines states that taxpayers should update their TP documentation, including the benchmarking set, when there are material changes that impact the functional analysis or TP analysis. Taxpayers are also required to update their TP documentation at least once every three years.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

With effect from YA 2019, taxpayers will be fined not more than SGD10,000 if they fail to comply with any of the following:

Prepare contemporaneous TP documentation if required to do so under Section 34F

Retain the TP 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 TP documentation within 30 days of receiving the notice to submit

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.

Similar penalties apply to a person who knowingly provides materially false or misleading TP documentation to the comptroller.

- **If an adjustment is sustained, can penalties be assessed?**

Applicable from YA 2019 onward, Section 34E introduces the penalty regime which allows the comptroller to apply a surcharge of 5% on the TP adjustment made for noncompliance with the arm's-length principle. The surcharge applies even if the taxpayer has prepared contemporaneous documentation.

- **Is interest charged on penalties or payable on a refund?**

This is not applicable.

b) Penalty relief

Adequate and contemporaneous TP documentation to support the pricing of the taxpayer's related-party transactions will help in mitigating penalties in relation to noncompliance with TP documentation requirements.

However, it will not mitigate the surcharge of 5% on the TP adjustments under Section 34E (applicable from YA 2019 onward).

9. Statute of limitations on TP assessments

The statute of limitations is four years from the end of the YA (i.e.,, the latest date the IRAS may make an additional assessment for YA 2016 is 31 December 2020).

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Medium to high: The IRAS may raise TP queries as part of its routine corporate income tax reviews, as well as through more detailed TP consultations with taxpayers.

- **Likelihood of TP methodology being challenged (high, medium or low)**

Medium to high: In examining the related-party transaction under audit, the IRAS may question the applicability of the TP methodology adopted. This may include the PLI applied, the specific margin and results arrived at, the TP method applied, as well as economic substance questions and request for evidence.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Medium to high: This depends on whether the taxpayer's position is defensible. The risk of an adjustment may be mitigated through contemporaneous TP documentation.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no thin-capitalization rules in Singapore.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Slovak Financial Directorate, local tax authorities and Ministry of Finance

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

The Slovak TP 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 TP documentation supporting the TP method used in transactions with foreign related parties. The Slovak Ministry of Finance regularly issues official guidance on the contents of TP documentation.

TP 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 TP documentation (new Guidance applicable for documentations from 2018 onward)

- **Section reference from local regulation**

See the previous section.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP 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 TP documentation – see below).

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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 became a signatory on 27 January 2016.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

[1] https://www.financnasprava.sk/en/financial-administration/financial-administration-bodie/financial-directorate-of-sr.

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

No; however, tax authorities can request the TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP 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 TP documentation issued in 2018 are almost fully compatible with the BEPS recommendations for local and master file.

- **Local file**

The new Slovak guidelines for TP 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 TP 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 TP 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.

- **Any other disclosure or compliance requirement**

There are no other specific requirements.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no TP-specific returns in the Slovak Republic. The corporate income tax (CIT) 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 CIT 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).

TP documentation does not need to be enclosed with the tax return.

- **Related-party disclosures in financial statement and 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.

TP 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 or documents to be filed**

No other information is required.

5. TP 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 TP disclosures and return**

The high-level information on intercompany transactions is submitted within the CIT return.

- **Master file**

Master file should be enclosed with the TP 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 TP documentation.

- **CbCR preparation and submission**

The deadline is 12 months after the fiscal year-end.

- **CbCR notification**

Yes, the deadline is the same as for CIT return.

b) TP documentation and local file preparation deadline

It should be available at the time the CIT return is filed.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for the submission of TP documentation or local file?**

No

- **Time period or deadline for submission upon tax authority request**

The taxpayer has 15 days to submit the TP documentation once requested by the tax authorities in an audit or inquiry.

6. TP 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 TP Guidelines).

7. 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 Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

There is none specified (not formally mentioned in regulations).

- **Other specific benchmarking criteria, if any**

Comparables with not more than 25% ownership are specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The penalty is EUR3,000 per any type of noncompliance; it can be assessed repeatedly.

- **If an adjustment is sustained, can penalties be assessed?**

Refer to the 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 TP-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).

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

In general, the likelihood of a CIT audit in Slovakia is medium, while the likelihood that the taxpayer's related-party transactions will be reviewed as part of that audit is high.

On the basis of the experience with TP audits in Slovakia, if TP 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 TP documentation was introduced, the tax authority has intensified its activity on TP and is increasingly focused on the TP and related documentation when auditing companies that form part of a multinational group. In 2013, a group specializing in TP was established within the structure of the tax authorities, and the first audits solely focused on TP issues have commenced.

Notwithstanding the focus of documentation rules on taxpayers that are obligated to maintain the so-called full TP documentation, TP audits do not focus only on such taxpayers. The likelihood of a TP audit is roughly the same for companies falling in the "basic" documentation scope (e.g.,, for mid-size companies).

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is 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 TP structure.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

This can vary depending on the TP structure, though structure on royalties, services, financial transactions and limited-risk manufacturers is an area of relatively straightforward challenge.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

In cases of related-party transactions, the taxpayer may request that the tax authority approves the selected TP 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 TP 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 TP disputes in Slovakia will be effective.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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).

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Financial Administration of the Republic of Slovenia (Finančna Uprava Republike Slovenije, or FURS)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

TP 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, 59/1, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16 and 69/17) (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 Pricing (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, 25/14 – ZFU, 40/14 – ZIN-B, 90/14, 91/15, 63/16 and 69/17) (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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Slovenia is a member of the OECD and EUJTPF.

As the Slovenian TP 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 EUJTPF's recommendation shall also generally apply.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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. The first CbC reports are due for FY2016 and should be filed 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, the Slovenian TP documentation requirements are based on a master file concept. Under this concept, as recommended by the European Community (EC) Council and the EUJTPF, the TP 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 CbC reports, which are commonly considered a part of TP documentation. The documentation should be prepared contemporaneously, within three months of the financial year end.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes — if it is considered taxable as permanent establishment

- **Should TP documentation be prepared annually?**

TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit and thresholds

- **TP 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 EUR750 million or above in the reporting period.

- **Economic analysis**

There is no materiality limit.

c) Specific requirements

- **Treatment of domestic transactions**

All transactions with related parties should be included in the TP documentation.

- **Local language documentation requirement**

The TP 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.

- **Any other disclosure or compliance requirement**

Disclosure of turnover with related parties is required with submission of a corporate income tax (CIT) return for intercompany loans and other transactions if it exceeds a threshold of EUR50,000.

4. TP return and related-party disclosures

- **TP-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 CIT return. In addition, if certain conditions are fulfilled, specifically prescribed attachments must be enclosed with the CIT return. Such conditions include:

If the cumulative amount of the given or received loans from a particular related party exceeds EUR50,000 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 EUR50,000 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% CIT 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 and annual report**

This is not applicable.

- **CbCR notification included in the statutory tax return**

CbCR notification should be filed as an appendix to the CIT return.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 TP disclosures and return**

Related-party transaction volumes should be reported in an appendix to the CIT return.

- **Master file**

This is not applicable.

- **CbC report preparation and submission**

The CbC report should be filed within 12 months after the end of the fiscal year of the entity (i.e.,, first reports due by 31 December 2017 for a fiscal year ending on 31 December 2016).

- **CbCR notification**

The CbCR notification should be filed as an appendix to the CIT return.

b) TP documentation and local file preparation deadline

The TP documentation should be prepared by the time the CIT reporting is due. It should also be submitted upon the request of the tax authorities.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

There is no statutory deadline for the submission of TP documentation apart from the CbC report.

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.

- **Time period or deadline for submission on 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 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions**

Following the changes to the OECD Guidelines regarding the hierarchy of TP 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.

7. 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 multiple periods, it is possible to apply a multiyear analysis.

- **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. The comparable market price is considered to be the median of the interquartile range of comparable market prices.

- **Fresh benchmarking search every year vs. roll forwards 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 every three years is recommended.

- **Simple vs. weighted average**

The comparable market price is considered to be the median of the interquartile range of comparable market prices.

- **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.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

A taxpayer may be fined up to EUR30,000 if the TP 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?**

In the case of a tax adjustment, late-payment interest and penalties for offenses may be charged.

Interest rates for noncompliance 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.

- **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.

9. Statute of limitations on TP assessments

The statute of limitations on CIT 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 TP documentation must be archived for 10 years.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 is high.

In practice, taxpayers that exhibit the following characteristics are at a higher risk of being subject to a TP 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 TP 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 CIT
- 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 TP-related audit, the likelihood that TP will be reviewed as part of the audit is high.

- **Likelihood of TP methodology being challenged (high, medium or low)**

It's generally medium; the likelihood depends on the appropriateness of the TP system in place (i.e.,, if the TP system of the company under review seems to be reasonable and is supported by TP documentation).

For example, if an entity having a limited risk profile incurs tax losses, the tax authorities will most likely challenge the TP method.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

It's generally high; the tax authorities make a TP 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 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 TP adjustment in its CIT return.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The tax authority mainly initiates a TP 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, TP issues identified in previous tax audits and information available from the media.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There is a safe harbour 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.
- 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.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Commissioner of the South African Revenue Service (SARS)

b) Relevant TP section reference

- **Name of TP regulations or rulings and effective date of applicability**

Section 210 (1) and 211 of Tax Administration Act, 2011: Amendments contain fixed-amount penalties for noncompliance with regard to CbCR filing in South Africa.

Section 31 of Income Tax Act No. 58 of 1962 (the Act) contains the main legislative provisions concerning TP.

- **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. OECD Guidelines treatment and reference

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

South Africa is not a member of the OECD. However, the SARS accepts the OECD Guidelines and has largely based its practice on them.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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.

- **CbCR notification and CbC report submission requirement**

Yes, there is a CbCR notification and CbC report submission requirement in South Africa for years of assessment commencing 1 January 2016.

CbCR notification is send via an email to the revenue authority and not part of the statutory return.

Filing deadlines for CbCR notification and statutory tax returns are same; i.e.,, 12 months from the last day of reporting fiscal year.

CbC report where applicable should be captured via the same e-filling platform as the statutory return.

c) Is your 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, 27 January 2016

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

[1] https://www.sars.gov.za/Pages/default.aspx.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Should TP documentation be prepared annually?**

TP documentation can be prepared anew every three years and updated annually. This is true for a benchmark. However, documentation as a whole needs to be updated annually.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

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

- **TP documentation**

This is not applicable.

- **Economic analysis**

This is not applicable.

- **BEPS master and local files**

The threshold for filing information pertaining to the master and local files is the aggregate of cross-border intercompany transactions (without offsetting any transactions against each other) exceeding or reasonably expected to exceed ZAR100 million.

- **CbCR**

Total consolidated group revenue of more than ZAR10 billion (EUR750 million) during the fiscal year immediately preceding the reporting fiscal year

c) Specific requirements

- **Treatment of domestic transactions**

There is none specified.

- **Local language documentation requirement**

TP documentation should be prepared in English.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

None

4. TP return and related-party disclosures

- **TP-specific returns**

There are no TP 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 TP 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 and annual report**

Yes, all annual financial statements which 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, CbCR notification now forms part of your ITR14 (tax return).

- **Other information or documents to be filed**

None

5. TP 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 TP disclosures and return**

This is not applicable.

- **Master file**

Master file needs to be submitted with your local file within 12 months after the taxpayer's financial year-end.

- **CbC report preparation and submission**

A CbC report 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) TP documentation and local file preparation deadline

TP documentation is typically recommended to be finalized by the time of lodging the tax return to achieve penalty protection (e.g.,, where there is a contemporaneous requirement).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

Time period or deadline for submission on tax authority request

Taxpayers have to submit the TP documentation within 21 business days once requested by the tax authorities in an audit or inquiry.

6. TP methods

a) Applicability

- **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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no legal requirement for local jurisdiction comparables; however, it is preferable to have comparables that operate similarly to that of South Africa.

- **Single-year vs. multiyear analysis**

Multiple-year analysis

- **Use of interquartile range**

Interquartile range is applicable.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

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).

8. TP penalties and relief

a) Penalty exposure

- **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 CbC report was compulsory; however, no specific interest or penalties were assigned for noncompliance. 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 noncompliance.

- **If an adjustment is sustained, can penalties be assessed?**

Penalty is the amount resulting from applying the highest percentage (between 200% – 0%) 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.

- **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 TP 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 TP 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:

- **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 have:**

a) Made full disclosure of the arrangement

b) Possession of 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.

9. Statute of limitations on TP 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 TP 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.

10. Likelihood of TP scrutiny and related audit by local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of a general annual tax audit is currently assessed as medium, and the likelihood of TP forming a part of such an audit is high. To the extent that the SARS requests information from a taxpayer, including TP documentation that the taxpayer does not have, this is grounds for an automatic TP audit.

- **Likelihood of TP methodology being challenged (high, medium or low)**

It depends on a case-by-case basis, however the methodology is normally challenged within the audit process. The likelihood is medium.

- **Likelihood of an adjustment if TP methodology is challenged (high, medium or low)**

The likelihood of an adjustment is high, should SARS challenge the methodology.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

There is none specified.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral, multilateral)**

South Africa currently does not have an APA program, although one is being considered. The legislation also currently prohibits the SARS from providing an advanced ruling to establish a price.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

There is none specified.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

South Africa has 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. Such 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 TP 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 nonmember countries.

SARS adopts a risk-based audit approach in assessing financial assistance transactions. SARS will consider transactions, in which the debt to EBITDA ratio of the South African taxpayer exceeds 3:1, to be of greater risk. The ratio is not a safe harbor and does not preclude SARS from auditing a taxpayer who is within the range of the above-mentioned ratio. The ratio is merely indicative of the level of risk set by SARS for the purpose of selecting cases for audit. It is accepted that the ratio may vary in different industries and according to the creditworthiness of the particular taxpayer. Accordingly, the ratio may not be indicative of what constitutes an arm's-length position for a particular taxpayer or industry; the ratio is merely used as a potential risk identifier.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

National Tax Service (NTS)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

The following regulations refer to TP:

- Adjustment of International Taxes Act (AITA) (since December 1995)
- Presidential Enforcement Decree (PED) of AITA (since December 1995)
- Enforcement Regulations of AITA (since March 1996)
- Basic Rulings of AITA (since June 2004)

- **Section reference from local regulation which defines related party or associated enterprise**

AITA Article 2 (1) 8 defines the term "special relationship" for TP purposes.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your country adopted or implemented BEPS Action 13 for TP documentation in your 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.

- Coverage in terms of master file, local file and CbCR

  It covers both master file and local file.

- 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).

- 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 TP method as documented in the local file was reasonably selected and applied.

- **CbCR notification and CbC report submission requirement**

Pursuant to the amendments to the Korean TP documentation rules applicable for the fiscal year starting on or after 1 January 2016, if the domestic ultimate parent entity (UPE) has consolidated revenue of the prior year above KRW1 trillion, or where the NTS cannot obtain the relevant CbC report from the other foreign tax jurisdiction due to the absence of a relevant exchange agreement, the CbC report must be filed by the Korean entity as part of the CRIT within 12 months of the end of the fiscal year.

Taxpayers in Korea are required to submit the CbCR notification to the tax authorities within six months of the end of the relevant fiscal year. If a taxpayer, whose ultimate parent is a foreign entity, fails to submit the CbCR notification in Korea by the prescribed due date, it will be required to directly submit the CbC report to the tax authorities within 12 months of the end of the relevant fiscal year.

[1] https://www.moef.go.kr/lw/entexlaw.do?bbsId=MOSFBBS_000000000058&menuNo=7060000&pageIndex=7

- CbCR notification included in the statutory tax return

  No

c) Is your country 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.

