##Top

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

General Directorate of Taxes (Drejtoria e Përgjithshme e

Tatimeve — GDT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Law no. 8438 on income taxes, as amended (Income Tax Law),

dated 28 December 1998, has the following references:

> Effective from 4 June 2014, Articles 36-36/7 were

introduced, providing a more comprehensive regulatory

framework on international transfer pricing, aligned with

the OECD Transfer Pricing Guidelines of 2010.

> Article 36/5 introduces transfer pricing documentation

requirements for the first time.

Law no. 9920 on tax procedures in the Republic of Albania

(Tax Procedures Law), dated 19 May 2008, has the following

references:

> Article 115/1 addresses penalties related to transfer

pricing.

> Double taxation treaties are enacted by Albania.

The Ministry of Finances and Economy issued Instruction

no. 16, dated 18 June 2014, for the implementation of the

transfer pricing legislation (Transfer Pricing Instruction).

This provides further guidance on the application of the

arm’s-length principle and the preparation of transfer pricing

documentation.

The Ministry of Finances and Economy issued Instruction no.

9, dated 27 February 2015, introducing specific rules and

procedures on the implementation of APAs.

> Section reference from local regulation

Article 2, paragraph 4, items (a) and (b) of Law no. 8438 on

income taxes provide for the definition of “related party” for

transfer pricing purposes.

Paragraphs 3.2 and 3.3 of the Transfer Pricing Instruction

elaborate more on the “related party” definition.1

1https://www.tatime.gov.al/eng/

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Albania is not a member of the OECD.

Albanian transfer pricing legislation refers to the OECD

Transfer Pricing Guidelines of 2010.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No; however, Albania joined the Inclusive Framework on BEPS

in August 2019.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The local transfer pricing regulations are generally in

line with the BEPS Action 13 format. However, in order

to ensure that it is considered complete and to achieve

penalty protection, it should also contain the local industry

and market analyses; an overview of the local entity,

including any local strategies; and the organizational

structure of the local entity.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, it has. There are no explicit requirements to prepare the

transfer pricing documentation contemporaneously. However,

it is advisable to have it prepared by the corporate income tax

(CIT) return date, i.e., 31 March of the following year.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, the local branches of foreign companies need to comply

with the local transfer pricing rules.

> Should transfer pricing documentation be prepared

annually?

Yes, transfer pricing documentation should be prepared

annually. However, taxpayers with a turnover of less than

ALL50 million that use external comparable data can use the

same data for three consecutive fiscal years. This is applicable,

provided that there have been no material changes in the

conditions of the controlled transactions, the comparability of

the external data and the relevant economic circumstances.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, an MNE with multiple entities in Albania is required to

have stand-alone transfer pricing reports for each entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is a revenue threshold of ALL50 million.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

Pursuant to Paragraph 15.6 of the Transfer Pricing Instruction,

the transfer pricing documentation should be submitted

in English or in Albanian. If it is in English, it should be

accompanied by a notarized translation into Albanian, which

should be provided within 30 days of the tax authorities’

request for translation.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no preference between aggregation or individual

testing, and both are allowed.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers are required to report all controlled transactions

annually by filing an annual controlled transaction notice

if the aggregate value of their controlled transactions,

including loan balances, exceeds ALL50 million (approximately

EUR410,000). The annual controlled transaction notice

should be submitted by 31 March of the following year. When

determining the annual aggregate transaction value, taxpayers

should take into account all intercompany transaction amounts

(i.e., without offsetting credit and debit values).

> Related-party disclosures along with corporate income tax

return

There are no other related-party disclosures or additional

forms required by the legislation, except those included in the

financial statements.

> Related-party disclosures in financial statement/annual

report

Related-party disclosures are included in the financial

statements of the taxpayer pursuant to IFRS requirements.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The CIT return should be submitted by 31 March of the

following year.

> Other transfer pricing disclosures and return

The annual controlled transaction notice should be submitted

by 31 March of the following year.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

There is no specific deadline for the preparation of the transfer

pricing documentation. However, since the documentation

must be submitted within 30 days upon tax authorities’

request, it is recommended that it be prepared by the CIT

return deadline, i.e., 31 March of the following year.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no specific deadline for the submission of transfer

pricing documentation. The transfer pricing documentation

must be submitted within 30 days upon receipt of the tax

authorities’ request, which can be initiated at any time after

the filing due date of the income tax return (i.e., 31 March of

the following year).

> Time period or deadline for submission on tax authority

request

It should be submitted within 30 days from the time of the tax

authorities’ request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

With regard to international transactions, under the current

transfer pricing rules, all transfer pricing methods advocated

by the OECD Guidelines are acceptable — namely, CUP, resale

price, cost plus, TNMM and profit split. When it can be proved

that none of the approved methods can be reasonably applied,

taxpayers are allowed to use other, more appropriate methods.

Preference is given to the best method providing the most

reliable results.

> Domestic transactions

This is not applicable.

b) Priority and preference of methods

Under the current transfer pricing rules, all transfer pricing

methods advocated by the OECD Guidelines are acceptable

— namely, CUP, resale price, cost plus, TNMM and profit split.

When it can be proved that none of the approved methods

can be reasonably applied, taxpayers are allowed to use other,

more appropriate methods. Preference is given to the best

method providing the most reliable results.

8. Benchmarking requirements

> Local vs. regional comparables

Preference is given to local comparables. In the absence of

local comparables, regional comparables can be used, but

the differences between geographical markets and other

factors affecting the financial indicator being analyzed must

be taken into consideration in the comparable analysis. It is

an EY jurisdiction practice to first attempt local comparables,

and if not available, the search can be extended to regional

comparables in the following order: Balkans, Eastern Europe

and the EU.

> Single-year vs. multiyear analysis

Preference is given to uncontrolled comparables belonging

to the same year as the controlled transaction. However, the

taxpayer can rely on immediate previous-year comparables,

provided the comparability criteria is met. It is an EY

jurisdiction practice to use a multiyear analysis for testing

arm’s length.

> Use of interquartile range

The transfer pricing rules define the market range as a range

that includes all the values of the financial indicators, such as

price, markup or any other indicator used for the application

of the most suitable transfer pricing method for a number

of uncontrolled transactions. These transactions are such

where each is almost equally comparable with the controlled

transaction based on a comparability analysis. The transfer

pricing rules do not specifically provide for the interquartile

range. However, they stipulate that, in the case of adjustments

by the tax authorities, the financial indicator is adjusted to the

median. It is an EY jurisdiction practice to use the interquartile

range (from Q1 to Q3) as the acceptable range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The transfer pricing rules do not include any general provision

in this respect. It is an EY jurisdiction practice to perform a

fresh benchmarking search every three to five years. The

financial update is performed annually.

The transfer pricing rules state that taxpayers with a turnover

of less than ALL50 million that use external comparable data

can use the same data for three consecutive fiscal years.

This is applicable, provided that there have been no material

changes in the conditions of the controlled transactions, the

comparability of the external data and the relevant economic

circumstances.

> Simple, weighted or pooled results

The transfer pricing rules do not provide any specific provision

regarding the use of a simple or a weighted average. In the

examples provided in the Transfer Pricing Instruction, the

simple average is used. However, it is an EY jurisdiction

practice to use both the weighted average and the simple

average.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

If the documentation is considered as incomplete, the taxpayer

does not benefit from the penalty relief, in case of transfer

pricing adjustments performed during a transfer pricing audit.

> Consequences of failure to submit, late submission or

incorrect disclosures

The failure to file the annual controlled transaction notice

(explained in the “Transfer pricing return and related-

party disclosures” section above) is subject to a penalty of

ALL10,000 for each month of delay.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, transfer pricing adjustments for which no documentation

has been made available or such documentation is considered

as incomplete trigger a penalty of 0.06% of the amount of

the unpaid liability for each day of delay, capped at 21.9% (an

equivalent of 365 days).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There are no explicit requirements to prepare the transfer

pricing documentation contemporaneously.

> Is interest charged on penalties or payable on a refund?

There is no interest charged on penalties.

b) Penalty relief

Taxpayers that have submitted the transfer pricing

documentation in a timely manner (i.e., within 30 days upon

receipt of the tax authorities’ request) and in compliance with

the transfer pricing rules are relieved from penalties in the

case of a transfer pricing adjustment. They will be liable to pay

only the additional tax liability and default interest.

The taxpayer has the option of appealing the decision of

the tax authorities. Initially, the appeal is addressed to the

Regional Tax Directorate, further to the Tax Appeal Directorate

and, if applicable, to the administrative court after all

administrative appeal methods have been exhausted.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on transfer pricing assessments is

five years from the date the related CIT return is filed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a transfer pricing audit in Albania may be

considered to be high. In light of the transfer pricing rules that

became effective on 4 June 2014, and especially because of

the introduced documentation requirements, transfer pricing

issues are expected to continue to attract significant attention.

Transfer pricing audits are expected to increase rapidly.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The tax administration is unlikely to challenge the

methodology applied. In principle, in examining the arm’s-

length character of a transaction, the tax administration

should use the same transfer pricing method applied by the

taxpayer, to the extent that it is the most appropriate one for

that transaction.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium; refer to the

section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There are no differences among transactions, industries and

situations.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The transfer pricing rules provide for three types of APAs:

unilateral, bilateral and multilateral agreements. Requests for

APAs will be taken into consideration provided the controlled

transactions during the period of the agreement surpass in

aggregate the amount of EUR30 million or if it is a case of

complexity and of a high commercial and economic impact for

Albania.

> Tenure

The maximum proposed period of the APA is five years unless

the APA is bound to a governmental agreement ratified by law.

> Rollback provisions

Taxpayers may not request a rollback. However, if the APA is

signed and finalized after the first fiscal year of the proposed

APA, the year during which the APA was proposed will be

considered covered under the agreement.

> MAP opportunities

MAPs are generally available under the double tax treaties that

Albania has with its treaty partners.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Albanian tax law includes thin-capitalization rules with respect

to the deduction of interest on loans, which apply if the debt-

to-equity ratio exceeds 4:1. The ratio applies to all debts owed

to related and unrelated parties as well as to loans obtained

from financial institutions. However, the limitation does not

apply to banks or to insurance and leasing companies. For

related-party loans, the net interest expense balance (that

is, the difference between the interest expenses and interest

revenues, exceeding 30% of earnings before interest, taxes,

depreciation, and amortization (EBITDA)) is not deductible.

Such non deductible interest in the current period can be

carried forward to future tax periods, provided that a change

of 50% in the entity’s ownership does not occur.

Viktor I Mitev

viktor.mitev@bg.ey.com

+ 35928177343

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Directorate General of Taxes (Direction Générale des Impôts —

DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Order dated 12 April 2012 amended by the order dated

November 17th, 2020 pertaining to the documentation

justifying the transfer prices applied on related companies.

In practice, the Algerian tax authorities started applying this

obligation from 2017.

> Section reference from local regulation

> Article 169 bis of the Algerian Tax Procedure Code

> Article 20 ter of the Algerian Tax Procedure Code

> Article 141 bis of the Algerian Direct Tax Code

> Article 192-3 of the Algerian Direct Tax Code

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and reference

a) Extent of reliance on OECD Transfer Pricing Guidelines,

UN tax manual or EU Joint Transfer Pricing Forum

Algeria is not a member of the OECD. However, the Algerian

transfer pricing legislation makes reference to the OECD

Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

The Algerian transfer pricing legislation only refers to a

document to be structured as follows:

> A base document relating to general information relating

to the group

> A document specific to the company subject to the

documentation obligation

Furthermore, following provisions of the Finance Act

for FY2019, Algeria introduced a complementary

documentation obligation. Entities subject to the

obligation of submitting a transfer pricing document may

be requested by the tax authorities, notably in the frame

of an audit, to provide a complementary document that

aims to provide specific information, which could be tax

rulings and advance pricing agreements (APAs) obtained

by the group in other jurisdictions.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, do they need to be submitted or

prepared contemporaneously?

Yes, the minimum information requirements are set by the

decree of 12 April 2012. They include information about (i)

the group and (ii) the entity subject to the documentation

obligation (including the financial information of the

documented fiscal year).

All entities (i) registered with the tax department responsible

for large-sized companies (Direction des Grandes Entreprises

— DGE), in addition to (ii) groups of companies as well as (iii)

foreign companies and (iv) companies set up in Algeria being

members of foreign groups registered at the level of other tax

offices must submit their transfer pricing documentation along

with their annual tax returns (before 30 April of each year).

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules? 1

Yes.

> Should transfer pricing documentation be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

There are no materiality limits or thresholds.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There are no materiality limits or thresholds.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions occurring between related companies

must be covered by the transfer pricing documentation.

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

Relatedness is ascertained in case of legal or de facto

dependency.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language. The Algerian Constitution mandates the

use of Arabic or French in official exchanges and documents

filed with the administration. French is, in practice, the

language used for all tax filings.

> Safe harbor availability, including financial transactions, if

applicable

There are no specific safe harbor rules set in Algerian transfer

pricing regulations. However, a ruling request can be submitted

by companies registered at the level of the DGE regarding

the taxpayer’s transfer pricing practices, but it cannot be

considered as a request for an APA.

> Is aggregation or individual testing of transactions preferred

for an entity?

Due to lack of comparable data, both approaches are accepted

in practice (aggregation or individual testing).

> Any other disclosure or compliance requirement

All companies subject to the transfer pricing obligation

must, if requested by the tax authorities in the frame of a tax

audit, provide analytical accounting information to the tax

inspectors. However, the tax authorities did not specify the

type of information or the format that must be used to submit

such information when requested.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no specific return to be filed in addition the transfer

pricing documentation itself.

> Related-party disclosures along with corporate income tax

return

In the framework of a tax audit, tax inspectors are entitled to

audit the possible infringement of the arm’s-length principle

with related parties (intercompany transactions), such as

the existence of a commercial or financial relationship that

differs from those that would be made between independent

enterprises. Moreover, as per new provisions of the 2018

Finance Act, the tax administration is now allowed to ask for

the group consolidated accounts (locally or abroad).

Furthermore, according to provisions of the 2019 Finance

Act, entities subject to the obligation of submitting transfer

pricing documentation may be required, in the context of a

tax audit, to provide complementary documentation if the

primary file submitted is considered to be insufficient by the

tax inspectors. Complementary documentation may notably

include tax rulings and APAs obtained by the group in other

jurisdictions.

> Related-party disclosures in financial statement and annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

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

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

30 April of the subsequent year to current year under

consideration.

c) Transfer pricing documentation and Local File submission

deadline

Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The statutory deadline for the submission of transfer pricing

documentation is the same as that of the corporate income

tax return, which is 30 April of the subsequent year to current

year under consideration. This is now required for all firms

performing transactions locally and internationally with related

companies (see above section 4a companies which are subject

to the documentation obligation).

> Time period or deadline for submission on tax authority

request

In the case of a tax audit or requisition, the taxpayer must

submit transfer pricing documentation within 30 days of the

tax authority’s request, if such documentation was not filed

with the annual tax return.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If “Yes,” specify which dead-

lines are impacted

The Algerian Tax authorities recently postponed the tax return

and TP documentation filling deadline from the 30 April 2022

to the 31 May 2022 for companies registered at the level of

the DGE, and until the 30 June 2022 for taxpayers registered

at the level of regional and local tax inspectorate (CDI).

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

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

dependency).

b) Priority and preference of methods

The Algerian transfer pricing legislation does not provide an

official transfer pricing method to be used for each transaction

type, but the Algerian tax authorities issued guidelines in 2010

referring to the OECD methods. In theory, all OECD methods

could be accepted, subject to justification in the economic

analysis.

Algerian tax authorities are developing a project to develop

a database by gathering financial data for benchmarking

purposes.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are preferred, although regional

comparables could in some cases be accepted because of a

lack of local data.

> Single-year vs. multiyear analysis

Not specified by either legislation of administrative doctrine.

> Use of interquartile range

Not specified by either legislation of administrative doctrine.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There are no specific guidelines or requirements under

the current legislation on the need to conduct a fresh

benchmarking search every year or for updating the financials

of a prior study. However, the Algerian legislations trend to

follow the OECD Guidelines recommendations to update the

benchmark study every three years.

> Simple, weighted or pooled results

It is not specified by the current transfer pricing regulations.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

In case of incomplete documentation, the tax authorities can

ask for a complementary documentation or information or

decide to trigger an audit to assess any irregularities. The

documentation can also be considered as non-receivable (not

valid) for not respecting the format provided by the local

legislation, in such case, the penalty for failure to submit could

apply (see below).

In case of incomplete transfer pricing documentation, tax

authorities may:

> Ask for complementary transfer pricing documentation

and information

> Initiate a tax audit

> Apply the same penalty than for failure to submit (see

below), if they consider the transfer pricing documentation

insufficient to ensure transfer pricing protection

> Consequences of failure to submit, late submission or

incorrect disclosures

For companies with a filing obligation, the Algerian transfer

pricing legislation provides that the penalty for failure to

submit the transfer pricing documentation is DZD2 million.

For taxpayers subject to a tax audit, the tax administration

is entitled to send a formal notice asking for the transfer

pricing documentation or the complementary transfer pricing

documentation to be provided within 30 days. In case of

failure, the DZD2 million penalty is applied.

> If an adjustment is sustained, can penalties be assessed, if

documentation is deemed incomplete?

Yes, the reassessed tax base will provide for a corporate

income tax adjustment amount in addition to a base penalty of

25%. In addition, the reassessed amount will also be subject to

tax on deemed transferred profits.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No. In practice, penalties being imposed for non-

contemporaneous documentation have not been observed.

> Is interest charged on penalties or payable on a refund?

Interest (late-payment penalties) can be charged on principal

and base penalties if the latter are not paid on schedule. These

interests are capped at 25%, on the total reassessed amount

(amounts deemed to be transferred indirectly).

b) Penalty relief

No specific penalty relief is applicable to transfer pricing,

but general penalty relief could apply in the framework of a

transaction procedure (remise conditionnelle) provided by the

Algerian Tax Procedure Code, under certain conditions.

A relief can also be granted for late payment penalties under

the graceful remittance (remise gracieuse) procedure, under

certain conditions.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for transfer pricing adjustments is

the same as for all Algerian corporate tax assessments (i.e.,

four years following the year for which the tax is due).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

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

pricing irregularities.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high, medium

or low)

The likelihood of a transfer pricing audit in Algeria may be

considered to be low to medium.

> Likelihood of transfer pricing methodology being challenged

(high, medium or low)

The likelihood of transfer pricing methodology being

challenged may be considered to be low to medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high, medium or low)

The likelihood of an adjustment if the transfer pricing

methodology is challenged may be considered to be high,

given the budgetary situation in Algeria, more pressure has

been suggested by the legislator for tax audits (notably in

terms of transfer pricing infringements).

> Specific transactions, industries and situations, if any, more

likely to undergo an audit

The oil and gas, pharmaceutical, and information and

communication technology industries are most likely to

undergo an audit. Also, all companies making large payments

to foreign related parties are more likely to undergo an audit.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The Algerian tax legislation does not provide for a specific

APA procedure. However, a binding tax ruling procedure was

introduced in the Algerian Tax Procedure Code for taxpayers

registered at the level of the DGE.

Following the 2019 Finance Act provisions, APA obtained by

the group in other jurisdictions can be requested by the tax

authorities in the context of a tax audit.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings,

or other transfer pricing-related certainty

measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Article 2 of the 2019 Finance Act provides a new provision

that limits the deduction of financial interest paid to

shareholders within the frame of their business relationships

with the Algerian company.

As a reminder, Article 141 of the Direct Tax Code and Similar

Taxes (Code des Impots Directs et Taxes Assimilées — CIDTA)

provides full deductibility of interests on loans paid to

shareholders concerning trading operations.

However, the 2019 Finance Act introduced a new provision

that limited deduction of interest as follows:

> Interest paid to shareholders:

> The deductibility of amounts provided to the company,

in addition to their share in the capital, regardless of the

legal form, is limited to the average effective interest rate

communicated by the Bank of Algeria.

> The deductibility condition is also subject to the fact

that the capital is fully paid by the shareholder and that

amount provided to the company do not exceed 50% of

the capital.

> Interest paid to related parties:

> The deductibility of interest paid to related companies

in the context of intercompany loans is limited to the

average effective interest rates communicated by the

Bank of Algeria.

Please note that foreign financing is limited to non-interest-

remunerated amounts provided through the shareholders’

account, which may exclusively be used for capital

expenditures and be paid back within three years. Otherwise,

the amount will have to be capitalized.

The Algerian government is expected to waive this limitation

through the Complementary Finance Act for 2020. An update

is likely in the second half of 2022.

Bruno Messerschmitt

Bruno.Messerschmitt@ey-avocats.com

+ 33 6 84 02 72 51

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

General Tax Administration (Administração Geral Tributária1 —

AGT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Presidential Decree 147/13 of 1 October 2013 — specifically,

Section II and Articles 10 to 13 (Statute of Large Taxpayers)

— and Article 50 of Law 19/14 of 22 October 2014 (Industrial

Tax Code), applicable starting 1 January 2014, changed by

Law 26/20 of 20 July 2020.

It is also relevant to mention Circular No. 002/DCC/2020

from the Angola National Bank (Banco Nacional de Angola —

BNA), by which the burden of proof of the market nature of

services purchased abroad lies with the Angolan entity. The

publication of this circular by the BNA on 18 August 2020

aimed to define the procedures for validation and execution

of current invisible contracts, considering that the contracting

of services abroad may represent a high risk of exchange

fraud and facilitate the illicit movement of funds abroad. In

summary, the authorization to transfer foreign currencies

from Angola related with service contracts with related parties

will require the presentation of, among other elements,

support documentation to prove the arm’s-length nature of the

underlying invoices.

> Section reference from local regulation

According to Article 11 of Chapter IV of Presidential Decree

147/13 of 1 October 2013, two companies are considered

related parties when:

a. The directors or managers of a company, as well as their

spouses, ascendants and descendants, directly or indirectly

have an ownership interest of 10% or more in the capital or

the voting rights of the other entity.

b. Majority of the members of the board of directors or

management are either common or distinct but related by

marriage, non-marital partnership, or direct kinship.

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

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

d. The companies have a relationship of control or cross-

ownership or contractual subordination contract, peer

group or equivalent situation following the terms of

company law.

e. Commercial relations between the two entities represent

more than 80% of the volume of operations.

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

its credit needs.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Angola is not a member of the OECD. The OECD Guidelines are

not adopted in the local transfer pricing regulations by Angola,

although certain OECD language is included in the transfer

pricing regulations enacted.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

> Even though Angola has officially joined the BEPS

Inclusive Framework, it is not possible to foresee when

any BEPS-related changes can be introduced into the local

legislation.

> Material differences from OECD report template or format

Angola has not adopted the Master File and Local File

approach, and full local transfer pricing documentation is

expected from each eligible taxpayer.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Angola has not adopted the Master File and Local File

approach, and full local transfer pricing documentation is

expected from each eligible taxpayer. Consequently, only

transfer pricing documentation fully compliant with local

regulations can be considered to protect against potential

penalties.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the transfer pricing documentation must be prepared

and submitted to the tax authorities by the end of the sixth

month after the fiscal year’s closing date. It also needs to be

contemporaneous.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

The documentation applies to all companies reporting annual

revenue of more than AOA7 billion, including those listed on

the large taxpayers’ list: large government-owned companies,

financial banking institutions, insurance and reinsurance

companies, pension fund management companies and pension

funds, payment system operators and providers, microcredit

companies, oil and gas companies, diamond companies,

telecommunications companies, and companies operating in a

monopoly regime.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

All intragroup transactions, in which the company was

involved, must be reported (domestic and cross-border).

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language (Portuguese).

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

No additional related-party detailed information is disclosed

to the General Tax Administration, other than the submission

of entity-specific transfer pricing documentation, when

applicable.

> Related-party disclosures in financial statement and annual

report

Yes

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

As stated above, an additional burden of proof was imposed

on Angolan paying entities, concerning contracts with foreign

entities of the same group, to prove that the prices charged

in the arrangements for the provision of services contracted

to non-resident-related entities conform to market prices.

Taxpayers’ obligations vary depending on whether they

reported annual revenues of more than AOA7 billion.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

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

> Other transfer pricing disclosures and return

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. Affilia-

tions 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.

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation must be prepared within six

months after the fiscal year-end, until 30 June.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Transfer pricing documentation must be prepared and

submitted to the tax administration within six months of the

fiscal year-end, until 30 June.

> Time period or deadline for submission upon tax authority

request

The transfer pricing documentation must be submitted by

the deadline stated above, so no additional notice is given to

taxpayers.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

Traditional transactional transfer pricing methods only,

namely, the CUP, resale price and cost-plus methods.

8. Benchmarking requirements

> Local vs. regional comparables

There is very limited, if any, comparable financial data available

on public databases regarding Angolan companies.

> Single-year vs. multiyear analysis for benchmarking

There is no reference to preferences regarding single-year

vs. multiyear analysis in the local legislation. The practical

approach has been to test the taxpayer’s single-year results

against multiple-year interquartile ranges.

> Use of interquartile range

Yes, in recent tax audits, the tax authorities have used the

interquartile range as a reference.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Yes, although not specified in the legislation, doing a fresh

benchmarking study is followed as a market practice.

> Simple, weighted or pooled results

This is not specified in the legislation.

> Other specific benchmarking criteria, if any

The local independence threshold or criteria should be used

in benchmarking studies. In case local comparables cannot be

found, comparability adjustments could be performed to the

set of regional comparables.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

See below.

> Consequences of failure to submit, late submission or

incorrect disclosures

The General Tax Administration notifies large taxpayers who

failed to file transfer pricing documentation to pay a tax fine

under the General Tax Code (namely, No. 2 of Article 198).

The fine amount can range from AOA10,000 to AOA50,000.

Existing notifications indicate that the maximum amount of

the range is being applied. The application of penalties in this

regard will imply a reputational risk to the taxpayer, as it will be

considered noncompliant.

Moreover, non-compliance with transfer pricing documentation

requirements may result in such taxpayers being forbidden

from performing capital operations, current invisible

transactions (payments for services and intangibles), or trading

operations that, according to the current exchange control

regulations, require an intervention from the National Bank of

Angola. In practice, it may block the day-to-day activity of any

taxpayer if its legal name is communicated by the General Tax

Administration to the National Bank of Angola, specifying non-

compliance with tax obligations

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

If a transfer pricing adjustment is made, a penalty equivalent

to 25% of the additional tax will be applied, plus late interest at

the non-compounded rate of 1% per month (or 12% per year).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

If a transfer pricing adjustment is made, a penalty equivalent

to 25% of the additional tax will be applied, plus late interest at

the non-compounded rate of 1% per month (or 12% per year).

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for transfer pricing assessments is 5

years from the last day of the tax year-end or 10 years in cases

of tax infringement.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits

(high/medium/low)

It may be considered to be medium. Large taxpayers have

already been notified to pay penalties for non-compliance

with the contemporaneous transfer pricing documentation

preparation and submission to the Large Taxpayers’ Office.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

High.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

High.

> Specific transactions, industries, and situations, if any, more

likely to be audited

Large taxpayers.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is no APA program available in Angola.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Only if available in the specific context of a convention to avoid

double taxation, namely with Portugal.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No data available.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Angola does not have thin-capitalization rules, but until

recently interest expenses from shareholder loans were not

accepted as tax deductible for the computation of the taxable

income due on industrial tax.

However, as of 18 April 2019, shareholder loans interest

expenses have become tax deductible (No. 1 of Article 16 of

the Industrial Tax Code), provided that the portion exceeding

the average annual interest rate established by the National

Bank of Angola is added to the taxable income.

Paulo Mendonca

paulo.mendonca@pt.ey.com

+ 351937912045

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Internal Revenue Service (Administración Federal de Ingresos

Públicos — AFIP).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer pricing regulations and rulings include:

> Income Tax Law (ITL) as amended by Law 27,430,

published on 29 December 2017, and Decree 824/2019,

published on 6 December 2019

> Administrative Order as amended by Decree 1170/2018,

published on 27 December 2018, and Decree 862/2019,

published on 9 December 2019

> AFIP (General Tax Directorate — Dirección General

Impositiva) General Resolution No. 4717/2020, published

on 14 May 2020 and amended by the General Resolution

5010/2021

> Section reference from local regulation

Section 14 of the Administrative Order as amended by Decree

1170/2018 and by Decree 862/2019.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Transfer pricing reporting obligations were suspended before

COVID-19 due to a major tax reform program that included

updating of transfer pricing documentation requirements. As

of today, the AFIP has granted a three-month extension for

fiscal years ended between December 2020 and December

2021. It is not expected that the AFIP will grant any further

extensions.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

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

OECD.

It has started the process required to become one. The

OECD Guidelines are not referenced in Argentina’s ITL and

regulations. However, the tax authority usually recognizes the

OECD Guidelines in practice as long as they do not contradict

the ITL and regulations. Several first-level court cases also

recognize the use of the OECD Guidelines, insofar as they do

not contradict the ITL and regulations.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

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

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

The Master File has been introduced within the Argentine

transfer pricing regulations through the enactment of

Decree 1170/2018. The regulations are outlined in Article

45 of General Resolution 4717/2020.

> Effective or expected commencement date

The Master File is effective for fiscal years beginning 1

January 2018.

> Material differences from OECD report template or format

The Masterfile needs to be filed in Spanish by local

taxpayers. The Masterfile contents required by regulations

include additional information to that established by the

OECD.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 30 June 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does it need to be submitted or

prepared contemporaneously?

Yes, it needs to be submitted depending on minimum

thresholds.

For the Local File, it must be submitted if intercompany

transactions are above ARS30 million. For those cases where

the company must submit the Master File or the group must

submit the CbCR, the minimum threshold for intercompany

transactions is ARS3 million as a whole or ARS300k for

individual transactions. This same threshold applies in the case

of transactions with entities located in low-tax jurisdictions or

noncooperative jurisdictions.

In the case of the Master File, it must be submitted if the group

presents an annual income greater than ARS4,000 million and

the intercompany transactions are above ARS3 million as a

whole or ARS300k individually.

The CbCR must be submitted following the OECD’s BEPS action

13 guidelines.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes

b) Materiality limit or thresholds

> Transfer pricing documentation (TP Return and Local File)

Taxpayers will not be required to file the transfer pricing

documentation if their transactions carried out with foreign

related parties, invoiced as a whole in the fiscal year, do

not exceed the total amount equivalent to ARS3 million or,

individually, equivalent to ARS300k. This should be done

without prejudice to the duty to preserve the documents,

information and evidence supporting the aforementioned

transactions. If the company is not required to submit the

Master File and the group is not required to comply with the

CbCR, the minimum threshold for intercompany transactions is

ARS30 million.

> Master File

The Master File has been introduced within the Argentine

transfer pricing regulations through the enactment of Decree

1170/2018. The regulations are outlined in Article 45 of

General Resolution 4717/2020.

Submission of the Master File is not mandatory when:

> The total consolidated annual income of the group does

not exceed ARS4000 million in the preceding fiscal year.

> The amount of the transactions with foreign related

parties in a fiscal year does not exceed ARS3 million in

total or ARS300k for an individual transaction.

> Notwithstanding the above, MasterFile will be mandatory

when the Group is required to file CBCr in their

corresponding jurisdiction.

> Local File

(Same as local TP documentation threshold) Taxpayers will not be required to file the transfer pricing

documentation if their transactions carried out with foreign

related parties, invoiced as a whole in the fiscal year, do

not exceed the total amount equivalent to ARS3 million or,

individually, equivalent to ARS300k. This should be done

without prejudice to the duty to preserve the documents,

information and evidence supporting the aforementioned

transactions. If the company is not required to submit the

Master File and the group is not required to comply with the

CbCR, the minimum threshold for intercompany transactions is

ARS30 million.

> CbCR

CbCR was introduced in Argentina in 2017. The group’s

income for the previous fiscal year must exceed EUR750

million. The CbCR has to be filed by the entities controlling

Argentine MNEs. In addition, the local filing of the CbCR will

only be required in Argentina when there is an underlying

international agreement in effect, but when there is no

competent authority agreement.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There are no requirements to report these transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language (Spanish).

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is a preference for individual testing.

> Any other disclosure or compliance requirement

For import and export transactions involving an international

intermediary between the Argentine taxpayer and the foreign

related parties, the local entity will have to prove that the

remuneration obtained by the international intermediary is in

accordance with the risks assumed, the functions performed,

and the assets involved in the transactions. The Local File

must include the functional analysis of the international

intermediary.

In addition, in case of imports or exports of commodities,

specific transfer pricing rules apply, including additional

transfer pricing returns.