3. TP documentation requirements

a) Applicability

- **Does your country have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Taxpayers meeting certain thresholds must prepare BEPS TP documentation (i.e., master file, local file and CbCR) annually.

Taxpayers that are not subject to the BEPS TP documentation but wish to be eligible for penalty relief should prepare and maintain a TP study report at the time of filing their corporate income tax return (CITR) and submit the report within 30 days upon request from the tax authority.

- **For an MNE with multiple entities in your country, is it required to have stand-alone TP reports for each entity?**

Yes, a separate report per entity is required.

b) Materiality limit or thresholds

- **TP documentation**

There is none specified.

- **BEPS master and local files**

Domestic corporations and foreign corporations with a domestic place of business must prepare BEPS master and local files 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 condition applies:
- The ultimate parent jurisdiction does not impose CbCR submission requirement.

Or

- 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.

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, paragraph 5 and 6.)

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

None

4. TP return and related-party disclosures

- **TP-specific returns**

The TP 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 KRW 200 million of services including royalties between each foreign related parties (or KRW 5 billion of tangibles / KRW 1 billion of services in total among all foreign related parties) shall submit TP 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 TP disclosure forms at the time the CITR is filed:

- A form stating the TP 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 CSAs)
- A summary of cross-border transactions with foreign related parties
- 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.

- **Related-party disclosures in financial statement and annual report**

Yes

- **CbCR notification included in the statutory tax return**

No

- **Other information or documents to be filed**

See above TP forms a, b, and c.

5. TP 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 TP 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 TP disclosures and return**

TP-related information 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.

- **CbCR notification**

CbCR notification is due within six months of the end of the fiscal year.

- **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 CbC report 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.

b) TP documentation and local file preparation deadline

There is no specified deadline for the preparation of TP documentation.

However, taxpayers that are not subject to BEPS TP documentation requirements (i.e., master file, local file and CbCR), but wish to be eligible for penalty protection, should prepare and maintain a TP study report at the time of filing the CITR (3 months from the end of the relevant reporting year).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Yes, taxpayers that meet the thresholds for BEPS TP 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 TP 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.

6. TP 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 TP 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 the 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 TP methods.

7. 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**

Multiyear analysis is preferred.

- **Use of interquartile range**

The NTS has its own version of calculating the interquartile range.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is none specified.

- **Simple vs. weighted average**

The weighted average is preferred for arm's-length analysis in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

Yes, there are two types of penalties associated with a TP adjustment: an underreporting penalty and an underpayment penalty:

- The underreporting penalty is approximately 10% of the additional tax resulting from a TP adjustment.
- The underpayment penalty, which is an interest payment in nature, is calculated as 0.03% of the additional tax on a TP 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.
- 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 TP documentation for the TP 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 TP methods reported, the penalty for underreporting may be waived if a TP adjustment is made. To be eligible for an underreporting penalty waiver, the TP documentation must be submitted within 30 days upon request by the NTS.

9. Statute of limitations on TP 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 seven years if a taxpayer does not submit the tax filing by the due date.

10. Likelihood of TP scrutiny or related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP being reviewed during a tax audit is high. The NTS, in practice and as a matter of policy, requests TP 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 TP methodology being challenged (high, medium or low)**

Generally, if TP 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 TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

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.

11. APA and MAP 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, the 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 TP 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).

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your country

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 (TP) regulation or rulings

a) Name of tax authority

National Revenue Authority, Ministry of Finance

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

There are no special TP regulations or rulings in South Sudan.

The TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

No

b) Materiality limit or thresholds

- **TP 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.

- **Any other disclosure or compliance requirement**

There's none specified.

4. TP return and related-party disclosures

- **TP-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 and annual report**

IFRS format

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

There's none specified, but audited financial statements are required.

5. TP 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 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) TP documentation and local file preparation deadline

No specific deadline is prescribed under the Taxation Act, 2009 and the accompanying regulations.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: TP rules apply**
- **Domestic transactions: not subject to TP rules**

b) Priority and preference of methods

The CUP method, followed by the resale-price or cost-plus methods in that order of priority

7. 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**

There is a preference for single-year analysis.

- **Use of interquartile range**

There is none specified.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

Fresh benchmarking is not needed every year, but economic conditions must be comparable.

- **Simple vs. weighted average**

There is a preference for the simple average.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

Yes, additional tax can be assessed – a 5% late-payment penalty per month and 3.6% interest per month.

- **Is interest charged on penalties or payable on a refund?**

1% per month

b) Penalty relief

No defence 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.

9. Statute of limitations on TP assessments

The statute of limitations on TP assessments is three years.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

It is 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 TP methodology being challenged (high, medium or low)**

Refer to the section above.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

Refer to the section above.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

No thin-capitalization rules exist.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Spanish National Tax Agency (AEAT) and General Directorate of Taxation (DGT)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

The TP 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Spain is a member State of the OECD.

The CITL's Explanatory Statement explicitly says that Spanish TP 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, TP documentation should be prepared contemporaneously.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, TP documentation needs to be prepared annually under local jurisdiction regulations.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

There are no specific rules in this regard. Although it would be advisable to prepare a single TP report for each entity, in certain cases, it might be acceptable to prepare a TP 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

- **TP documentation and local file**

[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.

Transactions carried out with the same counterparty that, in sum, are lower than EUR250,000 at market value are exempt from documentation obligations.

Additionally, TP 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 (AIEs), and temporary joint ventures (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.

- **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.

- **Any other disclosure or compliance requirement**

There is none other than those mentioned in this guide.

4. TP return and related-party disclosures

- **TP-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 blacklist).

- **Related-party disclosures along with corporate income tax return**

None

- **Related-party disclosures in financial statement and annual report**

The 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 or documents to be filed**

There is none other than those mentioned in this guide.

5. TP 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 TP 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) TP documentation and local file preparation deadline

TP documentation should be available for the tax authorities by the end of the voluntary period for filing the CIT return.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

Time period or deadline for submission on tax authority request

The taxpayer has to submit the TP documentation within 10 days once requested by the tax authorities in an audit or inquiry.

6. TP 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 TP methods should be based on the nature of related-party transactions, the availability of information and the comparability analysis.

7. 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**

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 Excel Quartile since they can ascertain the results.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year.

- **Simple vs. weighted average**

The weighted average is preferred, as per common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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?**

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.

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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood that TP will be reviewed as part of an audit is high if the taxpayer regularly enters into cross-border related-party transactions. For all other cases, the likelihood of a TP review during a general audit is 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 TP methodology being challenged (high, medium or low)**

The likelihood of a challenge to the TP methodology is high. Companies normally under audit have been previously selected to be audited because their financial statements show inconsistences between the TP methodology and the business rationale (loss-making companies would be a good example of this).

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is high. When the methodology is not accepted, an adjustment will normally occur.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The tax authorities have stated that TP audits are an area of major attention, particularly with regard to business restructurings and intangible transactions.

In this sense, loss-making companies, distributors and limited risk distributors with losses are normally a focus of the tax authorities.

11. APA and MAP 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, the 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 had a total of 408 active MAP applications as of 31 December 2018. 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 intra-group 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 (TP) regulation or rulings

a) Name of tax authority

Inland Revenue Department (IRD)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**
  - TP regulations and relevant provisions of the Inland Revenue Act, No. 24 of 2017 (IRA), effective from 1 April 2018
  - Relevant provisions of the double tax treaties

However, TP rules were introduced in Sri Lanka from 1 April 2008.

- **Section reference from local regulation**

TP rules are primarily contained in Sections 76, 77 and 78 of the IRA.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP Guidelines.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

  Both master and local files are covered.

- Effective or expected commencement date

  The effective commencement date is 1 April 2018.

- 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.

- **CbCR notification and CbC report submission requirement**

There is a CbCR notification and CbC report submission requirement in Sri Lanka.

- **CbCR notification included in the statutory tax return**

The CbCR notification is a separate filing and is not included in the statutory tax return.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they 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 foreign company need to comply with the local TP rules?**

Yes, a local branch will need to comply with the local TP rules if it has associated enterprise transactions.

[1] http://www.ird.gov.lk/en/sitepages/default.aspx.

- **Should TP documentation be prepared annually?**

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 your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

Taxpayers are required to maintain TP documentation, comprising of local file, master file and CbCR, if the following thresholds are met:

- Local file: if the aggregate value of associated enterprise transactions exceeds LKR200 million
- Master file: if the aggregate revenue exceeds LKR7.5 billion
- CbCR: If the entity is a member of an MNE group and the group's revenue exceeds LKR115 billion in the preceding financial year

- **BEPS master and local files**

The TP documentation requirements are broadly based on the OECD master file concept.

- **CbCR**

Refer to the section above.

- **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 the same income tax rates

Or

If any one of the associated enterprises have incurred losses

- **Local language documentation requirement**

Taxpayers are required to keep and maintain the TP documentation in English.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

Taxpayers are required to make TP-specific disclosures in the income tax return.

4. TP return and related-party disclosures

- **TP-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 and annual report**

Yes, there is a requirement under the Sri Lankan Accounting Standards.

- **CbCR notification included in the statutory tax return**

No

- **Other information or documents to be filed**

No

5. TP 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 TP disclosures and return**

The Transfer Pricing Disclosure Form specified in Section 4 above should be filed along with the income tax return.

- **Master file**

The master file should be submitted to the IRD within 30 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 by no later than 31 December of the reporting fiscal year of such MNE group.

b) TP documentation and local file preparation deadline

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 YA.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Master file and local file should be furnished upon request.

- **Time period or deadline for submission on tax authority request**

The taxpayer has to submit the master file and local file within 30 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).

6. TP 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.

7. 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**

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. roll forwards and update of the financials**

As per the TP regulations, if no significant changes have occurred, no fresh benchmarking needs to be conducted every year, but the financial data of the comparables needs to be updated. A fresh benchmark is required every three years.

- **Simple vs. weighted average**

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.

8. TP penalties and relief

a) Penalty exposure

- **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 lead to imposing a penalty of 200% of incremental tax on the TP adjustment.**
- **If an adjustment is sustained, can penalties be assessed?**

Yes, it can be 200% of the incremental tax.

- **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.

At this stage, the taxpayers generally have three choices:

- Accept the adjustment as it is
- Reach a negotiated settlement
- Follow the appeal procedure

An appeal against an assessment must be filed with the Commissioner General of Inland Revenue. Other appellate procedures include an appeal with the Tax Appeal Commission, a tax suit filed in the Appeal Court and, finally, a case before the Supreme Court.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood depends on the facts and circumstances. The questions below will help taxpayers to 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 TP methodology being challenged (high, medium or low)**

In general, the likelihood is 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 an adjustment if the TP methodology is challenged (high, medium or 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 undergo audit**

No particular transaction, industry and situation is more at risk of receiving a tax audit than another. Past 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.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

For group companies, a debt-to-equity ratio of 3:1 applies to manufacturing companies and a 4:1 ratio applies to other types of companies. Interest paid on loans in excess of the debt-to-equity ratio is not deductible for tax purposes.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Swedish Tax Agency (STA)

b) Relevant TP section reference

- Name of TP 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 TP 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 TP.

- Section reference from local regulation
- Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Sweden is an OECD member.

The Swedish tax laws on TP are based on the OECD Guidelines, and the courts and tax authorities apply the OECD Guidelines.

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

TP documentation prepared in line with the documentation requirements may give 50%-100% penalty protection, if provided on a timely basis and if the company has adhered to the principles described in the documentation.

c) Is your jurisdiction part of the OECD/G20 Inclusive Framework on BEPS?

Yes, Sweden 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, as of 27 January 2016

3. TP documentation requirements

a) Applicability

- Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?

Yes, TP 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 foreign company need to comply with the local RP rules?

Yes, the documentation requirements apply to Swedish branches of foreign companies.

- Should TP documentation be prepared annually?

[1] https://www.skatteverket.se/.

TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

A Swedish local file may include information on multiple Swedish entities.

b) Materiality limit or thresholds

- **TP documentation**

The Swedish TP 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 of 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 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.

- **Local language documentation requirement**

The TP documentation can be prepared in Swedish, English, Norwegian or Danish.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

There is none specified.

4. TP return and related-party disclosures

- **TP-specific returns**

There are no specific returns that have to be filed for TP 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 and annual report**

Yes

- **CbCR notification included in the statutory tax return**

No

- **Other information or documents to be filed**

No

5. TP 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).

- Other TP disclosures and return

There is none specified.

- Master file

Refer to b) 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) TP documentation and 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) TP documentation and local file submission deadline

- Is there a statutory deadline for submitting TP 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 taxpayer generally has 30 days to submit the TP documentation once requested by the tax authorities in an audit or inquiry.

6. TP 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.

7. 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

Single-year analysis is preferred.

- Use of interquartile range

Yes, interquartile range calculation is preferred.

- Fresh benchmarking search every year vs. roll forwards and update of the financials

Swedish tax law does not explicitly require a fresh benchmarking search every year; financial updates are generally acceptable.

- Simple vs. weighted average

The weighted average is generally preferred.

- Other specific benchmarking criteria, if any

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- Consequences of failure to submit, late submission or incorrect disclosures

Sweden has no specific TP 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 TP cases, penalties at a rate of 40% are generally imposed.

- **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

- **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.

The risk of penalties may be eliminated if there is full disclosure of the transactions undertaken and the methods used, and all other relevant information is provided when submitting the tax return. TP documentation prepared in line with the documentation requirements may give 50%-100% penalty protection, if provided on a timely basis and if the company has adhered to the principles described in the documentation.

Dispute resolution options include litigation in court, MAPs and the EU Arbitration Convention.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of an annual tax audit, in general, is medium-to-high. The likelihood depends on a number of factors, including, but not limited to, 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 TP will be reviewed as part of an audit is high. The STA's focus on TP-related issues has increased significantly since formal documentation requirements were introduced in 2007. In some cases, tax audits focus only on TP.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is low to high that the TP methodology will be challenged if TP is reviewed as part of the audit. The likelihood depends, for example, on the transactions involved, the TP 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 TP methodology is challenged (high, medium or low)**

If the TP methodology is challenged, the likelihood of an adjustment is high, unless the amounts are insignificant.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

Business restructurings and transactions involving intangible assets are often subject to audit.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

In Sweden, formal APA procedures have existed since 1 January 2010. Bilateral and multilateral APAs are available.

- **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 to which Sweden is signatory. Taxpayers have three years to present a case to the STA under the EU Arbitration Convention (90/436/EEC).

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulations or rulings

a) Name of tax authority

Cantonal tax administrations (tax assessments) and Swiss Federal Tax Administration (SFTA, competent authority)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

There are no specific references to TP in Swiss tax law. However, 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. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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. Voluntary filing is possible for Swiss ultimate parent entities for FY2016 and FY2017.

- **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 your 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.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Switzerland does not have TP documentation guidelines or rules concerning the master file and local file. Switzerland does, however, have TP documentation regulations for CbCR. In fact, Switzerland adopted the global minimum standard

included in Action 13 of the OECD BEPS project for the international automatic exchange of CbC reports.

Besides the obligation to file a CbC report for fiscal years starting in or after 2018, there is no specific requirement concerning TP documentation. In particular, there is no obligation to prepare a master file and a local file.

- **Does a local branch of foreign company need to comply with the local TP rules?**

This is not applicable.

- **Should TP documentation be prepared annually?**

Besides the obligation to file a CbC report for fiscal years starting in or after 2018, there are no specific requirements concerning TP 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. 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 TP system in tax audits.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

- **TP 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 CbC report. Filing of a CbC report is mandatory for fiscal years starting in or after 2018. Voluntary filing is possible for Swiss ultimate parent entities for FY2016 and FY2017.

- **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 TP 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 CbC report must be submitted in one of the Swiss official languages (German, French or Italian) or in English.

Besides the CbC report, other TP 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 intra-group debt or receivables in Swiss francs and in foreign currency. The safe-harbor interest rates are updated annually.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 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.

5. TP 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 TP disclosures and return**

This is not applicable.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

The CbC report 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) TP documentation and 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 TP system in tax audits.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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).

6. TP 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.

7. 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. roll forwards 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 vs. weighted average**

There is no preference, and both are applied in practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Swiss tax legislation does not contain specific TP penalties. In particular, there are no penalties for a lack of TP documentation (other than for the CbC report – 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 whomever intentionally submits a false or incomplete CbC report that substantially distorts the information requested, and provides an inaccurate representation of the facts
  - Noncompliance with the decision of the tax authority: up to CHF10,000 to whomever 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?**

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 Financial Matters (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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Tax audits focusing exclusively on TP are rare. However, the likelihood that TP will be reviewed as part of an audit is 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 TP issues, notably as a reaction to the OECD's BEPS Action Plan.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood of the TP methodology being challenged is medium.

Switzerland has various safe-harbor and administrative guidelines (e.g.,, debt-capacity, interest rates, low value-adding services, valuation, etc.), 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 tax payers follow a different methodology or exceed 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 to request a ruling or APA prior to transactions involving the transfer of a business.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

In cases in which the TP methodology is challenged, the likelihood of a TP adjustment is medium, as the disallowance of the methodology regularly leads to an adjustment of profitability.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The risk of scrutiny is 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.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

The mechanisms available in Switzerland to prevent and resolve TP disputes include rulings, bilateral APAs, multilateral APAs and MAPs.

It is common practice to clarify the taxation of critical or complex transactions, including TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

The SFTA has issued a circular containing safe-harbor rules for financing with regard to thin capitalization.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

National Taxation Bureau

b) Relevant TP section reference

- **Name of TP 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 (TP guidelines) became effective on 30 December 2004 (amended on 13 November 2017 and 6 March 2015).

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?

  Ministry of Finance (MOF) drew up an amendment (the Amendment) to the TP guidelines on the basis of the BEPS Action 13 final report. The final Amendment was released on 13 November 2017. In line with OECD BEPS Action 13, the Amendment adopts a three-tiered TP documentation requirement that includes the master file (MF), CbCR, and local file or TP report. The Amendment applies to the profit-seeking enterprises' income tax returns starting fiscal year 2017.

- Coverage in terms of MF, local file and CbCR

  Both the master and local files (TP report) are covered.

- Effective or expected commencement date

  The MF 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."

- 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 reportings.

- **CbCR notification and CbCR submission requirement**

When filing its current-year income tax return, a profit-seeking enterprise of an MNE group shall disclose information, such as the ultimate parent entity (UPE) responsible for filing a CbCR or the surrogate entity appointed by the group, as well as whether it is required to file a CbCR in its jurisdiction.

A profit-seeking enterprise located within the territory of Taiwan which is the UPE of an MNE group is required to file the current-year CbCR, under the prescribed format, with the tax collection authorities within 12 months from the last day of its fiscal year.

If one of the following conditions applies, a profit-seeking enterprise, whose UPE of an MNE group located outside the territory of Taiwan, shall follow the preceding regulations. For two or more constituent entities of the MNE group located within the territory of Taiwan, the MNE group may appoint one to file the CbCR on behalf of all entities and notify the tax collection authorities.

[1] https://www.dot.gov.tw.

a. The jurisdiction in which the UPE is a tax resident has not established CbCR obligations.

b. The UPE files a CbCR in its jurisdiction, but the jurisdiction in which the UPE is a tax resident does not have a signed agreement in place of information exchange on CbCR with Taiwan before the preceding filing deadline.

c. The UPE files a CbCR in its jurisdiction, and the jurisdiction in which the UPE is a tax resident has a signed agreement in place of information exchange with Taiwan on CbCR. The tax collection authorities, however, cannot obtain a CbCR in accordance with the signed agreement.

- CbCR notification included in the statutory tax return

  Yes, it is included in page B6 of income tax return.

c) Is your 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

As of April 2020, Taiwan has bilateral CbCR exchange agreements with Australia, Japan and New Zealand, respectively.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Taiwan has TP documentation guidelines and rules. A TP report has to be prepared annually. Refer to the below for more information.

Taiwan's Taxation Administration, MOF, released the TP guidelines in December 2004.

Except for immaterial related-party transactions, extensive contemporaneous documentation is required. According to the TP guidelines, an enterprise must have the TP 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 TP report, the tax authority may still request "other supporting documents" as evidence for the arm's-length nature of the intercompany transactions (alternate TP documentation). One example of other supporting documents is the parent's or headquarters' TP report, as long as it does not significantly vary from the concepts presented in the TP guidelines.

If the taxpayer does not meet the safe harbor criteria for the TP report, its TP 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
- TP methods selected by the enterprises
- TP methods selected by related parties under the same control
- Result of comparables search under the best method of TP
- A copy of intra-group 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 Jurisdiction-by-Jurisdiction Report (CbCR) notifications) and 22 (amended guidance for the TP report). To be in accordance with OECD BEPS Action 13, the amendment also added two new Articles, 21-1 and 22-1, to the TP guidelines. Article 21-1 added new guidance regarding the MF and Article 22-1 added new guidance for the CbCR.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

TP documentation has to be prepared annually under the local jurisdiction regulations. The minimum requirement to achieve this is an annual update of the TP documentation, including the transaction values and benchmarking analysis.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

A separate TP report per entity must be prepared.

b) Materiality limit or thresholds

- **TP documentation**

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)

- **BEPS master and local files**

This covers both master and local files. 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)

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions.

- **Local language documentation requirement**

The TP report and MF need to be submitted in the local language.

  - Article 22, paragraph V: The TP report or alternate TP documentation provided by profit-seeking enterprises pursuant to the preceding paragraphs should contain a table of contents and an index. The Mandarin Chinese translation shall 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 MF 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 TP report (local file) are provided as follows:

a. The MOF released a letter ruling[2] to further relax the safe harbor criteria. The rule applies for fiscal years ending December 2008 and afterward. The ruling states that the enterprise is not required to prepare a TP 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 additionally:
    - 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.

    Or

    - 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.

    Or

  - 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 MF are provided as follows:

[2]Tax Letter Ruling No. 09704555160, November 2008.

a. A Taiwan profit-seeking enterprise that is a member of an MNE group can be exempted from the MF requirement if either of the criteria below is met (the letter ruling[3] 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.

  Or

- The aggregated amount of cross-border controlled transactions in the current year is less than TWD1.5 billion.

The safe harbors for the CbCR is provided as follows:

a. 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[4] was released by the MOF on 13 December 2017).

b. 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[5] 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.

  Or

- The aggregated amount of cross-border controlled transactions in the current year is less than TWD1.5 billion.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

The tax authority currently does not require TP-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 TP 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 TP 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 and 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 or documents to be filed**

This is not applicable.

[3]Tax Letter Ruling No. 10604700690, December 2017.

[4]Ibid.

[5]Tax Letter Ruling No. 10804651540, December 2019.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

31 May (example for a calendar-year profit-seeking enterprise)

- **Other TP disclosures and return**

31 May (example for a calendar-year profit-seeking enterprise)

MF notification: Notification shall be done upon the filing of an income tax return by completing a form of the tax return (page B6).

MF preparation and submission: The MF shall be prepared while filing the income tax returns and submitted to the tax authority within 12 months after the fiscal year-end.

- **MF**

MF 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) TP documentation and local file preparation deadline

The TP documentation should be prepared by the time of lodging the tax return.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

The TP 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 MF 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 on 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 MF shall be submitted within 12 months after the fiscal year-end.

6. TP methods

a) Applicability (for both international and 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.

7. 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**

Multiyear analysis is preferred.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is no specific requirement for a fresh benchmarking search every year. However, the TP 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 vs. weighted average**

The weighted average is required while testing an arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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 TP 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?**

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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by local authority

- **Likelihood of TP-related audits (high, medium or 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 TP 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 TP methodology being challenged (high, medium or low)**

The likelihood that the TP methodology will be challenged in Taiwan is medium. According to the Taiwan regulations, the most appropriate TP 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 TP methodology, should questions arise. Through such steps, challenges on the TP methodology can be mitigated.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**
- **It's high, because the tax authority in Taiwan has been taking a firm stand in conducting TP audits in recent years.**
- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The MOF has issued a ruling that sets forth circumstances under which a TP 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 TP guidelines.
- The enterprise fails to charge related parties in accordance with the TP guidelines or charges an abnormal amount.
- The enterprise fails to provide the TP report upon a tax audit.

- The tax authority adjusted the TP of the enterprise, in which case the tax years preceding and subsequent to the year of a TP 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 TP guidelines.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

APAs are available under Articles 23–32 of the TP 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 TP 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 TP 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 TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Tanzania Revenue Authority (TRA)

b) Relevant TP section reference

- **Name of TP 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. TP 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 reference from local regulation**

Associates are defined under Section 3 of the ITA 2004.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP manual).

Nevertheless, the ITA 2004 and the 2018 TP regulations prevail if there are any inconsistencies between them, and the OECD's and the UN's documents.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, The Tax Administration (Transfer Pricing) Regulations, 2018, was issued by way of a gazette notice published on 27 April 2018 and took effect on the publication date.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, the regulations require contemporaneous transfer documentation to be prepared "for the year of income" (Regulation 7(3)).

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Each entity (including branches) needs TP documentation.

b) Materiality limit or thresholds

- **TP documentation**

There is no materiality threshold for TP documentation. However, the filing of the TP documentation together with the income tax return is required for entities with an aggregate value of related-party transactions of TZS10 billion and above.

[1] https://www.tra.go.tz/.

Master file

This is not applicable.

- **Local file**

This is not applicable.

- **CbCR**

This is not applicable.

- **Economic analysis**

This is required.

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 TP documentation needs to be submitted in either of the official languages of Tanzania (English or Swahili). However, in practice, TP documents are normally completed in English.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Any other disclosure or compliance requirement**

Annual updating of benchmarking is expected.

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax (CIT) 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 and annual report**

Yes, IFRS is applicable.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 TP 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 or more).

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

Yes, the documentation should be prepared upon the submission of the annual return – by the time of lodging the tax return to achieve penalty protection (e.g.,, where there is a contemporaneous requirement).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Yes, taxpayers with an aggregate value of related-party transactions of TZS10 billion and above should submit the documentation by the deadline for CIT return.

- **Time period or deadline for submission on tax authority request**

As per Section 7(4), the taxpayer has 30 days to submit the TP documentation once requested by the tax authorities in an audit or inquiry. This applies to taxpayers with an aggregate value of related-party transactions less than TZS10 billion.

6. TP 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 TP 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 TP regulations reiterate that the most appropriate method should be applied with regard to the nature and specific features of the transaction in question.

7. Benchmarking requirements

- Local vs. regional comparables

There is a preference for local comparables; however, it is not mandatory.

- Single-year vs. multiyear analysis

There is a preference for multiple-year testing (preferably three years).

- Use of interquartile range

Interquartile range calculation using Excel Quartile formulas is acceptable.

- Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average

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 shall 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.

8. TP penalties and relief

a) Penalty exposure

- Consequences of failure to submit, late submission or incorrect disclosures

The penalty for taxpayers who fail to comply with the TP 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 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?

Yes, it will be 100% 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 noncompliance or underpayment of tax has reasonable cause.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is high. The tax authority has revamped its TP team and there has been an increased number of TP audits.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is high. Refer to the section above.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is high. Refer to the section above.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

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.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

The TP regulations provide for an opportunity to enter into unilateral, bilateral or multilateral APAs. In a seminar for taxpayers on TP, 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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, nonresident persons or associates of such entities or persons.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Thailand Revenue Department (TRD)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

The tax law provisions, agreements and standards related to TP are:

- Provisions under the Thai Tax Code (TTC) dealing with market prices of the transactions
- Effective on or after 1 January 2019, Thailand's Transfer Pricing Act (TP Act) adding 3 new provisions to the TTC to stipulate the annual compliance requirements for taxpayers with related party
- TP guidelines: Departmental Instruction No. Paw. 113/2545 (DI 113)
- The bilateral advance pricing arrangement (bilateral APA) guidelines
- Double tax agreements between Thailand and other countries
- Thai Accounting Standard #24 (Related Party Disclosure) and Thai Financial Reporting Standard #15 (Revenue from Contracts with Customers)

- **Section reference from local regulation**

Provisions under the TTC dealing with income or expense items below market price:

- Sections 65 bis (4)
- Sections 65 ter (15)
- Section 70 ter

Provisions under the TTC dealing with annual compliance requirements:

- Section 35 ter
- Section 71 bis
- Section 71 ter

[1]http://www.rd.go.th/publish/index_eng.html.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Thailand is not a member of the OECD.

However, Thai TP guidelines generally follow the OECD Guidelines, including allowing all of the methods acceptable under the OECD Guidelines. The OECD Guidelines are not binding on the TRD; however, they may provide useful guidance, covering areas not addressed by DI 113.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

On 16 May 2017, the Thai cabinet approved the jurisdiction's action to join the BEPS Inclusive Framework as an associate. This involves implementation of Action 13 as one of the minimum standards. At the time of this publication, no specific timeline for the implementation of Action 13 has been released.

- Coverage in terms of master file, local file and CbCR

  See requirements under the TP Act.

- Effective or expected commencement date

  See requirements under the TP Act.

- Material differences from OECD report template or format

  For local file, please refer to DI 113 until further supplementary laws to the TP Act will be released.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  Relevant penalty protection clauses were not yet released at the time of the preparation of this publication.

- **CbCR notification and submission requirement**

TRD is looking into incorporating CbCR in its TP documentation requirements for financial years commencing on or after 1 January 2020 onward. But it is still at public hearing stage at the time of this publication's preparation.

- **CbCR notification included in the statutory tax return**

Relevant requirements were not yet released at the time of this publication preparation.

c) Is your 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

It was not a signatory at the time of this publication's preparation.

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, while the master file can be prepared per OECD Transfer Pricing Guidelines, Thai TP guidelines (i.e.,, DI 113) outline the content requirements for Thai TP documentation (or local file). Contemporaneous documentation for annual submission or penalty protection in Thailand was not in place at the time of this publication's preparation, but a taxpayer is required to submit the TP documentation within 60 days upon receiving a request from TRD.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, a local branch will need to comply with the local TP rules if it has related-party transactions.

- **Should TP documentation be prepared annually?**

The TRD typically requests TP documentation before tax or TP audits. In that case, taxpayers will usually be required to provide their TP documentation within 60 days of receiving a request from the TRD.

In practice, annual report preparation and updates are expected. This should include, at a minimum, verification of key facts and data in the TP documentation, including a financial update of the local benchmarking study. In general, a new benchmarking analysis should be conducted every three years.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, each entity of an MNE is required to prepare a stand-alone TP report if it has related-party transactions.

b) Materiality limit or thresholds

- **TP documentation**

A taxpayer having annual revenue not exceeding THB200 million (USD6 million) per year will be exempted from the requirement to provide TP documentation within 60 days upon receiving a request letter from TRD. Such revenue threshold refers to total revenue as disclosed in the audited financial statements for the relevant fiscal year.

- **Economic analysis**

Same as above

- **BEPS master and local files**

Same as above

- **CbCR**

Per the draft for public hearing, a consolidated revenue threshold of THB28,000 million per year (or proportionate if such ultimate parent company operates less than a year) is applied.