Services received by Argentine taxpayers require a benefit test

regarding the transaction paid by local company.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Starting in 2018, taxpayers are required to file the following

transfer pricing-specific returns with the AFIP:

> Annual Form 2668 (transactions with related parties

or entities located in low- or no-tax jurisdictions or

noncooperative jurisdictions and import and export

transactions with third parties)

> Annual Form 4501 (for the digital filing of the transfer

pricing study and certified public accountant’s

certification)

> Related-party disclosures along with corporate income tax

return

This is not applicable, provided there exists a separate return

to report related parties.

> Related-party disclosures in financial statement and annual

report

Taxpayers are required to file the following documentation

with the AFIP:

> An annual transfer pricing study (Local File)

> Audited financial statements for the fiscal year, if they

have not already been filed

> Certification of certain contents of the transfer pricing

study by an independent certified public accountant

> Transfer pricing-specific return (Form 2668 and Form

4501)

> CbCR notification included in the statutory tax return

This is not applicable, provided there exists a separate regime

to regulate CbCR filing.

> Other information or documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Fifth month after fiscal year-end. For fiscal years ending in

December, the filing deadline is mid-May. There are specific

due dates that depend on the taxpayer’s fiscal ID and the fiscal

year-end.

> Other transfer pricing disclosures and return

Sixth month after fiscal year-end. For fiscal years ending

in December, the deadline falls in June of the following

financial year. There are specific due dates that depend on

the taxpayer’s fiscal ID and the fiscal year-end. There is a

temporary three-month extension for fiscal years ended

between December 2020 and December 2021.

> Master File

Master File needs to be prepared and filed with the tax

authority up to 12 months after the fiscal year-end. The

Master File should be in Spanish.

> CbCR preparation and submission

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

> CbCR notification

The deadline is the third month after the fiscal year-end and

the second month after the CbCR filing.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation must be finalized by the

time of lodging the tax return to achieve penalty protection

(e.g., where there is a contemporaneous requirement). There

are specific due dates that depend on the taxpayer’s fiscal ID

and the fiscal year-end.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, the statutory deadlines for Argentine transfer pricing

filings are:

> Fiscal year-end plus five months: The income tax return is

due the fifth month after the fiscal year-end. Within such

filing, the local taxpayer must disclose transfer pricing

adjustments (if any). In that filing, the company must

disclose whether a transfer pricing adjustment is needed

to have arm’s-length prices in its transactions with related

and unrelated parties located in countries or jurisdictions

considered noncooperative for fiscal transparency

purposes, and in low- or no-tax jurisdictions. Thus, the

transfer pricing analysis should be performed by that

time even though the documentation is not due until later

(fiscal year-end plus six months).

> Fiscal year-end plus six months: The company must file

the transfer pricing annual return (Form 2668), including

detailed information of all cross-border intercompany

transactions (or those performed by the local company

with entities located in countries and jurisdictions

considered noncooperative for fiscal transparency

purposes or in low- or no-tax jurisdictions). Transfer pricing

report (in AFIP’s General Resolution 4717/20) needs to

be filed through Form 4501. A certified public accountant

(CPA) certification, signed by an independent accountant,

of certain procedures and information contained in the

transfer pricing report is also needed. The company also

has to file statutory financial statements for the year

signed by an independent accountant. If this is the first

filing, the financial statements for the two immediately

preceding tax periods (if applicable) should also be filed.

All applicable pieces of documentation must be filed

to complete a documentation package. Through the

Argentine tax authority’s General Resolution 5010/2020,

companies were granted with a temporary three-month

extension for fiscal years ended between December 2020

and December 2021.

> Time period or deadline for submission on tax authority

request

The taxpayer has 10 working days to submit the transfer

pricing documentation once requested by the tax authorities in

an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Transfer pricing reporting obligations were suspended before

COVID-19 due to a major tax reform program that included

updating of transfer pricing documentation requirements. As

of today, the AFIP has granted a three-month extension for

fiscal years ended between December 2020 and December

2021. It is not expected that the AFIP will grant any further

extensions.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

International transactions must be informed and analyzed.

> Domestic transactions

No need to document ,but transactions are expected to be

arm’s length.

b) Priority and preference of methods

The ITL does not prioritize methods; however, there exists a

strong preference in what concerns to internal comparables

and Section 30 of the Administrative Order, as amended by

Decree 1170/2018 and Decree 862/2019, articulates the

best-method rule.

The tested party must be the local entity (i.e., the entity based

in Argentina). The taxpayer selects the most appropriate

method, but the AFIP may oppose the selection. Pursuant to

the ITL, the accepted methods for transactions with related

parties and entities, located in countries and jurisdictions

considered noncooperative for fiscal transparency purposes or

in low- or no-tax jurisdictions, are CUP, resale price, cost plus,

profit split, TNMM and other methods.

The use of an interquartile range is mandatory. Unless there

is evidence to the contrary, the market price must be used for

tangible goods transactions with both related and independent

parties where there is an international price in a transparent

market.

The CUP method shall be considered the most appropriate

to value the transactions of goods with well-known prices

in transparent markets, either by reference to uncontrolled

comparable transactions or by reference to the indices,

coefficients or quotation values.

For import and export transactions involving an international

intermediary between the Argentine taxpayer and foreign

related parties, the local entity will have to prove that the

remuneration obtained by the international intermediary is in

accordance with the risks assumed, the functions performed

and the assets involved in the transactions. If the remuneration

of the foreign intermediary is higher than that agreed upon

between independent parties, the excess in the amount of

such remuneration shall be considered a higher profit from an

Argentine source, attributable to the local taxpayer.

The AFIP has the power to reclassify the transaction, including

determining the nonexistence of remuneration attributable

to the foreign intermediary and establishing the functions

performed, assets used and risks assumed (with the respective

remuneration and attribution to the party or parties), under

the following conditions:

> If, from the evaluation of the transaction, the AFIP

determines that there is a clear discrepancy between the

actual transactions and the functional analysis or signed

agreements with the foreign intermediary

> If the purpose of the transaction is explained solely for

fiscal reasons or if its conditions differ from those to which

independent companies have subscribed in accordance

with commercial practices

Export and import transactions with independent parties

not located in countries and jurisdictions considered

noncooperative for fiscal transparency purposes or in low- or

no-tax jurisdictions are subject to information requirements if

the annual amount of the transaction exceeds ARS10 million

or if the transactions are exports and imports of commodities.

The requirements depend on different annual transaction

amounts and, in some cases, may include calculations of profit

margins.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific requirement. However, the comparable

companies to be selected should be those that have publicly

available information (Forms 10-K, 20-F, ARS or similar

and audited financial statements in Spanish or English can

be found). Even though there is no specific requirement

established by law for using such databases or selecting

comparable companies, the AFIP has requested information

with such level of comfort in the data in the context of fiscal

audits (e.g., counting with a description of the comparable

business activities in Spanish, the financial information in a

specific format, the explanation of comparability adjustments

made in Spanish). It is also important to consider that the local

legislation determines the obligation of exposing the name

of the database used, the date of the comparable search,

and the breakdown with the accepted or rejected comparable

companies, along with the search process.

> Single-year vs. multiyear analysis for benchmarking

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

party). Multiple years can be considered for comparable

companies, but it must be justified.

> Use of interquartile range

When, by application of any of the methods set forth in ITL

Section 17, as revised in 1997 and as amended by Decree

824/2019, and the related Administrative Order as amended

by Decree 1170/2018 and Decree 862/2019, two or more

comparable transactions are determined, the median and

interquartile range shall be determined for the prices,

consideration amount or profit margins.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is recommended every year, but

a reasonable update of financials is accepted.

> Simple, weighted or pooled results

There is none specified.

> Other specific benchmarking criteria, if any

Preference for internal comparables, when available.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

In case of late filing or incomplete transfer pricing

documentation, the tax rating of the local taxpayer could be

downgraded.

> Consequences of failure to submit, late submission or

incorrect disclosures

For late filing of tax returns concerning other international

transactions, the taxpayer will be fined ARS20,000. For

penalties related to late filing or lack of filing, it does not

matter whether the transactions were at arm’s length.

For non-compliance with the formal duties of furnishing

information requested by the AFIP, the taxpayer faces fines of

up to ARS45,000. The same applies to failure to keep vouchers

and evidence of prices in files on hand and the failure to file

tax returns upon request. If tax returns are not filed after the

third request, and the taxpayer has income amounting to more

than ARS10 million, the fine is increased from ARS90,000 to

ARS450,000.

For unpaid taxes related to international transactions, the

taxpayer is fined 200% of the unpaid tax, which could be

augmented to 300% upon recidivism. Penalties for fraud are

two to six times the unpaid taxes.

Criminal tax law stipulates imprisonment for two to six years if

the unpaid tax exceeds ARS1.5 million for each tax and fiscal

year. If the unpaid tax exceeds ARS15 million, the prison term

will increase, ranging from three years and six monthscvv to

nine years.

Failing to comply with the obligations related to CbCR and

CbCR notifications will be considered by the AFIP as a relevant

indicator for starting an audit and verification of the risks

associated with their transfer prices and the potential tax BEPS

from the entities domiciled in Argentina to other member

companies of the MNE group.

Moreover, the liable parties may be subject to any of the

following measures:

> Being classified as a company subject to greater risk of

undergoing an audit

> Suspension or removal from the special tax registries of

the Argentinean tax jurisdiction

> Suspension of the process of obtaining an exemption or

non-withholding certificates

The following penalties are applicable to the non-compliance

with the obligations related to CbCR and CbCR notifications:

> i) The penalty will be between ARS80,000 and

ARS200,000 when the local taxpayer is a member of

an MNE group that reaches the minimum limit of total

consolidated revenues for mandatory CbCR and fails to

comply with the respective notifications and information

about the MNE group and the ultimate parent entity,

requested by the AFIP, within the deadlines established

for this purpose. If the local entity fails to comply with

the notification mentioned above, but its MNE group

does not reach the limit established for mandatory CbC

reporting, the penalty will be set between ARS15,000 and

ARS70,000.

ii) The penalty will be between ARS80,000 and

ARS200,000 when the local taxpayer fails to inform,

within the deadlines established for that purpose, the

identifying data of the reporting entity (the entity

designated for the submission of the CbCR) (first

notification).

iii) The penalty will be between ARS80,000 and

ARS200,000 when the local taxpayer fails to inform,

within the deadlines established for that purpose, the

submission of the CbCR by the reporting entity in its tax

jurisdiction (second notification).

> There will be an adjustable penalty (between ARS600,000

and ARS900,000) when the local taxpayer must file the

CbCR to the AFIP and does not submit it. The penalty will

also apply if the report submitted is partial, incomplete, or

has serious errors or inconsistencies.

> There will be an adjustable penalty (between ARS180,000

and ARS300,000) upon the total or partial non-

compliance with the requirements made by the AFIP on

complementary information requested in addition to the

CbCR.

> There will be a penalty of ARS200,000 when the local

taxpayer does not comply with a formal requirement

from AFIP to comply with duties mentioned in (a) and (b)

(above).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

When the tax is not paid for not filing returns or reports or

for filing inaccurate returns or reports, the taxpayer shall be

penalized with a fine of 200% (which could be augmented to

300% upon recidivism) of the unpaid or un-withheld tax. This is

if the nonpayment refers to transactions entered into between

local companies and any type of entity domiciled abroad, as

provided by Section 45.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the above section.

> Is interest charged on penalties or payable on a refund?

Interest accrues on unpaid tax balances.

b) Penalty relief

Concerning underpayment and fraud, if the non-recidivist

taxpayer voluntarily amends the tax returns before receiving

an intervention notice from the AFIP, then no penalty shall

be applied. If the tax returns are amended during the term

between receiving the intervention notice and before receiving

a special notice (or pre-vista) from AFIP´s auditors, the penalty

is reduced to one-quarter of the minimum fine. If the tax

returns are amended after receiving the pre-vista but before

receiving the notice of the resolution that formally starts

the official assessment procedure (the so-called “vista”),

the penalty is reduced to half of the minimum fine. If the

non-recidivist taxpayer accepts the adjustments assessed

by the AFIP and pays the amounts due within 15 days of

receiving this notice, the penalty is reduced to three-quarters

of the minimum fine. If the non-recidivist taxpayer accepts

the adjustments assessed by the AFIP through the official

assessment resolution, the penalty is reduce to the minimum

fine.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitations for federal tax matters is 6

years for registered and registration-exempt taxpayers and 10

years for unregistered taxpayers. These periods begin on 1

January following the year in which the tax return is due.

The moratorium regime in place during the calendar year

2009 and the voluntary declaration of the foreign exchange

holding regime in place during the calendar year 2013 added

one additional year each to the statute of limitations period

for certain fiscal years. The taxpayer must keep the transfer

pricing documentation on hand and provide it upon the AFIP’s

request for up to five years after the period established by the

statute of limitations.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits

(high/medium/low)

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

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of the tax authority challenging the taxpayer’s

transfer pricing methodology may be considered to be high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

It depends on the circumstances, but usually may be

considered to be high.

> Specific transactions, industries and situations, if any, more

likely to undergo an audit

Pharmacy, automotive and export of commodities are targeted

industries. Financial transactions and foreign intermediaries

are more likely to undergo an audit.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Yes, there is unilateral and bilateral availability. However, the

implementation regulations are yet to be issued for bilateral

availability.

> Tenure

This is not applicable yet; further regulations are expected to

make these changes operative.

> Rollback provisions

This is not applicable yet; further regulations are expected to

make these changes operative.

> MAP opportunities

Yes.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules apply as a restriction on the

deductibility of interest and foreign exchange losses arising

from debts of a financial nature that are contracted by

taxpayers with related entities (whether local or foreign).

According to the 2017 tax reform, the former 2:1 debt-to-

equity thin-capitalization rule was replaced with the BEPS-

based rule. The deduction on interest expense and foreign

exchange losses with local and foreign related parties is now

limited to 30% of the taxpayer’s taxable income before interest,

foreign exchange losses and depreciation. The taxpayer is

entitled to carry forward the excess non deductible interest

for five years and the unutilized deduction capacity for three

years. Certain exceptions to the above limitation are also

available.

In case of loans received by Argentine borrowers, debt

capacity and business reasons for the transaction should be

documented. In general, local transfer pricing rules follow the

OECD family approach for intercompany financial transactions.

Milton Gonzalez Malla

milton.gonzalez-malla@ar.ey.com

+ 541143181602

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

State Revenue Committee (SRC).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Tax Code of the Republic of Armenia, Chapter 73, effective

from 1 January 2020.

> Section reference from local regulation

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

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Armenia is not a member of the OECD.

There is no reference to the OECD Guidelines in the Tax Code

of the Republic of Armenia. As the TP rules enter into force

from 1 January 2020, there is no practice yet on referring to

or following the OECD Guidelines in this regard.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No .

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, TP documentation has to be prepared annually under

Armenian regulations and it should include the following:

> A detailed description of the taxpayer’s business functions

> A detailed description of the taxpayer’s organizational

structure

> Description of controlled transactions

> Description of applied TP methods

> The list of parties to controlled transactions

> Description of sources of information on comparable

uncontrolled transactions

> Calculation of arm’s-length range

> Financial and any other relevant information on the tested

party subject to analysis

> Detailed information on the adjustments made by the

taxpayer independently

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

The threshold for TP documentation is AMD200 million.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

Such transactions between related parties are considered

controlled in cases in which:

> Either of the parties to the transaction is a mineral royalty

payer

> Either of the parties to the transaction enjoys tax

privileges

> Either of the parties to the transaction is an operator of a

free economic zone

> Local language documentation requirement

The TP documentation can be submitted in Russian, English

or Armenian, provided that, upon the request of the tax

authorities, such documents made in English or Russian are

translated into Armenian and submitted to the tax authority

within 10 working days following the date of the receipt of the

written request.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

There is none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is none specified.

> Related-party disclosures along with corporate income tax

return

The taxpayer shall complete the notification form on controlled

transactions and file it with the tax authority on or before 20

April of the year following the tax year in which controlled

transactions were concluded.

> Related-party disclosures in financial statement and annual

report

Yes, this is applicable according to Accounting Standard 24

of Armenia. The definition of related parties in this standard

overall corresponds to the provisions of related parties in TP

rules of Armenia.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 20 April.

> Other transfer pricing disclosures and return

The deadline is 20 April.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

The taxpayer has to submit the TP documentation within 30

days from the time the tax authority requests it.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The comparable uncontrolled price (CUP), resale-price, cost-

plus, TNMM and profit-split methods are accepted, and there is

no priority or preference of methods.

8. Benchmarking requirements

> Local vs. regional comparables

If there is a lack of information on uncontrolled transactions

with an Armenian party’s involvement, the use of foreign

comparables shall be acceptable, where the impact of

economic circumstances and other comparability factors

on the financial indicator subject to examination by the

appropriate TP method is analyzed and, where necessary, a

comparability adjustment is made.

> Single-year vs. multiyear analysis for benchmarking

A multiyear analysis (three years) is preferred.

> Use of interquartile range

A government decree with detailed rules on calculating the

arm’s-length range was in the development stage at the time

of this publication.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Under the current legislation, there are no specific

guidelines and requirements on the need to conduct a fresh

benchmarking search every year or for updating the financials

of a prior study.

> Simple, weighted or pooled results

Guidance on the calculation of an arm’s-length range was in

the development stage at the time of this publication.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is none specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

No penalty is defined yet for non-compliance.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

There is none specified.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is none specified.

> Is interest charged on penalties and payable on a refund?

There is none specified.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on TP assessments is three years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The TP rules are effective from 1 January 2020. Hence, there

is no practice available in terms of TP audits. Accordingly,

likelihood of TP-related audits cannot be assessed.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Refer to the section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to undergo an audit

Refer to the section above.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There are no provisions for APA opportunities in Armenia.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest expenses on loans from entities other than banks and

credit organizations are not deductible in excess of two times

the tax base of the taxpayer’s net assets. The threshold for

banks and credit organizations is nine times the tax base of net

assets.

Anuar Mukanov

Anuar.Mukanov@kz.ey.com

+ 7 701 959 0579

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Australian Taxation Office (ATO)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Division 13 of Part III of the Income Tax Assessment Act

1936 (ITAA 1936)

> Subdivisions 815-A, B, C, D and E of the Income Tax

Assessment Act 1997 (ITAA 1997)

> Subdivisions 284-255 of Schedule 1 to the Tax

Administration Act 1953 (TAA 1953)

> Subdivisions 177G to 177R of the ITAA 1936

> Relevant provisions of double tax treaties

Applicability of legislation

Division 13 was enacted in 1982 and applies to income

years that commenced before 1 July 2013. Division 13

applies at the discretion of the Commissioner of Taxation (the

Commissioner).

Subdivision 815-A was enacted in 2012 and applies to income

years commencing between 1 July 2004 and 30 June 2013.

It operates concurrently with Division 13 for transactions

with related parties in countries that have a double taxation

agreement with Australia. Subdivision 815-A applies at the

Commissioner’s discretion.

Subdivisions 815-B, C and D apply to taxpayers with income

years commencing on or after 1 July 2013. The Commissioner

can apply Subdivisions 815-B, C and D, and taxpayers must

self-assess them.

Subdivision 815-E addresses the country by country Reporting

obligations as further outlined in the following sections.

All Australian TP legislation only applies in one direction.

Broadly speaking, it can only be used to increase profits,

decrease losses and offsets, and increase withholding tax

liabilities.

1 https://www.ato.gov.au/Business/International-tax-for-business/

Transfer-pricing/

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.

2Company officer is responsible for the signing of the company tax

return, and making sure that the responses in the return are true and

accurate, and there are no false or misleading statements.

Please note that the Australian source rules do not align with

the OECD authorized approach and require an allocation of

actual revenue and expenses. Where this leaves too much

profit in Australia, this is not remedied through Subdivision

815-C due to the one-sided application of the TP provisions.

Subdivision 815-D applies to partnerships and trusts using an

approach analogous to that found in Subdivisions 815-B and

815-C.

Subdivision 815-E addresses the country by country Reporting

obligations as further outlined in the following sections.

Diverted profits tax

In addition to the specific TP legislation, Australia also has a

diverted profit tax that broadly speaking looks at transactions

that are taxed overseas at a low rate (generally less than 24%

effective tax) and where obtaining a tax benefit is a principal

purpose of the arrangement. Diverted profits tax is levied at

40%, i.e. higher than the normal tax rate, and is not subject to

relief from double taxation under Australian tax treaties. The

diverted profit tax applies to significant global entities (SGEs).

Broadly speaking, SGEs are Australian taxpayers that form

part of an MNE that has a global turnover exceeding AUD1

billion.

Country by country reporting

Australia has very specific CbCR requirements that deviate

from the global norm in several aspects. Please refer to the

separate section on CbCR requirements below.

> Section reference from local regulation

The ATO has issued a significant amount of TP guidance.

Below are the key transfer pricing rulings (TR), practice

statements law administration (PS LA) and practical

compliance guidelines (PCG):

> TR 92/11: loan arrangements and credit balances

> TR 94/14: basic concepts underlying the operation of

Australia’s TP rules

> TR 97/20: pricing methodologies

> TR 98/11: documentation

> TR 98/16: penalties

> TR 1999/1: charging for services

> TR 2000/16: relief from double taxation and the MAP

> TR 2001/11: operation of Australia’s permanent

establishment attribution rules

> TR 2003/1: thin capitalization, applying the arm’s-length

debt test

> TR 2004/1: cost contribution arrangements

> TR 2007/1: effect of determinations under Division 13,

including consequential adjustments

> TR 2010/7: interaction of Australia’s thin-capitalization

rules and the TP provisions

> TR 2011/1: application of the TP provisions to business

restructurings by multinational enterprises

> TR 2014/6: income tax: TP — the application of Section

815-130 of the ITAA 1997

> TR 2014/8: income tax — TP documentation and

Subdivision 284-E

> Draft TR 2019/D2: income tax: thin capitalization — the

arm’s-length debt test

> PCG 2017/1: ATO compliance approach to TP issues

related to centralized operating models involving non-core

procurement, marketing, sales and distribution functions

> PCG 2017/2: Simplified Transfer Pricing Record Keeping

options

> PCG 2017/4: ATO compliance approach to taxation issues

associated with cross-border related-party financing

arrangements, related derivatives and interest-free

funding

> PCG 2019/1: ATO compliance approach to inbound

distribution entities

> PCG 2020/7: ATO compliance approach to the arm’s-

length debt test

> Taxpayer Alert 2020/1: Non-arm’s-length arrangements

and schemes connected with the development,

enhancement, maintenance, protection and exploitation

(together DEMPE) of intangible assets

> PS LA 2014/2: administration of TP penalties for income

years commencing on or after 29 June 2013

> PS LA 2014/3: simplifying TP record-keeping

> PS LA 2015/4: APAs

> Reportable Tax Position Schedule Guidance

> International Dealings Schedule Guidance

> Country-by-country Reporting Guidance

Case law

There have been a number of TP cases before the courts in

Australia, of which the following four are the most influential:

> Roche Products Pty Ltd (Roche) v. Commissioner of

Taxation [2008] AATA 261

> Commissioner of Taxation v. SNF (Australia) Pty Ltd

[2011] FCAFC 74

> Chevron Australia Holdings Pty Ltd v. Commissioner of

Taxation [2017] FCAFC 62

> Glencore Investment Pty Ltd v. Commissioner of Taxation

of the Commonwealth of Australia [2019] FCA 1432

> Singapore Telecom Australia Investments Pty Ltd v

Commissioner of Taxation [2021] FCA 1597

Broadly speaking, the Roche and SNF cases apply to Division

13, and highlighted the fact that Division 13 limited the ATO

to the consideration of whether the pricing of a related-party

transaction was at arm’s length. It did not provide the scope to

consider whether the profits or other commercial context of

the arrangement were also at arm’s length. In response, new

TP provisions were created; Subdivision 815-A was released in

2012, and Subdivisions 815-B, C and D were released in 2013.

The Chevron case looked at both Division 13 and Subdivision

815-A, and addressed the appropriate pricing for

intercompany loan arrangements. Of particular relevance

is that it rejected the “orphan concept” in determining the

arm’s-length consideration for loans. As a result, loans

cannot be priced as if the borrowing entity is an “orphan” but

rather should be seen as part of the global group’s family of

companies.

The Glencore case addressed the appropriate pricing for

the sales of copper concentrate produced by the Australian

Glencore entity to its Swiss parent. Importantly, the case

examined the extent of the ATO’s ability to ignore the actual

agreement entered into by the taxpayer on the basis that the

terms of this agreement are not considered to be arm’s length

in nature and rely on an alternative hypothetical agreement

that is differently structured to the actual agreement entered

into for the purposes of addressing statutory questions in

Division 13 and Subdivision 815-A. In finding for the taxpayer,

the court examined market evidence that supported the

terms of the actual agreement entered into and expressed

the view that any reconstruction should be limited to

exceptional circumstances referring to commentary in the

OECD Guidelines. Given the introduction of the reconstruction

provision in Subdivision 815-B and changes to the OECD

Guidelines since 2010, this judgment may have limited

application in the more recent years.

The SingTel case builds on earlier cases and focuses on what

arm’s length parties would have done. It essentially rejects

the “stand-alone” approach for financing transactions and

postulates that independent parties would have obtained

a guarantee from their parent. The Court also ruled that

notwithstanding this, no guarantee was payable as there was

no actual guarantee provided and no guarantee fee charged.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No. However, the ATO has issued guidance on COVID-19

economic impacts on transfer pricing arrangements. Key

aspects include a “but for COVID” analysis where COVID has

negatively impacted results and skepticism in relation to the

arm’s-length nature of changes in intercompany arrangements.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Australia is a member of the OECD and largely follows the

OECD Guidelines in practice.

In response to key TP cases that questioned the relevance

of the OECD Guidelines in interpreting Division 13 and the

ATO’s reliance on such interpretation, revised TP provisions

were released. These provisions refer directly to the 2010

OECD Guidelines (or the 1999 Guidelines for earlier years) as

relevant guidance for the determination of the arm’s-length

conditions. For years starting on or after 1 July 2017, the

relevant guidance also incorporates the changes as per the

final report on BEPS Actions 8-10.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

In name, Australia has adopted the OECD’s three-tiered

documentation approach set out in BEPS Action 13. The

requirements are met through lodgement of two files: the

Local File/Master File (LCMSF) (as defined below) and the CbC

report. As detailed below, the Australian interpretation of the

Local File deviates significantly from what is seen in most other

countries.

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

The LCMSF

As part of the Australian implementation of Action 13,

SGEs that are also country-by-country Reporting Entities

(CbCREs) have CbC reporting requirements. Whether an

SGE is also a CbCRE is subject to complex and nuanced

rules, especially for Private Equity owned SGEs, and it is

recommended advice is sought to assess whether an SGE

is also a CbCRE.

CbCREs need to provide the LCMSF file. LCMSF stands for

each of the components provided through the file, being:

> Local File

> CbC report notification

> Master File

> Short-form Local File

> Financials

The LCMSF must be lodged electronically in Extensible

Markup Language (XML) format and specific software

tools are required to prepare the XML file.

> CbC report

In addition to the LCMSF, Australian taxpayers must lodge

the CbC report in Australia through use of a separate

XML schema. Where the CbC report is lodged in a

jurisdiction that automatically exchanges it with the ATO,

this lodgement can be replaced with a notification. The

CbC report lodgement notification is provided through

lodgement of the LCMSF, due 12 months after the end of

the financial year.

A local lodgement is required if the CbC report is not

lodged in a jurisdiction that automatically exchanges

it with the ATO. This lodgement will need to be made

through a separate XML and a conversion process is

required to align the CbC report with the Australian

requirements.

> Effective or expected commencement date

The effective commencement date is 1 January 2016.

> Material differences from OECD report template or format

While Australia subscribes to the general concepts

of Action 13 including a three-tiered documentation

structure, there are some notable differences in Australia’s

implementation of the Local File. In summary:

> The CbC report is consistent with the OECD format.

> The Master File is consistent with the OECD format.

> The Australian interpretation of the Local File deviates

significantly from the interpretation in the rest of

the world. In Australia, the Local File is not a TP

documentation report, but a collection of transactional

data and other information structured in three parts:

> The short form Local File

> Part A of the Local File

> Part B of the Local File

The data provided through the Local File includes reporting

entity information, transactional data, the level of

compliant Australian TP documentation, foreign exchange

result-related information, legal agreements, information

on the TP method applied in Australia and overseas,

overseas APAs and ruling, etc. The Local File can only be

lodged electronically in the prescribed format through the

LCMSF XML file.

The Australian CbC Reporting requirements are set out in

Subdivision 815-E ITAA 1997.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Australia has specific documentation requirements set

out in Subdivision 284-E TAA 1953. Transfer pricing

documentation that does not meet these requirements is

not able to provide a reasonably arguable position and the

related penalty mitigation.

In straightforward cases, e.g., a vanilla distributor or

service provider, TP documentation prepared consistent

with the BEPS Action 13 format for Local Files may only

require procedural adaptations to meet the legislative

TP documentation requirements. In more complex cases,

e.g., those involving restructures, intangibles, intra-group

financing or commercially unrealistic results, substantive

additional technical analysis will typically be required to

address the Australian TP legislation.

Such analysis will need to consider the commercial

context of such arrangements to ensure that the TP

reconstruction provisions should not apply before

considering the arm’s-length nature of the pricing of such

transactions.

It is worth noting that in addition to TP documentation

requirements, there is the separate lodgement obligation

for the LCMSF mentioned above that cannot be satisfied

through a BEPS Action 13 format report.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it is as of 27 January 2016, with the dates on which

exchange relations became active listed on the OECD website.

In addition, Australia has signed a bilateral agreement with the

US.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

The preparation of TP documentation is not compulsory.

However, taxpayers that do not prepare documentation

that meets the specific requirements set out in Subdivision

284-E are precluded from establishing an RAP in the event

of a TP adjustment. This means that higher penalties apply if

the taxpayer receives a TP adjustment that increases its tax

liabilities in Australia.

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

documentation:

> > Be prepared contemporaneously, i.e., it must be kept

by or accessible to the local entity before the time by

which the taxpayer lodges its income tax return

> Be prepared in English, or readily accessible and

convertible into English

> Explains the particular way in which the relevant TP

provisions apply (or do not apply) to the taxpayer’s

international related-party dealings

> Explains why the application of the TP provisions to the

taxpayer’s international related-party dealings in that

way best achieves consistency with the relevant guidance

materials including the OECD Guidelines

> Allows actual conditions, arm’s-length conditions,

comparable circumstances and the result of the

application of the subdivision to be readily ascertained

In addition to these legal requirements to be able to have an

RAP, the ATO expects that taxpayers answer the following

questions in their documentation to demonstrate an RAP:

> What are the actual conditions that are relevant to the

matter?

> What are the comparable circumstances relevant to

identifying the arm’s-length conditions?

> What are the particulars of the methods used to identify

the arm’s-length conditions?

> What are the arm’s-length conditions, and is the TP

treatment appropriate?

> Have any material changes and updates been identified

and documented?

Further, additional disclosures are specifically listed in

Subdivision 284-E TAA. In addition, if the documentation is

prepared for a fee, an Australian Tax Agent must prepare or

control the preparation of the transfer pricing documentation

to avoid a breach of the Tax Agent Services Act.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Subdivision 815-C deals with TP in relation to permanent

establishments (PE). Subdivision 815-C links with and largely

follows Subdivision 815-B, however, there are some important

differences. It is noted that Australia does not subscribe to the

separate legal entity approach. As a result of the interaction

between the transfer rules and the source rules, TP for

permanent establishments can be a highly complex matter.

Generally, a PE is subject to the same income tax and

transfer pricing requirements as a normally incorporated

entity. Therefore, branches or PEs would have similar filing

requirements. An exception is the CbC report for which

Australian PEs of a non-Australian corporation can access a

fast-track exemption.

> Does transfer pricing documentation have to be prepared

annually?

In order to be able to have an RAP, documentation must

be prepared annually. However, if no significant changes

have occurred, an addendum to the documentation may be

sufficient as long as the addendum meets the requirements of

Subdivision 284-E.

Care has to also be given to the benchmarking analysis used.

In particular, it is unlikely that regional Asian sets would meet

the requirements or be accepted by the ATO because of the

significant differences between Australia and other regional

economies.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

There is no specific guidance or requirement in relation to

combining TP reports and whether a combination of reports is

appropriate will depend on the facts and circumstances.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit for the preparation of TP

documentation.

> Master File

CbCR requirements apply to CbCREs, largely Australian

taxpayers that form part of an MNE with an annual global

income of AUD1 billion or more. While the definition of global

group generally follows accounting consolidation rules, there

are several exceptions that require careful consideration.