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions between related parties should also comply with the arm's-length principle, and appropriate TP documentation is expected to be prepared for these transactions since the inception of such transactions.

- **Local language documentation requirement**

Local Thai language may be required for documentation; taxpayers should review the request from the Thai tax authority as to which language is requested.

- **Safe harbor availability, including financial transactions, if applicable**

This is not applicable.

- **Any other disclosure or compliance requirement**

Refer to Section 4.

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

The TRD published the Transfer Pricing Disclosure Form (Disclosure Form) on 18 November 2019. Taxpayers with revenue of at least THB200 million (USD6 million) are required to provide information regarding their related-party relationships and the value of related-party transactions in the Disclosure Form. The Disclosure Form applies to taxable years beginning on or after 1 January 2019.

- **Related-party disclosures in financial statement and annual report**

It's only required for public accountable entities, which are required to prepare audited financial statements in accordance with Thai Financial Reporting Standard.

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

CbCR

5. TP 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 TP disclosures and return**

TP disclosure form should be submitted within 150 days after each financial year-end of the taxpayer, along with the corporate income tax return.

- **Master file**

Within 60 days upon receiving a request letter from the TRD

- **CbCR preparation and submission**

Within 12 months after each financial year-end of the taxpayer

- **CbCR notification**

Relevant requirements were not yet released at the time of this publication

b) TP documentation and local file preparation deadline

TP documentation is expected to be prepared before the inception of the transaction.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on tax authority request**

Within five years from the date of filing the TP disclosure form, the TRD can request additional documents or evidence necessary to analyze the related-party transactions. The taxpayer is required to submit the additional documents (i.e.,, full TP documentation) within 60 days after receiving a request letter. If necessary, the taxpayer can request a 120-day extension to respond to the additional information requests. A 180-day extension is available for taxpayers if it is their first time of receiving a request letter from the TRD.

6. TP methods

a) Applicability (for both international and domestic transactions)

The TRD usually accepts CUP and TNMM, although it would also accept resale price, cost plus and other commercially used methods, such as the profit-split method, as specified in the OECD Guidelines and DI 113.

b) Priority and preference of methods

Refer to "Applicability" section above.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no written regulation; however, in practice, Thai comparables are requested.

- **Single-year vs. multiyear analysis**

Both single-year and three-year testing are required.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards 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 fiscal year, conducting only financial updates on that benchmarking study are acceptable for the next two years.

- **Simple vs. weighted average**

The preference is for the weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**
- **The selected comparable companies should not be owned with 50% common shareholding (indirectly or directly).**
- **The selected comparable companies should not have any related-party transactions of more than 20%.**
- **Auditors' opinion on comparable companies should be reviewed to ensure that financial data is reliable before financial analysis is performed.**

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Failure to comply with the TP disclosure, or submitting incorrect information, will be subject to a penalty of not exceeding THB200,000.

- **If an adjustment is sustained, can penalties be assessed?**

For tax shortfalls in general, if the TRD assesses a company, a penalty of 100% or 200% of the tax shortfall can be applied on certain circumstances.

- **Is interest charged on penalties or payable on a refund?**

A 1.5% per-month surcharge is imposed. The 1.5% monthly surcharge is capped at 100% of the tax shortfall amount.

b) Penalty relief

In the event of a TP adjustment, there is no formal penalty relief for having TP documentation in place.

Penalties may be reduced to half, or waived, if the taxpayer voluntarily files a return and accounts for the tax shortfall.

Surcharges are a form of interest and cannot be reduced. Contemporaneous documents cannot be used to reduce the penalty for a TP shortfall. However, documentation is an important tool in the defence of TP, should a tax audit take place.

A taxpayer can appeal for review through the tax authority and court process or through a mutual agreement procedure if a double tax agreement with the relevant mutual agreement clause is available or applicable.

9. Statute of limitations on TP assessments

TP assessments window is within five years from the date of filing the TP disclosure form.

10. Frequency of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of TP-related issue being reviewed as part of an audit is considered high.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood that TP methodology will be challenged is high because the TRD focuses on the use of appropriate Thai comparables in the application of TP methodology.

- **Likelihood of an adjustment if the TP methodology is challenged (high/medium/low)**

Based on our observation of tax audits in Thailand, the likelihood of adjustment is high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The TRD does not focus on a specific jurisdiction or industry, but rather on multinational corporations of various industries that incurred intercompany fees, cost allocations, consecutive losses and fluctuations of profitability.

The TRD also makes TP adjustments to the deductibility of expense items during its annual routine visits to taxpayers to review their business operations. During such checks, if officials find transactions warranting further analysis (including deductibility of expenses arising from intercompany transactions), a further investigation will be conducted.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

Bilateral APAs are available in Thailand. The Thai TP and bilateral APA guidelines were issued in 2002 and 2010, respectively.

- **Tenure**

It is up to five years.

- **Rollback provisions**

This is not available on the BAPA guidelines.

- **MAP opportunities**

Yes

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no thin-capitalization rules at the time of this publication preparation.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Office Togolaise des Recettes (Togolease Revenue Office)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**
  - Article 106 of the General Tax Code: Transfer Pricing form/declaration obligation (Finance Law 2020)
  - Article 106 of the General Tax Code: Transfer Pricing documentation obligation (Finance Law 2020)
  - Article 206 of Tax Book Procedure: Transfer Pricing documentation obligation (Finance Law 2020)
- **Section reference from local regulation**

General Tax Code: Article 106

Tax Book Procedure: Article 206

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Togo has implemented TP documentation and TP return obligation.

- 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- Article 106 of the General Tax Code: Transfer Pricing documentation obligation (Finance Law 2020)
- Article 206 of Tax Book Procedure: Transfer Pricing documentation obligation (Finance Law 2020)

The TP 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 TP 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 foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

A separate TP report is required per legal entity.

b) Materiality limit or thresholds

- **TP documentation**

The documentary obligation in French applies to anyone who meets the following conditions:

1. Companies established in Togo whose annual turnover net of tax or gross assets on the balance sheet is greater than XOF20,000,000,000

2. Companies established in Togo which hold or 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 XOF20,000,000,000

3. Companies established in Togo which are owned or controlled, 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 XOF20,000,000,000

The TP 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 XOF50,000,000 must be disclosed.

- **Master file**

There is no materiality limit or threshold.

- **Local file**

Only transactions more than XOF50,000,000 before tax should be disclosed in the TP 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 TP documentation and TP return should be submitted in French.

- **Safe harbor availability, including financial transactions, if applicable**

There is no specific requirement

- **Any other disclosure or compliance requirement**

During the tax audit, the tax authorities can request TP information (nature of relationship between companies, the relevant TP method, the activities carried out by the companies, etc.) even if the legal entity is not subject to the TP documentation obligation.

4. TP return and related-party disclosures

- **TP-specific returns**

The TP return needs to be submitted in French as part of the taxpayer's annual tax return. A model of this TP 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 and annual report**

This is not apllicable.

- **CbCR notification included in the statutory tax return**

No CbCR notification requirement

- **Other information or documents to be filed**

There are no other documents to be filed.

5. TP 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 TP disclosures and return**

The deadline for filing the TP 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) TP documentation and local file preparation deadline

The deadline for preparing the TP documentation is three months following the submission of the annual financial statements.

Also, the TP documentation must be available to the tax authorities at the beginning of a tax audit of the accounting records.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

The TP documentation must be prepared within three months as of the filing of the income tax return.

- **Time period or deadline for submission on 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.

6. TP 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.

7. 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**

No specific requirement

- **Use of interquartile range**

No specific requirement

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

No specific requirement

- **Simple vs. weighted average**

No specific requirement

- **Other specific benchmarking criteria, if any**

No specific requirement

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

TP documentation:

- For each audited FY, a fine of 1% based on the amounts of the unjustified transactions after the formal notice from the tax authorities – the fine could not be less than XOF10,000,000 per FY

  Or

- A fine of 10% in case of reassessed amounts

The lack of reply or a partial reply may trigger the application of the estimated taxation procedure.

- **If an adjustment is sustained, can penalties be assessed?**

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.

- **Is interest charged on penalties or payable on a refund?**

1% per month

b) Penalty relief

This is not applicable.

9. Statute of limitations on TP assessments

The limitation period is set to three years (common tax regime).

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

Medium

- **Likelihood of TP methodology being challenged (high, medium or low)**

Medium

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Medium

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

No specific transactions

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

No specific requirement

- **Tenure**

No specific requirement

- **Rollback provisions**

No specific requirement

- **MAP opportunities**

No specific requirement

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.**

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

- Ministry of Finance (Tunisia)
- The General Directorate of Taxes (La Direction Générales des Impôts)

b) Relevant TP section reference

- Name of TP 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 TP 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: Governing the Transfer Pricing Adjustments, defining the associated enterprises and regulating the TP rules with entities resident or established in low tax jurisdictions
- Article 59 paragraph II bis of the PCITC: governing the annual TP return requirement aspects
- Article 38bis of the Code of Fiscal Rights & Procedures (CFRP): governing the documentation supporting the TP 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 noncompliance with the annual TP return requirement aspects
- Article 84undecies of the CFRP: governing the sanctions and fines that may be applicable in case of noncompliance with the documentation supporting the TP 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 noncompliance with the CbCR filing requirements aspects

All the TP rules added by virtue of the Finance Act for the year 2019 are applicable to the tax position starting from 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 94 of the CFRP: governing the sanctions and fines that may be applicable in case of noncompliance 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 TP policy aspects)

- Section reference from local regulation

Please see above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Tunisia is not a member of the OECD. However, the Tunisian TP newly incorporated regulations that are applicable starting from 1 January 2020 is highly inspired from the OECD Guidelines (mainly the BEPS Action 13).

b) BEPS Action 13 implementation overview

- Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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

[1] https://doc-fiscale.finances.gov.tn/cimf-internet/page/document/fr/preview?path=/Loi%20de%20Finances/2019/Loi%20de%20Finances%202019%20Fr.pdf.

Pursuant to the Minister of Finance's orders dated 16 October 2019, the TP 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 have set out the contents of the supporting documents of TP's policy (master file and local file) and the contents of the CbC report, which are highly inspired from the OECD Guidelines and rules. Entities that are compliant with the Minister of Finance's orders on 16 October 2019 can avoid the penalties for lack of compliance with TP documentation rules.

c) Is your 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 November 2019

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

According to Tunisian tax regulation, which will be in force starting from 1 January 2020, the TP documentation requirements are summarized as following:

An annual TP return (to be filed annually): This is required by associated enterprises as defined by Article 48septies of the PCITC and of which the annual sales inclusive of all taxes exceed TND20 million. The form of the annual TP return, which should be e-filed, is fixed by the tax authorities.

The documentation supporting the TP 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 and of which the annual sales inclusive of all taxes exceed TND20 million. The form of the documentation supporting the TP policy is fixed by a ruling of the Minister of Finances.

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 of the CbCR, which should be e-filed, is fixed by a ruling of the Minister of Finances.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

The annual TP return and the CbCR (if it applies) have to be prepared and filed annually.

The documentation supporting the TP 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 your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

TP documentation

Total operating and financial revenue of more than TND20 million

- **Master file**

Total operating and financial revenue of more than TND20 million

- **Local file**

Total operating and financial revenue of more than TND20 million

- **CbCR**

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 jurisdiction-by-jurisdiction 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.

  Or

- 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.

  Or

- 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 intra-group transactions, including any changes from previous years
- An indication of the most appropriate TP 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 TP method used
- If applicable, an explanation of why a multi-year analysis of TP methods has been applied
- A list and description of comparable open-market transactions and independent company financial indicators used in the TP 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 part, 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 TP method used
- A summary of the financial assumptions used to apply the TP method
- A copy of the prior unilateral TP 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 intra-group transactions described above

c) Specific requirements

- **Treatment of domestic transactions**

Domestic transactions are covered by the TP regulation governing cross-border transactions without any difference (e.g.,, same adjustments rules and same documentation rules).

The only exception is that domestic transactions are excluded from the APAs, i.e.,, only cross-border transactions may be covered by an APA.

- **Local language documentation requirement**

The files are in French, as files in English are not officially recognized but can be accepted in practice.

- **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 paid to shareholders 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%.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Companies resident or established in Tunisia that are controlled by other companies or that control other companies according to Article 48septies of PCITC, and with gross annual sales equal to or greater than TND20 million, are required to submit an annual TP 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 TP 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 TP 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 with gross annual sales equal to or greater than TND20 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 TP 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 Minister of Finances.

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 administrations 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 and annual report**

There is no specific additional requirement other than those exposed with regard to annual TP 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).

The Finance Minister's order on 16 October 2019 sets out the contents of the CbC report.

- **Other information or documents to be filed**

This is not applicable.

5. TP 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 TP disclosures and return**

The annual TP return should be filed within the same deadlines as the CIT return.

The documentation supporting the TP 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 TP 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) TP documentation and local file preparation deadline

The documentation supporting the TP 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) TP documentation and local file submission deadline

The documentation supporting the TP 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 submitting TP documentation or local file?**

TP documentation requirements have to be filed, prepared and submitted within the same deadlines (as indicated above in a), b) and c)).

- **Time period or deadline for submission on tax authority request**

Apart from the cases of the annual TP return as well as the CbCR that should be submitted "spontaneously" (i.e.,, not upon request by tax authorities), on an annual base, the companies with gross annual sales equal to or greater than TND20 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 TP 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 administrations 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.

6. TP methods

a) Applicability (for both international and domestic transactions)

Prior to the adoption of the new TP 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, and after the adoption of the new TP rules by virtue of the Finance Act for the year 2019, the tax legislator is moving toward the recognition of the OCED's methods.

b) Priority and preference of methods

Prior to the adoption of the new TP rules by virtue of the Finance Act for the year 2019, the CUP was the preferred method.

Based on the current new tax regulation adopted by the Finance Act for the year 2019, it may not be excluded that the tax legislator is moving toward the recognition of the OCED 5 methods, but there is not yet specified preferred or prioritized methods. In all cases, the method should be the base that reflects as fair 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 authorities.

7. Benchmarking requirements

- **Local vs. regional comparables**

The current legislation does not cover any specific benchmarking "Local vs. regional comparables" requirements.

- **Single-year vs. multiyear analysis**

The current legislation does not cover any specific benchmarking "Single-year vs. multiyear analysis" requirements.

- **Use of interquartile range**

The current legislation does not cover any specific benchmarking "Use of interquartile range" requirements.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

The current legislation does not cover any specific benchmarking "Fresh benchmarking search every year vs. roll forwards and update of the financials" requirements.

- **Simple vs. weighted average**

The current legislation does not cover any specific benchmarking "Simple vs. weighted average" requirements.

- **Other specific benchmarking criteria, if any**

The current legislation does not cover any specific benchmarking requirements.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of an adjustment of the taxable income following a TP adjustment**
  - The additional tax in base is required on the additional adjusted income (Article 48 septies of the PCITC).
  - The proportional delay penalties on the additional tax in base would be required as following (Article 82 of the CFRP):
    - 1.25% per month or a proportion of a month based on the nonpaid due additional CIT liability in base
    - 2.5% based on the nonpaid due additional tax liability in base
  - The fixed delay penalties on the additional tax in base would be required as following (Article 81 of the CFRP):
    - 1.25% based on the nonpaid due additional CIT liability in base, in case the delay does not exceed 60 days
    - 2.5% based on the nonpaid due additional CIT liability in base, in case the delay exceeds 60 days
  - A prison sentence that varies from 16 days to three years and a fine that varies from TND1,000 to TND50,000, especially in the case of the use of invoices including exaggerated amounts compared with the arm's-length principle, and this is in order to implement tax avoidance planning based on non-fair TP rules (Article 94 of the CFRP).
  - Withholding tax (WHT) on deemed divided may also apply (not expressly provided by the tax regulation but this measure is adopted by the tax audit authorities' practices).