> Local File

Same as provided for Master File. Further, if the local entity

have less than AUD 2 million in total international related party

transactions, and no transactions that are on the exclusions

list, it may be able to submit only the Short Form Local File.

> CbCR

Same as provided for Master File

> Economic analysis

There is no materiality limit for the preparation of an economic

analysis.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The TP documentation needs to be maintained in English (local

language) or readily convertible into English.

> Safe harbor availability, including financial transactions, if

applicable

There are no formal safe harbors in the Australian TP

legislation. However, through PCGs, the ATO provides

guidance on its compliance approach, areas of focus and

the kind of arrangements that would typically not warrant

compliance activity.

Subject to the taxpayer meeting all conditions for the relevant

option, PCG 2017/2 provides simplified record-keeping

options applicable to the following transactions:

> Taxpayers whereby the annual turnover of the Australian

Economic Group is less than AUD 50 million

> Distributors with a turnover of less than AUD50 million

and profit before tax that exceeds 3% of sales

> Low value-adding intra-group services with a markup of no

less than 5% for services provided and no more than 5%

for services received

> Technical services with a markup of no less than 10%

for services provided and no more than 10% for services

received

> Outbound loans with related parties where the loan is

denominated in AUD, the amount lent does not exceed

AUD50 million and the interest rate is at least 1.79% for

the 2021 income tax year and 1.83% for the 2022 income

tax year

> Inbound loans with related parties where the loan is

denominated in AUD, the amount lent does not exceed

AUD50 million and interest does not exceed 1.79% for the

2021 income tax year and 1.83% for the 2022 income tax

year

> Taxpayers that have international related-party dealings

of less than 2.5% of the total turnover of the Australian

Economic Group

Where a taxpayer applies the simplified TP record-keeping

requirements and discloses this in their international dealings

schedule (IDS) or Local File, the ATO will typically not allocate

compliance resources to that arrangement.

Please note: In addition to the thresholds mentioned

above, further eligibility requirements must be met to allow

application of these rules. In addition, taxpayers must self-

assess the appropriateness of the TP and must document this

self-assessment as well as how they meet the criteria for the

specific transaction.

PCG 2019/1 provides the ATO’s compliance approach in

relation to inbound distributors and sets out the margins that

would typically not warrant ATO compliance resources. Again,

these margins are not safe-harbours and are not designed

to indicate the true arm’s-length position (which need to be

separately analyzed). Low-risk EBIT margins differ depending

on the industry and per this PCG starting at:

> Information and communications technology (ICT)

category I: 4.1%

> ICT category II: 5.4%

> Life sciences category I: 5.1%

> Life sciences category II: 8.9%

> Life sciences category III: 10.0%

> Motor vehicles: 4.3%

> General distributors: 5.3%

> Is aggregation or individual testing of transactions preferred

for an entity

Aggregation of transactions is allowed under appropriate

circumstances.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

We refer to the above for the CbCR requirements and below

for RTP requirements, and the following section for the IDS. No

other TP-specific returns apply.

> Related-party disclosures along with corporate income tax

return

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

requires taxpayers to disclose:

> Details of restructuring events involving international

related parties (question 17, which must be completed

regardless of the quantum of the transactions)

> Dealings with branch operations (question 18, which

must be completed regardless of the quantum of the

transactions)

In addition, if the aggregate amount of transactions or

dealings with international related parties, both revenue and

capital in nature, is greater than AUD2 million, the following

information must be disclosed:

> Top three transactions (individually) and other

transactions (combined) for the top three specified “low-

tax” jurisdictions (question 3)

> The top three transactions and other transactions

for the top three non-specified jurisdictions (question

4) (historically, the list of specified jurisdictions

predominantly focused on tax havens, but the list

has since expanded to include Hong Kong, Ireland,

Luxembourg, Singapore, Switzerland and the Netherlands)

> For all international related-party transactions (questions

5 through 13):

> Type of transaction, e.g., royalties, intercompany loans,

technical services and administrative services

> The quantum per type of transaction

> The percentage of transactions of each type covered by

contemporaneous documentation that has been prepared

in accordance with the ATO guidance mentioned above

(TP documentation does not need to be lodged with the

tax return)

> TP methodologies selected and applied for each

international related-party transaction type

> Information on transactions for no payment or

nonmonetary payment, share-based employee

remuneration and CCAs (Questions 14 through 16)

In addition to the TP disclosures, the IDS captures information

on interests in foreign companies or foreign trusts, permanent

establishments and thin capitalization. Separate thresholds

apply for these disclosures.

As an administrative concession, the ATO has waived the

requirement to lodge parts of the IDS where taxpayers

complete and lodge the Local File part of LCMSF in XML format

at the same time as the tax return.

> Related-party disclosures in financial statement/annual

report

Related-party disclosures may be required in the financial

statement and annual report.

> CbCR notification included in the statutory tax return

No; however, taxpayers disclose whether they are subject to

CbC Reporting requirements in the tax return.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

In most cases, the income tax return is due for lodgement

six months and 15 days after the end of the income tax year,

however it varies depending upon the entity. Payment of any

final tax liability is normally due on the first day of the sixth

month following the end of the income tax year. Taxpayers may

request a due date extension through the ATO portal.

> Other transfer pricing disclosures and return

If international related-party dealings exceed AUD2 million

(including average loan balances), an IDS must be lodged as

part of the corporate tax return.

Reportable Tax Position Schedule for companies with a

turnover in excess of AUD25 million that form part of an

Australian economic group with a turnover in excess of

AUD250 million must be disclosed. Transfer pricing reportable

tax positions include 'normal' material reportable tax positions

as well as specific disclosures in relation to ATO guidance

on a variety of topics including financing, distribution

arrangements, Development, Enhancement, Maintenance,

Protection and Exploitation (DEMPE) functions, Intangible

property, Marketing and non-core-procurement hubs, etc.

> Master File

If required, this must be filed 12 months after the end of

the financial year of the taxpayer unless the taxpayer has

received a replacement reporting period (RRP), in which case

the deadline is 12 months after the end of the RRP (typically

the global parent entity’s year-end immediately preceding the

taxpayer’s year-end).

An exemption may be available where Australia is the only

jurisdiction in which the Master File needs to be prepared.

> CbCR preparation and submission

If required, the CbC report is due 12 months after the end

of the financial year of the taxpayer unless the taxpayer has

received an RRP, in which case the deadline is 12 months after

the end of the RRP. Refer to the “CbCR notification” section

for situations where the CbC report has been lodged with

another revenue authority with whom the ATO has a formal

information exchange.

> CbCR notification

If the CbC report is lodged with another revenue authority

with whom the ATO has a formal information exchange, the

Australian taxpayer is able to provide a notification through

the LCMSF form, and the ATO then obtains a copy of the CbC

report directly from the other revenue authority.

b) Transfer pricing documentation/Local File preparation

deadline

> Transfer pricing documentation

To achieve penalty protection, documentation must be on hand

by the date of lodging the corporate tax return. This cannot be

remedied at a later point in time. The documentation does not

need to be provided to the ATO.

> Local File

If required, an Australian Local File must be filed 12 months

after the end of the financial year of the taxpayer. If the

taxpayer prepares and lodges at least Part A of the Australian

Local File by the due date of the corporate tax return, questions

2 to 17 of the abovementioned IDS do not need to be

completed (this is an “administrative concession” provided by

the ATO).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

There is no filing deadline for the submission of TP

documentation; however, TP documentation must be provided

upon request by the ATO.

> Time period or deadline for submission upon tax authority

request

The taxpayer generally has to submit the TP documentation

within 28 days upon request by the ATO. Although an

extension of this deadline is possible from the ATO, based

on recent experience, the ATO is unlikely to grant such

an extension unless there are clear, compelling reasons

supporting the request.

The ATO will routinely check the date stamp on the files to

confirm whether they were contemporaneous.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: typically not applicable

b) Priority and preference of methods

The legislation requires taxpayers to adopt the “most

appropriate” TP method and refers to the OECD Guidelines

in this regard. Methods include traditional transaction

methods (e.g., CUP, resale price and cost plus) and traditional

profits-based methods (e.g., profit split and TNMM). Any

other method that results in an arm’s-length outcome is also

acceptable. However, other methods should only be used

where one of the other traditional transaction or profits-based

methods cannot be reliably applied.

8. Benchmarking requirements

> Local vs. regional comparables

Although there is no legal or formal requirement for local

jurisdiction comparables, the ATO has a strong preference

for local comparables and uses local databases that contain

information on more companies than the typical regional

and global databases. The ATO will generally accept foreign

comparables only if it can be demonstrated that reliable local

comparables are not available. Regional Asian comparables are

typically not accepted due to market differences.

> Single-year vs. multiyear analysis for benchmarking

Although multiple-year (five years) testing is generally

acceptable, based on recent experience, the ATO has been

challenging profit profiles where there are a number of very

low-profit or loss years that are combined with higher-profit

years to achieve an overall average result within the range.

> Use of interquartile range

There are no formal guidelines on the determination of the

appropriate point in the range. interquartile ranges, calculated

using spreadsheet quartile formulas, are generally acceptable,

but there may still be challenges in terms of the most

appropriate point within the interquartile range (i.e., it is not

necessarily accepted that if the tested party results fall within

the interquartile range, it may automatically be concluded that

such results are consistent with the arm’s-length principle).

For taxpayers that are required to file an RTP schedule, results

that sit outside the interquartile range must be disclosed as an

RTP if they meet the materiality threshold and are not already

disclosed as a Category C RTP.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement to conduct a fresh

comparable benchmarking search annually. Generally, such

benchmarking may be rolled forward with a refresh of the

financial information of the comparables for an additional one

or two years where there have not been significant changes in

the industry or the functional profile of the tested party.

> Simple, weighted or pooled results

Generally, weighted rather than simple averages are used in

determining averages over a period.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Incomplete documentation will typically mean that the

documentation does not provide a reasonably arguable

position (RAP) for penalty mitigation purposes.

> Consequences of failure to submit, late submission or

incorrect disclosures

If not provided upon request, taxpayers cannot rely on

documentation to provide a RAP. Whether incorrect

disclosures have an impact will depend on the disclosure

itself. Minor errors are unlikely to have an impact, whereas

significant misleading disclosures could lead to increased

penalties.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

> Penalties apply to underpaid tax (shortfall penalties),

failure to submit or late submission (failure to lodge

penalties), or incorrect disclosures (false and misleading

disclosure penalties).

> Penalties depend on the entity as well as various other

factors such as the level of culpability.

> Penalties for SGEs, i.e., any entity that is part of a group

with a global turnover of AUD1 billion or more, are

particularly high. Failure to lodge penalties for these

entities start at AUD111,000for filings that are one

date late and gradually increase to AUD555,000 for

lodgements that are 90 days late or more.

> The Australian Local File lodgement is mandatory for

country-by-country Reporting Entities and failure to lodge

is subject to the same failure to lodge penalties. Similarly,

failure to address MF requirements could lead to penalties

up to AUD 555,000 per year.

> Where ATO staff conclude that an entity entered into the

scheme with the sole or dominant purpose of that entity

or another getting a transfer pricing benefit, the penalties

will be either 50% or 25% of the transfer pricing shortfall

amount, depending on whether the entity has appropriate

documentation. Higher penalties apply where there are

further culpability factors such as intentional disregard for

the law. These penalties are doubled for SGEs.

> Where the ATO staff concludes that an entity did not

enter into the scheme with the sole or dominant purpose

of getting a transfer pricing benefit, the penalties will

be either 25% or 10% of the transfer pricing shortfall

amount, depending on whether the entity has appropriate

documentation. These penalties are doubled for SGEs.

> A Public Officer that knowingly signs an income tax return

with incorrect or misleading disclosures (including those

related to Transfer Pricing) may face criminal charges.

b) Penalty relief

> Where the taxpayer has contemporaneous documentation

(i.e., prepared prior to, or at the time of, filing the

company’s annual tax return and IDS) to support an RAP,

the penalty may be reduced.

> In addition, penalties may be reduced in certain

circumstances by 20% for voluntary disclosure after

notification of an audit, or by 80% for voluntary disclosure

before notification of an audit.

> A taxpayer with an APA will typically not incur tax shortfall

penalties. Exceptions to this include non-arm’s-length

dealings that are not covered by the APA, or non-

compliance with the terms and conditions of the APA.

> The Commissioner has discretion to remit penalties. PS LA

2008/18, sets out guidance on the remission of penalties.

The practice statement provides some very restrictive

examples in which penalties are to be remitted. In relation

to penalties with respect to failure to have an RAP, given

the specific nature of Subdivision 284-E, it would seem

unlikely that the Commissioner would remit penalties in

the future unless the prescribed documentation exists.

Similarly, we are seeing more reluctance to fully remit

failure-to-lodge penalties for SGEs.

10. Statute of limitations on transfer pricing

assessments

Under Subdivisions 815-B, C and D, amendments can be made

within seven years following the date on which a notice of

assessment is issued to the taxpayer.

Historically, there has been no statute of limitations with

respect to TP adjustments. The tax legislation applicable

for financial years starting before 1 July 2013 specifically

empowers the Commissioner to make amendments to tax

assessments in any year for TP adjustments under Division

13. As such, years starting before 1 July 2013 remain open to

challenge indefinitely.

Adjustments can be made under Subdivision 815-A for any

financial years starting between 1 July 2004 and 30 June

2013 (inclusive). Similar to Division 13, there is no limitation

on when adjustments can be made.

Some of Australia’s double tax agreements, including

those with New Zealand and Japan, specify time limits for

adjustments.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

All top 1,100 companies in Australia are subject to review over

a four-year period, with the top 100 companies being subject

to annual reviews. A similar review process has recently been

started for large privately owned Australian companies.

We note that the ATO has also recently selected companies

in the pharmaceutical and technology industries for audits as

well as taxpayers with significant intra-group financing.

Outside these groups, the likelihood of an annual tax audit in

Australia is typically medium. However, if taxpayers exhibit

risk factors, the likelihood of a review or audit increases

significantly.

Where the taxpayer enters into a material level of international

related-party transactions, TP is almost always reviewed if any

general tax review or audit is started.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It is generally the application of the TP method that is

challenged, e.g., the comparables selected and selection of

point in the range.

However, there have been recent cases where the method

has been challenged, e.g., the use of the cost-plus method

to remunerate a marketing service function has been

rejected in favour of a sales-based measure to determine the

remuneration for this function.

There have also been recent experiences in which the ATO

has sought to apply the profit-split method to determine the

remuneration of a local marketing, sales and distribution entity

where it has been concluded that such entity provides a unique

and valuable contribution to the overall supply chain.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The chance of some adjustment may be considered to be

medium to high, given the ATO risk selection guidelines for

an audit, i.e., the ATO will prioritize resources for those cases

where the ATO believes there is a relatively high probability of

an adjustment.

> Specific transactions, industries and situations, if any, more

likely to be audited

In determining whether an Australian taxpayer’s TP

arrangement should be reviewed or audited, the ATO

generally considers the size and nature of the related-party

dealings, the quality of any TP documentation and whether

the taxpayer’s results appear to be commercially realistic.

The ATO has developed a sophisticated risk engine that

considers these factors, along with other financial and industry

data, to determine which taxpayers to review. Related-party

transactions undertaken in connection with the following may

receive particular attention by the ATO:

> Centralized business models with activity in low-tax

jurisdictions, including principals, marketing hubs and

procurement companies in low-tax jurisdictions

> Low levels of profitability, or losses

> Financing arrangements, including interest-free loans

(for outbound taxpayers), high interest-bearing loans (for

inbound taxpayers) and guarantee fees

> Business restructuring (particularly where profitability is

reduced, or intangible property is transferred)

> Transactions with low-tax jurisdictions

> Payments made in connection with intangible property,

including royalties or other licensing arrangements

> Management service fees that significantly impact overall

profitability or are paid to a low-tax jurisdiction

More recently, the ATO has been focusing on BEPS scenarios

involving one or more of the above risk indicators and

commencing risk reviews on such companies.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Australia. APA

regulations in Australia support unilateral, bilateral and

multilateral APAs. The ATO’s APA program is outlined in ATO

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

currently underway.

> Tenure

An APA in which the ATO is involved typically has a three- to

five-year term.

> Rollback provisions

Historically, rollbacks were available subject to the ATO’s

agreement and the taxpayer’s facts.

While rollbacks are still included in the PS LA the ATO may

also apply other mechanisms such as a “letter of comfort” or a

”settlement deed” depending on the situation.

> MAP opportunities

Australia has an active and usually effective MAP program.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No specific changes, however, the ATO is hesitant to conclude

APAs in situations where the facts are not settled/stable

including where there has been significant disruption as the

result of COVID-19.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under the thin-capitalization rules, the deduction in relation

to debt used to fund the Australian operations of both foreign

entities investing into Australia and Australian entities

investing overseas is limited. The rules disallow a deduction for

a portion of specified expenses an entity incurs in relation to

its debt finance when the entity's debt-to-equity ratio exceeds

the safe harbor and none of the alternative tests are satisfied.

A debt deduction is an expense an entity incurs in connection

with a debt interest, such as an interest payment or a loan

fee that the entity would otherwise be entitled to claim a

deduction for.

Examples of debt interests include loans, promissory notes,

etc. Generally, interest-free debt does not count as part of an

entity's debt for thin-capitalization purposes.

The thin-capitalization rules affect both Australian and foreign

entities that have multinational investments. This means they

apply to:

> Australian entities with specified overseas investments —

these entities are called outward investing entities

> Foreign entities with certain investments in Australia,

regardless of whether they hold the investments directly or

through Australian entities — these entities are called inward

investing entities

There are two threshold tests that ensure entities with

relatively small debt deductions or small overseas investments

are not subject to the thin-capitalization rules. There is also

a third test for certain entities established to manage certain

risks and separate thresholds for certain entities in the

financial services industry.

Where an entity fails the safe harbor test, it may be to apply

the global gearing test or the arm’s-length debt test to support

its debt deductions. Both tests are relatively complex but can

result in a significantly reduced disallowance.

Joe Lawson

joe.lawson@au.ey.com

+ 61 421 163 633

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Ministry of Finance

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Transfer Pricing Documentation Law (TPDL) and the

related regulation for implementation of the law —

applicable for fiscal years (FYs) starting on or after 1

January 2016

> Austrian Transfer Pricing Guidelines 2021 (ATPG 2021)

(BMF-AV Nr. 140/2021, 7 October 2021)

> Section 6 (6), Income Tax Act

> Sections 8 and 12 (1) 10, Corporate Income Tax Act

> Income Tax Guidelines 6.13.3, 2511-2513

> Corporate Income Tax Guidelines 14.8.2, 1147

> Sections 115, 119, 124, 125, 131 and 138, Federal Tax

Code (FTC)

> Section 118, FTC regarding unilateral APAs

> Section 49b, Criminal Tax Law (CTL)

> Several opinions (public rulings called Express Answering

Service (EAS)), published by the Ministry of Finance

regarding selected TP issues

> Section reference from local regulation

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

2515

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

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

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Austria is a member of the OECD and recognizes the OECD

Guidelines which provide support for domestic use, but do not

constitute binding law in Austria.

According to the Austrian Transfer Pricing Guidelines, the tax

authorities also observe the OECD Report on the Attribution of

Profits to Permanent Establishments (AOA), although the AOA

is currently not fully applicable, as none of Austria’s current

double tax treaties include the new Article 7. The Austrian tax

authorities are fully aware of, and recognize, the OECD BEPS

developments (e.g., BEPS Action 13 was considered as the

basis for the implementation of the TPDL).

There is no public information available on the extent of

reliance of the Austrian tax authorities on the UN Practical

Manual on Transfer Pricing for Developing Countries.

A delegate from the Austrian Ministry of Finance takes part in

the EUJTPF. However, there is no public information available

on the extent of reliance of the Austrian tax authorities on the

deliveries of the EUJTPF.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS Action

13 for TP documentation in the local regulations?

Yes

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

Master File, Local File and CbCR are covered.

> Effective or expected commencement date

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

January 2016.

> Material differences from OECD report template or format

There is none specified. However, more detailed

documentation in connection with hard-to-value intangibles

and services is likely to be requested, based on the case law of

the higher administrative court in Austria (stated also in the

ATPG 2021).

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report is typically sufficient to

achieve penalty protection.

However, the TPDL does not define specific penalties regarding

the master and Local Files. See the “TP penalties and relief”

section below.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it is as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Contemporaneous preparation is highly recommended.

For FYs starting on or after 1 January 2016, the TPDL

is applicable. If TP documentation needs to be prepared

according to the TPDL, both the Master File and the local

file must be submitted upon the request of the competent

tax office within 30 days. The Austrian tax authorities can

request submission of the Master File and Local File after the

constituent entity files its tax return (i.e., the earliest deadline

for the submission of the Master File and the Local File is 30

days after filing the tax return of the respective year).

For years not covered by the TPDL Austrian tax law, the

Austrian Transfer Pricing Guidelines do not contain any

submission deadlines. TP documentation is usually submitted

to the Austrian tax authorities upon request during a tax

audit. Usually the competent tax inspector will determine a

submission deadline, which can vary from case to case (e.g.,

from only one week to several weeks). Upon the tax inspector’s

consent, an extension of the deadline is possible.

Following the OECD Guidelines as well as the ATPG 2021

TP documentation should be prepared at the time of the

transaction, or no later than the time of completing and filing

the tax return for the fiscal year in which the transaction

takes place. The ATPG 2021 additionally state that the TP

documentation requirements have to be met in a timely

manner. If represented by an Austrian tax advisor, the annual

corporate income tax return has to be filed by the end of

March of the second calendar year, following the balance sheet

date at the latest — and if the Austrian tax authorities do not

ask for an earlier filing. So usually, as already mentioned, the

TP documentation needs to be submitted upon request of the

tax authorities during a tax audit.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

The definition of a constituent entity stipulated in the TPDL

also includes permanent establishments. The TPDL stipulates

that a Master File and Local File must be prepared by the

constituent entities resident in Austria, if their turnover in the

previous two FYs exceeded EUR50 million in each year.

Constituent entities resident in Austria that do not exceed

the stipulated turnover threshold have to file a Master File on

request, if a group entity resident in another state is required

to prepare a Master File according to the respective domestic

law of its resident state.

Existing documentation obligations in addition to the TPDL

remain unaffected. This means that constituent entities with

a turnover below EUR50 million are required to prepare a

TP documentation in accordance with the “prior standard,”

which is based on the general provisions on bookkeeping,

record–keeping and disclosure requirement of the FTC for tax

purposes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

TP documentation is requested by the Austrian tax authorities

from specific constituent entities, i.e., entity-wise. Therefore,

although it is not forbidden to combine TP documentation

for several Austrian entities in one report, in general, we

recommend preparing stand-alone reports for each entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

The Austrian TP regulations (TPDL as well as Transfer Pricing

Guidelines) do not provide materiality thresholds. In general,

all cross-border intercompany transactions need to be

documented. However, materiality thresholds are often applied

in practice, which follow the OECD approach outlined in OECD

Guidelines 2017. If applied, such materiality thresholds may

be questioned by the Austrian tax authorities.

> Master File

The TPDL covers the Master File.

A Master File must be prepared by constituent entities resident

in Austria, if their turnover in each of the previous two fiscal

years exceeded EUR50 million. The obligation to prepare

the Master File ceases in a given year if the turnover of the

constituent entities is below EUR50 million for two previous

consecutive years.

Constituent entities resident in Austria that do not exceed

the stipulated turnover threshold have to file a Master File if

a group entity resident in another state is required to prepare

a Master File according to the respective domestic law of its

resident state.

Furthermore, the TPDL clarifies that documentation

obligations existing in addition to the TPDL (e.g., accounting

and filing obligations according to the FTC) are not affected by

the TPDL. Consequently, TP documentation also needs to be

prepared by constituent entities not exceeding the turnover

threshold. In this regard, the ATPG 2021 stipulate a minimum

content, which is required for TP documentations of entities

not exceeding the turnover threshold. The required content

of the transfer pricing documentation has to be evaluated

on a case-by-case basis and depends on the volume of the

cross-border transactions, the complexity of the facts and

circumstances surrounding the transactions in question as well

as the industry.

> Local File

The TPDL covers the Local File.

A Local File must be prepared by constituent entities resident

in Austria, if their turnover in each of the previous two FYs

exceeded EUR50 million. The obligation to prepare the local

file ceases in a given year, if the turnover of the constituent

entities is below EUR50 million for two previous consecutive

years.

Furthermore, the TPDL clarifies that documentation

obligations existing in addition to the TPDL (e.g., accounting

and filing obligations according to the FTC) are not affected by

the TPDL. Consequently, TP documentation also needs to be

prepared by constituent entities not exceeding the turnover

threshold. In this regard, the ATPG 2021 stipulate a minimum

content, which is required for TP documentations of entities

not exceeding the turnover threshold. The required content

of the transfer pricing documentation has to be evaluated

on a case-by-case basis and depends on the volume of the

cross-border transactions, the complexity of the facts and

circumstances surrounding the transactions in question as well

as the industry.

> CbCR

The TPDL covers CbCR. A CbCR has to be prepared if the total

turnover generated by the multinational group stated in the

consolidated annual financial statements of the previous FYs

amounts to at least EUR750 million. The term “turnover”

should be understood as the sum of the revenues generated

from activities on the market.

The tables to be used for the CbCR must be in line with the

tables provided in the TPDL, which correspond to the tables

provided in the OECD Guidelines.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

Domestic intra-group transactions have to be documented if

transactions directly or indirectly affect the determination and

cross-border analysis of appropriate intra-group transfer prices

applied within the group.

> Local language documentation requirement

The TPDL stipulates that the entire documentation must be

prepared in a language officially permitted for tax proceedings

(typically German) or English. A German translation of

documentation prepared in English (or for certain parts

thereof) may be requested by the Austrian tax authorities.

The regulation of the implementation of the TPDL states that

Appendix 3 of the CbCR has to be prepared in English.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

The Austrian tax authorities expect to be provided with a local

file in which each transaction type is analyzed separately.

Please note that an aggregated approach is not usual.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

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

tax returns.

> Related-party disclosures along with corporate income tax

return

No specific continuous disclosure is required in the annual

tax return. In the case of a tax audit, the auditors usually

ask for a description of related-party transactions, as well as

disclosure of all contracts in place with the related parties and

TP documentation available. In an increasing number of cases,

an extensive TP questionnaire is discussed.

> Related-party disclosures in financial statement/annual

report

Besides reporting obligations according to the IFRS (which

are not incorporated into Austrian law), Section 238 of the

Austrian Commercial Code (applicable to medium and large

corporations) states that transactions of the company with

related companies and persons, as well as information on their

value and the type of relationship, must be provided. Further

information on the transactions that are necessary for the

assessment of the company's financial position must also be

provided. It should be noted that this reporting obligation

exists (only) for transactions that do not comply with the

arm’s-length principle and that are material.

> CbCR notification included in the statutory tax return

No, the CbCR notification is not included.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The CIT return has to be filed by 31 March of the second

calendar year following the balance sheet date at the latest,

if represented by an Austrian tax advisor. If not represented

by an Austrian tax advisor, CIT returns must be filed by 30

June of the calendar year following the balance sheet date

at the latest, if filed electronically (CIT returns for permanent

establishments need to be filed by 30 April at the latest).

> Other transfer pricing disclosures and returns

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

tax returns.

> Master File

A Master File has to be submitted upon the request of the

competent tax office within 30 days. The Austrian tax

authorities can request submission of the Master File after the

constituent entity files its tax return (i.e., the earliest deadline

for the submission of the Master File is 30 days after filing the

tax return of the respective year).

> CbCR preparation and submission

The filing due date for the CbCR depends on the fiscal year-

end of the reporting entity (usually the group’s fiscal year-

end). If the Austrian constituent entity is the reporting entity,

the CbCR has to be filed electronically (via FinanzOnline) with

the competent tax office within 12 months after the end of the

respective FY.

> CbCR notification

The TPDL stipulates that a constituent entity that is resident

in Austria needs to inform the competent tax office about the

identity and residence of the reporting entity by the last day

of the FY for which a CbCR is filed. For FY beginning after 31

December 2021 no notification needs to be filed in case no

changes occur compared to the previous year.

b) Transfer pricing documentation/Local File preparation

deadline

In line with the TPDL, the required documentation (the master

file and the Local File, as well as the CbCR) has to be prepared

for FYs starting from 1 January 2016. In cases where a

constituent entity was officially designated by notice as the

surrogate parent entity for the submission of the CbCR,

the submitted information can refer to FYs starting from 1

January 2017.

Master Files and Local Files prepared in line with the TPDL have

to be submitted upon the request of the competent tax office

within 30 days after the constituent entity files its tax return

(i.e., the earliest deadline for the submission of the master

file and the Local File is 30 days after filing the tax return of

the respective year). Following the OECD Guidelines as well as

the ATPG 2021, TP documentation should be prepared at the

time of the transaction, or no later than the time of completing

and filing the tax return for the fiscal year in which transaction

takes place. Consequently, it is highly recommended to have

the Master File and the Local File prepared when the tax return

is filed at the latest.

c) Transfer pricing documentation and Local File submission

deadline

The CbCR has to be filed electronically with the competent

tax office within 12 months after the end of the respective FY.

Both the Master File and the Local File have to be submitted

upon the request of the competent tax office within 30 days

after the constituent entity files its tax return (i.e., the earliest

deadline for the submission of the Master File and the Local File

is 30 days after filing the tax return of the respective year).

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline in terms of a specific date as to

when TP documentation must be submitted. However, under

the TPDL, there is a statutory deadline in terms of a fixed time

period in which TP documentation must be submitted upon the

tax authorities’ request (see below).

> Time period or deadline for submission upon tax authority

request

Before the implementation of the TPDL, TP documentation

(Master File and Local File) was usually requested by the

competent tax auditor during a tax audit. The submission

deadline could vary greatly from case to case (e.g., from

only one week to several weeks). Upon the tax auditor’s

consent, an extension of the deadline was possible. On the

basis of the TPDL, the deadline for the submission of the TP

documentation (Master File and Local File) is 30 days upon the

request of the competent tax office after the constituent entity

files its tax return.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: yes

> Domestic transactions: yes

b) Priority and preference of methods

Based on the OECD Guidelines and the Austrian Transfer

Pricing Guidelines, the Austrian Ministry of Finance accepts

the CUP, resale-minus, cost-plus, TNMM and profit-split

methods.

The Ministry of Finance follows the replacement of the

hierarchy of TP methods, according to the 2010 update of

Chapters I to III of the OECD Guidelines. Particularly, the TNMM

and the profit-split method are no longer considered methods

of last resort. According to the Austrian Transfer Pricing

Guidelines, the method that provides the highest degree of

certainty for the determination of an arm’s-length transfer

price has to be selected.

8. Benchmarking requirements

> Local vs. regional comparables

The TPDL does not include regulations regarding benchmark

studies. Generally, local comparables are preferred. However,

for Austrian purposes, usually regional pan-European

Amadeus benchmark studies (EU 15 or EU 27 along with

Iceland, Norway, Switzerland and UK) are accepted. When

preparing a benchmark study, the five comparability factors

must be considered in identifying or determining the set of

comparables.

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis is used for the financials of comparables.

However, for the tested party, usually each separate year

should be within the interquartile range identified by a

benchmark study and specific reasoning should be provided in

case of deviations.

> Use of interquartile range

Yes, interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Following the OECD Guidelines as well as the ATPG 2021,

as long as the operating conditions remain unchanged, the

searches in databases for comparables supporting part of the

Local File shall be updated at least every three years.

> Simple, weighted or pooled results

There is a clear preference for the weighted average for

arm’s-length analysis. In practice, three-year weighted average

arm’s-length ranges are commonly applied.

> Other specific benchmarking criteria, if any

> Independence: rejection of companies owned by at least

one shareholder (25% threshold) and companies owning at

least one subsidiary (25% threshold)

> Type of accounts: unconsolidated

> Loss-making companies: rejection of companies with a

weighted average loss

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

No, but please note that there is an increased risk of

adjustments by the Austrian tax authorities. Further, the

risk of investigations based on the Criminal Tax Law (CTL) is

increased.

> Consequences of failure to submit, late submission or

incorrect disclosures

At the time of this publication, there was only one specific

regulation dealing with TP penalties in Austria.

Section 49b of the CTL stipulates that anyone who does not

file the CbCR in time, does not file it at all, or incorrectly files

the required items in the tables in Appendices 1 to 3 of the

TPDL, by intent, commits a tax offense. The CTL stipulates

penalties of up to EUR50,000 for intent and up to EUR25,000

for gross negligence. While penalties are to be imposed, legal

prosecution (by courts) for such tax offenses is excluded by the

CTL.

However, the TPDL does not define specific penalties with

regard to the Master File and Local File. Therefore, the general

regulations of Section 111 FTC (penalties) apply. According to

Section 111 FTC, a fine of up to EUR5,000 per offense can be

levied by the tax authorities after they provide the taxpayer

with a warning or notification that includes the amount of the

fine and an appropriate deadline for taking the required action.

In addition, Section 51 (1) lit., a CTL (tax offenses) could

be applicable, which stipulates a monetary penalty of up to

EUR5,000 for an intentional violation of the tax law disclosure

obligations. Additionally, a lack of documentation significantly

increases the risk that the tax authorities will regard a

transaction as noncompliant with the arm’s- length criterion

and, thus, the risk of a TP adjustment is also increased.

Further, the risk of investigations based on the CTL, especially

in connection with incorrect disclosure, is increased.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

No specific penalties are stipulated. Withholding tax may be

levied depending on the circumstances and facts.

Penalties according to the CTL can be assessed in case of

intent or gross negligence (usually a percentage of the unpaid

taxes).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

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

increased.

> Is interest charged on penalties or payable on a refund?

If the taxable income is increased because the arm’s-length

criterion has not been met, non deductible late-payment

interest, in the amount of 2 percentage points above the base

rate (published by the European Central Bank), is levied on

the CIT payments for any additional prior year for up to 48

months.

b) Penalty relief

There are no penalty relief provisions available.

Late-payment interest will become due on any CIT payments

for an additional prior year, regardless of whether the

documentation is sufficient.

If adjustments are proposed or made by the tax authority in

the course of a tax audit, the taxpayer can either file an appeal

or request for an MAP, or both.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on a TP adjustment is usually 6 years

after the end of the calendar year in which the relevant FY

ends. If the CTL is to be applied, the statute of limitations is 10

years, not 6 years. In case a tax audit starts within the six-year

period, the statute of limitations is extended. The term may be

extended for up to 10 years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny or

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit (i.e., every FY being

examined) is very high and TP is highly likely to be reviewed as

part of that audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of a TP methodology being challenged may be

considered to be medium to high, depending on the specific

circumstances of the case.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high, as the tax

auditors often take a firm stand and request for arm’s-length

evidence.

> Specific transactions, industries and situations, if any, more

likely to be audited

Intercompany service transactions, intercompany royalty

payments, intercompany financing arrangements, transactions

with low-tax jurisdictions, as well as business restructurings

and change of TP policy leading to a reduction of profits have

a higher likelihood to undergo audit. The likelihood depends

more on transaction types than on the industry an MNE is

belonging to.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

On the basis of Section 118 of the FTC, it is possible to apply

for a unilateral, binding, appealable advance ruling issued by

the competent tax office on the tax treatment of a particular

(but yet-to-occur) issue related to reorganizations, groups

of companies, international tax law (including TP), sales tax

law or the existence of abuse. The administrative fee to be

paid to the tax authorities for filing an APA request is up to

EUR20,000.

Under specific circumstances, it is possible to ask the Austrian

tax authorities to participate in negotiations of a bilateral or

multilateral APA on the basis of Article 25 (3) of the respective

double tax treaty.

> Tenure

Usually, APAs based on Section 118 of the FTC are granted for

a period of three years.

> Rollback provisions

A rollback is only available for bilateral and multilateral APAs

in line with Chapter IV of the OECD Transfer Pricing Guidelines

and the BEPS Action 14 Minimum Standard.

> MAP opportunities

Austria had a total of 286 active MAP applications as of 31

December 2020. The following tables show the average time

needed to close MAP cases.

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

Cases started before 1 January 2016 Average time

TP cases 71.00

Other cases 79.43

Note: The average time taken to close MAP cases that started

before 1 January 2016 was computed by applying the

following rules: (i) start date: the date on which the competent

authority that received the MAP request decided that the

objection raised in the request was justified and initiated

the bilateral phase of the MAP, and in cases where Austria's

competent authority did not receive the MAP request, the date

of the official notification of the initiation of the bilateral phase

of the MAP by the other competent authority; and (ii) end

date: the date on which an MAP agreement was reached. The

date of notification of the taxpayer was not taken into account.

If the treaty partner required acceptance of the MAP result

by the taxpayer, then the "end" date was counted as the date

when the taxpayer responded, either accepting or rejecting

the agreement.

Cases started as from 1 January 2016 Average time

TP cases 22.28

Other cases 17.47

Note: The average times to close MAP cases that started as

from 1 January 2016 were computed according to the MAP

statistics reporting framework available at http://www.oecd.

org/tax/dispute/mutual-agreement-procedure-statistics-

reporting-framework.pdf.

14. Have there been any impacts or changes

to Advance Pricing Agreements (APAs),

rulings or other transfer pricing-related

certainty measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under Austrian tax law, there are no debt-to-equity rules

referring to a fixed percentage or a certain minimum equity.

Shareholders are basically free to decide whether to finance

their company with equity or loans. Please consider that the

tax authorities may reclassify loans granted by shareholders,

loans granted by group companies and loans granted by third

parties (guaranteed by group companies) as equity, if the funds

are transferred under legal or economic circumstances that

typify equity contributions, such as the following:

> The equity of the company is insufficient to satisfy the

solvency requirements of the company and the loan

replaces equity from an economic point of view.

> The company’s debt-to-equity ratio is significantly below the

industry average.

> The company is unable to obtain any loans from third

parties, such as banks.

> The loan conveys rights similar to shareholder rights, such

as profit participations.

If a loan is reclassified (for example, during a tax audit),

interest is not deductible for tax purposes and the withholding

tax on hidden profit distributions may become due.

On the basis of the administrative practice of the Austrian tax

authorities and High Court jurisdiction, an equity ratio of about

20%–25% is generally recommended. Austrian tax authorities

usually check the equity ratio based on the year-end annual

financial statements (by dividing total equity through balance

sheet total).

Andreas Stefaner

andreas.stefaner@at.ey.com

+ 43 664 60003 1041

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

The State Tax Service under the Ministry of Economy of the

Republic of Azerbaijan

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The transfer pricing regulations are contained in:

> The Tax Code of the Republic of Azerbaijan, following

amendments by Law of the Republic of Azerbaijan No.

1356-VQD, dated 30 November 2018, “Amendments to

the Tax Code of the Republic of Azerbaijan,” effective from

1 January 2019 (the Tax Code)

> Decision of the Ministry of Taxes of the Republic of

Azerbaijan No. 1717050000006200, dated 27 January

2017, “Determination and Application of Transfer

Pricing,” effective from 8 February 2017 (the transfer

pricing rules)

Major transfer pricing regulations are contained in Article 14-1

(introduced by Law No. 454-VQD), 16.1.4 and 18 of the Tax

Code.

Jurisdictions with a preferential tax regime are defined in the

Presidential Decree of the Republic of Azerbaijan No. 1505

dated 11 July 2017 “Approval of the List of Countries and

Territories with Preferential Taxation” and last updated on 11

June 2019.

> Section reference from local regulation

The regulations define controlled transactions as:

> Transactions between a resident of Azerbaijan and a non

resident, both qualifying as related parties under Article

18;

> Transactions between a permanent establishment of a non

resident in Azerbaijan and such non resident itself, as well

as its representative or branch offices or other divisions

located in other countries

> Effective for 2019 reporting period, transactions between

a permanent establishment of a non resident in Azerbaijan

and any person associated (under Article 18) with such

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

non resident located in other jurisdiction

> Transactions between a resident of Azerbaijan and any

person incorporated (registered) in jurisdictions with

preferential tax regime (offshore jurisdictions)

Effective from 2022 reporting period:

Transactions between residents of Azerbaijan and any of their

permanent establishments, branches or other subsidiaries

located in another jurisdiction (territory).

Transactions between a resident of Azerbaijan or a permanent

establishment of a non resident in Azerbaijan and a non

resident, if:

> The transaction involves sales commodities traded on

international commodity exchanges;

> Total turnover of a resident of Azerbaijan or a permanent

establishment of a non resident in Azerbaijan exceeds

30 million AZN and the share of a transaction with any

non resident exceeds 30% of total revenue or expenses,

respectively.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Azerbaijan is not a member of the OECD.

The local transfer pricing regulations entered into force from

2017 and include fundamental principles stipulated by the

OECD Guidelines. BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No

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

CbCR-applicable legal entities resident in Azerbaijan fulfilling

certain conditions are required to submit CbCRs beginning

from the 2020 reporting period in 12 months since the end

of reporting period. CbCR notification is also required relating

to the period effective from 1 January 2020 before 30 June

2021.

> Effective or expected commencement date

1 January 2020 for CbCR.

> Material differences from OECD report template or format

Local OECD report template prescribes reporting of

financial information on entity-by-entity level, which is

different from country-by-country level format adopted

by OECD

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

The penalty for incorrect presentation of information in the

CbCR is 2000 AZN.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, 12 March 2021.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does the documentation need to

be submitted or prepared contemporaneously?

There are no specific guidelines or rules for transfer pricing

documentation. However, the transfer pricing rules provide

the right to the tax office to review pricing in controlled

transactions. Accordingly, taxpayers have the right to justify

pricing. transfer pricing documentation should be provided to

the tax office during a tax audit.

There is also a requirement to submit a notification on

controlled transactions (the notification).

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, transactions of a local branch of a foreign company are

subject to transfer pricing control.

> Should transfer pricing documentation be prepared

annually?

There is a requirement to review controlled transactions for

compliance with the arm’s-length principle in each respective

period when transaction occurs.

The notification should be submitted annually.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

The notification should be submitted in respect of controlled

transactions with a turnover exceeding the threshold of AZN

500,000 (approximately USD 295,945) after transfer pricing

adjustments, if any.

There is no materiality limit or threshold for transfer pricing

documentation.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

CbCR has been introduced in the Azerbaijani tax legislation

with the first reporting year being 2020. Reporting entities

shall include entities that are residents of Azerbaijan and are

constituent entities of MNE groups with consolidated annual

income exceeding EUR 750 million. The CbC report for 2020

must be submitted by 31 December 2021

> Economic analysis

There is no materiality limit or threshold for economic analysis.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions are not subject to the transfer pricing

regulations.

> Local language documentation requirement

Local tax authorities require documents in foreign language to

be translated into Azerbaijani.

The notification must be prepared in Azerbaijani.

> Safe harbor availability, including financial transactions, if

applicable

No safe harbors.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure or compliance requirement

No other requirements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The notification requires disclosure of details on controlled

transactions, such as the nature and description of a controlled

transaction, volume and turnover of such transactions (after

application of transfer price) as well as information on a

counterparty and a basis of recognition as a related party.

> Related-party disclosures along with corporate income tax

return

Related-party disclosure should be provided in the notification.

> Related-party disclosures in financial statement and annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

There is no other filing requirement.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

31 March of the year following the reporting year, with

possibility for extension up to three months.

> Other transfer pricing disclosures and return

The deadline for submission of the notification is the same as

for profit tax return.

> Master File

This is not applicable.

> CbCR preparation and submission

Twelve months since the end of reporting period (reporting

period is a calendar year). The CbC report for 2020 must be

submitted by 31 December 2021, unless required otherwise

by the tax authorities in Azerbaijan.

> CbCR notification

The constituent entity has to submit CbC notification by 30

June 2021 for FY2020.

b) Transfer pricing documentation/Local File preparation

deadline

No specific deadline.

c) Transfer pricing documentation and Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No

> Time period or deadline for submission on tax authority

request

Documents requested for purpose of a desk audit procedure

should be submitted within five business days from the

request.2

Documents requested as part of a field audit procedure should

be submitted within 15 days from the request.3

d) Are there any new submission deadlines per

COVID-19-specific measures? If Yes, specify which

deadlines are impacted

There is none specified

2Section 37.2 of the Tax Code of Azerbaijan.

3Section 42.1 of the Tax Code of Azerbaijan.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions: yes

> Domestic transactions: no

b) Priority and preference of methods

The transfer pricing regulations prescribe five methods: 4

> Comparable uncontrolled price (CUP) method

> Resale price

> Cost-plus

> Transactional profit method

> Profit split

The CUP method is the most preferred method. 5 If the CUP

method cannot be applied, the resale price method and the

cost-plus method are preferred.

8. Benchmarking requirements

> Local vs. regional comparables

The transfer pricing regulations do not specify preference

between local and regional comparables. Moreover, there is

no local database available. However, the regulations envisage

comparability factors. Therefore, determination of a region

highly depends on the facts and circumstances of a tested

transaction.6

> Single-year vs. multiyear analysis

Single-year analysis is required. 7

> Use of interquartile range

The transfer pricing regulations envisage a full range of

comparable as an acceptable market range. 8

4 Section 5 of the transfer pricing rules.

5Section 5.2 of the transfer pricing rules.

6Section 4.3 of the transfer pricing rules.

7Section 4.3 of the transfer pricing rules.

8Section 2.0.9 of the transfer pricing rules.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A single-year search is required for every year in which a

controlled transaction occurs.

> Simple vs. weighted average

A simple average is applied where several comparable

transactions are identified.9

> Other specific benchmarking criteria, if any

The transfer pricing rules prescribe independence and other

benchmarking criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

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

to submit the notification.

A penalty of AZN 2,000 (approx. USD1,100) applies for

presenting inaccurate information in the notification.

A penalty of AZN 2,000 (approx. USD 1,100) applies for

failure to submit the CbCR.

A penalty of AZN 2,000 (approx. USD 1,100) applies for

presenting inaccurate information in the CbCR.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

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

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

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

> Is interest charged on penalties or payable on a refund?

A late payment interest of 0.1% of underpaid tax applies if

additional accrual is made as a result of desk audit or by a

taxpayer.

b) Penalty relief

No specific penalty relief.

9Section 6.3 of the transfer pricing rules.

10. Statute of limitations on transfer pricing

assessments

Three years from the moment of violation of the Tax Code.10

This period can extend to five years in special circumstances,

such as criminal investigation or obtaining information from

foreign competent authorities.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high, medium

or low)

High: A transfer pricing-related audit is conducted as a part of

profit tax audits.

> Likelihood of transfer pricing methodology being challenged

(high, medium or low)

High: Considering the hierarchy of the transfer pricing

methods and certain specifics of local regulations and practice.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high, medium or low)

High: The tax office has the right to revise the methodology

applied by the taxpayer. The result of the revision is likely to be

an adjustment.

> Specific transactions, industries and situations, if any, more

likely to be audited

All related-party transactions are closely reviewed by the tax

authorities during the onsite tax audits.

10Article 56.1 of the Tax Code.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The transfer pricing rules support unilateral APAs.11 However,

the mechanism is not yet elaborated.

> Tenure

There is none specified.

> Rollback provisions

This is not applicable.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

11Section 9 of the transfer pricing rules.

Anuar Mukanov

Anuar.Mukanov@kz.ey.com

+7 701 959 0579

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

National Bureau for Revenue (NBR)

b) Relevant transfer pricing section reference

Name of transfer pricing regulations or rulings and the

effective date of applicability

There are no transfer pricing regulations and rulings in

Bahrain at the time of this publication other than the CbCR

regulations. However, Bahrain has entered into double taxation

treaties (DTTs) with approximately 44 countries that have an

article that resembles Article 9 of the OECD Model Treaty (on

associated enterprises).

> Section reference from local regulation

This is not applicable for transfer pricing regulations — refer to

the section above.

However, for CbCR regulations, the Ministerial Decision No. 28

of 2021 (issued on 4 February 2021) is referred to.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

NA

3. OECD Guidelines treatment and BEPS

Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Bahrain is not an OECD member jurisdiction and there

are no local transfer pricing regulations other than the

CbCR regulations, which were issued in line with the OECD

Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes. Bahrain is a member of the BEPS Inclusive Framework

(BEPS IF) and has issued CbCR regulations.

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

Bahrain became a signatory to the Multilateral Competent

Authority Agreement (MCAA) on the exchange of CbC

reports in December 2019, which provides a mechanism

for the automatic exchange of CbC reports among

members. Bahrain ratified the MCAA on the exchange

of CbC reports in January 2021. Bahrain also issued the

CbCR regulations on 4 February 2021.

> Effective or expected commencement date

The filing of CbCR report and notification is applicable

from fiscal year starting 1 January 2021. First filing of

CbC notification is on 31 December 2021 and first filing of

CbCR will be on 31 December 2022.

> Material differences from OECD report template or format

The local CbCR requirements are consistent with OECD

CbCR guidance.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is none specified.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed in December 2019.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

No

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

This is not applicable.

> Does transfer pricing documentation have to be prepared

annually?

This is not applicable.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

This is not applicable.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

[Bahraini dinar (BHD)] 342,000,000

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

This is not applicable.

> Safe harbor availability, including financial transactions, if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

NA.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

returns

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable. However, the CbCR notification has to be

filed through the standard AEOI portal in Bahrain.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The due date for filing the income tax return is the 15th day

of the third month of the taxable year (advanced payment

method). Bahrain income tax is levied only on entities engaged

in oil and gas exploration and production.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The due date of filing CbCR is 12 months from the end of fiscal

year end.

> CbCR notification

The first due date of filing CbCR notification is 31 December

2021.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

This is not applicable.

> Time period or deadline for submission on tax authority

request

This is not applicable.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No specific information available

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

> Local vs. regional comparables

This is not applicable.

> Single-year vs. multiyear analysis for benchmarking

This is not applicable.

> Use of interquartile range

This is not applicable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

This is not applicable.

> Simple, weighted average or pooled results

This is not applicable.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

This is not applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

This is not applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No specific information available for penalty. Refer to the

above section.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

This is not applicable.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not covered in COVID Tracker

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

This is not applicable.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

This is not applicable.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

This is not applicable.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APAs are not applicable.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

The NBR has issued guidance on the use of MAP in resolving

DTT-related disputes. There is no experience yet of the use of

MAP in relation to transfer pricing issues.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No information available in COVID Tracker

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Patrick Oparah

Patrick.Oparah@bh.ey.com

+97317135194

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

National Board of Revenue (NBR)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Sections 107A to 107J of the Income Tax Ordinance, 1984

(the Ordinance), and Rules 70 to 75A of the Income Tax Rules,

1984, refers to TP.

> Section reference from local regulation

Sections 107A to 107J of the Ordinance refers to TP.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Bangladesh is not a member of the OECD.

Bangladeshi legislation is broadly based on the OECD

Guidelines. Five of the six methods prescribed in the

Bangladeshi legislation to compute arm’s-length prices

conform with the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No

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

This is not applicable.

1http://nbr.gov.bd/

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, TP documentation is required to be maintained by the

taxpayer while filing the TP return. The documentation only

needs to be submitted with the tax authorities upon request.

As per Bangladesh TP law, the data of comparable has to be

of the relevant financial year, so there is a contemporaneous

requirement.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local TP rules if

it has related-party transactions.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the minimum requirement to achieve this is determined

through transaction values and benchmarking analysis.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

TP reports if it has related-party transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is an applicable materiality limit in Bangladesh for the

purpose of preparing TP documentation based on aggregate

transaction values of Bangladesh taka (BDT) 30 million.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

The economic analysis is prescribed by transfer pricing

regulation and to be incorporated in the documentation

with the help of the most appropriate method among the six

methods prescribed in the Income Tax Ordinance, 1984.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The TP documentation need not be submitted in the local

language.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

No additional requirements or disclosures apart from

the statement of international transactions (SIT), TP

documentation and TP certificate

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Under Section 107EE of the Ordinance, every person who has

entered into an international transaction shall furnish, along

with the return of income, an SIT in the form and manner as

may be prescribed.

Under Section 107F, the Deputy Commissioner of Taxes may,

by written notice, ask for an accountant’s report certifying that

the documents and information maintained by a taxpayer are

in line with Bangladesh’s TP regulations, provided the taxpayer

is entering into an international transaction in which the

aggregate value of the international transactions entered into

by the taxpayer exceeds BDT30 million.

> Related-party disclosures along with corporate income tax

return

The income tax return form requires the taxpayer to declare

on the face of the return itself whether it has entered into

international transaction and, if yes, whether they have

submitted the details of such transactions (SIT captures the

details of international transaction and is mandatorily required

to be filed along with return of income).

> Related-party disclosures in financial statement/annual

report

From a Bangladesh TP perspective, no specific disclosure is

required in the financial statement and annual report.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

None

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Every company (resident or non resident) is required to file

a return of income by the 15th day of the seventh month

following the end of the income year or 15 September,

following the end of the income year where the said 15th day

falls before 15 September.

> Other transfer pricing disclosures and return

It should be filed along with the corporate tax return.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The TP documentation needs to be maintained by the time of

submission of SIT and to be filed upon request.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No

> Time period or deadline for submission upon tax authority

request

This is not known as assessments are yet to begin. Typically, 7

to 10 days may be expected.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes, it’s applicable for international transactions. Furthermore,

Bangladesh TP regulations also include the concept of deemed

international transactions wherein the third-party transactions

(both resident and non residents) are covered.

> Domestic transactions

It is not applicable for domestic transactions.

b) Priority and preference of methods

Bangladeshi legislation prescribes the following methods:

CUP, resale price, cost plus, profit split, TNMM and any other

method.

When it can be demonstrated that none of the first five

methods can be reasonably applied to determine the arm’s-

length price for an international transaction, Section 107C

allows the use of any other method that can yield a result

consistent with the arm’s-length price.

To determine a comparable uncontrolled transaction, Rule

71(3) provides that only the data pertaining to the relevant

financial year should be used. However, the rule permits the

use of data before the relevant financial year, if it can be

substantiated that such data bears facts that could influence

the analysis of comparability.

8. Benchmarking requirements

> Local vs. regional comparables

Since no local benchmarks are available, regional

benchmarking is undertaken. This is a jurisdiction-specific

practice due to the unavailability of a Bangladesh-specific

database.

> Single-year vs. multiyear analysis for benchmarking

Bangladesh TP legislation has not provided any preference

for single-year or multiyear testing. Since Bangladesh TP

regulations are broadly based on the OECD Guidelines, it is

generally suggested that multiple-year data be used.

> Use of interquartile range

As per Bangladesh TP laws, in case six or more than six data

sets are being used, arm’s-length price shall be considered as

range of 30th percentile to 70th percentile.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is preferable to be conducted

every year. The regulations do not explicitly provide guidance

in relation to the use of contemporaneous data but Rule 71(3)

provides that only the data pertaining to the relevant financial

year should be used. However, the rule permits the use of data

before the relevant financial year, if it can be substantiated

that such data bears facts that could influence the analysis of

comparability.

> Simple, weighted or pooled results

There is a preference for the weighted average.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Penal provisions are mentioned below

> Consequences of failure to submit, late submission or

incorrect disclosures

The details of the penalty provisions are provided below:

> For failure to keep, maintain or furnish any information or

documents as required by Section 107E of the Ordinance,

the taxpayer faces a penalty not exceeding 1% of the value

of the international transaction.

> For failure to comply with the notice or requisition

under Section 107C of the Ordinance by the Deputy

Commissioner of Taxes, the taxpayer faces a penalty not

exceeding 1% of the value of the international transaction.

> For failure to file an SIT, there is a penalty of 2% of the

value of the international transaction under Section

107EE of the Ordinance.

> For not furnishing an accountant’s certificate, the taxpayer

is fined an amount not exceeding BDT300,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

This is not applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

This is not applicable.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

No penalty relief regulation has been provided as of the time

of this publication.

An aggrieved taxpayer has the option to appeal an adjustment

in the following order:

> First appellate authority: Commissioner of Taxes (Appeals)

> Final fact-finding authority: Taxes Appellate Tribunal

> High Court Division of the Supreme Court

> Final authority: Appellate Division of the Supreme Court

10. Statute of limitations on transfer pricing

assessments

When a TP assessment has been initiated, no order of

assessment shall be made after three years have passed from

the end of the assessment year in which the income was first

assessable.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

This is not applicable; the first round of audits in Bangladesh is

expected to commence soon.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Refer to the section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

Refer to the section above.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Bangladesh does not have a formal APA program.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

No, there are no relevant regulations or rulings. The TP

regulations are currently at a very nascent stage and TP

assessment is yet to commence. Therefore, the approach of

the tax authorities, or any rulings, on the thin capitalization or

debt capacity is not yet known.

Vijay Iyer

vijay.iyer@in.ey.com

+ 91 9810495203

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

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

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Prior to 1 January 2019, the TP rules in Belarus were

regulated by Article 30-1 of the Tax Code of the Republic of

Belarus (the Tax Code).

Starting 1 January 2019, Article 30-1 was abolished, and the

new TP rules were introduced with the Law of the Republic of

Belarus “On amendments and additions to some laws of the

Republic of Belarus” No. 159-3 of 30 December 2018. With

these amendments, the TP rules in Belarus are regulated by

Chapter 11 of the Tax Code, titled “Principles for determining

the price for goods (works, services), property rights for

taxation purposes.”

> Section reference from local regulation

Chapter 11 of the Tax Code, together with Article 20, which

defines related parties and associated enterprises in Belarus is

the reference for local regulation.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Belarus is not a member of the OECD although the

jurisdiction’s law is generally in line with them. However,

Belarusian TP rules do not refer to the OECD Guidelines,

UN tax manual or EUJTPF because of which the practical

application of the rules may, therefore, be different from the

OECD and other relevant guidelines.1

b) BEPS Action 13 implementation overview

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

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Belarus has not adopted BEPS Action 13 for TP

documentation. However, the issue is under consideration by

the Belarusian tax authorities.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report is not sufficient to

achieve penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, but there are no direct requirements in local TP rules

to prepare TP documentation contemporaneously, though

it should be ready and provided upon the request of tax

authorities.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, compliance is required if the local branch of a foreign

company is a taxpayer in Belarus.

> Does transfer pricing documentation be prepared annually?

Yes, starting 1 January 2019, TP documentation has to be

prepared annually. Previously, the Belarusian legislation

did not envisage a direct requirement on the frequency of

updating TP documentation. Moreover, technically, a TP

documentation could be requested by the tax authorities on a

quarterly basis.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

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

b) Materiality limit or thresholds

> Transfer pricing documentation

Type of transaction Thresholds, the total value of all purchase or sale

transactions with one party per year (BYN)

2018 2019-21

Large

taxpayers

All other

categories

of taxpayers

Large

taxpayers

All other

categories of

taxpayers

Foreign transactions

With related parties

1,000,0002

100,000 2,000,000 400,0003

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 goods4 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

With parties applying No threshold

special tax regimes

With other parties,

including independent

parties 5

Not a subject for TP

control

2In 2018, all foreign transactions of large taxpayers were subject to

control if their total annual value exceeded BYN1 million.

3In 2018, all foreign transactions of large taxpayers were subject to

control if their total annual value exceeded BYN1 million.

4The list of strategic goods is approved by the Directive of the Council

of Ministers No. 470 of 16 June 2016. The list includes crude oil and

petroleum products, associated gas and other hydrocarbon gas, raw

timber, potassium chloride and iron and non-alloy steel bars.

5Before 2019, all transactions with immovable property and housing

bonds were controlled (the dependence of parties or tax regime applied

by them was not taken into account).

In addition, from 1 January 2019, banking operations are

subject to TP control along with all other transactions (there

was a special exemption for such transactions in 2018).

From 1 January 2022 transactions on sales/purchase of

securities and financial derivatives, transactions with credits

(loans) are subject for TP control in Belarus. For transactions

with credits (loans) the price of transaction for the purposes of

TP control and threshold calculation is recognized as the total

amount of the credit (loan).

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

Thresholds are the same as for TP documentation.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for the following domestic

transactions:

> Transactions with immovable property and housing bonds

carried out between related parties or with unrelated

parties applying special tax regimes (without any

threshold)

> Transactions with related parties (including the

involvement of independent intermediaries with no

substantial functions) that are exempt from taxation due

to the application of special tax regimes (the threshold for

such transactions is BYN400,000 for all taxpayers (except

for large taxpayers) and up to BYN2 million for large

taxpayers)

> Local language documentation requirement

The TP documentation needs to be submitted in the local

language. According to Article 22 of the Tax Code, documents

submitted to the tax authorities prepared in a foreign language

should be accompanied by a translation into Belarusian or

Russian. The validity of the translation or the authenticity

of the signature of the translator must be certified either by

a notary or by another official authorized to perform such

notarial acts.

> Safe harbor availability, including financial transactions, if

applicable

In 2018, a 20% variance from the arm’s-length range was

acceptable. If the variance went beyond 20%, tax liabilities

were to be adjusted to the lowest- or highest-range value.

Starting 1 January 2019, the acceptable 20% deviation from

the arm’s-length range has been abolished.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred. However,

transactions could be grouped for the purposes of determining

arm’s-length prices, calculating profitability and reporting

to the tax authorities, provided that in relation to such

transactions the functions performed by the party (parties),

accepted risks, used assets and profit level indicator applied

for testing the transactions are the same.

> Any other disclosure or compliance requirement

There are two formats of TP documentation in Belarus:

> Full-scope TP documentation: to be prepared in respect of

foreign trade transactions of large taxpayers and foreign

trade transactions involving strategic goods

> Limited-scope TP documentation or so-called economic

justification: to be prepared in respect of all other types of

controlled transactions

The TP documentation or economic justification must be

prepared in special formats prescribed by Resolution No. 2 of

the Belarusian Tax Ministry as of 3 January 2019.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no specific TP returns in Belarus. Belarusian TP rules

require the submission of information, disclosing controlled

transactions of a taxpayer on an ongoing basis (at least

monthly), regardless of whether the volume of transactions

exceeds the established thresholds. Refer to section (e) below

for more details.

> Related-party disclosures along with corporate income tax

return

Details of foreign founders of a Belarusian entity should be

provided to the tax authorities in the annual corporate income

tax return. The deadline is 20 March of the year following the

tax period.

> Related-party disclosures in financial statement/annual

report

Notes to annual financial statement should include, inter

alia, the information on related parties, types of transactions

performed with related parties during the reporting period,

their amounts, opening and closing balances related to such

transactions, etc.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

Effective from 1 July 2016, taxpayers are required to inform

the tax authorities about their controlled transactions

undertaken during a respective tax period — a calendar year.

The reporting has to be done on a transaction-by-transaction

basis by means of electronic value-added tax (VAT) invoices

(schet-factura) that need to be filed through a web portal of

the TDM.

Details of controlled transactions should be reported to the

tax authorities on a monthly basis. The general deadline is

the 10th day of the month following the reporting month,

although it can be different in some cases.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is on a quarterly basis (i.e., 20 April, 20 July,

20 October and, for the fourth quarter, 20 March of the year

following the tax period).

> Other transfer pricing disclosures and return

The deadline is on the 10th day of the month following the

reporting month, for the reporting on controlled transactions

(notifications by means of electronic VAT invoices).

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

TP documentation should be finalized by the time of

submission upon the request of tax authorities.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No, TP documentation should not be provided along with the

corporate income tax return but technically may be requested

by the tax authorities on an annual basis .

> Time period or deadline for submission on tax authority

request

Effective from 1 January 2019, companies are required to

file the TP documentation within 10 working days from the

request for a desk tax audit. For a field tax audit, the deadline

is not established and should be specified in the request of the

tax authority but must be at least two working days.

Moreover, the tax authorities are entitled to request TP

documentation in the course of tax audits, but it should not

be earlier than 1 June of the year, following the calendar year

during which the transaction was conducted. This deadline is

only applicable to foreign-trade transactions of large taxpayers

and taxpayers involved in foreign-trade transactions with

strategic goods.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

Yes.

b) Priority and preference of methods

The Belarusian TP rules call for five methods to be applied in a

strict hierarchical order:

1. CUP

2. Resale price

3. Cost-plus

4. TNMM

5. Profit split

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

resort. In terms of the choice between the cost-plus and

TNMM, there is a best-method rule, i.e., the taxpayer should

apply a method that enables the company to make the most

reliable conclusion regarding the arm’s-length level of prices.

Starting 1 January 2022, there is a best-method rule in

respect of the choice between cost-plus, TNMM and profit-split

methods.

8. Benchmarking requirements

> Local vs. regional comparables

The legislation requires searching for local comparable data,

although there is a lack of local databases available in the

market. In addition, starting 1 January 2019, the Tax Code

allows using foreign comparable data if the local data is not

available. Starting 1 January 2021, it is specified that if

the local data is not available for testing, Belarusian entity

financial data of comparable companies from EAEU member

countries6 is used as a top priority. If the data of comparable

companies from EAEU member countries is not available, then

financial data of other foreign companies could be used.