- **Consequences of failure to submit, late submission or incorrect disclosures**
  - Annual TP return: Any company that has not filed the annual TP return within the legal deadlines is liable to an administrative tax fine equal to TND10,000. Any missing information in the above-mentioned 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 TP policy: Any company that did not communicate the documentation supporting the TP 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).

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. In other words, the offenses provided for in Articles 94, 84nonies, 84undecies and 84 decies of the CFRP, which may be applicable to the noncompliance with TP 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.

9. Statute of limitations on TP assessments

- **In case of compliance with the tax returns filing requirements: the current considered year and the four previous years**
- **In case of noncompliance with the tax returns filing requirements (failure to file tax returns): the current considered year and the 10 previous years**

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

High

Likelihood of TP methodology being challenged (high, medium or low)

High

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

High

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

No specifications: Tax authorities may challenge all TP transactions, industries and situations.

11. APA and MAP 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 TP on the method to be applied in the future, with associated enterprises established outside Tunisia.

The procedures for concluding the agreement and its effects are set by a ruling of the Minister of Finances (ministerial ruling decreed on 6 August 2019).

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 in order to set out the practical arrangements for implementing the MAP provided for in the double taxation treaties concluded by Tunisia.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Pursuant to Article 48 of PCITC, the interests paid to shareholders 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%.

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Not available

1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Turkish taxes are administered by the Turkish Ministry of Finance or by Turkish state authorities.

b) Relevant TP section reference

- **Name of TP regulations or rulings and effective date of applicability**

TP is regulated by Article 13 of the Corporate Tax Code No. 5520, published on 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 TP, 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."

TP 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 and 3.

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 TP.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Turkey is a member of the OECD.

The preamble to the law covering TP 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 TP 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, TP 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 TP methods listed in the OECD Guidelines.

b) BEPS Action 13 implementation

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 TP report and CbC report for the 2019 accounting period.

- Coverage in terms of master file, local file and CbCR

  Master file: The multinational taxpayers which 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 local file requirement is the same as the former annual TP report and all taxpayers which have cross-border transactions (for large corporation taxpayers, both domestic and cross-border intercompany transactions) have to prepare a local TP report. In addition, companies operating in free trade zones are required to prepare a TP report for their domestic intercompany transactions.

  CbCR: The CbCR is for taxpayers belonging to an MNE group which have a consolidated revenue of EUR750 million or above. The first CbCR will be for the year 2019 and will be submitted by 31 December 2020.

CbCR notification requirement: With the decree, notification requirements have been introduced. Multinational entities are covered, and the reporting entity (whether ultimate parent entity or surrogate entity) must indicate which entity will report CbCR and should be identified to Turkish tax authorities within six months after the effective date of this Decree (August 2020). For following the reporting periods, notification shall be made by the end of June with a written petition to the tax authorities.

- 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, there are TP documentation guidelines, rules and strict documentation requirements. TP documentation is required to be prepared contemporaneously.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

The TP documentation report has to be prepared annually under the local jurisdiction regulations. Updating transaction values might be a solution only in case there are no changes in the operations, functions, supply chain, organization, shareholder structure, etc., of the entity. Otherwise, the expectation of the tax authority is to have a full documentation report.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP 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 and above.

- **Economic analysis**

There is none specified.

c) Specific requirements

- **Treatment of domestic transactions**

There is a documentation requirement for domestic intercompany transactions in the case that the company is registered with the Large Taxpayers Tax Office (Büyük Mükellefler Vergi Dairesi Başkanlığı).

- **Local language documentation requirement**

The TP 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-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 TP 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 intra-group services. Taxpayers must also disclose the TP 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 will be required to complete the form on TP, 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 and above, they will be obligated to electronically submit the TP 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 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The documentation should be filed on or before 25 April.

- **Other TP 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 to the Turkish Tax Authority when requested.

- **CbCR preparation and submission**

The CbCR should be submitted electronically within 12 months after the end of the reporting period. The first CbCR will be filed for FY2019.

- **CbCR notification**

Notifications for FY2019 will be submitted by the end of August 2020; for the following periods, notifications will be submitted annually by the end of June of the relevant year.

b) TP documentation and local file preparation deadline

The TP documentation should be finalized by the time of lodging the tax return to achieve penalty protection (e.g.,, where there is a contemporaneous requirement).

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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.

- **Time period or deadline for submission on tax authority request**

The taxpayer has to submit the TP documentation within 15 days once requested by the tax authorities in an audit or inquiry.

6. TP methods

a) Applicability (for both international and 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.

7. 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. roll forwards and update of the financials**

Fresh benchmarking is preferred.

- **Simple vs. weighted average**

The weighted average is preferred.

- **Other specific benchmarking criteria, if any**

There is a preference for applying independence and unconsolidated financials criteria.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

There are no specific TP penalties, but failure to submit, late submission or incorrect disclosures trigger a tax audit.

- **If an adjustment is sustained, can penalties be assessed?**

If such a disguised distribution is assessed during a tax audit:

a. For corporate income tax purposes, 22% of the corporate income tax is recalculated as if the disguised distribution had not been made.

b. A dividend withholding tax of 15% is calculated for the net amount of the disguised distribution.

- **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 TP 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.

9. Statute of limitations on TP assessments

There is no specific statute of limitations on TP assessments. Rather, the general rule for the statute of limitations is applicable, which is five years from the accrual of the tax payment.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

For medium- and large-sized multinational firms, the likelihood of an annual tax audit is high. Most large-sized 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 TP scrutiny during a tax audit is high, as tax inspectors generally focus on related-party transactions.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood of a challenge to the TP 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 TP methodology is challenged (high, medium or low)**

For medium- and large-sized multinational firms, the likelihood of an annual tax audit is high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The frequency of TP audits has increased, and these audits are mainly focused on intra-group 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.

11. APA and MAP 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 TP 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 TP adjustment, there will neither be the imposition of a deemed dividend (arising as a result of the TP 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

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

According to local thin-capitalization regulation, if the ratio of the borrowings from shareholders or from people related to the shareholders exceeds thrice 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 (TP) regulation or rulings

a) Name of tax authority

Federal Tax Authority (FTA)

b) Relevant TP section reference

- **Name of TP regulations or rulings and effective date of applicability**

There are currently no local TP regulations in place, except regulation of the submission of reports (jurisdiction-by-jurisdiction report) by multinational companies.

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

No; however, UAE has issued stand-alone legislations to govern CbCR requirements.

- Coverage in terms of master and local files

  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 your 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, 24 June 2018

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

No

- **Does a local branch of foreign company need to comply with the local TP rules?**

When it comes to CbCR requirements, yes, the local branch of foreign company needs to comply. However, there are no additional documentation requirements such as master file or local file.

- **Should TP documentation be prepared annually?**

This is not applicable.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

This is not applicable.

b) Materiality limit or thresholds

TP documentation

This is not applicable.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

The new reporting requirements has affected businesses that have a legal entity or branch in the UAE and are members of a multinational enterprise (MNE) group with annual turnover above AED3.15 billion (approximately USD850 million).

- **CbCR notification and CbC report submission requirement**

Same as above

- CbCR notification included in the statutory tax return

  No, CbCR notification is a separate submission.

- **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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

a) TP-specific returns

This is not applicable.

b) Related-party disclosures and TP-related appendices

This is not applicable.

c) Other information or documents to be filed

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

This is not applicable.

- **Other TP disclosures and return**

This is not applicable.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

A UAE reporting entity (i.e.,, UPE or SPE) must file its CbCR no later than 12 months after the last day of the reporting fiscal year of the MNE group.

- **CbCR notification**

A UAE constituent entity will be required to submit a notification no later than the last day of the reporting fiscal year of MNE group.

b) TP documentation and local file preparation deadline

This is not applicable.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

This is not applicable.

- **Time period or deadline for submission on tax authority request**

This is not applicable.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

7. 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**

This is not applicable.

- **Use of interquartile range**

This is not applicable.

- **Fresh benchmarking search every year vs. roll forwards 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 financial data be updated for the rest of the years.

- **Simple vs. weighted average**

There is none specified.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP 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 set out in the resolution may result in penalties being levied as follows:

1. **Penalty of AED100,000 (USD27,400) for failure to retain supporting documentation and information**
2. **Penalty of AED100,000 for failure to provide the competent authority with requested information**
3. **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**
4. **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 point 3 above, total penalties shall not exceed AED1 million.

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

This is not applicable.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

This is not applicable. TP regulations are not in place.

- **Likelihood of TP methodology being challenged (high, medium or low)**

See the above section.

- **Likelihood of an adjustment if TP methodology is challenged (high, medium or low)**

See the above section.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

None

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

This is not applicable.

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

Yes, as BEPS Associates, the UAE will have to work closely with other jurisdictions to monitor the implementation of the minimum standard on dispute resolution under the BEPS plan. This will complement the other BEPS minimum standards and facilitate taxpayers' access to effective and expedient dispute resolution mechanisms under bilateral tax treaties.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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

Uganda Revenue Authority (URA)

b) Relevant TP section reference

- **Name of TP 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. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD TP Guidelines, UN tax manual or 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 CbC report 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP 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 the Uganda's Income Tax (Transfer Pricing) Regulations, 2011.

The branch is expected to maintain TP documentation in Uganda that verifies that its transactions with its head office as well as other 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 corporate income tax (CIT) return for that year.

- **Should TP documentation be prepared annually?**

No

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP 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

- **TP documentation**

For in-jurisdiction transactions between related entities, the threshold is UGX500 million in aggregate for the transaction during the year.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

This is not applicable.

- **CbCR notification and CbC report submission requirement**

There is no CbCR notification or CbC report submission requirement in Uganda.

- CbCR notification included in the statutory tax return

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 the two domestic entities should be included in the TP documentation.

- **Local language documentation requirement**

The TP documentation need not be submitted in the local language and English documentation is acceptable.

- **Safe harbor availability, including financial transactions, if applicable**

There's none specified.

4. TP return and related-party disclosures

a) Related-party disclosures and TP-related appendices

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

b) TP-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.

c) Other information or 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.

5. TP 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 TP 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) TP documentation and 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on tax authority request**

The taxpayer has to submit TP documentation within 30 days of the tax authority's request.

6. TP methods

a) Applicability (for both international and 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.

7. 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**

Multiple-year (three-year) analysis, as per common practice

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulae is acceptable.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

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

8. TP penalties and relief

a) Penalty exposure

- **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?**

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.

- **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.

9. Statute of limitations on TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or 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 TP methodology is challenged (high, medium or 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 undergo audit**

Management fees and royalties: The general focus by the tax authority is on MNEs, irrespective of the sector, with significant related-party transactions.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (TP) regulation or rulings

a) Name of tax authority

Her Majesty's Revenue and Customs (HMRC)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

The United Kingdom's TP legislation is set out in Part 4 of the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010). This covers cross-border and UK-to-UK transactions.

- **Section reference from local regulation**

For accounting periods beginning on or after 1 April 2018, the UK TP 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 of the TIOPA 2010 and the related interpretative sections.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

The UK is a member of the OECD.

The OECD Guidelines are effectively imported into the UK TP rules because the Guidelines are required to be used in interpreting the rules. Section 164 of the TIOPA 2010 confirms that the UK's TP provisions are to be construed in alignment with Article 9 of the OECD Model Tax Convention and its associated TP guidelines.

For accounting periods beginning on or after 1 April 2011, and ending on or before 31 March 2016, the version of the OECD Guidelines approved by the OECD on 22 July 2010 (the 2010 Guidelines) is to be used in reinterpreting the UK TP legislation. For accounting periods beginning on or after 1 April 2016 and 2011, and ending on or before 31 March 2018, the TP guidelines to be used are the 2010 Guidelines as revised by the report Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 – 2015 Final Report. For accounting periods beginning on or after 1 April 2018, the 2017 OECD Guidelines is to be used. See the section above.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

There are no specific documentation requirements in UK law. However, given the UK participation in the OECD BEPS project, it is recommended to follow the Action 13 formats and it would be regarded as meeting UK requirements.

- 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

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, TP documentation which sets out the evidence of compliance with Part IV TIOPA needs to be prepared contemporaneously.

[1] https://www.legislation.gov.uk/ukpga/2010/8/contents.

- **Does a local branch of a foreign company need to comply with the local TP rules?**

Yes, TP rules are applicable by proxy for UK branches and permanent establishments (PEs) of non-UK companies in respect of hypothesized dealings in addition to group transactions attributed to the PE.

- **Should TP documentation be prepared annually?**

Yes, the minimum requirement to achieve this is maintaining appropriate evidence that transactions meet the arm's-length standard and showing that this position has been considered for each relevant accounting period.

HMRC does not want businesses to suffer disproportionate compliance costs, so it advises that taxpayers should prepare and retain such documentation as is reasonable given the nature, size and complexity (or otherwise) of their businesses or of the relevant transaction (or series of transactions). But such documentations should adequately demonstrate that their TP meets the arm's-length standard having regard to the UK law in Part IV TIOPA.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

No, it is not required by law to have stand-alone TP reports for each UK entity. However, it is preferred to have separate TP reports in support of each company's return filing.

b) Materiality limit or thresholds

- **TP documentation**

There is an exemption from the application of TP rules for small- and medium-sized enterprises (SMEs). For the calculation of profits, the legislation provides an exemption from TP 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 nondiscrimination 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.

- **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.

- **CbCR**

The UK follows the OECD threshold limit.

- **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 TP obligations as cross-border transactions under the law. In practice, HMRC takes 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 to not present TP 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 TP and special rules will apply for them.

- **Any other disclosure or compliance requirement**

No

4. TP return and related-party disclosures

TP-specific returns

There is none specified. There are no return disclosure requirements (save for confirmation), where applicable, that 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 will 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 and 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 CBC report is required.

- **Other information or documents to be filed**

There is none specified.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 12 months after the end of the accounting period.

- **Other TP disclosures and return**

This is not applicable.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

CbC report 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 (UPE). Additionally, 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 CbC reports 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) TP documentation and local file preparation deadline

There is no specific statutory deadline for the preparation of TP 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) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

There is no statutory deadline for the submission of TP documentation.

- **Time period or deadline for submission on tax authority's 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.

6. TP 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 TP guidance is based on adherence to the OECD Guidelines.

Following a tax case in 2010, HMRC now more routinely challenges the robustness of external CUP data (particularly in relation to intellectual property licenses). This is unless there has been an analysis around the relevant parties' bargaining positions in agreeing to the third-party license arrangements. This position has been reinforced by the OECD BEPS Actions, 8 to 10.

HMRC has also expressed concern over the use of, and reliance on, the historical CUP analysis in relation to procurement. HMRC's view is that there is little support for the high level of commissions and fees often paid in outbound transactions. HMRC has commissioned a third-party consultancy to analyze procurement contracts, which is used as a risk assessment tool, and any returns outside the expected range will require persuasive analysis not based around historical CUP data.

In addition, HMRC routinely challenges the use of the cost-plus method for high-value-added services, where it looks to substitute some form of value-based fee using the profit split or a sales-based proxy.

7. 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 has a preference in practice for a local comparable set where available.

- Single-year vs. multiyear analysis

It is not specified in the legislation, but HMRC follows the OECD Guidelines in generally preferring the use of multiyear data.

- Use of interquartile range

It is not specified in the legislation but, in practice, HMRC often challenges prices which fall outside an interquartile range.

- Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average

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 HMRC's publicly available guidance on the best practices in selecting comparables.

8. TP penalties and relief

a) Penalty exposure

- Consequences of failure to submit, late submission or incorrect disclosures

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 TP legislation. There is a penalty regime in UK law which 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 behaviors which led to the inaccuracy. For an error despite taking reasonable care, there is no penalty. For a careless error, there is a lower tax-geared penalty (up to 30%) and, for deliberate inaccuracies, the penalty will be higher (up to 70%). For deliberate mis-statement, which 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?**

Penalties can be assessed for TP adjustments; refer to the section above. It is currently HMRC's practice to consider penalties for any TP adjustment which results in increased taxable profits in the UK, with the level of penalty reflecting the facts and circumstances of the case.

- **Is interest charged on penalties or payable on a refund?**

Interest is charged on overdue tax and the current late-payment interest is 2.60%. Interest is also payable on overpaid tax currently at just 0.5%.

b) Penalty relief

The best protection against penalties is to demonstrate sufficient due diligence around compliance. This is best shown through TP documentation that fully shows that the application of the arm's-length principle was fully considered, following a two-sided functional and factual analysis, in preparing the relevant tax return and applied to each intra-group provision included therein.

Normally, adjustments are mutually agreed in the course of an enquiry. TP settlements are required to be reviewed by HMRC's Transfer Pricing Board to achieve consistency across HMRC. There is a similar board-level review for TP 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 TP cases to be taken to tribunal or court in the UK.

9. Statute of limitations on TP 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 6 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

In general, across the taxpayer population, the likelihood of an annual tax audit is characterized as low. There is no system for annual tax audits, as HMRC takes a risk assessment approach to tax audits. The likelihood that TP will be reviewed as part of a wider audit is characterized as medium. Most multinational companies will have TP considered as part of their overall risk assessment, but only those seen as high risk in this area will typically be then 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 levied at 25% rather than the CT rate of 20%. HMRC launched a Profit Diversion Compliance Facility in 2019 under which companies that may otherwise be impacted by DPT may elect in, and come forward with, revised analysis and an offer to settle.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood of a challenge to the TP methodology is characterized as 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 TP methodology is challenged (high, medium or low)**

The likelihood is high; not all audits or profit divergence compliance facility (PDCF) submissions will result in an adjustment but, equally, given HMRC's risk assessment approach, their expectation is that they will have selected the right cases for enquiry so as to achieve adjustments in the majority of such cases.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

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 to face greater scrutiny.

As noted above, the UK has an additional tax which is potentially chargeable, the DPT, which is increasingly being applied by HMRC to achieve UK tax adjustments on cross-border arrangements or to persuade at-risk MNCs to enter the PDCF program. A full discussion of the tax is beyond the scope of this guide, but it is highly recommended that its application be carefully considered in any TP case.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

Bilateral APA opportunities are available, including, now, for financial transactions, but given the resource constraints of HMRC, admissions to the program are not expected to increase much beyond the current levels. 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 indicated 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).

The UK was one of the groups of the eight tax authorities that signed up for the initial pilot exercise for the International Compliance Assurance Program (ICAP) and welcomes approaches from taxpayers who wish to take part in this program going forward.

- **Tenure**

APAs typically do not exceed five years.

- **Rollback provisions**

Rollbacks should be available, subject to appropriate fact patterns.

- **MAP opportunities**

An 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 71 MAP applications in 2017–18, but admitted 103 new applications. The average time needed to close MAP cases is currently 27.5 months.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 TP rules, there are a number of other domestic rules which may limit interest deductions and should be considered separately.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

State Fiscal Service of Ukraine

b) Relevant TP section reference

- **Name of TP 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 Law or Article 39) regulates TP in Ukraine. Generally, the provisions of the Law are in line with the OECD Guidelines.

A number of rules and provisions related to TP are also established by other laws and decrees, as follows:

- Law of Ukraine No. 609-VIII (15 July 2015) features amendments to the Ukrainian Tax Code regarding TP.
- Law of Ukraine No. 1636-VII (12 August 2014) governs the creation of the free economic zone of Crimea and special conditions of economic activity on the temporarily occupied territory of Ukraine (entities in Crimea are considered nonresidents for the purposes of TP).
- 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 TP purposes.
- Decree of the Cabinet of Ministers of Ukraine No. 480 (4 July 2017) provides a list of organizational legal forms of nonresidents, who 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. 616 (8 September 2016) provides the list of goods traded on the commodity exchanges and the list of world commodity exchanges for the purpose of CUP method application in order to improve tax control over TP.
- Law of Ukraine No. 1797-VIII (21 December 2016) features amendments to the Ukrainian Tax Code regarding TP.
- Law of Ukraine No. 2245-19 (7 December 2017) features amendments to the Ukrainian Tax Code and other legislative acts of Ukraine regarding the balance of budget revenues in 2018.

The tax authorities provide administrative interpretation and guidance on the application of the TP rules, the release of consultation letters, orders, and opinions expressed in the press and at public events.

Local accounting standards: These are the Ukrainian GAAP or International Financial Reporting Standards (IFRS).

At the time of this publication, no regulations and rulings have been issued on BEPS Actions 1 to 15; relevant legislation acts are in development.

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Ukraine is not a member of the OECD.

The Ukrainian tax authorities refer to the OECD Guidelines as well as other reference guides in their consultations and public opinions.

Ukrainian law incorporates the main standards of the OECD Guidelines. A taxpayer taking part in a controlled transaction shall determine the amount of its taxable income pursuant to the arm's-length principle. The array of methods and documentation requirements closely follows the OECD Guidelines.

b) BEPS Action 13 implementation overview

[1] http://sfs.gov.ua/en/.

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**
  - Coverage in terms of master file, local file and CbCR

    Yes — master file and CbCR
  - Effective or expected commencement date

This is not applicable.
  - Material differences from OECD report template or format

    Ukraine has local TP documentation requirements that require additional information to the OECD local file.
  - Sufficiency of BEPS Action 13 format report to achieve penalty protection

    Same as above

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, it should be prepared annually and submitted upon the request of tax authorities within 30 days after receiving such request.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes, a permanent establishment of a nonresident in Ukraine is required to prepare the TP documentation for each reporting period pursuant to the requirements specified in Article 39.

- **Should TP documentation be prepared annually?**

Yes

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, each legal entity with annual revenue exceeding UAH150 million (approximately USD5.5 million) should file the report on controlled transaction and the TP documenting separately from any other legal entities, registered in Ukraine.

b) Materiality limit or thresholds

- **TP documentation**

Transactions are recognized as controlled if both of the following conditions are met:

The annual taxpayer's revenue exceeds UAH150 million (excluding indirect taxes) for the corresponding tax year.

The volume of such transactions with each counterparty exceeds UAH10 million (approximately USD370,370) (excluding indirect taxes) for the corresponding tax year.

- **Master file**

It applies to MNEs with annual consolidated group revenue equal to or exceeding EUR50 million in the previous year. It has not been determined yet whether regulations extend to subsidiary entities.

- **Local file**

It is expected.

- **CbCR**

It is expected once legislation is finalized.

- **Economic analysis**

This is not specified.

c) Specific requirements

- **Treatment of domestic transactions**

There is no documentation obligation for domestic transactions.

- **Local language documentation requirement**

According to paragraph 39.4.9 of the Tax Code of Ukraine, the TP documentation must be submitted in Ukrainian.

- **Safe harbor availability, including financial transactions, if applicable**

This is not specified.

- **Any other disclosure or compliance requirement**

There is the annual preparation and submission of the report on controlled transactions, which contain a list of all controlled supplies of goods and services.

4. TP return and related-party disclosures

- **TP-specific returns**

Ukrainian TP rules require the submission of a TP report on controlled transactions disclosing all the controlled transactions of a taxpayer for the reporting period, provided that the controlled transactions with the same counterparty exceed UAH10 million (approximately USD370,000).

- **Related-party disclosures along with corporate income tax return**

Taxpayers shall report self-adjustments of tax liabilities arising due to the application of TP rules in a special TP annex to the corporate profit tax (CPT) return.

- **Related-party disclosures in financial statement and annual report**

No information

- **CbCR notification included in the statutory tax return**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

60 calendar days after the end of the year

- **Other TP disclosures and return**

1 October for the report on controlled transactions; 30 calendar days upon the tax authorities' request for the TP documentation

- **Master file**

No information

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

There is no statutory deadline for the submission of TP documentation; however, it needs to be submitted within 30 calendar days upon the tax authorities' request.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on tax authority request**

The taxpayer has 30 calendar days to submit the TP documentation once requested by the tax authorities in an audit or inquiry.

6. TP methods

a) Applicability (for both international and domestic transactions)

- **International transactions: yes**
- **Domestic transactions: no**

b) Priority and preference of methods

The Ukrainian TP 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 shall be used. Profit-based TP 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. 616 (8 September 2016), the CUP method based on information from commodity exchanges shall apply. To apply other methods in such situations, a taxpayer shall submit to the tax authorities a written report that includes data about PLIs 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). Such report shall be provided by 1 May of the year following the reporting period.

7. Benchmarking requirements

- **Local vs. regional comparables**

A local benchmarking study must be used.

- **Single-year vs. multiyear analysis**

Both are possible; however, the selection of multiyear analysis should be substantiated in the TP documentation file.

- **Use of interquartile range**

The interquartile range must be used.

- **Fresh benchmarking search every year vs. roll forwards 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 vs. weighted average**

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:

a. Activity code criteria (NACE Rev.2)

b. Financial criteria (positive operating profit for at least one of the years that are used to calculate PLI)

c. Twenty-percent independence criteria

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The report on controlled transactions is mandatory and due on 1 October.

The penalty for not filing the report on controlled transactions is 300 times the subsistence minimum (for FY2019, UAH576,300 or approximately USD21,344).

The penalty for not including all the controlled transactions in the report on controlled transactions is 1% of the total amount of transactions not included, but no more than 300 times the subsistence minimum. If controlled transactions have not been included in the report, the penalty is 1% of the amount of such non-declared transactions, but no more than 300 times the subsistence minimum. The penalty for late submission of the report is one-time the subsistence minimum (for violations in FY2019, UAH1,921 or USD71) for each calendar day of late submission (no more than 300 times the subsistence minimum). Non-submission of the adjusted report after 30 calendar days upon expiration of the term for penalty payment for non-submission is punishable by five times the subsistence minimum (for violations in FY2019, UAH9,605 or USD356) for each calendar day of non-submission of the adjusted report. The penalty for late declaration of the controlled transactions in the submitted report on controlled transactions (in case of the adjusted report submission) is one-time the subsistence minimum for each calendar day of lateness in declaring the transactions in the submitted report, but no more than 300-times the subsistence minimum.

Tax authorities may request TP documentation for the previous fiscal year, starting 1 May of the next year, and the taxpayer has 30 calendar days to comply. The penalty for not submitting the TP documentation is 3% of the sum of the controlled transactions for which the TP documentation was not submitted, but not exceeding 200 times the subsistence minimum (for FY2019, UAH384,200 or approximately USD14,230). Non-submission of the documentation after 30 calendar days upon expiration of the term for penalty payment for non-submission entails penalties of five times the subsistence minimum for each calendar day of non-submission of the documentation. Late submission of the documentation is penalized by two times the subsistence minimum (for violations in FY2019, UAH3,842 or USD142) for each calendar day of late submission, but no more than 200 times the subsistence minimum.

The penalty for understatement of tax liabilities as a result of TP rules is from 25%–50% of the understated tax (no penalty is applicable for the 2013, 2014 and 2015 reporting years). In addition, an understated tax is subject to late-payment interest at a rate of 100%/120% of the discount rate established by the National Bank of Ukraine (NBU), which is 18% per year as of 1 December 2018.

- **If an adjustment is sustained, can penalties be assessed?**

Refer to the section above.

- **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 13.5% per year as of 1 December 2019.

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.

No special penalty relief is provided for failing to submit the TP documentation and the report on controlled transactions.

The tax authorities might reach a decision on the tax underpayment and the necessity of tax adjustments after the tax audit. It is possible to discuss the conclusions administratively or in court.

9. Statute of limitations on TP assessments

The statute of limitations for TP assessments is seven years (2,555 days, as specified by the Tax Code) 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is high. According to the Law, TP 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 TP review.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood that the TP methodology will be challenged during the course of an audit is currently unknown because of the novelty of the legislation and absence of practical experience in Ukraine.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

Self-adjustments are possible. Self-adjustments are the upward adjustments of tax liabilities performed by taxpayers resulting from applying the TP rules and have to be recorded in the CPT return. Deadlines for filing the report on controlled transactions are not aligned with the deadlines for filing the CPT return.

Corresponding adjustments in the case of transactions with nonresidents are not prescribed by the Law.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

None

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Thin-capitalization rules apply to all loans received by resident companies from nonresident related parties 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. Nondeductible interest may be carried forward to future periods, but the carryforward amount is reduced by 5% annually.

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1. Tax authority and relevant transfer pricing (TP) regulations or rulings

a) Name of tax authority

Internal Revenue Service (IRS)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

The following are the TP regulations or rulings:

- Treasury Regulations (Treas. Regs.)
  - Treas. Reg. Section 1.482 (effective: 16 September 2015)
  - Treas. Reg. Section 1.6662 (effective: 30 December 2003)
  - Treas. Reg. Section 1.6038A (effective: 13 December 2016)
  - Treas. Reg. Section 1.6038C
- Revenue Procedures (Rev. Procs.) include Rev. Procs. 99-32, 2015- 40, 2015-41, 2007-13 and 2005-46.
- Tax Cuts and Jobs Act of 2017 (TCJA) (effective from 1 January 2018)[2]

The Tax Cuts and Jobs Act of 2017 (TCJA) made significant changes to the US Internal Revenue Code, including lowering the US corporate income tax rate to 21% and introducing a number of new provisions with TP implications.

Key provisions of the TCJA with TP 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): The TCJA inserted a new section into the IRC, Section 250, which 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.
- Global Intangible Low-Taxed Income (GILTI): The GILTI regime, detailed in the new Internal Revenue Code Sections 250 and 951A, and in revised Sections 960 and 904, imposes a US tax on GILTI, while providing a deduction equal to 50% of the GILTI amount and allowing an 80% foreign tax credit (FTC).
- The TCJA moved the definition of intangibles from Section 936 to Section 367(d)(4) and also expanded the definition.

- **Transfer Pricing Examination Process (Publication 5300 (6-2018))**

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 TP 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).

- **Section reference from local regulation**

Refer to the section above.

2. OECD Guidelines treatment and BEPS Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

The US is an OECD member jurisdiction.

The IRS considers its TP laws and regulations to be wholly consistent with the OECD Guidelines. For domestic purposes, the OECD Guidelines do not provide support and would not be directly relevant to the application of any US TP methods. However, if taxpayers pursue competent authority relief from double taxation or a bilateral APA, the OECD Guidelines are

[1] **https://www.irs.gov/businesses/international-businesses/transfer-pricing.**

[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 NOL deduction allowed under Section 172.

relevant and may be used to demonstrate compliance with international principles.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

The US has adopted BEPS Action 13 (limited to CbC) 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 2016.

- Material differences from OECD report template or format

The CbC template is consistent with the BEPS Action 13 template. The local file documentation template for the US should be consistent with Treas. Regs., Sections 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. Regs., Sections 1.482 and 1.6662. The specific requirements for penalty protection are listed in the "Applicability" section above.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes; however, although TP documentation is not required by law, in practice, it is recommended that taxpayers maintain contemporaneous documentation to avoid penalties. The existence of documentation need not be either disclosed in, or provided with, the return.