At the same time, the law allows tax authorities to use secret

comparables (customs information, peer analysis, etc.).

> Single-year vs. multiyear analysis for benchmarking

Starting from 1 January 2021, the Tax Code stipulates that,

in calculating an arm’s-length range, one should use the

financial information for the year during which the controlled

transaction was performed (analyzed year) or the data for

three calendar years preceding the analyzed year, or the

year in which the prices of the controlled transaction were

established.

> Use of interquartile range

The interquartile range is to be used from 1 January 2021.

Before that the full range was used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search every year is preferable;

6Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia

however, there are no official clarifications from the Belarusian

tax authorities in this respect.

> Simple, weighted or pooled results

Starting 1 January 2019, the Tax Code stipulates calculation

of a weighted-average range. Previously, no preference was

specified.

> Other specific benchmarking criteria, if any

Starting 1 January 2019, the benchmarking criteria for

comparable companies were amended.

Local search criteria

for comparables 2018 2019–21

Independence The level of

participation is 20%.

The level of participation is 20%.

In addition, the independence

threshold may be increased up to

50% if less than four comparable

companies are identified based

on the combination of all search

criteria.

Losses

Comparable

companies should

not report losses

in each year of the

analyzed period.

Comparable companies should not

report losses in more than one year

during the analyzed period.

Net assets

The net assets

of potentially

comparable

companies should

be positive in

each year of the

analyzed period.

The net assets of potentially

comparable companies should not

have a negative value as of 31

December of the last year in the

analyzed period.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

None.

> Consequences of failure to submit, late submission or

incorrect disclosures

Belarusian law does not set out any special penalties for the

violation of TP rules.

Penalties will be imposed if a taxpayer’s income is adjusted

as a result of a tax audit and if the taxpayer did not provide

the TP documentation, supporting the prices in a controlled

transaction.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes. The penalty for non-submission of required documents

(including electronic VAT invoices with information about

controlled transactions) is up to 30 basic amounts (up to

BYN960).

The penalty of 40% on the additional tax payable is also

applied. In addition, late payment of tax is subject to a daily

late payment interest of 1/360th of the refinancing rate set by

the National Bank of the Republic of Belarus.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes. There is no TP penalty protection in the local law. If an

adjustment is sustained, penalty will apply irrespective of

whether there was contemporaneous documentation.

> Is interest charged on penalties or payable on a refund?

Interest is not charged on penalties.

Interest is payable by the tax authorities on an overdue tax

refund, starting the date following the expiration date for

making a decision on a tax refund, and by the date when such

decision is made. The interest rate shall be applied at 1/360th

of the rate of the National Bank of the Republic of Belarus,

which was effective on the day of making a decision on a tax

refund (9.25% per year as of 1 January 2022).

b) Penalty relief

In general, penalty exemption is available if a taxpayer

adjusted its tax return and paid the outstanding tax liability

before a tax audit (i.e., for self-initiated adjustments). The

penalty does not apply if prices are established in accordance

with an APA.

For 2019 to 2022, the late payment interest on tax adjustment

is not applied if the outstanding tax liability is settled by a

taxpayer within five days from the date of submission of the

adjusted tax return. This relief is applicable for both self-

initiated TP adjustments and for adjustments made by tax

authorities during tax audits. Interest relief is not applicable if

the income tax base is adjusted during a tax audit conducted

on behalf of the criminal prosecution bodies. For other periods,

late payment of tax is subject to a daily late payment interest

of 1/360th of the National bank’s refinancing rate (which is

9.25% per year as of 1 January 2022).

10. Statute of limitations on Transfer pricing

assessments

The tax authority can perform a tax audit (including for TP

matters) for the five-year period.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of Transfer pricing scrutiny and

related audit by the local authority

> Likelihood of Transfer pricing-related audits (high, medium

or low)

There are no specific TP-related audits; TP matters are audited

by the tax authorities during general tax audits (in-house and

on-site audits). The average frequency of on-site tax audits

is five calendar years and the likelihood of TP matters to be

covered by such audits is generally high. The frequency of in-

house tax audits is not limited and the likelihood of TP-related

in-house audits is also high.

> Likelihood of transfer pricing methodology being challenged

(high, medium or low)

Based on the recent results of TP audits performed

by Belarussian tax authorities, the probability that TP

methodology will be challenged may be considered to be

medium to high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high, medium or low)

Based on the recent results of TP audits performed by

Belarussian tax authorities, the probability of tax adjustment

if the TP methodology is challenged may be considered to be

medium to high.

> Specific transactions, industries and situations, if any, more

likely to undergo an audit

The TDM has published the list of taxpayers that are top

priority for TP audits:

> Loss-making companies, i.e., companies that report losses

for two or more years in a row

> Affiliates of multinational companies, i.e., companies that

have foreign related parties

> Companies that report insignificant profit together

with significant revenue for two or more years in a row,

assuming that such distortion is not a result of specific

industry trends

> Companies for which profitability for the relevant tax

period is lower than industry average profitability, as

published by the National Statistical Committee of the

Republic of Belarus

> Companies that sell real estate to related parties

> Companies engaged in cross-border transactions with

a foreign party, if the jurisdiction of the foreign party

envisages a lower tax level than in Belarus, or if the

foreign party applies beneficial tax regimes

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Starting 1 January 2019, the APA program is available

for large taxpayers and such taxpayers which conducted

controlled transactions in the amount exceeding BYN2 million

per year. The Tax Code does not envisage a possibility to

conclude bilateral or multilateral APAs.

> Tenure

APAs can be concluded up to the three calendar-year term and

may be extended for two more calendar years.

> Rollback provisions

The effective period of the APAs may only cover the first day

of the calendar year in which a taxpayer applied to the TDM to

conclude such APAs. The Tax Code does not provide any other

rollback provisions.

> MAP opportunities

MAP opportunities are available for jurisdictions that the

Republic of Belarus has effective double tax treaty with.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules came into force in 2013. The rules

limit the deductibility of certain costs and expenses where the

taxpayer has controlled debt to a foreign or Belarusian founder

or participant.

The thin-capitalization rules apply if the taxpayer’s debt-to-

equity ratio (for all controlled debt) at the end of the tax period

is at 3:1.

The thin-capitalization rules apply to the following types of

controlled debts:

> Debt on loans, excluding commercial loans

> Amounts payable for engineering, marketing, consulting,

management and intermediary services, information

services, and personnel recruitment and supply services,

and consideration for the transfer of industrial property

rights

> Fines, penalty interest and other sanctions, including

damages for contractual breaches

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Belgian General Administration of Taxes, part of the Federal

Public Service Finance

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The arm’s-length principle detailed in Article 185, Section 2,

of the Belgian Income Tax Code (ITC), entered into force on 19

July 2004. Articles 26, 49, 53, 54, 55, 79, 207, 307, Section

1, s. 3; and 344 of the Belgian ITC also relate to TP.

Transfer pricing documentation (TPD) rules are embedded in

the Belgian ITC (Articles 321/1–321/7 and 445, Section 3)

through a law passed on 1 July 2016 and the Royal Decree

of 2 December 2016. Additional information regarding the

application of sanctions and fines, in case of non-compliance

with the Belgian TPD requirements, is set in a Belgian

administrative guidelines published in February 2019.

The most recent transfer pricing administrative guidelines

were published on 25 February 2020 with reference

2020/C/35. These provide the interpretation of the Belgian

tax administration on the 2017 OECD Guidelines. Various

other circular letters were issued in the past on transfer

pricing, dispute resolution, etc.

> Section reference from local regulation

See above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD TP Guidelines, UN tax manual

or EUJTPF

Belgium is a member jurisdiction of the OECD.

The Belgian transfer pricing legislation and guidance is

generally in line with the OECD Guidelines. While Belgium

considers its transfer pricing laws and regulations to be

consistent with the OECD Guidelines through historical

practice, coupled with case law and transfer pricing circulars

specifying the position of the Belgian tax administration, the

Belgian interpretation differs on certain points from these

guidelines. Belgium has implemented additional compliance

requirements (transfer pricing forms) in addition to the arm’s-

length principle.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS Action

13 for TPD in the local regulations?

Yes

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

It covers the Master File, Local File and CbCR.

> Effective or expected commencement date

The Master File transfer pricing form (275.MF) and general

Local File transfer pricing form (Parts A and C of 275.LF)

are applicable for financial years beginning on or after

1 January 2016. A detailed Local File transfer pricing

form (Part B of 275.LF) is applicable for financial years

beginning on or after 1 January 2017.

> Material differences from OECD report template or format

There are no material differences between the OECD

report template or format and Belgium’s regulations.

However, specific forms are to be completed and filed

through a dedicated platform in a specific electronic

format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes, provided that compliance with the transfer pricing

forms is met.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the MCAA on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, it needs to be prepared contemporaneously. Developing

jurisprudence indicates that the proactive preparation of

transfer pricing documentation demonstrates best efforts of

the taxpayer and offers additional support in case of litigation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, transactions between the head office or other branches of

a foreign company and a Belgian branch must be carried out at

arm’s length.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

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

entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

For companies not exceeding the thresholds in the following

section, but having intercompany transactions, transfer

pricing documentation requirements also exist. Specifically,

in the case of a transfer pricing audit, all Belgian companies

and permanent establishments need to provide transfer

pricing documentation demonstrating that their intercompany

transactions take place at arm’s length, within 30 days of the

request of the Belgian tax authorities.

> Master File

Belgian tax resident companies or permanent establishments

that exceed at least one of the following criteria in their

(statutory) financial accounts of the prior financial year have to

submit a Master File transfer pricing form (275.MF) and a local

file transfer pricing form:

> Operating and financial income equal to or exceeding

EUR50 million (excluding nonrecurring items)

Or

> Balance sheet total (i.e., total assets) equal to or exceeding

EUR1 billion

Or

> The average annual number of full-time employees of 100

(in total)

> Local File

(Same as MF thresholds) Belgian tax resident companies or permanent establishments

that exceed at least one of the following criteria in their

(statutory) financial accounts of the prior financial year have to

submit a Master File transfer pricing form (275.MF) and a local

file transfer pricing form:

> Operating and financial income equal to or exceeding

EUR50 million (excluding nonrecurring items)

Or

> Balance sheet total (i.e., total assets) equal to or exceeding

EUR1 billion

Or

> The average annual number of full-time employees of 100

(in total)

> CbCR

CbCR applies to multinational groups with a consolidated

group revenue equal to or exceeding EUR750 million. Belgian

entities, which are the ultimate parent companies or the

surrogate parent companies of such multinational groups,

should annually file the CbCR form (275.CBC) with the Belgian

tax authorities within 12 months after the end of the group’s

financial year. The Belgian entity may also be required to file

this form in a number of cases, for instance, if there is no

agreement for the exchange of information in tax matters

between Belgium and the reporting entity’s jurisdiction.

Each Belgian entity of a qualifying multinational group should

annually file a CbCR notification form (275.CBC NOT) with the

Belgian tax authorities, providing details on the group entity

that will comply with the CbCR. The notification should be filed

with the Belgian tax authorities no later than the end of the

financial year of the group. For reporting periods ending on 31

December 2019 or later, the filing of Form 275 CBC NOT will

only be required in case of changes (law of 2 May 2019).

> Economic analysis

There is no materiality limit. However, in the absence of an

economic analysis, the transfer pricing documentation will

likely be considered incomplete.

c) Specific requirements

> Treatment of domestic transactions

Transfer pricing documentation has to be prepared even if the

Belgian company or the permanent establishment has only

domestic transactions. In the latter case, the documentation

documents the intercompany transactions taking place

between Belgian entities and the Belgian branches of foreign

entities. In addition, if the company is part of a multinational

group and falls within the thresholds for preparation of

Master File transfer pricing forms and Local File transfer pricing

forms, it must submit them even if it is only engaged in local

intercompany transactions (general Part A and Part C only, in

case of the Local File form).

> Local language documentation requirement

Answers to formal questions of the tax authorities must be

given in one of the Belgian official languages (i.e., French,

Dutch or German). The transfer pricing documentation and

transfer pricing forms can be submitted in one of the Belgian

official languages or in English.

> Safe harbor availability, including financial transactions, if

applicable

Belgium has no safe harbor rules.

> Any other disclosure or compliance requirement

See below.

> Is aggregation or individual testing of transactions preferred

for an entity

A transaction-by-transaction approach is preferred, unless

transactions are so closely linked or continuous that they

cannot be evaluated adequately on a separate basis.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are specific transfer pricing returns in Belgium, including

the CbCR (275.CBC) and Master File forms (275.MF), both of

which have to be filed, at the latest by 12 months after the last

day of the group’s financial year-end to which they relate. The

Local File transfer pricing forms (275.LF) have to be filed at the

same time as the deadline of the corporate tax return for the

financial year to which they relate.

In addition, companies that are part of a multinational group of

companies subject to CbCR also have to notify the Belgian tax

authority of the name of the entity and the jurisdiction of its

tax residence that will submit the CbC notification (275.CBC.

NOT) every year, before the end of the group’s financial year in

case of changes (see supra).

> Related-party disclosures along with corporate income tax

return

The reporting requirement introduced through Article 307,

Section 1, s. 3 of the Belgian ITC, relates to payments of

more than EUR100,000 per taxable period made by resident

or non resident entities (Belgian permanent establishments)

to persons established in tax havens on or after 1 January

2010. Tax havens are defined with reference to a “blacklist”

determined through a Royal Decree (it currently contains

around 30 jurisdictions that either do not levy corporate

income tax or have a nominal corporate income tax rate that is

lower than 10%). A mandatory form (No. 275 F) for reporting

direct or indirect payments to persons established in tax

havens is to be attached to the tax return. Failure to report

payments results in the non-deductibility of such payments. In

addition, these tax deductions are acceptable only when proof

is presented by the Belgian taxpayer that these payments

relate to actual and bona fide transactions at arm’s length with

persons other than artificial constructions.

> Related-party disclosures in financial statement and annual

report

The Belgian accounting rules introduced through the Royal

Decree of 10 August 2009 require that companies provide

certain additional information that relates to TP in the notes or

annex section of their statutory annual accounts, as follows:

> Companies must provide information regarding the nature

and business purpose of their relevant, off-balance sheet

arrangements; whether underlying risks and benefits are

considered material; and when the disclosure is necessary

to correctly assess the financial position of the company.

This requirement is applicable in cases of intra-group

guarantees, pledges, factoring liabilities, transactions with

special-purpose entities (whether transparent or not) and

offshore entities.

> Companies must disclose their material transactions

with affiliated parties that are considered not to be at

arm’s length. Depending on the type of company, a

different scope of information is to be provided, ranging

from merely listing such transactions to mentioning

the amounts involved, alongside all other information

necessary for a correct view of the company’s financial

position.

> While this rule is not included in the Belgian Tax Code,

it creates a requirement for the relevant entities to

review and document the arm’s-length nature of their

intercompany transactions. Non-compliance may result

in director liability. Evidently, any such disclosures are

anlent source of information for a tax inspector to initiate

a (targeted) transfer pricing audit.

> Other information or documents to be filed

See above.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Generally, the deadline is seven months after the financial

year-end. For a company with a calendar financial year, the

deadline is, in principle, 31 July. Tax authorities do, however,

grant collective extensions on an annual basis, but plan to

reduce these in the future.

> Other transfer pricing disclosures and return

Local File transfer pricing forms (275.LF) should be filed at the

same time as the filing deadline of the, corporate tax return.

> Master File

Master File transfer pricing form (275.MF) needs to be

submitted within 12 months after the last day of the group’s

financial year to which it relates.

> CbCR preparation and submission

It should be filed within 12 months after the last day of the

group’s financial year-end to which it relates. For a group with

a calendar financial year, the deadline would be 31 December

of the next year.

> CbCR notification

The filing deadline is by the end of the financial year of the

group. The new section in Article 321/3 ITC (§3) states

that the filing of Form 275 CBC NOT is required only if the

information provided deviates from what was filed for the

previous reporting period.

b) Transfer pricing documentation/Local File preparation

deadline

For the Master File transfer pricing form (275.MF) and Local File

transfer pricing form (275.LF), please see the above section.

In addition, when completing the Local File form, which is due

at the same time as the deadline for the corporate income

tax return, the taxpayer should notify the tax authorities

if transfer pricing documentation is available. The transfer

pricing Local File report must be available upon the request of

the Belgian tax authorities (e.g., in case of a transfer pricing

audit).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no obligation to submit the Local File transfer pricing

report. However, as mentioned above, the Local File transfer

pricing report should be available upon the request of the

Belgian tax authorities (e.g., in case of a transfer pricing

audit). In addition, if the Belgian company or permanent

establishment of an MNE group falls within the thresholds to

prepare and submit the Local File transfer pricing forms — as

the latter asks to confirm the existence of the aforesaid local

file transfer pricing documentation reports — the existence of

such reports also needs to be mentioned as the filing of the tax

return.

> Time period or deadline for submission on tax authority

request

The taxpayer must submit the transfer pricing documentation

report within 30 days upon request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If yes, specify which deadlines

are impacted

For the fiscal year ended 31 December 2020, the due date for

filing of tax return has been extended to 28 October 2021.

As such, the preparation due date for the Local File has been

extended to 28 October 2021 for the same fiscal year. For

companies with a calendar fiscal year ending 31 December

2021, the deadline is set at 17 October 2022 for filing via

Bizztax.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

In principle, taxpayers are free to choose any OECD transfer

pricing method as long as it results in arm’s-length pricing for

the transaction. The selection of the most appropriate method

is based on an analysis of the specific transaction, as well as

an analysis of the comparability.

b) Priority and preference of methods

There is no real hierarchy of methods. In case more methods

can be applied in an equally reliable manner, then the

traditional transaction methods are preferred over the

transactional profit methods. The CUP method is preferred

if the CUP method and another method can be applied in an

equally reliable manner.

8. Benchmarking requirements

> Local vs. regional comparables

In case sufficient comparability references cannot be found in

the jurisdiction of the tested party, this can be expanded with

markets which are closest comparable to the market of the

tested party. The Belgian administration accepts pan-European

studies.

> Single-year vs. multiyear analysis

Single-year testing is required.

> Use of interquartile range

The interquartile range is preferred by the Belgian tax

administration. In case of very high and equal comparability

with the third-party reference points, each point in the full

range can be a reference for a comparable price.

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

The Belgian tax authorities recommend to perform a full

update of the original comparability study every three years. A

yearly update of the results of the original comparability study

is expected..

> Simple vs. weighted average

No formal guidance exists in this regard.

h) Other specific benchmarking criteria, if any

The Belgian tax authorities issued in the transfer pricing

circular of 2020 more detailed administrative guidelines

containing suggested criteria for the benchmarking search.

9. Transfer pricing penalties and relief

a) Penalty exposure

In accordance with the new transfer pricing legislation, failure

to submit the CbC report, CbCR notification, Master File forms

(275.MF) or Local File transfer pricing forms (275.LF) will

result in an administrative penalty ranging from EUR1,250

to EUR25,000. This penalty will apply as of the second

infringement. Furthermore, non-compliance with the transfer

pricing documentation obligations increases the likelihood of a

transfer pricing audit.

In addition, the absence of the mandatory transfer pricing

documentation required to be filed with the tax return

(Local File transfer pricing forms) results in an incomplete or

inaccurate tax return, which may lead to the reversal of the

burden of proof.

b) Consequences for incomplete documentation

Same as below.

c) Consequences of failure to submit, late submission or

incorrect disclosures

In accordance with the new transfer pricing legislation, failure

to submit the CbC report, CbCR notification, Master File forms

(275.MF) or Local File transfer pricing forms (275.LF) will

result in an administrative penalty ranging from EUR1,250

to EUR25,000. This penalty will apply as of the second

infringement. Furthermore, non-compliance with the transfer

pricing documentation obligations increases the likelihood of a

transfer pricing audit.

In addition, the absence of the mandatory transfer pricing

documentation required to be filed with the tax return

(Local File transfer pricing forms) results in an incomplete or

inaccurate tax return, which may lead to the reversal of the

burden of proof.

d) If an adjustment is sustained, can penalties be assessed

if documentation is deemed incomplete?

The general tax penalty framework applies to transfer pricing

adjustments. These penalties vary from 10%–200% (in

exceptional cases). The rate depends on the degree of intent to

avoid tax or the degree of the company’s gross negligence.

Furthermore, for late payments, interest is due on additional

tax assessments (including assessments resulting from a

transfer pricing adjustment).

e) If an adjustment is sustained, can penalties be assessed

if documentation is deemed non-contemporaneous?

Same as above.

f) Is interest charged on penalties or payable on a refund?

There is none specified.

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.

10. Statute of limitations on transfer pricing

assessments

The general rules regarding the statute of limitations apply to

transfer pricing assessments. Therefore, the tax authority is

entitled to make additional assessments for a period of three

years, starting from the closing of the accounting year.

However, in the case of fraud being considered, the tax

authority has the right to adjust the income during a seven-

year period, provided the taxpayer received prior notice

of serious indications of fraud. In the case of tax losses,

the statutes of limitations do not run until these tax losses

are effectively used to offset taxable income. Some other

exceptional statutes of limitations also exist for specific

situations.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Pending tax audits are continuing. Pre-audit and other

meetings may be held by video/conference calls given the

latest measures implemented in Belgium against the COVID-19

pandemic.

12. Likelihood of transfer pricing scrutiny or

related audit by the local authority

h) Likelihood of transfer pricing-related audits (high, medi-

um or low)

In Belgium, the likelihood of a tax audit may be regarded as

medium to high due to a significant number of transfer pricing

audit questionnaires sent by the Belgian tax authorities to

Belgian companies and permanent establishments), and

the significant staffing and reinforcement of the Belgian

transfer pricing Audit Cell. The Belgian tax authorities also

use systematic data-mining techniques to identify and target

Belgian companies, and permanent establishments for transfer

pricing audits; they also use information available in the filed

transfer pricing forms.

i) Likelihood of transfer pricing methodology being chal-

lenged (high, medium or low)

Depending on the robustness of the transfer pricing

methodology and support available, as well as on the type of

the intercompany transactions under review, the likelihood

that the transfer pricing methodology will be challenged may

be regarded as medium to high. This is due to the significant

sophistication of the Belgian tax authorities in transfer pricing.

In case of uncertain position or doubts, there is a room for

interpretation.

j) Likelihood of an adjustment if the transfer pricing meth-

odology is challenged (high, medium or low)

Depending on the robustness of the transfer pricing

methodology and support available, the likelihood of an

adjustment may be regarded as medium to high.

k) Specific transactions, industries and situations, if any,

more likely to be audited

In practice, a transfer pricing audit is often triggered by

situations, such as:

l) Structural losses

m) Sudden decrease in profitability

n) Business reorganizations

o) Migration of businesses

p) The use of tax havens or low-tax-rate countries

q) Back-to-back operations

r) Circular structures

s) Invoices for services sent at the end of the year, i.e., man-

agement services

t) Changes in the number of employees

u) Business restructurings

v) Intangibles-related and financial transactions

w) Financial transactions

x) Failure to file transfer pricing forms in Belgium

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

y) Availability (unilateral, bilateral and multilateral)

There is an APA program available in Belgium for unilateral,

bilateral and multilateral APAs.

z) Tenure

The APAs are generally granted for a five-year term, which is

the legal maximum. Unilateral APAs are generally granted for

a three-year term.

aa) Rollback provisions

Rollbacks are allowed subject to the approval and agreement

with the Belgian Competent Authority. Rollbacks will only

be permitted if the applicable time limits (such as the tax

assessment terms) allow this. For Belgium, this means that

rollbacks can be applied provided that the relevant facts and

circumstances of the previous years are identical, and the tax

assessment terms for those years have not expired yet. The

foreign tax authority must also approve of the rollback.

Rollbacks are not available for unilateral APAs.

bb) MAP opportunities

MAPs are generally available under the double tax treaties that

Belgium has with its treaty partners, as well as under the EU

Arbitration Convention.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

cc) Old thin capitalization rule (until tax year 2019 with

grandfathering)

The Belgian tax law provides for a general thin-capitalization

rule (5:1 debt-equity ratio) according to which interest

payments or attributions in excess of a 5:1 debt-equity ratio

are not tax deductible.

This thin-capitalization rule exist until and including tax year

2019. As of the tax year 2020 (financial years ending 31

December 2019 or later), the EBITDA-based rule will apply.

This thin-capitalization rule will, however, remain applicable in

two cases: (i) grandfathered loans (i.e., loans granted before

17 June 2016, in case no “fundamental” modifications have

been made); and (ii) interest paid to a beneficiary located in a

tax haven.

dd) New EBITDA-based rule (as of tax year 2020)

The EBITDA-based rule is in line with the EU Anti-Tax

Avoidance Directive I requirements. Exceeding borrowing costs

will only be tax deductible up to the highest of the following

two thresholds: (i) 30% of the taxpayer’s fiscal EBITDA, or (ii)

EUR3 million. The borrowing costs exceeding these thresholds

that are not deducted in the current taxable period can be

carried forward indefinitely. Taxpayers who are part of the

same group also have the possibility to transfer unused

EBITDA capacity to other group companies, provided certain

conditions are met.

Jan Bode

jan.bode@be.ey.com

+32 497 597 124

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Directorate-General of Taxes (Direction Générale des Impôts

(DGI))

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Article 34 of the General Tax Code (GTC): TP form or

declaration obligation (Finance Law 2020)

> Article 37 GTC: foreign related-party transactions

definition (Finance Law 2020)

> Article 1085 ter-2 bis GTC: transfer pricing documentation

(TPD) obligation (Finance Law 2020)

> Article Art. 1085 ter-2 ter: CbCR obligation (Finance Law

2020)

> Section reference from local regulation

> GTC: Article 45, 470, 471, 496, 503, 542 and 544 of

General Tax Code (Fiscal Law 2022)

> Article 45 of General Tax Code provides general

information about TP rules

> Article 470 of General Tax Code provides new rules related

to the TP return

> Article 471 of General Tax Code provides rules related to

CbCR

> Article 496 of General Tax Code provides penalties about

TP return and CbCR

> Article 503 of General Tax Code provides penalties about

TP documentation

> Article 542 of General Tax Code provides information

about intragroup transactions to the tax authorities as

part of a tax audit

> Article 543 of General Tax Code provides conditions

related to the TP documentation obligations

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Benin is not a member of the OECD. However, as a member

of the inclusive framework, Benin agrees to implement a

minimum BEPS standard.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Master File Local File and CbCR are covered.

> Effective or expected commencement date

1 January 2020.

> Material differences from OECD report template or format

No material differences are there.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the MCAA on the exchange of CbCR

Yes.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, Benin has TPD rules. Please refer to above mentioned

Sections from local regulations.

The TPD will have to be prepared and made available to the tax

authorities at the beginning of a tax audit of the accounting

records.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes

> Does transfer pricing documentation have to be prepared

annually?

The TPD has to be prepared and made available to the tax

authorities at the beginning of a tax audit of the accounting

records.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

A separate TP report is required per legal entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

The documentary obligation applies to anyone who meets the

following conditions:

annual turnover excluding taxes or gross assets greater than

or equal to XOF1 billion at the following conditions:

a. If the entity holds at the end of the financial year, directly

or indirectly, more than half of the capital or voting rights

of a company established or incorporated in the Republic

of Benin or outside the Republic of Benin, fulfilling the

condition mentioned in point “a”

b. More than half of the capital or voting rights is held, at

the end of the financial year, directly or indirectly, by a

company fulfilling the condition mentioned in point “a”

> Master File

There is no materiality limit or threshold.

> Local File

Please refer to Section b, “materiality limit or thresholds” or

“TPD.”

> CbCR

A company established in the Republic of Benin is required to

file a CbC report when:

a. It holds, directly or indirectly, a sufficient interest in one

or more entities in a manner that it is required to prepare

consolidated financial statements in accordance with the

accounting principles in force or would be required to do so

if its shareholdings were listed on the stock exchange in the

Republic of Benin

b. It has an annual consolidated turnover before tax of at least

XOF492 billion for the financial year preceding the year

concerned by the declaration,

c. No other enterprise holds directly or indirectly an interest

described in paragraph (a) in the above-mentioned

enterprise

d. It is owned directly or indirectly by an enterprise

established in a state which does not require the deposit of

such a declaration and which would be required to deposit

such a declaration if it were established in the Republic of

Benin

e. It is owned directly or indirectly by a legal entity established

in a state not included in the list provided for in this article,

but with which the Republic of Benin has concluded an

agreement on exchange of information on tax matters

f. It has been designated for this purpose by the group of

affiliated undertakings to which it belongs and has informed

the tax authorities thereof

> Economic analysis

There is no materiality limit or threshold.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The TPD and TP return must be submitted in French.

> Safe harbor availability, including financial transactions, if

applicable

There is no specific requirement.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no specific requirement.

> Any other disclosure/compliance requirement

There is no specific requirement.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The TP return needs to be submitted in French as part of

the taxpayer’s annual tax return. Online submission tool is

provided (electronic format is mandatory).

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

There is no CbCR notification requirement.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline for filing the annual financial statements is 30

April following each FY.

> Other transfer pricing disclosures and return

The deadline for filing the TP form is 30 April following each

FY.

> Master File

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

records.

> CbCR preparation and submission

The CbCR should be prepared and submitted within the 12

months following each FY.

> CbCR notification

There is no CbCR notification.

b) Transfer pricing documentation/Local File preparation

deadline

It should be available by the time of a tax audit of the

accounting records.

c) Transfer pricing documentation/Local File submission

deadline

It should be available by the time of a tax audit of the

accounting records.

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

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

> Time period or deadline for submission upon tax authority

request

If the documentation is not available or ready at the time of

the tax audit of the accounting records, a 30-day formal notice

will be sent to the audited company.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: yes

> Domestic transactions: not applicable

b) Priority and preference of methods

These OECD methods are generally accepted: CUP, resale

price, cost-plus, profit-split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific requirement. However, local or west

African comparables would be preferred.

> Single-year vs. multiyear analysis for benchmarking

There is no specific requirement.

> Use of interquartile range

There is no specific requirement.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement.

> Simple, weighted or pooled results

There is no specific requirement.

> Other specific benchmarking criteria, if any

There is no specific requirement.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not provided.

> Consequences of failure to submit, late submission or

incorrect disclosures

TP return/CbCR: Fine is applicable at XOF10 million.

TPD: For each audited FY, a fine of 0.5% is applicable based on

the amounts of the unjustified transactions after the formal

notice from the tax authorities. The fine could not be less than

XOF10 million per FY.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Same as above.

Penalties are assessed at rates ranging from 20%, 40% or 80%

of the tax due, depending on whether the taxpayer's return

was accidentally, mistakenly or fraudulently in error.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is no specific requirement.

> Is interest charged on penalties or payable on a refund?

Penalties are assessed at rates ranging from 20%, 40% or 80%

of tax due, depending on whether the taxpayer's return was

accidentally, mistakenly or fraudulently in error.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The limitation period is set to three years (common tax

regime).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium.

> Specific transactions, industries and situations, if any, more

likely to be audited

There are no specific transactions mentioned.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is no specific requirement.

> Tenure

There is no specific requirement.

> Rollback provisions

There is no specific requirement.

> MAP opportunities

There is no specific requirement.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Benin has the following thin-capitalization rules regarding

loans by shareholders and related parties to local entities:

> The sums made available by all shareholders should not

exceed the amount of the share capital. The interest paid

to the shareholders should not exceed 30% of the profit

before corporate income tax and before deduction of such

interest, and depreciation and provisions.

> The interest rate should not exceed the rate of the central

bank advances, increased by three percentage points.

> The loan should be repaid within five years following the

granting of the loan. In addition, the local entity should

not go into liquidation during this five-year period.

> The share capital of the local entity should be entirely paid

up.

Eric Nguessan

Eric.nguessan@ci.ey.com

+ 2250708025038

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority1

Internal Taxes Service (Servicio de Impuestos Nacionales)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Act No. 843 since 20 May 1986 (amended to Act N° 549

since 21 July 2014)

> Supreme Decree No. 2227 since 30 December 2014

> Supreme Decree No. 2993 since 23 November 2016

> Normative Resolution No. 10-0008-15 of 30 April 2015

> Normative Resolution No. 101700000001 of 13 January

2017

> Normative Resolution No. 101800000006 of 9 March

2018

> Normative Resolution No. 101900000002 of 15 February

2019

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/no)

The tax authority did not announce any changes for COVID-19

situation in transfer pricing regulation.

3. OECD Guidelines treatment and BEPS

implementation

c) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Bolivia is not a member of the OECD.

1https://www.impuestos.gob.bo/pag/Normativa\_Tributaria

OECD rules are not expressly accepted, but the current

transfer pricing regime is based on the OECD Guidelines.

d) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

This is not applicable.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

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

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Not applicable.

f) Signatory to the MCAA on the exchange of CbCR

Not applicable.

4. Transfer pricing documentation

requirements

g) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, transfer pricing documentation rules have been in force

since 2015. There are parameters to comply with on some

obligations; all the related parties must be valuated at arm’s

length, but the taxpayer must comply with the following

requirements 120 days after the company’s year-end:

Related-parties amount operations Information to submit to tax authority

Higher than BOB15 million (USD2.16

million)

Transfer pricing study

Tax return 601

Between BOB7.5 million (USD1.08

million) to Bs15 millions (USD2,15

million)

Tax return 601

Lower than BOB7.5 million (USD1.08

million)

Keep the information in order to

demonstrate the related parties’

operations are at arm’s length.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, in accordance with the rules set out in point 1 (b).

> Does transfer pricing documentation have to be prepared

annually?

Yes, transfer pricing documentation has to be prepared

annually under Bolivia’s local jurisdiction regulations.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, it is necessary to have a study for each company that has

related-party operations.

h) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There is no materiality limit.

i) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for treatment of

domestic transactions.

> Local language documentation requirement

There is a requirement for the transfer pricing documentation

to be submitted in the local language. All information to the

tax authority must be presented in Spanish.

> Safe harbor availability, including financial transactions, if

applicable

There is no specific requirement for safe harbor availability.

> Is aggregation or individual testing of transactions preferred

for an entity

Not applicable.

> Any other disclosure or compliance requirement

> Transfer pricing documentation must be presented in

physical and digital format.

> The related-party amounts (e.g., price or value) must be

expressed in local currency (boliviano (BOB)).

> Transfer pricing documentation must include the company

legal representative’s signature.

> It must comply with a minimum content established RND

No. 10-0008-15.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Transfer pricing Informative Return Form 601.

> Related-party disclosures along with corporate income tax

return

Prior to corporate income tax return submission, an analysis

about related-party transactions must be carried out. However,

related-party disclosures are not included along with the

corporate tax return.

> Related-party disclosures in financial statement/annual

report

Yes

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

No

6. Transfer pricing documentation and

disclosure timelines

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 transfer pricing disclosures and return

The timeline is 120 days after the closing of the FY, and the

closing depends on the nature of the business, including:

> Commercial, service, financial and insurance companies:

31 December

> Industrial companies: 31 March

> Agribusiness companies: 30 June

> Mining companies: 30 September

> Master File

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation should be finalized before

the deadlines indicated above.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The transfer pricing documentation needs to be submitted

each year. It is necessary to send Form 601 when the

transactions are higher than BOB7.50 million (USD1.08

million). A transfer pricing study and the Form 601 must be

presented when the transactions are higher than BOB15

million (USD2.16 million). But in all cases, the company

should have supporting documentation to demonstrate that

transactions are conducted at arm’s-length basis.

The transfer pricing documentation should be filed according

to the due dates indicated above.

> Time period or deadline for submission on tax authority

request

In case of a request from the Bolivian Internal Revenue

Service (IRS), the taxpayer must submit the transfer pricing

documentation generally in 5 working days, depending on the

request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

n) Applicability (for both international and domestic trans-

actions)

> International transactions: yes

> Domestic transactions: no

o) Priority and preference of methods

The best method must be used (i.e., CUP, resale price, cost-

plus, profit-split or TNMM). For commodities, the price in

transparent markets must be used.

8. Benchmarking requirements

> Local vs. regional comparables

Both are accepted by the Bolivian IRS.

> Single-year vs. multiyear analysis for benchmarking

There is no rule specified. But, in practice, multiyear testing is

preferred in testing the arm’s-length analysis.

> Use of interquartile range

This is not applicable. The formula used is called the difference

value range (rango de diferencias de valor.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Fresh benchmarking needs to be submitted every year.

Bolivian rules do not define anything about an update of

financial statements. But in practical terms, all companies are

performing new research or, at minimum, they are updating

the financial statements. In any case, a complete report is

needed each year.

> Simple, weighted or pooled results

The simple average is preferred while testing the arm’s-length

analysis, but Bolivian rules do not specify anything.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable

> Consequences of failure to submit, late submission or

incorrect disclosures

Unidades de Fomento a la Vivienda (UFV)5,000 (USD1,707)

for not filing transfer pricing information or tax returns (Form

601), and UFV2,500 (USD853) for uncompleted filing and late

submission

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete ?

This is not applicable.

> Is interest charged on penalties or payable on a refund?

There is no interest charged.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

In June 2016, Act No. 812 set the statute of limitations at

eight years and this term is extended to 10 years when there

are transactions performed with low- or null-taxation countries

and regions.

Furthermore, transfer pricing audits can be performed within a

period of two years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not covered in COVID Tracker.

12. Likelihood of transfer pricing scrutiny and

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

There is no experience regarding this as the transfer pricing

regime is being enforced from FY15. However, transfer pricing

audits were initiated in FY17 for a few companies in Bolivia. No

results are available from those audits yet.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Refer to the section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

This is not defined in the current law.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Juan Pablo Vargas

juan.vargas@bo.ey.com

+ 59122434313

Contact

1. Tax authority and relevant transfer pricing

(TP) regulation or rulings

a) Name of tax authority1

Tax Authority of the Federation of Bosnia and Herzegovina

(FBiH) in the FBiH; Tax Administration of Republic of Srpska in

the Republic of Srpska.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

FBiH

Articles 44–46 of the Corporate Income Tax (CIT) Law define

the arm’s-length principle, the acceptable methods, and the

obligation to prepare and file TP documentation, which are

available on the official website of the Tax Authority of the

FBiH. Articles 58–59 of the CIT Law refer to penalties, among

others, for non-possession of TP documentation and are

available on the official website of the Tax Authority of the

FBiH.

The Rulebook on TP provides further details about the

methods for the determination of arm’s-length prices in intra-

group transactions, and prescribes obligatory content and

the filing deadline of the TP documentation, related-party or

associated enterprise criteria, safe harbor transactions, etc.

The Rulebook on TP is available on the official website of the

Tax Authority of the FBiH.

Republic of Srpska

Articles 31–35 of the CIT Law prescribe the related-party

definition, arm’s-length principle, acceptable methods and

the obligation to prepare and file TP documentation. Articles

58–60 of the CIT Law refer to penalties, among others, for

nonpossession of TP documentation and are available on the

official website of the Tax Administration of Republic of Srpska.

The Rulebook on TP and the methods for the determination of

arm’s-length prices in intra-group transactions provides further

details about these and prescribes obligatory content of the TP

documentation.

> Section reference from local regulation

FBiH

1Tax Authority of the FBiH website: www.pufbih.ba;

Tax Administration of Republic of Srpska website:

www.poreskaupravars.org

Article 6 of the Rulebook on TP defines related parties and

associated enterprises.

Republic of Srpska

Article 31 of the CIT Law and Article 4 of the Rulebook on TP

define related parties and associated enterprises.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Bosnia and Herzegovina and all its tax jurisdictions (i.e., FBiH

and Republic of Srpska) are not members of the OECD.

TP legislation in the FBiH and the Republic of Srpska are

generally based on the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The FBiH and the Republic of Srpska implemented BEPS

Action 13 to a certain extent through local TP legislation; the

Republic of Srpska prescribed only the CbC report in local

legislation.

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

FBiH

TP legislation in the FBiH covers Master File, Local File and

CbCR.

Republic of Srpska

Only CbCR is covered.

> Effective or expected commencement date

FBiH

The effective date for the preparation of a Local File (i.e.,

TP report) is 27 August 2016, whereas the effective date

for the Master File is 1 January 2018.

Republic of Srpska

There is none specified.

> Material differences from OECD report template or format

FBiH

The TP report in the FBiH requires particular information

prescribed for the Master File.

Republic of Srpska

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

FBiH

The BEPS Action 13 format for the Local File would not

suffice, whereas particular information prescribed for the

Master File in the OECD report template or format would

be required.

Republic of Srpska

The BEPS Action 13 format for the Local File would not

suffice, whereas for the Master File, this is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes, Bosnia and Herzegovina is a part of the OECD/G20

Inclusive Framework on BEPS.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, the Rulebook on TP provides rules for the preparation of

TP documentation.2

TP documentation needs to be prepared by a certain due

date, but it is to be submitted upon the request of the tax

authorities.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

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

> Does transfer pricing documentation have to be prepared

annually?

TP documentation has to be prepared annually under local

jurisdiction regulations in the FBiH and the Republic of Srpska.

Every section of the TP report should be updated with the

latest available information.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

In the FBiH, the threshold for preparation of Master File is

BAM1.5 billion and is set on the group level.

> Local File

This is not applicable.

> CbCR

Groups with consolidated revenue above approximately

EUR750 million for Republic of Srpska and BAM1.5 billion for

the FBiH.

> Economic analysis

There is no materiality threshold.

b) Specific requirements

> Treatment of domestic transactions

2Please note that the mentioned Rulebooks are separate bylaws in

the FBiH and the Republic of Srpska.

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The TP report should be submitted in the local language (i.e.,

Bosnian, Croatian or Serbian).

FBiH

If required, a Master File could be submitted in English, but

the local tax authority does not waive the right to request the

translation.

Republic of Srpska

There are no specific requirements.

> Safe harbor availability including financial transactions, if

applicable

FBiH

TP legislation in the FBiH prescribes safe harbor of 5%

on the total cost of the service for the receipt of specific

administrative and support services, which are not provided to

third parties (by service provider).

Republic of Srpska

TP legislation in the Republic of Srpska does not prescribe safe

harbor for controlled transactions.

> Is aggregation or individual testing of transactions preferred

for an entity

Not applicable.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

FBiH

Taxpayers are obligated to submit the TP-900 form by 31

March for the previous fiscal year (FY) if they fulfill the

prescribed requirements for a TP adjustment waiver.

In addition, taxpayers should prepare the form with summary

of controlled transactions (TP 902 form) in case that its

related-party transactions exceed BAM500,000. This

document should be provided to the tax authorities alongside

the CIT return. There is a specific form prescribed in this

respect and it should be signed by an authorized person in the

company.

Republic of Srpska

Taxpayers are obliged to submit an annual report of controlled

transactions if the total amount of their controlled transactions

is above BAM700,000.

> Related-party disclosures along with corporate income tax

return

Taxpayers are obligated to disclose in their annual CIT return

on the revenues and expenses resulting from transactions with

related parties, as well as disclose tax-based adjustments on

the basis of the TP analysis.

> Related-party disclosures in financial statement/annual

report

Information relating to transactions with related parties should

be disclosed within notes in the financial statements.

> CbCR notification included in the statutory tax return

No.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

It’s 30 days from the deadline for submission of financial

reports (e.g., for 2018, the deadline for the CIT return would

be 30 March 2019) in the FBiH. And it’s 90 days after the

fiscal year-end (in case the fiscal year-end corresponds to the

calendar year-end, the submission deadline is 31 March of the

current FY for the previous FY) in the Republic of Srpska.

> Other transfer pricing disclosures and return

It’s 31 March for the previous FY for the CBC-901 (for FBiH

resident entities whose revenue exceeds BAM1,5 billion,

TP-900 and TP-902 forms in the FBiH, and 31 March for the

previous FY for the annual report of controlled transactions in

the Republic of Srpska.

> Master File

This is not applicable.

> CbCR preparation and submission

The report needs to be prepared and submitted by no later

than 31 March of a current year for a previous year in the

FBiH. Whereas, in the Republic of Srpska, a CbC report should

be prepared by 31 March of a current FY for the previous FY,

and submitted upon request by tax authorities (alongside TP

documentation).

> CbCR notification

FBiH: 31 March of a current year for a previous year.

Republic of Srpska: not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

FBiH

The deadline for preparation of the TP report is 30 March of a

current FY for the previous FY.

Republic of Srpska

The deadline for preparation of the TP report is 31 March of a

current FY for the previous FY.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

TP legislation in the FBiH and the Republic of Srpska, does

not prescribe a statutory deadline for the submission of TP

documentation, but sets out that TP documentation must be

prepared by the CIT return submission deadline.

> Time period or deadline for submission on tax authority

request

FBiH: 45 days upon tax authority request.

Republic of Srpska: 30 days upon tax authority request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — yes

> Domestic transactions — yes

FBiH

Traditional transaction methods have priority for application

in TP in the FBiH, with CUP defined as the most preferable

method. Taxpayers are allowed to select other specified

methods that could be considered reasonable, assuming that

previously mentioned methods could not be applied.

Selection of the most appropriate method is based on the

following criteria:

> Nature of controlled transactions, conducted via

functional analysis

> Level of comparability between controlled and

uncontrolled transactions

> Completeness and accuracy of data on controlled and

uncontrolled transactions

> Reliability of assumptions

> The level of influence of unreliable data and assumptions

on conducted adjustments

Republic of Srpska

The taxpayer is required to select the most appropriate

method for determining that the transaction price is at arm’s

length.

Selection of the most appropriate method is based on the

following criteria:

> Pros and cons of the chosen method

> Nature of transactions and functional analysis of the

parties involved in intercompany transactions

> Availability and reliability of data for the analysis

> Level of comparability between controlled and

uncontrolled transactions

The taxpayer is also allowed to use any other unspecified

method that is reasonable to apply in a given circumstance,

assuming that the specified methods cannot be applied.

b) Priority and preference of methods

FBiH

Traditional transaction methods have priority for application

in TP in the FBiH, with CUP defined as the most preferable

method.

Republic of Srpska

TP legislation in the Republic of Srpska does not prescribe

priorities in the application of methods.

8. Benchmarking requirements

> Local vs. regional comparables

Foreign comparables are accepted for the purpose of a

benchmark analysis, if no local comparables could be identified

in the FBiH, and the Republic of Srpska.

> Single-year vs. multiyear analysis for benchmarking

There is a preference for multiple-year analysis in the FBiH;

use of multiyear analysis is recommended in the Republic of

Srpska.

> Use of interquartile range

Use of the interquartile range is mandatory in the FBiH,

whereas its use in the Republic of Srpska is recommended.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year.

TP documentation has to be prepared annually, and there

is no need to conduct a fresh benchmarking search every

year, i.e., a rollforward (update of financials of comparable

companies) of the previous year’s benchmarking analysis could

be acceptable, too. Furthermore, the financials of a taxpayer

should be updated every year in accordance with the financial

statements for that year.

> Simple, weighted or pooled results

Application of the weighted average is mandatory in the FBiH,

whereas its application is recommended in the Republic of

Srpska.

> Other specific benchmarking criteria, if any

Independence of a company is evaluated by related-party rules

stating that an entity is considered a related party if it has

25% of shares or votes of the taxpayer. Also, a related party is

considered to be a person closely related to the taxpayer.

Specifically, TP legislation in the FBiH prescribes that

companies that incurred a loss should be excluded from a

benchmarking analysis.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

FBiH

The taxpayer is exposed to the risk of penalty in the amount

of BAM3,000 to BAM100,000 (approx. EUR1,500 to

EUR50,000) as well as the responsible individual in the

taxpayer (e.g., director, CEO or general manager) is exposed to

the risk of penalty in the amount of BAM2,500 to BAM30,000

(approx. EUR1,250 to EUR15,000) in case of not possessing

the required TP documentation in accordance with the CIT Law

(Article 58, paragraph 2 point j).

RS

The taxpayer is exposed to the risk of penalty in the amount

of BAM 20,000 to BAM 60,000 (approx. EUR 10,000 to EUR

30,000) as well as the responsible individual in the taxpayer

(e.g., director, CEO or general manager) is exposed to the

risk of penalty in the amount of BAM5,000 to BAM15,000

(approx. EUR2,500 to EUR7,500) in case of not possessing

TP documentation that contains sufficient information to

determine arm’s-length nature of transactions in accordance

with the CIT Law (Article 58, paragraph 1 point 2).

> Consequences of failure to submit, late submission or

incorrect disclosures

FBiH

The taxpayer is obligated to possess a TP report at the time

of submission of the CIT return. Penalties in the amount

of BAM3,000 to BAM100,000 (approx. EUR1,500 to

EUR50,000) could be imposed if the taxpayer doesn’t possess

the TP report on the due date of the CIT return. Additionally,

penalties in the amount of BAM2,500 to BAM10,000 (approx.

EUR1,250 to EUR5,000) could be imposed on a responsible

person in the company for the previously mentioned.

Republic of Srpska

The range of penalties for eventual non-compliance (i.e., not

having a prepared TP report on the day of submission of the

annual CIT return or missing the deadline for submitting TP

documentation after receiving a request from the relevant

tax authorities) is between approximately EUR10,000

and EUR30,000 for the legal entity. And it’s between

approximately EUR2,500 and EUR7,500 for the responsible

individual in the legal entity.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In addition to above-mentioned penalties, the possible

adjustment of taxable income on a TP basis may result in

increased CIT liability and penalty interest payments for late

tax payments.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Penalties would only be assessed in case the TP

documentation for the relevant tax period is not prepared.

It is possible that the competent authorities dispute the

information presented in the TP documentation due to the

non-contemporaneous nature of said TP documentation.

In that case, the taxpayer could be liable for additional CIT

liability payment and related penalty interest.

> Is interest charged on penalties or payable on a refund?

FBiH

Legislation in the FBiH prescribes that the interest is charged

at a daily rate of 0.04%.

Republic of Srpska

Legislation in the Republic of Srpska prescribes that the

interest is charged at a daily rate of 0.03%.

Please note that no interest is generally not payable on refund

of tax liabilities.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The general statute-of-limitations period of five years for taxes

in the FBiH, and the Republic of Srpska, can be applied to TP

assessments.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing -related audits (high/medium/

low)

The likelihood may be considered to be medium, although

audits by tax authorities are not conducted regularly, and

audited periods are not considered irrevocably closed.

Typically, audits take place only once every three to five years

and they cover all taxes. TP is likely to be within the scope of

most tax audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It’s medium at the moment and the tax authorities have a

limited level of sophistication in TP methodology, given the

lack of practice, but they have raised this question in certain

previous situations.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium — refer to the

section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Advance rulings and APAs are not available in the FBiH or the

Republic of Srpska.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is applicable through double tax treaties. There is no

elaborate practice in FBiH or the Republic of Srpska regarding

MAP.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

A thin-capitalization rule applies in the FBiH, under which

interest expense relating to debt in excess of a 4:1 debt-to-

equity ratio is non deductible.

Ivan Rakic

ivan.rakic@rs.ey.com

+ 38163635690

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Botswana Unified Revenue Service (BURS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Income Tax (Transfer Pricing) Regulations, 2019.

> Section reference from local regulation

Section 36A of the Income Tax (Amendment) Act, 2018,

comes into effect on 1 July 2019.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Botswana is not a member of OECD. However, the OECD

Guidelines are a relevant source of interpretation for the

regulations.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

The coverage provided is only in terms of the Local File and

Master File. There is no requirement for CbCR.

> Effective or expected commencement date

Effective from 1 July 2019.

> Material differences from OECD report template or format

No material difference.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes, Botswana joined the OECD Base Erosion and Profit

Shifting Inclusive Framework in June 2017.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

There is no guideline provided yet.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

No additional guidelines outside the regulations and the

significance of the OECD Guidelines in interpreting these

regulations have been provided.

The Local File should be prepared contemporaneously as it

is to be filed together with the tax return on the prescribed

return-filing date. The equivalent of the Master File is only

submitted to the tax authority upon request. Such request

will be premised on the fact that the value of the controlled

transactions will have exceeded BWP5 million.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Documentation is required where the value of the

intercompany transactions exceeds BWP5 million, provided

there is no artificial splitting of transactions.

> Master File

The detailed group information (Master File) will be required

from only those taxpayers whose transactions with connected

persons exceed BWP5 million.

> Local File

Documentation is required where the value of the

intercompany transactions exceeds BWP5 million, provided

there is no artificial splitting of transactions.

> CbCR

There is no requirement to prepare a CbCR.

> Economic analysis

There is no materiality threshold for preparing an economic

analysis.

c) Specific requirements

> Treatment of domestic transactions

For domestic transactions, the regulations have been limited

only to transactions relating to an International Financial

Services Center (IFSC) company.

> Local language documentation requirement

All transfer pricing documentation sent to the tax

administration is to be drafted in Setswana or English.

> Safe harbor availability, including financial transactions, if

applicable

There are no safe harbor rules.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no transfer pricing-specific return. The Local File

should be filed as an attachment to the corporate income tax

return.

> Related-party disclosures along with corporate income tax

return

Filed as attachments to the corporate income tax return.

> Related-party disclosures in financial statement and annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

There is no requirement for CbCR.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Four months after the end of taxpayer’s financial year.

> Other transfer pricing disclosures and return

None.

> Master File

The Master File will be filed on notification from the tax

authority, and the due date will be stated in the notice.

> CbCR preparation and submission

There is no CbCR, hence no notification requirement.

> CbCR notification

There is no CbCR, hence no notification requirement.

b) Transfer pricing documentation/Local File preparation

deadline

The Local File should be prepared before filing the tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The Local File should be filed together with the tax return on

the prescribed return filing date, i.e., four months after the

end of the fiscal year.

> Time period or deadline for submission on tax authority

request

It will be specified in the tax authority notice.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

For the purposes of determining the arm’s-length price,

only five methods have been approved. These and their

corresponding financial indicators are shown below:

> Traditional methods:

> Comparable uncontrolled profit (CUP) method: price

> Cost-plus method (CPM): markup on costs

> Resale-price method (RPM): resale margin

> Transactional methods:

> Transactional net margin method (TNMM): net profit

margin

> Transactional profit split method (PSM): operating profit

and loss split

> Domestic transactions

For the purposes of determining the arm’s-length price,

only five methods have been approved. These and their

corresponding financial indicators are shown below:

> Traditional methods:

> Comparable uncontrolled profit (CUP) method: price

> Cost-plus method (CPM): markup on costs

> Resale-price method (RPM): resale margin

> Transactional methods:

> Transactional net margin method (TNMM): net profit

margin

> Transactional profit split method (PSM): operating profit

and loss split

b) Priority and preference of methods

The regulations provide that, where possible, the CUP is to be

the default transfer pricing method. Where both the traditional

and the transactional methods can be equally applied, the

traditional methods are to be used. Furthermore, the taxpayer

has been allowed to use any other method outside the

approved methods provided the Commissioner General (CG)

is satisfied that the transfer pricing method used is consistent

with the regulations and none of the five approved methods

can be reasonably applied.

8. Benchmarking requirements

> Local vs. regional comparables

The tax authority will consider comparables from the same

geographic market as the controlled transaction. Where such

information is not available, the tax authority may accept

information from any other geographic market.

> Single-year vs. multiyear analysis

It is not mandatory. However, where used, the law requires

that the taxpayer justifies the use of the multiyear data.

> Use of interquartile range

The regulations provide for the use of the full range and not

interquartile.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The law provides for analysis for each tax year.

> Simple, weighted or pooled results

There is no provision for the use of averages.

> Other specific benchmarking criteria, if any

None.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

A penalty not exceeding BWP500,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

A penalty equal to the greater of 200% of the amount of

tax that would have been payable had the transaction been

conducted at arm’s length or a fine of BWP10,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

A penalty equal to the greater of 200% of the amount of

tax that would have been payable had the transaction been

conducted at arm’s length or a fine of BWP10,000.

> Is interest charged on penalties or payable on a refund?

There is no guideline provided yet.

b) Penalty relief

Up to 50% penalty relief for failing to furnish BURS with

transfer pricing documentation is applicable.

10. Statute of limitations on transfer pricing

assessments

There is no guideline provided yet. However, the general

statute of limitation is eight years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny or

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be low based on the

current general anti-avoidance audits.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

The likelihood may be considered to be low based on the

current general anti-avoidance audits.

> Specific transactions, industries and situations, if any, more

likely to be audited

Based on prior BURS audit activity, related-party transactions

are more likely to be auditeds. Mining, capital projects and

financial services are the industries most likely to undergo

audits.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Taxpayers may apply to the CG to enter into an APA, and the

terms and conditions of entering into an APA have not been

prescribed.

> Tenure

There is no guideline provided yet.

> Rollback provisions

There is no guideline provided yet.

> MAP opportunities

It is available in terms of the relevant double tax treaty.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules can be found in the Income Tax Act,

but only in relation to mining companies and IFSC companies.

Net interest expense for all entities is limited to 30% of

earnings before interest, taxes, depreciation and amortization

(EBITDA). Any excess net interest expense will be carried

forward for 10 years for mining entities and three years for all

other taxpayers.

Bakani Ndwapi

Bakani.ndwapi@za.ey.com

+ 2673654010

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Federal Revenue Department (Receita Federal do Brasil — RFB)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Law 9.430/1996 was amended by Law 12.715/2012.

Law 12.766/2012 introduced further changes to the Brazilian

TP rules for financial transactions with related parties.

Normative Instruction (IN RFB 1.312/12) gives detailed

regulations about the local TP rules — amended by Normative

Instruction RFB 1.870/19.

Normative Ruling 1,037/10, which lists the countries and

jurisdictions deemed to be low-tax jurisdictions or favored

tax regimes for purposes of the transfer pricing rules. This

list, which has been amended several times over the past few

years, was lastly modified by Normative Ruling 1,896/19,

issued on 27 June 2019.

Normative Rulings 602/05, 1,124/11, 1,547/15 and

1,623/16; Declaratory Act 37/2002; and Ordinances 222/08,

436/05, 425/06, 329/07, 310/08, 04/11 and 563/11.

> Section reference from local regulation

The terms “related party” and “associate enterprise” are

defined in Article 2 of IN RFB 1.312/12.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Brazil is not a member of the OECD.

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

Brazil’s TP rules deviate significantly from international

standards, including the OECD Guidelines, as there are no

profit-based methods, and the concept of a functional and risk

analysis is not included in the local TP rules.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Brazil has implemented BEPS Action 13 only regarding the

CbCR requirements ruled by Normative Instruction 1.681/16.

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

CbCR is covered, but it does not cover the Master File or

Local File.

> Effective or expected commencement date

For the CbCR, the first covered year was the fiscal year

2016 to be filed as part of the local tax return on 31 July

2017.

> Material differences from OECD report template or format

The local CbCR requirements are similar to those of BEPS

Action 13 format for CbCR purposes.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

As previously mentioned, in Brazil, the CbCR requirements

are similar to those of BEPS Action 13 format. There are

no local requirements for Master File and Local File.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes, Brazil is part of G20.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, Brazil signed on 21 October 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The Brazilian TP rules are described in a specific regulation

(Law 9.430/1996 and IN RFB 1.312/12 and correlated

updates). The TP calculations (local TP study) should be

performed every year, and the results must be filed in specific

forms of the annual corporate income tax return.

It is not required to prepare the TP reports to be filed to tax

authorities as in countries that follow the OECD Guidelines.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, the local branch is required to comply with the Brazilian

TP rules as any other entity that has any intercompany

transaction with related parties or entities located in low-tax

jurisdictions.

> Does transfer pricing documentation have to be prepared

annually?

TP calculation (local TP study) is the local requirement, and

it must be prepared annually according to local jurisdiction

regulations. In Brazil, the TP analysis must be prepared for all

transactions.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

If the MNE has different entities in Brazil, each local entity

should perform its own TP study.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The threshold is the lower of BRL2.26 billion or EUR750

million (or equivalent in Brazilian reais according to the euro

FX conversion rate of 31 January 2015) in the previous year

of the fiscal year under analysis.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

The Brazilian TP rules are not applicable for domestic

transactions.

> Local language documentation requirement

Local TP study must be prepared in Portuguese with monetary

figures in Brazilian reais.

> Safe harbor availability, including financial transactions, if

applicable

Safe harbor limits are applicable only for export transactions.

Exports are exempt from the application of transactional

TP rules if they meet one of the following three safe harbor

conditions:

> Export net revenue does not exceed 5% of total net

revenue in a calendar year.

> Profitability in export transactions to related companies,

on a three-year average, is at least 10%, and the

intercompany export transactions do not exceed 20% of

total net export transactions.

> The average price of exports, per item, is at least 90% of

the average domestic sales price.

> Is aggregation or individual testing of transactions preferred

for an entity

This is not applicable.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers are expected to have the calculations and

documentation necessary to support the information filed in

specific TP forms as part of the annual tax return.

> Related-party disclosures along with corporate income tax

return

The electronic income tax return (ECF) contains five specific

forms that require taxpayers to disclose detailed information

regarding their main intercompany transactions and the details

of the local TP calculations (Brazilian TP study).

Taxpayers need to disclose the total transaction values of

the most-traded products, services or rights; the names and

locations of the related trading partners; the methodology

used to test each transaction; the calculated benchmark price;

the average annual transfer price; and the amount of any

resulting adjustment.

> Related-party disclosures in financial statement and annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

Yes.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Last business day of July. For FY2020, the due date was

postponed to the last business day of September 2021 in

view of COVID-19. No announcements yet about any potential

postponement in 2022.

> Other transfer pricing disclosures and return

Last business day of July. For FY2020, the due date was

postponed to the last business day of September 2021 in

view of COVID-19. No announcements yet about any potential

postponement in 2022.

> Master File

This is not applicable.

> CbCR preparation and submission

Last business day of July. For FY2020, the due date was

postponed to the last business day of September 2021 in

view of COVID-19. No announcements yet about any potential

postponement in 2022

> CbCR notification

Last business day of July. For FY2020, the due date was

postponed to the last business day of September 2021 in

view of COVID-19. No announcements yet about any potential

postponement in 2022.

b) Transfer pricing documentation/Local File preparation

deadline

Ideally, the TP analysis (local TP study) must be finalized

before the income tax and social contribution payments are

due (by the end of January of the immediately following year

to the calculation period). Add-backs must be considered

timely in the taxable basis and paid within the regular deadline.

Fines and interests are charged in case of late payment. Details

of the TP calculations should be informed in the TP forms as

part of the local tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Yes, the deadline is the last business day of July of the

following year, as part of local corporate tax return.

> Time period or deadline for submission upon tax authority

request

Taxpayers have to deliver the TP documents within 30 days

upon request from the tax authorities. The taxpayer can ask

for additional time depending on the volume of information

requested by the Brazilian IRS.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

In view of COVID-19, the filing of the CbC notification, CbCR

and TP report, which coincides with the filing of the corporate

income tax return, has been postponed to the last business

day of September 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

There is no best or most appropriate method rule in Brazil. The

local taxpayers select the TP method that results in the lowest

amount of adjustment. An exception is made when it comes

to goods considered as commodities. For such cases, the

mandatory commodities methods (based on public quotations)

must be used to test those intercompany transactions.

8. Benchmarking requirements

> Local vs. regional comparables

The local TP rules do not require the preparation of economic

analysis using a set of comparables for the determination

of arm’s-length range. Therefore, the discussion on local vs.

regional comparables for the application of TNMM or CPM

methods is not applicable for local TP study. In Brazil, these TP

methods cannot be applied to test intercompany transactions.

> Single-year vs. multiyear analysis for benchmarking

TP documentation in Brazil should be prepared on the basis of

annual data. As an exception, the Brazilian CUP (PIC) method

allows the taxpayer to consider comparable transactions of the

immediately preceding calendar year for cases in which the

taxpayer does not identify the minimum amount (threshold)

of third-party transactions in the same calendar year that the

intercompany transactions were carried out.

> Use of interquartile range

This is not applicable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

As Brazilian rules deviate significantly from the international

TP framework, the study is required to occur every calendar

year and should be based on information available for the

calendar year under analysis.

> Simple, weighted or pooled results

There is a preference for weighted average for determining

benchmark prices.

> Other specific benchmarking criteria, if any

For commodities, the taxpayer must use public prices as

comparable (market exchange or publications).

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The regulation imposes potentially heavy penalties for non-

compliance with the CbCR rules. Transactions and financial

operations that are not fully reported in the CbCR give rise to a

penalty of up to 3% of the underlying value of the transactions.

Further, BRL500 to BRL1,500 of penalty, per month, will

be imposed for failing to file or for not answering the tax

authority’s request and clarification.

> Consequences of failure to submit, late submission or

incorrect disclosures

The regulation imposes potentially heavy penalties for non-

compliance with the CbCR rules. Transactions and financial

operations that are not fully reported in the CbCR give rise to a

penalty of up to 3% of the underlying value of the transactions.