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 its application, was reasonable, given the available data and the applicable pricing methods, and that it 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 affecting pricing
- A description of the organizational structure
- Any documents explicitly required by regulations, e.g.,, cost-sharing arrangement documents
- A description of the pricing method and reasons the method was selected (a best-method analysis)
- A description of alternative methods and why they were not selected
- A description of controlled transactions and any internal data used to analyze them
- 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 used to develop the pricing method
- Any material data discovered after the close of the tax year, but before the filing of the tax return
- A general index of the principal and background documents, and a description of the record-keeping system

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes – Internal Revenue Code, Section 482, applies to US taxpayers, whether or not incorporated, whether or not organized in the US, and whether or not affiliated.

- **Should TP documentation be prepared annually?**

Yes; for penalty avoidance purposes, a taxpayer is considered to have satisfied the documentation requirement if it maintained certain documentation. To the extent that there

are changes from the previous year, the changes need to be reflected.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Treas. Reg., Section 1.6038-4, requires US MNE groups to provide aggregated data on the CbC report. Note, however, that 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. 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

TP documentation

There is no materiality limit.

- **BEPS master and local files**

This is not applicable.

- **CbCR**

The limit is USD850 million (approximately EUR700 million).

- **CbCR notification and CbC report submission requirement**

There is no CbCR notification requirement in the US. The CbC report (form 8975) must be prepared and submitted for tax years, beginning on or after 30 June. It is voluntary for tax years beginning on or after 1 January.

- CbCR notification included in the statutory tax return

This is not applicable.

- **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. Regs., Section 1.482, provides taxpayers the opportunity to use applicable federal rates (AFRs) for intercompany loans and advances; further, under certain conditions, only a charge of fully loaded cost may be used for intercompany services transactions.

- **Any other disclosure or compliance requirement**

There are no additional requirements.

4. TP return and related-party disclosures

- **TP-specific returns**

Taxpayers are required to file forms 5471, 5472 and 8865 regarding transactions with related parties.

- **Related-party disclosures and TP-related appendices**

Under regulations issued in 2010, certain taxpayers must also disclose their uncertain tax positions (UTPs) on Schedule UTP and provide information, such as the ranking of the positions by the size 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.

- **Other information or 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 CbC basis. US MNE's 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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

The deadline is 15 March; extension is available until 15 October.

- **Other TP 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) TP documentation and local file preparation deadline

If the documentation is prepared to help protect against penalties, then it must be in place by the filing date of a US tax return that has been filed in a timely manner.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

The submission is based on the request of tax authorities.

- **Time period or deadline for submission on tax authority request**

Taxpayers must provide the documentation to the IRS within 30 days of an examiner's request.

6. TP methods

a) Applicability (for both international and domestic transactions)

This is applicable only for international transactions.

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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is no such legal requirement regarding local comparables; foreign and regional comparables are generally acceptable to local tax authorities, provided the comparability requirements are met.

- **Single-year vs. multiyear analysis**

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 issue being 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. roll forwards and update of the financials**

There is no legal requirement for a fresh benchmarking search every year as roll forward and financial updates are acceptable for up to two to three years (if the fact pattern has remained the same).

- **Simple vs. weighted average**

The weighted average is preferred.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

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, respectively. The penalties are calculated as a percentage of the underpayment, or the penalty may apply to a valuation misstatement. There is no penalty for failure to have documentation; however, documentation may help avoid a penalty.

- **If an adjustment is sustained, can penalties be assessed?**

Yes; see the previous section.

- **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 via taxpayer-provided documentation, demonstrating the taxpayer's application of Internal Revenue Code Section 482.

9. Statute of limitations on TP 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. There is no 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.

10. Likelihood of TP scrutiny or related audit by local authority

- **Likelihood of TP-related audits (high, medium or 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 TP scrutiny during a tax audit is high. TP 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 TP. New positions have been created within the IRS's Large Business and International Division for a deputy commissioner (international) and a director of TP operations, and a significant number of TP professionals have been hired. As a result of this emphasis, documentation is requested frequently at the outset of any examination of taxpayers transacting with foreign related parties.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The overall likelihood that the TP methodology will be challenged during the initial stages of any audit, where there are international transactions, is high. However, experiences have shown that well-reasoned documentation reduces the likelihood of further analysis.

- **Likelihood of an adjustment if TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

Cost sharing and other IP migration transactions generally are challenged. Other high-risk transactions, such as those described in the OECD BEPS Action Plan, also draw attention to further analysis.

11. APA and MAP 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.

- **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 TP issues in a single negotiation process.

- **MAP opportunities**

Revenue Procedure 2015-40 (Rev. Proc. 2015-40) sets forth the "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; they must meet the prescribed time limits; and satisfy the prescribed conditions for a Competent Authority Request. Most of the US DTTs permit 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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.

Contact

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

General Tax Direction (Dirección General Impositiva, or DGI)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

TP 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. 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 TP report.

- 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
- Section reference from local regulation
- 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

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 TP 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 your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Yes

- Coverage in terms of master and local files

  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 the 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

  There are no material differences between the OECD report template or format and Uruguay's regulations.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

  The requirements to fulfill the reports are yet to be regulated by the Government.

c) Is your 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.

3. TP documentation requirements

[1] www.dgi.gub.uy.

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, TP documentation has to be prepared annually under local jurisdiction regulations. The minimum requirement is that all the information of the economic analysis and the TP documentation must be updated.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

Whenever there are transactions with related entities, taxpayers are required to prepare and maintain an annual TP documentation.

The documentation must be submitted to the DGI, with a TP return, when the total amount of intercompany transactions is equal to or greater than 50,000,000 indexed units (for 2019, approximately USD5,800,000).

- **BEPS master and local files**

Regarding the master file, the threshold is not defined yet; further regulation must be published to do so. For the local file, there is no threshold; if a transaction with a related entity exists, a local file must be prepared.

- **CbCR**

The total consolidated revenue of the group should be equal to or exceed EUR750 million.

- **CbCR notification and CbCR submission requirement**

All corporate income tax (CIT) taxpayers that integrate a specific multinational group of great economic dimension are obliged to notify and submit the CbCR. The group of great economic dimension is considered to be those whose total consolidated revenues at the group's fiscal year-end are equal to or greater than EUR750 million.

In that sense, all CIT taxpayers that comply with the above-mentioned rule are included in this regime; even when they do not have transactions with related entities; are in an inactive, closing or liquidation state; are free zone users; are exempt from the tax; or obtain income from a foreign source.

The CbCR must be submitted annually, except when it must be presented by an entity that is a member of the multinational group and is obliged to inform a tax administration of a jurisdiction with which our Uruguay has an information exchange agreement with competent authorities of foreign states in the framework of international agreements or conventions, and this report can be effectively exchanged with our local tax authority (DGI).

- CbCR notification included in the statutory tax return

This is not specified.

- **Economic analysis**

This is not applicable.

c) Specific requirements

- **Treatment of domestic transactions**

Entities engaging in transactions with other entities which were created, domiciled, based, residing or located in countries with low or no taxation, or which are benefitted by a special low- or no-taxation system, including local free zones, are subject to TP regime. This means that transactions performed by taxpayers with nonresidents 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 nonresident entities located in Uruguay, such as permanent establishments or branches from nonresidents, are also subject to TP rules.

- **Local language documentation requirement**

The documentation needs to be submitted in the local language. However, this is not mandated by the law.

- **Safe harbor availability, including financial transactions, if applicable**

There is none specified.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

Only those taxpayers that are obligated to file the TP study must file the TP 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 of them of the type 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 of the local entity and the ones that are used by the company though they are not the property of the company. An extensive questionnaire of the company's operating activities with entities abroad must be completed; questions about the company and the group, for example, 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 and TP-related appendices**

Taxpayers are required to file:

- The TP 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 TP return Form 3001 if it corresponds; a new TP return has been approved that requires significant additional information about the multinational group and the related entities of the company

- **Other information or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

22 April (four months after the fiscal year-end)

- **Other TP disclosures and return**

22 September (nine months after the fiscal year-end).

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

The deadline is 12 months after the end of the reporting FY. However, for FYs ending between 31 December 2017 and 30 November 2018, deadline is 15 months after the end of the reporting FY.

- **CbCR notification**

The deadline is by the end of the reporting FY. However, for FYs ending between 31 December 2017 and 28 February 2019, deadline is 31 March 2019.

b) TP documentation and local file preparation deadline

TP documentation should be finalized by the time of lodging the tax return to achieve penalty protection (e.g.,, where there is a contemporaneous requirement).

The TP documentation must be prepared nine months after the fiscal year-end, but the TP preliminary analysis is due four months after the fiscal year-end for the presentation of the income tax return.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Yes, the report must be submitted to the tax authority if the total amount of intercompany transactions exceeds USD6 million with the correspondent TP return. 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 TP documentation once requested by the tax authorities in an audit or inquiry is not regulated but usually is approximately 10 days.

6. TP 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.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is a preference for local comparables for arm's-length analysis.

- **Single-year vs. multiyear analysis**

There is a preference for single-year testing.

- **Use of interquartile range**

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. roll forwards 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 vs. weighted average**

There is a preference for a simple average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

The penalty for those that breach the formal requirements established in the TP framework (i.e.,, failure to timely file a TP report, CbC report) 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 TP, 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 TP study or the CbC report 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?**

There is nothing mentioned in the local regulation regarding the exemption of penalties because of significant TP adjustments.

- **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.

9. Statute of limitations on TP assessments

There is no specific statute of limitations for TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of an annual tax audit, in general, is medium, while the likelihood that TP will be reviewed as part of that audit is 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 TP methodology being challenged (high, medium or low)**

If TP is reviewed as part of the audit, the likelihood that the TP methodology will be challenged is high. TP 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 TP methodology is challenged (high, medium or low)**

Once a TP analysis methodology is challenged or questioned by the tax authorities in a TP audit, the likelihood of an adjustment is high based on what we have experienced over the years. In almost every case in which the tax authority suggests a new methodology and it is applied, a TP adjustment (significant or not) is applied.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

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 TP analysis and the financial statements, identifying internal and external comparables

General observations pointed out in inspections are:

- Comparability adjustments made to the stated party
- Rejection of the selected comparable companies
- Observations of companies that have continuous losses for many years

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

Currently, no APA regime is published in Uruguay, but the tax authority recently signed the first one.

Uruguayan TP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There is none specified.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Venezuelan Tax Administration (National Integrated Service of the Customs and Tax Administration, or SENIAT)

b) Relevant TP section reference

- **Name of TP 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 TP 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.

[1]https://www.ciat.org/bolivarian-republic-of-venezuela/?lang=en. http://declaraciones.seniat.gob.ve/portal/page/portal/PORTAL_SENIAT.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 Law.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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 does 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 TP informative return and the local file.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, TP documentation has to be prepared annually under the local jurisdiction regulations.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP 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 TP 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.

- **Any other disclosure or compliance requirement**

Yes, TP informative return (Form PT-99)

4. TP return and related-party disclosures

- **TP-specific returns**

A controlled party's TP 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 and annual report**

No

- **CbCR notification included in the statutory tax return**

No

- **Other information or documents to be filed**

All information that supports TP calculations, in accordance with the provisions of Article 167 of the ITL

5. TP 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 TP 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) TP documentation and local file preparation deadline

TP documentation only needs to be finalized by the time of submission upon request. The TP informative return (Form PT-99) must be submitted within six months after the end of the fiscal year. The TP study must be submitted only if the tax authorities require it.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP 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 TP 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 TP documentation once requested by the tax authorities in an audit or inquiry.

6. TP 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.

7. 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 Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

It can be both. But, usually, an update of the financial information of previous comparable companies is used.

- **Simple vs. weighted average**

There is a preference for a weighted average for arm's-length analysis.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **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 TP 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 Tax Administration.

- **If an adjustment is sustained, can penalties be assessed?**

In the case of a TP 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.

- **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 TP 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.

9. Statute of limitations on TP 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 TP informative return doesn't imply payments of any type.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood of an annual tax audit in general is high, as is the likelihood that TP will be reviewed as part of the audit.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood that the TP methodology will be challenged if TP is reviewed as part of the audit is medium.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is high.

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The SENIAT continues to be very active and effective in handling TP audits. It has added TP 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 TP 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 TP audit are:

- Inconsistencies among the TP report, income tax return and TP 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 TP information return

Currently, in the TP 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.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

The thin-capitalization rules provide for a debt-to-equity ratio of 1:1.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

General Department of Taxation (GDT)

b) Relevant TP section reference

- Name of TP regulations or rulings and the effective date of applicability

Article 37 of the Law on Tax Administration 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 TP regulations are included in Decree 20/2017/ND-CP (Decree 20) and Circular 41/2017/TT-BTC (Circular 41). Decree 20 and Circular 41 are effective from 1 May 2017. They are silent on their first cover year. However, in practice, on the basis of verbal instruction from the tax authority, we understand that Decree 20 and Circular 41 cover the taxpayers' year ending after the effective date of Decree 20 and Circular 41 (1 May 2017).

Recently, the Government enacted the Law on Tax Administration No. 38/2019/QH14 (Law on Tax Administration 38), dated 13 June 2019. In this, TP-related regulations are mentioned in some of the articles and this law will take effect on 1 July 2020.

- Section reference from local regulation

Article 5 of Decree 20 provides the definition of related parties as follows:

Related parties are parties having relationships where:

a) A party participates directly or indirectly in the management or control of, or contributes capital to, or invests in, the other party.

b) Parties are directly or indirectly managed, controlled, or invested in, by another party.

Related parties referred to in Clause 1 of this article shall be subject to the following specific provisions:

a) An enterprise directly or indirectly owns at least 25% of the investment capital of the other enterprise.

b) At least 25% of the investment capital of both enterprises are directly or indirectly being owned by a third party.

c) An enterprise who is the biggest shareholder of another enterprise directly or indirectly owns at least 10% of the total shares of the other enterprise.

d) An enterprise guarantees or offers another enterprise a loan under any form (including third-party loans guaranteed by the financing sources of the related parties or financial transactions with a similar nature). However, this is based on the condition that the loan amount must be equal to at least 25% of the investment equity, and accounts for more than 50% of the total medium- and long-term debts of the borrowing enterprise.

e) An enterprise appoints members of the executive board who are responsible for the leadership or control of another enterprise, provided that the number of members appointed by the former accounts for more than 50% of the total number of members of the executive board of the latter. Or, a member appointed by the former has the authority to decide the financial policies or business activities of the latter.

f) Both enterprises have more than 50% of the members of their executive board or one member of the executive board who, with the authorization to decide financial policies or business activities, are 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 has a specific relationship pairing. The relationship pairings include: wife and husband, natural or foster father and natural or foster child, natural or foster older sibling and natural or foster younger sibling, brother or sister-in-law, maternal or paternal grandfather or grandmother, and maternal or paternal grandchild, and maternal or paternal aunt and uncle, and sibling.

h) Both business entities are head office and permanent establishments or permanent establishments of the same overseas entity or individual.

i) One or more enterprises are under the control of one individual through either his or her investment capital in those enterprises, or his or her direct involvement in the administration of those enterprises.

j) An enterprise is, in reality, under the management or control of, or whose business activities are controlled by, the other enterprise.

[1] http://www.gdt.gov.vn/wps/portal/english.

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."

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or 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 20 and Circular 41 adopt certain concepts of BEPS actions.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Yes, it has.

- **Coverage in terms of master file, local file and CbCR**

It covers both the 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.

- **CbCR notification and CbC report submission requirement**

There is no CbCR notification requirement in Vietnam.