Further, BRL500 to BRL1,500 of penalty, per month, will

be imposed for failing to file or for not answering the tax

authority’s request and clarification.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

As there are no special penalties for TP, general tax penalties

are applicable. The amount of the penalty may be up to 20%

of the omitted tax (or 0.33% per day) if the taxpayer pays

the related taxes late, but before an audit. Meanwhile, if the

tax authority assesses the taxpayer as part of a TP audit,

the applicable penalties may range from 75% to 225% of the

omitted taxes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

As there are no special penalties for TP, general tax penalties

are applicable. The amount of the penalty may be up to 20%

of the omitted tax (or 0.33% per day) if the taxpayer pays

the related taxes late, but before an audit. Meanwhile, if the

tax authority assesses the taxpayer as part of a TP audit,

the applicable penalties may range from 75% to 225% of the

omitted taxes.

> Is interest charged on penalties or payable on a refund?

Payables and refunds are updated by the official Brazilian

interest rate (sistema especial de liquidacao e custodia —

SELIC), when applicable.

b) Penalty relief

Currently, no penalty relief is available. The taxpayer may

appeal to the administrative court. If there is no resolution at

this level, the dispute goes to other courts. Where a taxpayer

voluntarily makes a tax payment, penalties may be waived,

even in case of late payment, to the extent no audit has been

started by the tax authorities.

10. Statute of limitations on transfer pricing

assessments

A general statute of limitations applies, which is five years

from the first day of the following fiscal year. In the case of

filing amended tax returns, the statute starts with the filing of

the latest amended return.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of TP being reviewed as part of an audit is

characterized as medium, because the tax authorities have

access to a wide range of accounting and fiscal information in

electronic databases that makes it easier for them to monitor

any discrepancy of tax information.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium to high.

Since the companies have to submit the income tax return

in electronic format, the tax authorities have increased the

number of fiscal assessments.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. Considering that

the Brazilian methodology is different from the OECD’s, it is

very common to have TP adjustments in Brazil, which must be

added in the corporate income tax base.

> Specific transactions, industries and situations, if any, more

likely to be audited

For certain industries — such as automotive, pharmaceutical,

chemical, and oil and gas — and intragroup services into

Brazil (services and cost allocations), the likelihood of a TP

audit may be considered to be high. The risk of a TP audit

may be considered to be high if the tax authorities identify

inconsistencies in the information filed electronically (e.g.,

customs declaration, financial statements and other filing

requirements, such as SISCOMEX (Sistema Integrado de

Comércio Exterior)).

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The RFB has issued Normative Instruction 1,846/18, which

regulates the MAP in Brazil in accordance with the minimum

standards of BEPS Action 14.

Following are the phases of the procedure:

> Unilateral MAP: The RFB receives and analyzes the

request presented by the taxpayer related to the MAP. If

RFB accepts the proposal and ends the double taxation,

the MAP process is concluded. If RFB disagrees with the

proposal, the bilateral MAP is activated.

> Bilateral MAP: RFB will proceed with discussions with the

other tax authority, with a view to investigate and end the

alleged double taxation.

APA is not available in the Brazilian legislation.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

The process is available under a tax treaty entered into by

Brazil and another jurisdiction, so that the treaty partners

can resolve cases involving their taxpayers where there have

been disputes concerning cross-border transactions in their

countries.

Who can apply for a MAP?

Any Brazilian taxpayer that considers that a case of

double taxation occurred or is imminent, derived from TP

adjustments, royalty limitations or WHT, can apply.

What taxes are covered?

The following Brazilian corporate income taxes are covered:

> Income tax (Imposto de Renda da Pessoa Jurídica — IRPJ)

> Social contribution on net revenue (Contribuição Social

sobre o Lucro Líquido — CSLL)

Any other income tax or taxes of the same nature in the other

jurisdiction are also covered.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under the thin-capitalization rules, interest paid to related

parties that are not located in a tax-haven jurisdiction and that

do not benefit from a preferential tax regime may be deducted

on an accrual basis for corporate income tax purposes, only if:

> The expenses are necessary for the company’s activities.

> Both of the following thresholds are met:

> The related-party debt-to-equity ratio does not exceed

2:1, calculated based on the proportion of related-party

debt-to-direct-equity investment made by related parties.

> The overall debt-to-equity ratio does not exceed 2:1,

calculated based on the proportion of total debt-to-total-

direct-equity investment made by related parties.

Interest paid to an entity or individual located in a tax haven

or that benefits from a preferential tax regime (regardless of

whether the parties are related) may be deducted only if the

expenses:

> Are necessary for the company’s activities.

> (Both of the following thresholds are met:

> The amount of the Brazilian entity’s indebtedness to the

tax haven or preferential tax regime resident does not

exceed 30% of the net equity of the Brazilian entity.

> The Brazilian entity’s total indebtedness to all entities

located in a tax-haven jurisdiction or benefiting from a

preferential tax regime does not exceed 30% of the net

equity of the Brazilian entity.

Excess interest is treated as a non deductible expense for

IRPJ and CSLL purposes. The TP rules affecting cross-border

loans remain in effect, as do the general requirements for

deductibility.

Gustavo Carmona

gustavo.carmona@br.ey.com

+ 55 11 2573 5523

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

National Revenue Agency (NRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Following are the TP regulations or rulings in the jurisdiction:

> Corporate Income Tax Act (CITA), promulgated in State

Gazette (SG) Issue 105, 22 December 2006, most recent

amendments promulgated in SG Issue 8, 28 January

2022.

> Tax and Social Insurance Procedure Code (TSIPC),

promulgated in SG Issue 105, 29 December 2005, most

recent amendments promulgated in SG Issue 105, 11

December 2020.

> Ordinance N 9, 14 August 2006, about methods for

determining market prices (Ordinance N 9), promulgated

in SG Issue 70, 29 August 2006.

> Double taxation treaties enacted by Bulgaria.

> Section reference from local regulation

According to Article 15 of the CITA, when related parties enter

into transactions whose commercial and financial terms differ

from those of unrelated-party transactions, resulting in a

different taxable base than what would have been achieved in

unrelated-party transactions, the tax authorities will adjust the

taxable base accordingly.

Specifically, under Article 16 of the CITA, when one or more

transactions, including those between unrelated parties, have

been concluded under terms in which the fulfillment leads

to lower or no taxation, the taxable base will be determined

without taking notice of these transactions, certain terms

or their legal forms. Instead, the taxable amount that will be

considered would be obtained in a market-customary way of

the relevant type at market prices and is intended to achieve

the same economic result without leading to lower or no tax.

For the definition of “related parties,” the CITA refers to the

provisions of the TSIPC.

The methods applied in determining the arm’s-length prices

1http://www.minfin.bg/en/page/174

have been introduced by the TSIPC and Ordinance N 9.

The NRA released its Manual on Transfer Pricing Audits

(the Manual) in 2008. By introducing a chapter on TP

documentation requirements in the Manual in 2010, the NRA

approved the documents that TP auditors would require during

their investigations.

The Manual is not technically part of the law; however,

it is generally followed by both taxpayers and the tax

administration. In this respect, it is in the taxpayers’ interest

to comply with the Manual because it defines what the NRA

usually requires during a TP audit. Compliance with the Manual

is expected to significantly narrow the scope of disputes over

TP matters during tax audits.

In mid-2018, new legislation was developed, making TP

documentation mandatory for related-party transactions

that take place after 1 January 2020. The new rules were

introduced in the TSIPC, promulgated in SG Issue 64, 13

August 2019 and Issue 96, 6 December 2019. The mandatory

TP rules will apply to local taxpayers, which are subject to a

corporate tax levy, are involved in cross-border dealings with

related parties and meet certain criteria that are similar to the

criteria for a large enterprise set in the Accountancy Act.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Bulgaria is not a member of the OECD. In January 2022,

however, the OECD Council decided to open accession

discussions with Bulgaria to OECD membership.

Although there is no specific reference in the Bulgarian TP

legislation and the relevant soft law, the NRA generally follows

OECD Guidelines. However, there are certain differences

because the 2010 and 2017 editions of the OECD Guidelines

have not been incorporated in local TP legislation and in the

Manual. For example, domestic regulations still provide for

the hierarchy of methods that was abolished in the OECD

Guidelines. Furthermore, Bulgarian TP rules do not explicitly

deal with business restructuring.

The Manual is expected to be aligned with the most recent

edition of the OECD Guidelines in the near future.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Bulgaria has adopted BEPS Action 13 for TP documentation in

the local regulations in terms of CbCR, as well as for overall TP

documentation starting January 2020.

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

Yes, Master File and Local File are covered as per new

regulations effective from January 2020.

> Effective or expected commencement date

The newly adopted law is applicable for the fiscal years

beginning on or after 1 January 2020.

> Material differences from OECD report template or format

No, there are no material differences. However, there are

some local specifics that need to be considered.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The penalties in case no TP documentation is prepared

and presented when requested under the current

legislation are insignificant. Generally, Master Files and

Local Files prepared in the BEPS Action 13 format report

should be sufficient to show the arm’s-length nature of the

related-party transactions reviewed.

However, from January 2020 onward, failure to present

the Local File may trigger penalties ranging up to 0.5%

of the volume of the related-party transactions that

should have been documented. Failure to submit the

Master File may trigger penalties ranging from BGN5,000

(or approximately EUR2,500) to BGN10,000 (or

approximately (EUR5,000).

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 17 November 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Mandatory TP rules effective as of 1 January 2020.

Yes, there are mandatory TP documentation requirements that

are generally in line with OECD’s BEPS Action 13.

The 2019 amendments to the TSIPC introduced obligatory

TP documentation preparation requirements. Under the new

Bulgarian TP legislation, beginning 1 January 2020, large

taxpayers will be obliged to prepare TP documentation on a

yearly basis. The taxpayers will be required to have the TP

documentation with the prescribed content within the deadline

set if at least two of the following three thresholds mentioned

below have been met:

> Their annual net sales for the preceding year did not

exceed BGN76 million (or approximately EUR38 million).

> Their assets’ net book value did not exceed BGN38 million

(or approximately EUR19 million) as of 31 December of

the prior year.

> Their average employees’ count over the reporting period

did not exceed 250 people.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, the provisions governing the preparation of the TP

documentation also apply to the transactions of the Bulgarian

branches of foreign entities.

> Does transfer pricing documentation have to be prepared

annually?

Under the newly introduced legislation, while the Master File

and the Local File need to be updated each year, the applicable

benchmarks might be updated every three years (if there have

not been any significant changes in the business environment

and rollforward is performed). Additionally, financial data

and the respective transaction data, which serve as a basis

for comparison of the transactions under review, need to be

updated annually.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Mandatory TP rules effective as of 1 January 2020.

Under the newly introduced legislation, the preparation of

TP documentation with specific content within a fixed time

limit is mandatory for local taxpayers, which are subject to a

corporate tax levy and could generally be classified as large

enterprises. To avoid falling within the scope of the new

obligation, a local taxpayer should not meet more than one of

the following three thresholds:

> Assets with a balance sheet value not exceeding BGN38

million (or approximately EUR19 million) as of 31

December of the previous year

> Net sale revenues of less than BGN76 million (or

approximately EUR38 million) as of 31 December of the

previous year

> Average number of employees over the reporting period

being below 250 people

The Local File should analyze and document related-party

dealings whose value over the reporting period exceeds the

following thresholds:

> BGN400,000 (or approximately EUR205,000) applicable

to controlled transactions in goods

> BGN200,000 (or approximately EUR102,000) applicable

to controlled transactions in services

> BGN200,000 applicable to transactions related to

intangibles

> BGN1 million (or approximately EUR500,000) applicable

to the value of the loan principal

> BGN50,000 (or approximately EUR25,000) applicable to

interest rate accrued

> Master File

Mandatory TP rules effective as of 1 January 2020.

Under the newly adopted Bulgarian TP legislation, the large

taxpayers (as defined in the TSIPC) that have dealings with

related parties from abroad will be obligated to prepare

TP documentation consisting of Local File and Master File.

The Master File should be available by 30 June of the year

after. However, no requirement for the submission of the TP

documentation is proposed, i.e., the previous requirement

would remain and should be submitted upon request by the

NRA.

For the most part, Bulgarian TP documentation requirements

are compliant with OECD Guidelines and follow the BEPS

Action 13 framework. However, some local specifics must be

considered, in order to avoid further questioning from the tax

authorities or even imposing penalties.

Failure to submit the Master File may trigger penalties ranging

from BGN5,000 (or approximately EUR2,500) to BGN10,000

(or approximately EUR5,000).

> Local File

Under the newly adopted Bulgarian TP legislation, large

taxpayers (as defined in the TSIPC) that have dealings with

related parties from abroad will be obligated to prepare TP

documentation consisting of Local File and Master File. The local

TP file should be prepared by 30 June of the following year.

For the most part, Bulgarian TP documentation requirements

are compliant with OECD Guidelines and follow the BEPS

Action 13 framework. However, some local specifics must be

considered, in order to avoid further questioning from the tax

authorities or even imposing penalties.

Failure to submit the Local File upon request may trigger

penalties up to 0.5% of the volume of the related-party

transactions that should have been documented.

> CbCR

This is applicable to Bulgarian constituent entities with

consolidated revenue exceeding BGN1,467 million (EUR750

million).

> Economic analysis

Under the newly adopted rules, economic analysis comprising

description of the selected TP method and the reasoning

behind that choice, selection of the tested party, description

of the methodology for selection of comparable uncontrolled

transactions or companies, analysis of the financial data about

the comparables and the financial data of the tested party,

etc., is a mandatory element of the TP documentation.

c) Specific requirements

> Treatment of domestic transactions

Bulgarian legislation and the relevant soft law do not

distinguish between domestic and cross-border related-party

transactions. The same general rules for evidencing their

arm’s-length nature apply to them. However, if the entity

has related-party dealings only within the territory of the

jurisdiction, it has no obligation to prepare the mandatory TP

documentation.

> Local language documentation requirement

Based on TSIPC provisions, any documents presented to the

tax authorities should be prepared in Bulgarian language

or translated by a sworn translator. In this respect, the TP

documentation needs to be submitted in the local language.

The group’s Master File may be prepared in another language.

However, the taxpayer should be able to provide a translated

version of the document (or the parts requested by the tax

authorities) performed by a sworn translator. In case the

translated documentation is not provided by the deadline, the

tax authorities may translate the document at the expense of

the taxpayer.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Not applicable. Individual testing of transactions is preferred.

However, aggregation is also allowed if individual testing

cannot be performed.

> Any other disclosure or compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

In Bulgaria, there is no TP-specific return.

> Related-party disclosures along with corporate income tax

return

Taxpayers are required to submit, as part of their annual

corporate income tax package, summarized information about

transactions with domestic and non-resident related parties as

well as with offshore companies. This includes a statement of

the total annual income and expenses arising from controlled

dealings as well as balances (i.e., payables and receivables)

outstanding at the end of the year.

Furthermore, taxpayers are required by the National

Accounting Standards (and the International Financial

Reporting Standards) to disclose, in their financial statements,

relationships between related parties, regardless of whether

there have been transactions between them, as well as the

related-party transactions.

> Related-party disclosures in financial statement and annual

report

Further to the provisions of the National Accounting Standards

(and the International Financial Reporting Standards),

taxpayers are required to disclose, in their financial

statements, relationships between related parties, regardless

of whether there have been transactions between them, as

well as the related-party transactions.

> CbCR notification included in the statutory tax return

There is none specified.

> Other information or documents to be filed

The entities part of an MNE group that have an obligation to

prepare a CbCR should file a notification to the tax authorities

stating which entity in the group submits the CbCR returns.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is 30 June of the following year. Therefore,

the CIT return for the financial year 2021 should be filed by 30

June 2022.

> Other transfer pricing disclosures and return

The filing deadline is 30 June of the following year. Therefore,

the CIT return and the relevant disclosures related to TP for

the financial year 2021 should be filed by 30 June 2022.

> Master File

The due date for the Master File is within 12 months after this

period.

> CbCR preparation and submission

The CbCR should be submitted within 12 months of the end

of the fiscal year for the MNE. Thus, CbCR of a multinational

group of entities with a fiscal year that ended on 31 December

2019 should be submitted by 31 December 2020.

> CbCR notification

The filing deadline is the end of the respective fiscal year, i.e.,

a notification for the fiscal year ended on 31 December 2019

should be submitted by 31 December 2019.

b) Transfer pricing documentation/Local File preparation

deadline

Current guidelines

There is no statutory deadline or recommendation for the

preparation of TP documentation. As a good practice, to avoid

TP adjustments, it is recommended that the file be completed

by the time the corporate income tax return for the respective

year should be submitted.

Adopted amendments

Under the adopted TP legislation, the local TP file should be

prepared by 30 June of the following year, while the master

file should be available by 30 June of the year after.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of TP

documentation. It is not required to be provided along with the

tax return. It only needs to be presented upon request by the

tax authorities.

> Time period or deadline for submission on tax authority

request

TP documentation should usually be submitted within 7 to

14 days upon request. However, the taxpayer can request an

extension of up to three months.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

Current guidelines

Under Bulgarian TP legislation, one of the following methods

should be applied to determine the market price:

> CUP

> Resale price

> Cost plus

> Profit split

> TNMM

The hierarchy of methods’ criterion should be used for the

application of TP methods.

The TSIPC introduced the methods applicable for determining

the arm’s-length price, while Ordinance N 9 regulates the order

of consideration, and applying the traditional TP methods

is preferred. Moreover, the CUP method is considered the

most direct and reliable measure of an arm’s-length price for

controlled transactions. The TNMM and profit-split methods

are used only in cases in which applying the traditional

methods produces an unsatisfactory result.

Adopted amendments

Under the adopted amendments, the hierarchy of methods is

accepted.

8. Benchmarking requirements

> Local vs. regional comparables

In terms of the procedural search approach to conduct

comparable searches, the Manual states that comparable data

could be obtained both from internal and external transactions

and the source database should be publicly available. In

addition, according to the Manual, exemplary sources of

comparable transactions data could be the National Statistical

Institute, local industry associations, Amadeus, Orbis and

others.

It is the NRA TP auditors’ recent practice to challenge

benchmarking analysis for the lack of Bulgarian data and

analysis of the local market players. In such cases, the

revenue authority performs its own benchmark analysis and

test of the profitability of the local entities on the basis of

local business intelligence databases. In this respect, it is

highly recommended that the benchmark analysis contained

in the TP documentation of the taxpayer reviews Bulgarian

comparables and considers them with priority.

> Single-year vs. multiyear analysis for benchmarking

There is no specific guidance in legislation or the Manual;

however, as a jurisdiction practice, multiple-year testing is used

(usually three years).

> Use of interquartile range

Local TP legislation requires the use of interquartile ranges in

case the TNMM method is applied.

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

Current guidelines

A fresh benchmarking search is to be conducted every year.

According to the Manual, the TP documentation should be

prepared for the fiscal period when the analyzed intercompany

transactions were concluded. Any TP documentation prepared

for the preceding fiscal years may be used for the following

years, provided no changes in the organization and functions

of the company or changes of any other factors that may

affect the pricing of the controlled transactions are present.

The actualization of the TP documentation should be made in

relation to these changes for the respective year.

Adopted amendments

Under the adopted amendments, TP documentation should

be updated annually. However, benchmarks may be updated

once every three years in case no changes in the organization

and functions of the company or changes of any other factors

that may affect the pricing of the controlled transactions

are present. Additionally, financial data and the respective

transaction data, which serve as a basis for comparison of the

transactions under review, need to be updated annually.

> Simple, weighted or pooled results

There is none specified.

> Other specific benchmarking criteria, if any

No specific benchmarking criteria are contained in the local

legislation and the relevant soft law.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable. For presenting incorrect or incomplete data in

the transfer pricing documentation, the obligated entity can be

imposed with a fine between BGN1,500 and BGN5,000.

> Consequences of failure to submit, late submission or

incorrect disclosures

Current guidelines

If the taxpayer fails to provide documentation when requested

by the tax authorities, a fine for not cooperating could be

imposed. However, this fine is insignificant (i.e., in the range of

BGN250 to BGN500, or approximately EUR128 to EUR256).

Therefore, the main consequence for the entity would be the

adjustment of its taxable profit if the tax auditors conclude

that the price applied in controlled transactions is not at arm’s

length.

Furthermore, a taxable person involved in a “hidden profit

distribution” would be subject to an administrative sanction

amounting to 20% of the expense and classified as a hidden

profit distribution (unless voluntarily disclosed to the tax

authorities). Both the expense classified as hidden profit

distribution and the sanction would be non deductible for

corporate income tax purposes. In addition, the expense would

be considered a deemed dividend and, thus, subject to a 5%

withholding tax.

Business expenses may be classified as a hidden profit

distribution if an entity has:

> Accrued, paid or distributed to the benefit of the entity’s

shareholders or their related parties’ amounts that are not

business-related or are in excess of market-price levels

> Accrued interest costs on debt financing if at least three of

the following criteria are met:

> The loan principal exceeds the equity of the borrower as of

31 December of the preceding year.

> The repayment of the principal or the interest on the loan

is not limited by a fixed time period.

> The loan repayment or interest payment depends on

whether the borrower ended on a profit position.

> The repayment of the loan depends on the satisfaction of

other creditors’ claims or on payment of dividends.

Adopted amendments

In addition to the penalties discussed above, under the

adopted amendments, failure to submit the Local File may

trigger penalties up to 0.5% of the volume of the related-

party transactions that should have been documented.

Failure to submit the Master File may trigger penalties ranging

from BGN5,000 (approximately EUR2,500) to BGN10,000

(approximately EUR5,000).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the section above.

> Is interest charged on penalties or payable on a refund?

On refund, default interest (i.e., 10% plus the base interest of

the Bulgarian National Bank) could be claimed on the amounts

unduly paid by a taxpayer.

b) Penalty relief

Voluntary disclosure of hidden profit distribution relieves

taxpayers of the administrative penalty, which is 20% of

the hidden profit. This allows taxpayers to self-adjust any

overpriced group transactions with no threat of penalties.

If, in the course of a tax audit, the tax auditors challenge

the TP methodology and propose an adjustment, the local

taxpayer may file an objection along with any relevant

evidence. Then, based on all documents collected in the

course of the audit, the tax auditors will come up with a final

assessment, which, if not in the taxpayer’s favor, could be

appealed before the Appeals Directorate of the NRA, which

may confirm or cancel the assessment or assign a new audit. In

case the assessment is confirmed by the Appeals Directorate,

the taxpayer may initiate a court appeal. Bulgaria is also a

party to the EU Arbitration Convention.

10. Statute of limitations on transfer pricing

assessments

In Bulgaria, documentation may be required for any open

tax year as well as for tax obligations not covered by the

statute-of-limitations period. As a general rule, the statute-of-

limitations period for corporate income tax is five years from

the year following the year of expiration of the statutory term

granted for filing corporate income tax returns. The Bulgarian

statutory term for both filing the annual corporate income tax

return and remittance of the amount due is 30 June of the

following year. For example, the financial year 2013 is open for

tax audits until the end of the financial year 2019 because the

corporate income tax return for the financial year 2013 should

have been filed by 30 June 2014.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny or

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

In general, the likelihood of an annual tax audit is

characterized as low. The likelihood that TP documentation

will be reviewed as part of that audit is characterized as high

because of the high probability that the tax authorities would

request to analyze all related-party transactions. Normally, a

taxpayer is audited for its corporate tax compliance at least

once every five periods.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the TP methodology will be challenged

is characterized as medium. The revenue authorities may

scrutinize cases where the local entity has sizable operations

yet is earning limited margins or generating losses. Routine

service arrangements are normally not challenged as long as

the actual rendering of the service is evidenced.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high when the

taxpayer is not able to provide reasonable justification of its

intercompany pricing arrangement.

> Specific transactions, industries and situations, if any, more

likely to be audited

Currently, the NRA is not challenging the TP methodologies

of particular industries as riskier than others. Based on our

observations, local affiliates of multinationals that report

recurring losses or low profitability in high-margin sectors may

be scoped in for tax audits focused on TP. Large employers

that participate in group stock incentive plans have recently

been subject to audits on their pricing policies.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No binding ruling or APA opportunities are currently

applicable.

Taxpayers are allowed to file a request for a written opinion

from the NRA or the Ministry of Finance on the interpretation

and application of the tax law with regard to a specific tax

issue. However, the value of the position of the tax authorities

on a particular tax aspect is very limited because the tax

authorities refuse to provide any opinion about transactions

that have not yet been structured and documented.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Yes.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

All financing (interest) expenses may be subject to the

Bulgarian thin-capitalization rules (if certain conditions are

met). However, these rules do not apply:

> If the interest is not tax deductible on other grounds (e.g.,

non-compliance with the arm’s-length principle)

> In case of penalty interest and interest for late payment

> If the interest expenses are capitalized in the value of an

asset

> In case the interest expense is related to financial lease

or a bank loan, unless guaranteed or provided by related

party

As of January 2020, if a loan is guaranteed by a Bulgarian

entity and its related party at the same time, then the thin-

capitalization rules will not apply to the part of the interest on

the loan equal to the ratio between the market value of the

guarantee provided by the Bulgarian taxpayer and the amount

of the financing.

Viktor I Mitev

viktor.mitev@bg.ey.com

+ 35928177343

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Directorate General for Taxation (Direction Générale des

Impôts — DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Articles 66, 99, 588-8°, 616-1°, 618-2 of the General Tax

Code, since 2018.

Articles 98, 99 and 757 of General Tax Code (Fiscal Law

2022): Article 98 of General Tax Code (Finance Bill 2022)

requires companies to file a transfer pricing return. This

provision of the law is applicable since 1 January 2022.

The content of the transfer pricing return is expected to be

specified by the Ministry of Finances.

Article 99 of General Tax Code provides new conditions related

to the transfer pricing documentation obligations.

Article 757 of General Tax Code (Finance Bill 2022) provides

penalties about transfer pricing return and updated penalties

about transfer pricing documentation.

Decree n°2018-211 MINEFID/SG/DGI setting out

the conditions for implementing the transfer pricing

documentation requirement.

> Section reference from local regulation

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

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Burkina Faso is not a member of the OECD. However, as a

member of the Inclusive Framework on BEPS, it has agreed to

implement a minimum BEPS standard.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

BEPS Action 13 provisions are not applicable.

> Effective or expected commencement date

FY2018.

> Material differences from OECD report template or format

A BEPS Action 13 format report is typically sufficient to

achieve penalty protection.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, it has to be prepared contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

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

comply.

> Should transfer pricing documentation be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, in Burkina Faso, tax is assessed on each associated

company result, not on a consolidated revenue. Groups are not

treated as taxpayers or fiscal entities; each company must file

a separate tax return.

b) Materiality limit or thresholds

> Transfer pricing documentation

The documentation obligation applies to companies operating

in Burkina Faso:

> This obligation applies to companies operating in Burkina

Faso:

a. Which have annual sales excluding taxes or gross assets

equal to or greater than XOF1 billion (CFA francs)

b. Which, at the end of the fiscal year, directly or indirectly

hold a majority of the share capital or voting rights of a

company operating in Burkina Faso

c. Who, at the end of the fiscal year, directly or indirectly,

hold a majority of the share capital or voting rights of

an enterprise operating in or outside Burkina Faso that

meets the condition mentioned in paragraph (a) of this

section

d. A majority of share capital or voting rights are held, at

the close of the fiscal year, directly or indirectly, by a

company operating in Burkina Faso or outside Burkina

Faso that meets the condition indicated in above

paragraph (a)

> Master File

This is not applicable.

> Local File

There is no specific materiality limit for transactions. The

conditions mentioned above must be met (transfer pricing

documentation).

> CbCR

This is not applicable.

> Economic analysis

There is no materiality limit or threshold.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions must be documented. It is expected of

domestic transactions to follow arm’s-length principles.

> Local language documentation requirement

It should be in French; English documentation is not accepted.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Any other disclosure or compliance requirement

If, during an audit, the tax authorities have gathered elements

leading to the presumption that the enterprise has made a

profit transfer and has not fulfilled its documentary obligation,

they may require from the enterprise operating in Burkina Faso

any information or document on the relations it has with non

resident enterprises and on the method of determining the

prices of the transactions.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is preferred.

5. Transfer pricing return and related-party

disclosures

Companies with annual sales excluding taxes or gross assets

equal to or greater than XOF1 billion are required to file a

transfer pricing return no later than May 31 for the previous

fiscal year ended December 31.

Filing of transfer pricing return is mandatory since Finance Bill

2022.

The content of the transfer pricing return is expected

to be specified by the Ministry of Economy, Finance and

Development (Ministère de l’Économie, des Finances et du

Développement).

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

There is no CbCR notification requirement.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline for filing the annual financial statements is 30

April, following each fiscal year.

> Other transfer pricing disclosures and return

Transfer pricing return must be submitted by 31 May.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

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

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no submission deadline.

> Time period or deadline for submission on tax authority

request

At the beginning of the tax audit and within 30 days upon

official request by the auditors addressed to the audited

companies.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

These OECD methods are generally accepted: CUP, resale

price, cost plus, profit split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific requirement. However, local or West

African comparables would be preferred.

> Single-year vs. multiyear analysis

There is no specific requirement.

> Use of interquartile range

There is no specific requirement.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement.

> Simple, weighted or pooled results

There is no specific requirement.

> Other specific benchmarking criteria, if any

There is no specific requirement.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Same as below.

> Consequences of failure to submit, late submission or

incorrect disclosures

Transfer pricing return

Failure to submit or incomplete return will involve a fine of

XOF10 million.

Transfer pricing documentation

Failure to respond or an incomplete response to the official

request of the tax authorities will involve for each fiscal year

audited a fine equal to 0.5% of the amount of the transactions

concerned by the documents that have not been made

available to the tax authorities. The amount of this fine may

not be less than XOF10 million per fiscal year.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Same as above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

This is not applicable.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The limitation period is set to three years (common tax

regime), added to two years in case of transfer pricing tax

audit or whether the information exchange procedure has

been implemented.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium.

> Specific transactions, industries and situations, if any, more

likely to be audited

Medium.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

A possibility to agree with the local tax authorities is provided

by law (Article 588-8). However, no further guidance is

available.

> Tenure

The APA may cover the year in which the request was done as

well as the four subsequent years.

> Rollback provisions

There is no guidance provided.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty to which Burkina Faso is signatory.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to Covid-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The intercompany interests are only deductible if the capital

has been fully released. In any case, the maximum deductible

amount cannot exceed the legal interest rate increased by

two percentage points and cannot be greater than 15% of the

profit before corporate income tax, and before deduction of

such interest, and depreciation and provisions.

Eric Nguessan

Eric.nguessan@ci.ey.com

+ 2250708025038

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

General Department of Taxation (GDT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Prakas 986 — “Rules and procedures for income and expense

allocation between related parties.”

> Section reference from local regulation

Article 56 of the Law on Taxation and Section 7.3 in the

Prakas on tax on profit define a related party for transfer

pricing purposes.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Cambodia is not a member of the OECD; however, it follows the

OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The documentation requirements in Prakas 986 broadly

conform to the guidance in the OECD BEPS Action 13 report

on CbCR.

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

Only Local File is applicable.

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

> Effective or expected commencement date

The effective date for Local File is 10 October 2017.

> Material differences from OECD report template or format

None.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, there are transfer pricing documentation rules. A transfer

pricing report has to be prepared annually.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local transfer

pricing rules if it has related-party transactions.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the transfer pricing documentation needs to be prepared

annually, and a transfer pricing memo should also include

contemporaneous benchmarking.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

transfer pricing reports if it has related-party transactions.

b) Materiality limit and thresholds

> Transfer pricing documentation

There is none specified.

> Master File

There is none specified.

> Local File

No threshold applicable.

> CbCR

There is none specified.

> Economic analysis

Contemporaneous benchmarking is required to support the

arm’s-length nature of the intercompany pricing.

c) Specific requirements

> Treatment of domestic transactions

There is none specified.

> Local language documentation requirement

There is none specified, as transfer pricing documentation

prepared in the English language may be submitted to the GDT.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure or compliance requirement

Annex 1, which is the related-party disclosure form attached to

the CIT return.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Annex 1, which is the related-party disclosure form attached to

the CIT return.

> Related-party disclosures along with corporate income tax

return

Yes, there is a requirement.

> Related-party disclosures in financial statement and annual

report

Yes.

> CbCR notification included in the statutory tax return

None.

> Other information or documents to be filed

None.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Within 90 days after the end of the fiscal year-end.

> Other transfer pricing disclosures and return

The documentation should be filed 90 days after the end of

the fiscal year-end.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

There is none specified.

b) Transfer pricing documentation/Local File preparation

deadline

There is no specified deadline for the preparation of transfer

pricing documentation.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

This is not applicable.

> Time period or deadline for submission on tax authority

request

The documentation should be filed within seven working days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

All five recognized OECD methodologies are accepted in

Cambodia, and there is no priority or preference of methods.