- CbCR notification included in the statutory tax return

This is not applicable.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes

- **Does a local branch of a foreign company need to comply with the local TP rules?**

Yes, a local branch needs to comply with Vietnamese TP rules if the branch is an independent branch and has corporate income tax (CIT) finalization in Vietnam. The same is covered under Article 11 of Decree 20.

- **Should TP documentation be prepared annually?**

The three-tiered TP documentation (local file, master file and CbCR) must be prepared and made available by the time of submitting the CIT finalization return of the respective year (i.e.,, 90 days after the financial year-end).

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes

b) Materiality limit or thresholds

- **TP documentation**

Clause 2, Article 11, of Decree 20 provides the exemption cases as follows:

The taxpayer shall be responsible for declaring its related-party transactions in Form 01, attached to the Appendix of this Decree, but shall be exempted from preparation of the TP documentation in the following circumstances:

a) **Taxpayer who engaged in related-party transactions, but its total revenue generated within the tax period is less than VND50 billion and the total value of its related-party transactions within the tax period is less than VND30 billion**

b) **Taxpayer who signed an APA and submitted the annual report in accordance with legislation on APA; for those related-party transactions, which are not covered by the APA, taxpayers are obliged to comply with the aforesaid TP documentation requirements stated in Article 10 hereof**

c) **Taxpayers performing business activities by exercising routine functions, neither generating any revenue nor incurring any cost from the use of intangible assets; taxpayers generating sales less than VND200 billion; taxpayers achieving the required ratio of net operating profit before loan interest and CIT relative to sales revenue that is provided for the following businesses:**
   - Distribution: at least 5%
   - Manufacturing: at least 10%
   - Toll manufacturing or processing: at least 15%

In case taxpayers do not apply the profit margins stipulated above, they are required to prepare TP documentation in accordance with this Decree.

- **BEPS master and local files**

Refer to the section above (Clause 2, Article 11 of Decree 20).

- **CbCR**

Clause 2, Article 4, of Circular 41 provides that:

If the taxpayer cannot provide the CbC report of the ultimate parent company prepared for the tax period relative to the tax finalization period of the taxpayer, it is instead obliged to provide the CbC report of the ultimate parent company prepared in the financial year preceding the tax period of the taxpayer. This should be provided along with a written explanation for the case (legal basis for why it cannot provide the CbCR of the ultimate parent company for the current year).

If the taxpayer cannot provide the CbC report of the ultimate parent company, it must provide a written explanation for the case (legal basis for why it cannot provide the CbC report of the ultimate parent company).

- **Economic analysis**

Refer to the section above (Clause 2, Article 11 of Decree 20).

c) **Specific requirements**

- **Treatment of domestic transactions**

There is a documentation obligation for domestic transactions. However, Clause 1, Article 11, of Decree 20 provides that "taxpayers are exempted from the TP declaration in Section III and IV of Form 01, provided in the Appendix attached to this Decree, if it only engages in transactions with related parties who are subject to CIT in Vietnam with the same CIT rate, and neither entity enjoys CIT incentives during the tax period. However, such an entity must declare the basis for such exemption in Section I, II of Form 01, attached to the Appendix of this Decree." In this regard, the regulations are silent on whether companies only engaging in domestic related-party transactions with the related parties, with the same tax rate and no tax holiday, are exempted from preparation of the three-tiered TP documentation.

- **Local language documentation requirement**

Yes, the TP 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.

- **Any other disclosure or compliance requirement**

Please refer the below.

4. TP return and related-party disclosures

- **TP-specific returns**

The disclosure forms (as mentioned above) must be submitted together with the CIT return which must be filed within 90 days from the end of the financial 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-ended date.

- **Related-party disclosures along with corporate income tax return**

Form 01: disclosure on related-party relationship and related-party transactions

Form 02: checklist for local file

Form 03: checklist for master file

Form 04: CbCR (applicable for companies with ultimate parent company in Vietnam, with global consolidated revenue of at least VND18,000 billion, and having operations in many countries or territories)

- **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.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

90 days from the end of the financial 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-ended date.

- **Other TP disclosures and return**

90 days from the end of the financial 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-ended date.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

TP documentation must typically be finalized by the time of lodging the final CIT return.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on tax authority's request**

The taxpayer has to submit the TP documentation within 15 working days upon written request in case of audit.

6. TP methods

a) Applicability (for both international and domestic transactions)

Yes

b) Priority and preference of methods

Decree 20 and Circular 41 permit the use of the following methods: CUP, resale price, cost plus, TNMM or profit split.

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 the CUP method if reliable information on CUP is available.

7. Benchmarking requirements

- **Local vs. regional comparables**

There is a legal requirement for local-jurisdiction comparables. 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**

Single-year testing is acceptable. In audit, the tax authority prefers the single-year testing.

- **Use of interquartile range**

Interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

There is no need to conduct a fresh benchmarking search every year.

- **Simple vs. weighted average**

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, as it can be requested by the tax authority

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Administrative penalties ranging from VND700,000 to VND5 million may be imposed for failure to comply with TP disclosure requirements.

- **If an adjustment is sustained, can penalties be assessed?**

Taxpayers are subject to a penalty of 20% of additional tax in the case of an incorrect declaration. Additional penalties of up to three times the outstanding tax due may be imposed if a tax evasion or fraud is found.

- **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 TP adjustment is made.

b) Penalty relief

Penalties may be mitigated by timely and adequate disclosure of the related-party transactions on forms 01, 02 and 03 attached to Decree 20, and by the preparation and timely production of the three-tiered TP 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.

9. Statute of limitations on TP assessments

TP 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.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

The likelihood is medium to high, as the tax authority is currently paying more attention to TP.

- **Likelihood of TP methodology being challenged (high, medium or low)**

The likelihood is medium. The tax authority strongly prefers the CUP method. In the case of the application of CPM, challenges are around the selection of comparables and the comparability of the selected comparables.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is high, mostly around CUP applicability, and in the case of application of CPM or 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 undergo audit**

TP audits are increasing and become more sophisticated. Some of the focus points in TP 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.)

11. APA and MAP 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**

An APA can be effective for up to five years, with renewal for a maximum of five years.

- **Rollback provisions**

Rollback provisions are not available for prior years.

- **MAP opportunities**

Yes, taxpayers may request an 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

There are no specific tax-driven thin-capitalization rules in Vietnam.

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1. Tax authority and relevant transfer pricing (TP) regulation or rulings

a) Name of tax authority

Zambia Revenue Authority (ZRA)

b) Relevant TP section reference

- **Name of TP 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 take effect from FY 2017 and shall be in effect for each subsequent year.

As per amendment of TP 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 TP regulations, by providing detailed guidance on application of arm's-length principle and Zambia's TP documentation requirement.

- **Section reference from local regulation**

Sections 97A to 97D

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Zambia is not a member of the OECD. However, the TP regulations recognize the application of OECD Transfer Pricing Guidelines and the United Nations practical manual on TP for developing countries. However, the regulations and Zambian ITA will prevail in case of any inconsistencies.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your local regulations?**

Zambia is just an invitee and has not signed on to the adoption of Action 13.

- Coverage in terms of master file, local file and CbCR

No, Zambia has not explicitly adopted BEPS Action 13 for TP documentation in local regulations, but there are some elements thereof.

- 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 your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

Yes, Zambia has TP documentation guidelines. The documentation has to be contemporaneous. There is no requirement to submit.

- **Does a local branch of foreign company need to comply with the local TP rules?**

Yes

- **Should TP documentation be prepared annually?**

Yes, the TP documentation has to be prepared on an annual basis and maintained for 10 years.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, each entity needs its own TP report.

b) Materiality limit or thresholds

[1] https://www.zra.org.zm/.

- **TP documentation**

Local entities with an annual net turnover equal to or exceeding ZMK20 million (approximately USD2.1 million) are required to prepare documentation. However, the threshold does not apply to multinational enterprises (MNEs), effectively rendering all MNEs subject to TP requirements.

- **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**

The TP regulation applies to an establishment solely in Zambia with turnover above ZMW20 million (approximately USD2.1 million). Domestic transactions have the same TP obligations under the law.

- **Local language documentation requirement**

The TP 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 get 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.

- **Any other disclosure or compliance requirement**

This is not applicable.

4. TP return and related-party disclosures

- **TP-specific returns**

This is not applicable.

- **Related-party disclosures along with corporate income tax return**

Effective from 2018 (including FY 2017), 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 non-disclosure is USD600 per day for the company and each of the directors.

- **Related-party disclosures in financial statement and 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**

This is not applicable.

- **Other information or documents to be filed**

This is not applicable.

5. TP documentation and disclosure timelines

a) Filing deadline

- **Corporate income tax return**

For FY2019, the due date for the return filing is 21 June 2020; prior to FY2017, the due date for the corporate income tax return filing was 30 June of the following year.

- **Other TP disclosures and return**

Taxpayers have to disclose all related-party transactions in their annual returns, effective from FY2017. The regulations state that TP documentation must be prepared by the date of submission of the annual income tax return, but a TP document does not need to be submitted.

- **Master file**

This is not applicable.

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

Effective from 2018, for FY2017 and each subsequent year, contemporaneous TP documentation must be prepared by the date of submission of the annual income tax return.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

No

- **Time period or deadline for submission on tax authority request**

TP documentation should be submitted within 30 days upon written request.

6. TP 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 TP methods from which an appropriate method can be chosen:

- CUP
- Resale price
- Cost plus
- TNMM
- Transactional profit split

7. 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**

Multiyear analysis

- **Use of interquartile range**

Yes, interquartile range calculation using Excel Quartile formulas is acceptable.

- **Fresh benchmarking search every year vs. roll forwards and update of the financials**

As a practice, fresh benchmarking search is not required every year.

- **Simple vs. weighted average**

A simple average is preferred, as per common practice.

- **Other specific benchmarking criteria, if any**

There is none specified.

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Noncompliance 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 is ZMW24,000,000).

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

There is a specific statute of limitations on TP 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 TP-related records for a period of 10 years (6 years for other tax records) with the base year being 2012.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or 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 TP methodology being challenged (high, medium or low)**

The likelihood is medium; tax authorities will usually challenge the characterization of the entity. The methodology is not often challenged.

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

The likelihood is 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 undergo audit**

At the time of this publication, the mining industry (mining companies and suppliers) and distributors seemed to be the revenue authorities' focus.

11. APA and MAP 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.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your jurisdiction

Interest exceeding 30% of tax earnings before interest, depreciation 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 (TP) regulation or rulings

a) Name of tax authority

Zimbabwe Revenue Authority (ZIMRA)

b) Relevant TP section reference

- **Name of TP regulations or rulings and the effective date of applicability**

Zimbabwe TP 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 TP.

2. OECD Guidelines treatment and BEPS implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines, UN tax manual or EU Joint Transfer Pricing Forum

Zimbabwe is not a member of the OECD but references to the OECD Guidelines and the UN Transfer Pricing Guidelines as relevant sources of interpretation and application for TP purposes.

b) BEPS Action 13 implementation overview

- **Has your jurisdiction adopted or implemented BEPS Action 13 for TP documentation in your 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) 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

  There is no mention of master or local file and CbCR in the local legislation.

- Effective or expected commencement date

It is not applicable.

- Material differences from OECD report template or format

Zimbabwe uses OECD and UN manual guidelines.

- Sufficiency of BEPS Action 13 format report to achieve penalty protection

It is yet to be tested.

c) Is your 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

3. TP documentation requirements

a) Applicability

- **Does your jurisdiction have TP documentation guidelines or rules? If yes, do they need to be submitted or prepared contemporaneously?**

The 35th schedule of the Income Tax Act (23:06) and Statutory Instrument 109 of 2019 provide guidance on the documentation requirements. Further, the Authority 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 foreign company need to comply with the local TP rules?**

Yes, it is required to comply.

- **Should TP documentation be prepared annually?**

Yes, TP documentation must be prepared annually. This involves updating transaction values, review of any material changes from the prior year, documenting new transactions and updating the industry analysis.

[1] https://www.zimra.co.zw/.

- **For an MNE with multiple entities in your jurisdiction, is it required to have stand-alone TP reports for each entity?**

Yes, each legal entity is required to have its stand-alone TP report.

b) Materiality limit or thresholds

- **TP documentation**

Zimbabwe has no materiality thresholds. Every "person" who engages in related-party transactions is required to have TP documentation including small to medium 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 TP documentation report need to be submitted in English.

- **Safe harbor availability, including financial transactions, if applicable**

Zimbabwe does not have safe-harbor rules at this stage.

- **Any other disclosure or compliance requirement**

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

4. TP return and related-party disclosures

- **TP-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 TP return.

- **Related-party disclosures in financial statement and annual report**

No information

- **CbCR notification included in the statutory tax return**

It is not applicable.

- **Other information or 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

5. TP 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 TP disclosures and return**

TP return is submitted with the corporate income tax return.

- **Master file**

No information

- **CbCR preparation and submission**

This is not applicable.

- **CbCR notification**

This is not applicable.

b) TP documentation and local file preparation deadline

The TP documentation must be available on request by the Commissioner. It must be submitted within seven days of the written request.

c) TP documentation and local file submission deadline

- **Is there a statutory deadline for submitting TP documentation or local file?**

Yes

- **Time period or deadline for submission on tax authority request**

Documentation shall be provided to the Commissioner within seven days of the written request being duly issued by the Commissioner.

6. TP 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 TP methods in Zimbabwe:

- CUP
- Resale price
- Cost plus
- TNMM
- Transactional profit split

When all the above-mentioned methods can be applied with equal reliability, the determination of arm's-length conditions shall be made using the CUP method.

7. 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. roll forwards and update of the financials**

Not specified

- **Simple vs. weighted average**

Simple

- **Other specific benchmarking criteria, if any**

None

8. TP penalties and relief

a) Penalty exposure

- **Consequences of failure to submit, late submission or incorrect disclosures**

Penalties for noncompliance with TP legislation are:

10% of the shortfall tax liability where taxpayer TP documentation report has been prepared in accordance with the TP regulations and guidelines

30% of shortfall tax liability where the TP documentation prepared does not meet both the local TP regulations and TP guidelines

100% of shortfall tax liability where there is evidence of tax evasion

- **If an adjustment is sustained, can penalties be assessed?**

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.

9. Statute of limitations on TP assessments

It is six years from the relevant year of the assessment.

10. Likelihood of TP scrutiny and related audit by the local authority

- **Likelihood of TP-related audits (high, medium or low)**

High

- **Likelihood of TP methodology being challenged (high, medium or low)**

High

- **Likelihood of an adjustment if the TP methodology is challenged (high, medium or low)**

High

- **Specific transactions, industries and situations, if any, more likely to undergo audit**

The audit program is risk-based, concentrating on nonresident controlled and significantly thinly capitalized Zimbabwean companies and branches. Sectors include mining and financial services; transactions include intangibles, group services, restructuring and sale of property.

11. APA and MAP opportunities

- **Availability (unilateral, bilateral and multilateral)**

No legislation in place

- **Tenure**

This is not applicable.

- **Rollback provisions**

This is not applicable.

- **MAP opportunities**

It is available to 16 countries with which it has double tax agreements with.

12. Relevant regulations and rulings with respect to thin capitalization or debt capacity in your 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 (jurisdiction-by-jurisdiction reporting)
Part of the OECD's BEPS Action Plan 13. MNCs are required to provide the jurisdiction-by-jurisdiction (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

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
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
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

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
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
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

Jurisdiction	Master File Reqmt.	Local File	CbCR Reqmt.	CbCR Notification Reqmt.	MCAA Signatory	Contemporaneous TP Documentation Preparation Reqmt.	Annual Benchmarking Reqmt.
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
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

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EYG no. 005873-20Gbl

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