8. Benchmarking requirements

> Local vs. regional comparables

Finding local comparables is extremely difficult because of a

lack of publicly available databases while there are only a few

companies listed on the local stock exchange. Accordingly,

regional comparables are accepted.

> Single-year vs. multiyear analysis

Single year is accepted.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Rollforward study is acceptable.

> Simple, weighted or pooled results

Simple average is acceptable.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is none specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

This will result in the withdrawal of the taxpayer’s certificate of

tax compliance.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, from 10% to 40% of the underdeclared amount depending

on the quantum of the underdeclared amount relative to the

tax amount actually declared.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, from 10% to 40% of the underdeclared amount depending

on the quantum of the underdeclared amount relative to the

tax amount actually declared.

> Is interest charged on penalties or payable on a refund?

Yes, at 2% per month.

b) Penalty relief

Relief from penalties may be negotiated between the taxpayer

and the tax authority. While an administrative appeals tribunal

was recently set up, to date, no taxpayers have approached

the tribunal to settle a tax dispute.

10. Statute of limitations on transfer pricing

assessments

This is 3 years, which may be extended to 10 years if fraud or

obstruction of the implementation of the law is involved.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium, as Cambodia

only introduced its transfer pricing regulations in October

2017, and its transfer pricing audit capabilities are still being

developed. Furthermore, while a dedicated transfer pricing

audit team has been established within the tax authority, its

current resources do not allow it to conduct many transfer

pricing audits simultaneously.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium (same reason as above)

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium (same reason as above)

> Specific transactions, industries or situations, if any, more

likely to be audited

Historically, the garment industry has been targeted by the

revenue authority for transfer pricing audits. The logistic,

shipping and freight-forwarding industries are also being

targeted for transfer pricing audits by the authorities. At an

individual transaction level, payment of management fees,

royalties and payments for other intangibles are all currently

being closely scrutinized by the tax authority.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is none specified.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

No.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

No dedicated thin-capitalization rules exist; however, interest

deductions are capped at 50% of earnings before interest and

taxes (EBIT) for the year in question plus any interest income

earned in that year.

Phat Tan Nguyen

phat.tan.nguyen@vn.ey.com

+ 84938364777

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

General Directorate of Taxation.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The transfer pricing documentation rules were introduced

in the Cameroonian legislation by the 2014 Finance Law.

However, these rules have undergone modifications with the

2018 and 2020 Finance Laws.

> Section reference from local regulation

Section 19 and Section M19a specifies the documentation

requirements.

Section 18 \*ter governs the filing of the transfer pricing

annual return.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

NO

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Cameroon is not a member of the OECD.

The OECD Guidelines on transfer pricing may, however, be

relied on to determine the arm’s-length nature of intragroup

transactions, and supporting documentation should be

prepared.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

This is not applicable.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the transfer pricing documentation must be prepared

for all intercompany transactions (goods, services, rights and

interest on loan, etc.) without exception.

In accordance with the provisions of the 2020 Finance Law,

the obligation to annually file a transfer pricing documentation

has been replaced by the obligation to file an annual transfer

pricing declaration.

Nevertheless, the transfer pricing documentation on its own

must be presented at the start of a tax audit for companies

realizing a turnover equal to or exceeding XAF1 billion.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes; however, to present a transfer pricing documentation,

the local branch should realize a turnover greater than or

equal to XAF1 billion and be under the dependence or control

of another entity within the meaning of Section M19b of the

2020 Finance Law.

To prepare a transfer pricing annual return, the local branch

should belong to the Directorate of Large Businesses

(Direction des Grandes Entreprises — DGE).

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation should cover the taxpayer’s

annual intercompany transactions.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare a stand-alone

transfer pricing report if it has related-party transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

Regarding the annual transfer pricing return, as per Article

18 ter of the 2020 Finance Law, companies belonging to the

Directorate of Large Businesses, and which are under the

dependence or which control other companies, are required

to file an annual transfer pricing return using the template

provided by the tax authorities. The filing must be performed

electronically.

Regarding the transfer pricing documentation, Section M19

of the 2020 Finance Law mentions that it is applicable for

companies realizing a turnover equal or more than XAF1

billion and which are under the dependence or which control

other entities. The transfer pricing documentation is no

longer filed with the tax administration. Instead, it should be

presented to tax inspectors at the beginning of a tax audit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There exists an obligation to document domestic transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be prepared in

the local languages (French or English), as per the General

Administrative Law.

> Safe harbor availability, including financial transactions, if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

This is not applicable.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

A specific template for the annual transfer pricing return has

been shared by the tax authorities.

> Related-party disclosures along with corporate income tax

return

Details of the intragroup transactions are inserted in the

transfer pricing return, which is filed annually within the same

deadline as corporate income tax return. These details contain

information about the related parties.

> Related-party disclosures in financial statement and annual

report

Taxpayers must mention the financial transactions with

entities with which they may or may not have ties in the annual

tax return.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

Transfer pricing documentation must contain information on

the group regarding the statement of interests held in the local

company and a general description of the activity carried out.

This includes changes in the capital that have occurred during

the financial year, general description of the group’s transfer

pricing policy, general description of the functions performed,

and the risks assumed by the associated companies. It

should also present a list of the main intangible assets held,

particularly patents, brands, trade names and know-how.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporate income tax is declared in the annual tax return to be

filed before March 15.

> Other transfer pricing disclosures and return

The annual transfer pricing declaration should be filed before

March 15.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation must be prepared and

presented at the start of an audit.

c) Transfer pricing documentation/local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no deadline for the submission of the transfer pricing

documentation. The documentation must be produced on the

first day of a tax audit.

It is therefore advisable to prepare this documentation in

advance, as the time between the receipt of an audit notice

and the start of the verification may be very short.

> Time period or deadline for submission on tax authority

request

If transfer pricing documentation is not handed over or only

partially handed over to the officials of the tax administration

on the date of commencement of the accounting audit, the tax

administration shall send to the concerned company a formal

warning to produce or complete it within 15 (fifteen) days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No specific information is available.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

There is no specific method provided by the legislation.

However, the method chosen by the company should respect

the arm’s-length principle.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

> Local vs. regional comparables

African comparables are preferable.

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis — four years.

> Use of interquartile range

Yes.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is not necessary to be conducted

every year; update of the financials is permissible.

> Simple, weighted or pooled results

There is none specified.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The presentation of an incomplete transfer pricing

documentation after a formal notice is punishable by a fine

of 5%, per financial year, of the amount of each transaction

concerned by the absent complementary information. The

minimum amount of this fine is set at XAF50 million.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to produce the transfer pricing documentation after

a formal notice is punishable by a fine of 5% of the amount

of each transaction that should have been documented and

per financial year. The minimum amount of this fine is set at

XAF50 million.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties in case of an adjustment are of 30%, 100% and 150%

in the cases of good faith, bad faith and fraud, respectively.

Late payment interest of 1.5% with a maximum of 50% is

equally applicable.

Penalties for an incomplete or for an absence of

documentation does not hinder the application of the

sanctions in case of a tax adjustment.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the above response.

> Is interest charged on penalties or payable on a refund?

Interests are not charged on penalties. Late payment interests

are applied on the principal amount of the tax.

b) Penalty relief

A taxpayer can request total or partial remittance of the

penalties.

If an adjustment is proposed by the tax authority, dispute

resolution options are available — a claim before the General

Director of Taxation and then the Minister of Finance and,

finally, a petition before the court. Also, the taxpayer could

proceed via compromise to obtain moderation of all or part of

the taxes.

10. Statute of limitations on transfer pricing

assessments

There is no statute of limitations specific to transfer pricing

matters. Nonetheless, pursuant to Section M34 of the

Cameroonian Manual of Tax Procedures, the statute of

limitations applicable to taxes is four (4) years. This limitation

period should be applicable to transfer pricing assessments as

well.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit, in general, may be

considered to be high. The likelihood that transfer pricing will

be reviewed as part of that general tax audit is also high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the transfer pricing methodology will be

challenged may be considered to be high because of recent

trends in tax audits by the tax inspectors.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

See the above response.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance pricing agreement and mutual

agreement procedure opportunities

> Availability (unilateral, bilateral and multilateral)

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

based on Section M33 of the Manual of Tax Procedures,

before a contract is concluded or a transaction is performed,

a taxpayer can request a tax ruling (rescrit fiscal) from the

tax authorities to get their position on the potential tax

implications. This article does not exclude transfer pricing

from matters that could be presented within the framework of

a ruling.

However, we note a tendency by the tax administration that

refuses to respond to rulings when they carry on transfer

pricing, stating that such request are APAs, which are not

governed by the Cameroonian legislation.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The specific rules relating to thin capitalization or the debt

capacity concern the deductibility of interest paid to partners

directly or indirectly holding at least 25% of the capital or

voting rights.

Indeed, according to the provisions of Article 7B of the 2021

General Tax Code, to be deductible, the interest paid to these

partners must fulfill the following cumulative conditions:

> The sums paid by all the partners do not exceed one-and-

a-half times the amount of equity.

> The interest paid must not exceed 25% of the tax result

before tax and before deduction of said interest and

depreciation taken into account for the determination of

this result.

> The interest rates should not exceed the Bank of Central

African States (Banque des États de l’Afrique Centrale —

BEAC) plus two points.

> A written and duly registered loan agreement should exist.

> The subscribed share capital should be fully paid up.

Joseph Pagop Noupoue

joseph.pagop.noupoue@cm.ey.com

+ 33 6 74 57 72 12

Contact

Alexis Popov

alexis.popov@ey-avocats.com

+ 33 6 46 79 42 66

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Canada Revenue Agency (CRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Section 247 of the Income Tax Act, Canada (ITA) received

Royal Assent on 18 June 1998 and is generally applicable

to tax years that began after 1997. For transactions after

28 March 2012, Sections 247(12) to 247(15) were added

in 2012 to streamline and rationalize the withholding tax

implications of transfer pricing adjustments. Section 247(2.1)

was added in 2021, applicable to taxation years that begin

after 18 March 2019, to implement an ordering rule to give

priority to Section 247 over other provisions of the ITA.

The CRA provides its administrative interpretations and

guidance with respect to Section 247 and its application

through the release of Information Circulars (ICs), Transfer

Pricing Memoranda (TPMs), and pronouncements at public

conferences, symposia and conventions.

The CRA’s current key pronouncements on transfer pricing

are:

> IC94-4R, International Transfer Pricing: Advance Pricing

Arrangements (APAs), 16 March 2001

> IC94-4R (special release), Advance Pricing Arrangements

for Small Businesses, 18 March 2005

> IC71-17R6, Guidance on Competent Authority Assistance

Under Canada’s Tax Conventions, 1 June 2021

> Fourteen different TPMs

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

1https://www.canada.ca/en/revenue-agency/services/tax/interna-

tional-non-residents/information-been-moved/transfer-pricing.html

Submission deadlines for providing documentation are

unchanged (three months), but administratively, on 31 March

2020, the CRA announced that requests issued before 1 April

2020 and having submission deadlines of 18 March 2020 or

later will be considered canceled and will be reissued at a later

date. This is in order to provide taxpayers with the full three

months allowed.

On 25 May 2020, the CRA announced an extension of time to

file corporate tax returns to 1 September 2020 for returns due

in June, July or August 2020. Documentation is required to be

prepared by the date that the corporate tax return is due.

In a September 2020 conference Q&A response, the CRA

indicated that for transfer pricing purposes it would generally

expect that Canadian government COVID-19 assistance would

be fully retained by the Canadian recipient.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Canada is a member of the OECD.

While no mention is made of the OECD Guidelines in Section

247 of the ITA, the legislative provision is intended to reflect

the arm’s-length principle as set out in the OECD Guidelines.

The CRA has also endeavored to harmonize its administrative

guidance and approach to transfer pricing with the OECD

Guidelines. When dealing with transfer pricing issues

domestically, the relevant Canadian statutory provisions are

relied upon. The CRA’s administrative guidance is considered

instructive, but not binding. The OECD Guidelines and other

OECD reports are not formally recognized as authoritative.

However, courts and other dispute resolution channels (e.g.,

competent authorities) will usually consider the OECD’s

international principles and standards in reaching a decision.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Canada has not adopted or implemented BEPS Action 13 for

transfer pricing documentation in its local regulations. Rather,

the jurisdiction relies on the transfer pricing documentation

framework outlined in Section 247(4)(a)(i) to (vi) of the ITA.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it is so as of 11 May 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, documentation needs to be prepared contemporaneously

but is only required to be submitted upon a request by CRA to

do so.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, it should comply with local transfer pricing rules to the

extent that the local branch has transactions with non-arm’s-

length persons, and those transactions are relevant to the

operation of the business in Canada.

> Does transfer pricing documentation have to be prepared

annually?

Yes, under local jurisdiction regulations, transfer pricing

documentation should completely and accurately describe

material changes in the year (if the documentation was

previously prepared).

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity is required to separately document its transfer

pricing. Documentation reports prepared on an MNE-group

basis may be acceptable as long as the transactions by each

entity are discretely and adequately documented.

b) Materiality limit and thresholds

> Transfer pricing documentation

This is not applicable; however, reporting of transactions on

Form T106 is required only if the total reportable transactions

exceed CAD1 million.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The limit is EUR750 million.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The transfer pricing documentation is acceptable in English or

French; however, there is no specific mandate by tax law.

> Safe harbor availability, including financial transactions, if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

Testing of each discrete transaction is preferable to

aggregation.

> Any other disclosure or compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Refer to the T106 details in the section above.

> Related-party disclosures along with corporate income tax

returns

Taxpayers are required to file a T106 information return

annually, reporting the transactions undertaken with non-

arm’s-length non residents during the taxation year. This

requirement applies where the value of transactions with

non-arm’s-length non residents in the aggregate exceeds CAD1

million in the taxation year. The T106 is a separate information

return, but it is usually filed together with the corporate tax

return (although there are separate penalties if the T106

information return is filed late). Data from the T106 is entered

into a CRA database and is used to screen taxpayers for

international tax audits.

> Related-party disclosures in financial statement and annual

report

No.

> CbCR notification included in the statutory tax return

No.

> Other information or documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporate income tax return should be filed within six months

after year-end for corporations and within five months after

year-end for partnerships.

> Other transfer pricing disclosures and return

T106 information returns should be filed within six months

after year-end for corporations and within five months after

year-end for partnerships.

> Master File

There is no requirement to file a Master File.

> CbCR preparation and submission

The report should be submitted no later than 12 months after

the last day of the fiscal year to which the CbCR relates.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation should be completed by the

time of filing the tax return, which is six months after year-

end for corporations and five months after year-end for

partnerships.

c) Transfer pricing documentation/Local File submission

deadline

This is not applicable unless the transfer pricing

documentation is requested by the CRA, at which time, the

taxpayer will have three months to provide the documentation

to the CRA.

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

Taxpayers must provide documentation to the CRA within

three months of service, made personally or by registered or

certified mail, of a written request under Subsection 247(4).

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If yes, specify which deadlines

are impacted

Submission deadlines for providing documentation are

unchanged (three months), but administratively, on 31 March

2020, the CRA announced that requests issued before 1 April

2020 and having submission deadlines of 18 March 2020 or

later will be considered canceled and will be reissued at a later

date. This is in order to provide taxpayers with the full three

months allowed.

On 25 May 2020, the CRA announced an extension of time to

file corporate tax returns to 1 September 2020 for returns due

in June, July or August 2020. Documentation is required to be

prepared by the date that the corporate tax return is due.

No further extensions were provided in 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

For international transactions, the CRA accepts the transfer

pricing methods recommended in the OECD Guidelines when

such methods are applied correctly and result in an arm’s-

length price or allocation. Commonly accepted transfer pricing

methods include CUP, resale price, cost plus, profit split

(residual and contribution) and TNMM.

Domestic transactions may conceptually be subject to transfer

pricing approaches, but they are not addressed by the transfer

pricing rules in Section 247 of the ITA. Other provisions that

apply domestically to transactions between non-arm’s-length

persons for inadequate consideration, and to whether an

expense is reasonable, may invite reference to transfer pricing

approaches.

b) Priority and preference of methods

Traditionally, the CRA considered that, even though Section

247 does not stipulate so, the above-noted transfer pricing

methods form a natural hierarchy, with the CUP method

providing the most reliable indication of an arm’s-length

transfer price or allocation. Traditionally, the CRA did not

require or impose a best-method rule.

The CRA believes that the most appropriate method to be used

in any situation will be that which provides the highest degree

of comparability between transactions, following an analysis of

the hierarchy of methods.

In 2012, following the 2010 revisions to the OECD Guidelines,

which it endorsed, the CRA published TPM-14. While not

wholly abandoning the concept of a natural hierarchy of

methods, it indicated that accepting the preferred method

in a particular circumstance would depend on the degree of

comparability available under each of the methods and the

availability and reliability of the data.

8. Benchmarking requirements

> Local vs. regional comparables

Local benchmarks are preferred following the jurisdiction

of the tested party. For Canada, Canadian benchmarks are

preferred, but generally, North American companies are

acceptable as comparables.

> Single-year vs. multiyear analysis for benchmarking

Single-year testing is generally required, but multiple-year data

may be considered in setting pricing under APAs.

> Use of interquartile range

The full range of comparable results is relevant for testing

transfer prices; quartile results are not critical but may be

presented for information purposes along with the median.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

It is not necessary for a fresh benchmarking search to be

conducted every year; rollforward and update of the financials

of a prior study are acceptable if the facts and circumstances

have not materially changed for the transaction from those

applicable to the year of the study.

> Simple, weighted or pooled results

The taxpayer’s results are tested on a single-year basis.

Nonetheless, comparable company data is often presented for

multiple years using a weighted average.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

This is not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

Subsection 247(3) of the ITA imposes a penalty of 10% of the

net upward transfer pricing adjustments. These penalties are

applicable if such adjustments exceed the lesser of 10% of the

taxpayer’s gross revenue for the year or CAD5 million and if

the taxpayer has not made reasonable efforts to determine

and use arm’s-length transfer prices.

As set out in TPM-13, all proposed reassessments involving

potential transfer pricing penalties must be referred to the

Transfer Pricing Review Committee (TPRC) for review and

recommendation for final action. After considering the facts

and circumstances and the taxpayer’s representations, the

TPRC will conclude whether a transfer pricing penalty is

justified.

A taxpayer will be deemed not to have made reasonable

efforts to determine and use arm’s-length transfer prices

or allocations unless the taxpayer has prepared or obtained

records or documents that provide a description that is

complete and accurate, in all material respects, for the items

listed in Subsection 247(4) of the ITA (see the “Transfer

pricing documentation requirements” section above), and

such documentation exists as of the tax filing due date. For

corporations, such documentation must exist six months after

the year-end. For partnerships, the due date is five months

after year-end. Further, a taxpayer will be deemed not to have

made reasonable efforts to determine and use arm’s-length

transfer prices or allocations if the taxpayer does not provide

the records or documents to the CRA within three months of

the issuance of a written request to do so.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, transfer pricing-related penalties are assessed without

reference to the taxpayer’s income or loss for the relevant

reporting year and are not tax deductible.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

Yes, interest on penalties is payable from the date of

assessment of the penalty, at 5% currently in 2022; if the

assessed penalty is subsequently rescinded, the interest would

be reversed.

b) Penalty relief

If a taxpayer is considered to have made reasonable efforts to

determine and use arm’s-length transfer prices or allocations

with respect to adjusted, non-arm’s-length transactions,

no penalty is assessed. No transfer pricing penalties under

Subsection 247(3) of the ITA should arise with respect to

transactions covered by an APA, as long as the APA remains in

effect and the taxpayer complies with its terms and conditions.

When the CRA has reassessed a transfer pricing penalty,

and the Canadian competent authority and relevant foreign

counterpart negotiate a change to the amount of the transfer

pricing adjustment, the CRA will adjust the amount of the

Canadian transfer pricing penalty accordingly. If the result

of the change is that the adjustment no longer exceeds the

penalty threshold, the penalty is rescinded.

An assessed transfer pricing penalty may also be vacated by

the CRA Appeals Branch upon review.

10. Statute of limitations on transfer pricing

assessments

Under Subsection 152(4) of the ITA, the Minister of National

Revenue ordinarily cannot reassess a taxpayer after the

“normal reassessment period,” as defined in Subsection

152(3.1) of the ITA. For most multinational taxpayers, that

period is four years beginning after the earlier of the day of

mailing a notice of an original assessment for the year or the

day of mailing an original notification that no tax is payable for

the year. The time limit applies unless the taxpayer has made

misrepresentations, committed fraud or filed a waiver, in which

case, the minister may reassess a taxpayer at any time (i.e.,

without any time limit).

With respect to transactions involving non-arm’s-length

transactions with non residents, the reassessment period is

extended by an additional three years, i.e., to seven years. This

time period may be further extended if the taxpayer provides

the CRA with a waiver (authorization from the taxpayer

to the CRA to waive the time limit for reassessment). The

taxpayer may provide waivers within the seven-year extended

reassessment period. A number of Canada’s tax treaties

restrict the time for Canada to make an adjustment to a period

less than the seven years allowed under the ITA.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

After initially suspending audit activities, the CRA has returned

to full audit activities.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

For large corporations, the likelihood of an annual tax audit

may be considered to be high, as is the likelihood of transfer

pricing being reviewed as part of the audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of a transfer pricing methodology being

challenged, if transfer pricing comes under audit, is also high, as

the CRA does challenge methodology depending on the facts.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If the methodology is challenged, then the likelihood of an

adjustment may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to undergo an audit

Corporate restructuring, royalties, hybrid debt transactions,

financial products and corporate services charges are more

likely to undergo an audit.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The CRA launched its APA program in July 1993. As set out

in IC94-4R, it allows taxpayers to pursue unilateral, bilateral

and multilateral APAs. In addition, the CRA has made a small-

business APA program available to Canadian taxpayers under

certain conditions. The CRA no longer charges taxpayers to

complete an APA.

An APA request can cover a taxation year if the request is

made before the filing due date for that year.

> Tenure

Typically, the tenure is five years, but terms can vary; often,

additional years are added at the end of an APA negotiation.

> Rollback provisions

TPM-11 discusses the CRA policy with respect to rolling an

APA back to prior years, with the main limitation being that

APAs may not be rolled back to years for which a request for

contemporaneous documentation under Section 247 has been

issued. Effectively, this means that APAs cannot be rolled back

to tax years that are currently undergoing a transfer pricing

audit.

> MAP opportunities

Yes, the taxpayer may request MAP consideration under an

applicable treaty.

A time limit specified under either the “associated enterprises”

or the “mutual agreement procedure” provision of a double

taxation treaty may be relevant in the case of transfer pricing

and may not necessarily be the same limit in each article.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

The Canadian competent authority has fully returned to work,

although it is continuing to experience slower than normal

interactions with a number of jurisdictions. It has shown

greater willingness to interact remotely on cases with other

jurisdictions and with taxpayers and representatives. Public

comments by the CRA indicate it understands that pandemic

may impact the critical assumptions for previously negotiated

APAs and it may need to revisit those APAs on a case-by-case

basis if critical assumptions are breached. On APAs currently

under negotiation, the Canadian competent authority will

consider the impact of the pandemic on the APA participants

on a case-by-case basis. Some APA cases have been settled

with truncated term so as to not cover COVID-19-influenced

years. The CRA indicated in 2020 that it did not consider that

current MAP cases were impacted by the pandemic given that

MAP cases currently under negotiation do not include 2020,

and future events would not be taken into consideration for

earlier years. That is likely still the case. The CRA indicates

that, for transfer pricing benchmarking purposes, it intends to

continue to rely on single-year benchmarking results.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under Subsection 18(4) of the ITA, deductibility of interest

paid to related non resident people is limited to debt equal to

1.5 times the equity. Debt capacity is not subject to specific

regulation.

Tara Di Rosa

tara.dirosa@ca.ey.com

+ 1 4162006356

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

National Directorate of State Revenues (Direcção Nacional de

Receitas do Estado — DNRE).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Articles 65 and 66 of the Corporate Income Tax Code (CITC)

define the arm’s-length concept, the eligible TP methods, the

definition of special relations and declarative requirements.

Ministerial Order No. 75/2015 was published by Cape Verde’s

Ministry of Finance (Ministério das Finanças) on 31 December

2015 (TP Ministerial Order).

> Section reference from local regulation

Article 66 of the CITC.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD transfer pricing guidelines/UN

tax manual/EU Joint Transfer Pricing Forum

Cape Verde is not a member of the OECD. It has adopted

general concepts of the UN tax manual and the OECD

Guidelines in its local regulations. Furthermore, the TP

Ministerial Order mentions that the OECD Guidelines are an

important reference on TP matters.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

1https://mf.gov.cv/web/dnre

Cape Verde has not yet adopted BEPS measures in its TP

legislation, but it has already joined the Inclusive Framework

for the global implementation of the BEPS Project.

Recently, the part of Action 13 of the OECD BEPS Action Plan

devoted to CbCR has been introduced in Cape Verde.

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

Only CbCR recommendations have been adopted. The

BEPS Action 13 TP documentation format has not been

adopted in Cape Verde.

> Effective or expected commencement date

CbCR obligation is expected to apply for the fiscal year

2020.

> Material differences from OECD report template or format

There are differences as Cape Verde has not adopted the

Master File and Local File approach. However, Cape Verde

local TP legislation does not outline a specific structure

that the TP report should follow. Instead, it lists (in Article

15 of the TP Ministerial Order) the information that the

report should include, which is in line with the OECD TP

Guidelines.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, as per the TP Ministerial Order, taxpayers must maintain

contemporaneous information and documentation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, all taxpayers established in Cape Verde that undertake

related-party transactions with resident or non resident related

entities need to comply with local TP rules.

> Does transfer pricing documentation have to be prepared

annually?

As per the TP Ministerial Order, taxpayers must maintain

contemporaneous information and documentation regarding

the TP policy adopted in the determination of transfer prices

on an annual basis.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

The entities classified as “large taxpayers” are entities with a

turnover greater than CVE200 million or with a global value

of paid tax greater than CVE15 million or entities with a high

level of risk associated.

Additionally, other entities are subject to preparation of the

TP documentation — namely, entities benefiting from the

privileged taxation regime, as defined in the General Tax Code,

permanent establishments of non resident entities and entities

specifically designated by the tax authorities for this purpose.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The report should be consistent with OECD requirements (i.e.,

group consolidated revenue of EUR750 million).

> Economic analysis

They are the same as those identified above. Economic

analysis should be a part of the TP documentation, and there

are no separate criteria for this obligation.

c) Specific requirements

> Treatment of domestic transactions

They have to be reported and should be in line with the arm’s-

length principle.

> Local language documentation requirement

The documentation should be in Portuguese.

> Safe harbor availability, including financial transactions, if

applicable

This is not explicitly addressed in the legislation.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is preferred. Aggregation is allowed only if

certain conditions are met.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The main disclosure requirements at this level are contained in

the Annual Tax and Accounting Information Return (declaração

anual de informação contabilística e fiscal), in which a taxpayer

should, on a yearly basis, indicate whether it has engaged,

during that tax year, in intragroup transactions with entities in

which it is in a situation of special relation, as well as:

> Identify the related entities

> Identify and declare the amount of transactions conducted

with each of the related parties

> Declare if it has organized, by the time the transactions

took place, and maintains the documentation relating to

the transfer prices applied

The deadline for the submission of such return corresponds

to the end of the seventh month after the corresponding tax

year-end.

> Related-party disclosures along with corporate income tax

return

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

above).

> Related-party disclosures in financial statement and annual

report

Yes.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Five months from the fiscal year-end.

> Other transfer pricing disclosures and return

Seven months from the fiscal year-end.

> Master File

This is not applicable.

> CbCR preparation and submission

The deadline for submission of the CbCR is the end of the 12th

month following the fiscal year-end.

> CbCR notification

The deadline for preparation or submission for the CbCR

notification is the 30th day of the 5th month following the

fiscal year-end.

b) Transfer pricing documentation/Local File preparation

deadline

In the absence of provisions covering the deadline to

prepare TP documentation, it is reasonable to assume that it

corresponds to the deadline of the submission of the Annual

Tax and Accounting Information Return — the end of the

seventh month after the corresponding tax year-end.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

There is no statutory deadline for submission of TP

documentation, but it should be submitted upon request.

> Time period or deadline for submission upon tax authority

request

This is not applicable.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

All five widely accepted methods recognized among TP

administrators and practitioners are acceptable under the local

regulations: CUP, resale price, CPM, profit split and TNMM.

It is foreseen that the most appropriate method should

be applied to a controlled transaction or to a series of

transactions to determine whether those transactions comply

with the arm’s-length principle.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific requirement.

> Single-year vs. multiyear analysis of benchmarking

There is no specific requirement.

> Use of interquartile range

There is no specific requirement.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement.

> Simple, weighted or pooled results

There is no specific requirement.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Entities refusing to file or to prepare the relevant transfer

pricing documentation (if not regarded as tax fraud) are liable

for a penalty ranging from CVE100,000 to CVE2.5 million.

Formerly, the penalty for negligent non-filing or late filing of

the transfer pricing documentation was set at CVE375,000.

> Consequences of failure to submit, late submission or

incorrect disclosures

See above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

There is none specified.

b) Penalty relief

There is none specified.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations in Cape Verde is five years, counting

from the beginning of the fiscal year after the one in which the

tax issue was raised.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not available.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

It’s medium. We are aware that TP audits are already

occurring.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It’s medium. We are aware that TP audits are already

occurring.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

It’s medium. We are aware that TP audits are already

occurring.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance pricing agreement and mutual

agreement procedure opportunities

> Availability (unilateral, bilateral and multilateral)

This is not applicable.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Only if available in the specific context of a convention to avoid

double taxation, namely with Portugal.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not available.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

No relevant regulations or rulings are in place.

Paulo Mendonca

paulo.mendonca@pt.ey.com

+ 351937912045

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

General Director of Taxation.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The transfer pricing regulation has been introduced in Chad

by the Finance Law, 2018, through its Articles 4, 20 and 23.

Finance Bill for 2019 has added an additional article (Art. 15),

and the Finance Bill for 2020 has added Article 30.

> Section reference from local regulation

The Article 1000 of the General Tax Code and the rules n° 04/

MFB/SE/DGM/DGI/DELC/2018, 8 July 2018, of the General

Director of Taxation give more guidelines about the transfer

pricing requirements.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Chad is not a member of the OECD.

The OECD Guidelines on transfer pricing may be relied

upon to determine the arm’s-length nature of international

transactions and supporting documentation should be

prepared. Also, the Chad Government refers to the OECD

exclude list for transfer pricing purposes.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is none specified.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

No, there are guidelines and rules for a transfer pricing return

form to be filed and submitted alongside the annual tax return

every year by companies.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

There is no transfer pricing documentation in Chad. There is a

transfer pricing return form to be prepared annually.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare a stand-alone

transfer pricing return.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable. Only transfer pricing return is applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

This is not applicable.

> Local language documentation requirement

French or Arabic.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

No.

> Any other disclosure or compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Yes, there is a transfer pricing return.

> Related-party disclosures along with corporate income tax

return

Taxpayers must disclose related-party transactions.

> Related-party disclosures in financial statement and annual

report

Yes, the details of the information to be included in the

transfer pricing return form are given in the document

“Instruction Specifying the Procedures for Applying the

Transfer Pricing Rules.”

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

It’s 30 April of each year with possibility of extension to 15

May if agreed by the tax administration.

> Other transfer pricing disclosures and return

It’s 30 April of each year with possibility of extension to 15

May if agreed by the tax administration.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing return deadline is 30 April of each year

with possibility of extension to 15 May if agreed by the tax

administration.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The transfer pricing return must be submitted each year, along

with the annual tax return, no later than 30 April of each year,

for enterprises whose shares or voting rights are held directly

or indirectly, or that hold directly or indirectly, the shares or

voting rights of a company abroad.

The late submission penalty is applied as below:

> XAF10 million if submitted after 15 May to 31 May

> XAF20 million if submitted after 1 June to 30 June

> XAF25 million if submitted after 1 July to 31 July

> XAF5 million for each month from 1 August

If the tax administration, during a general tax audit, has

evidence to presume that such companies had indirectly

transferred profit abroad or had conducted intragroup

transactions not reported in the transfer pricing return, the

following sanctions are applied:

> Rejection of deductibility of intragroup transaction

> Fine of 5% of the total amount of the intragroup

transactions of the company with a minimum of XAF50

million per fiscal year

> Time period or deadline for submission upon tax authority

request

Please see the above comments.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

No.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specified method as per the tax law, but the

company should specify the method used.

> Single-year vs. multiyear analysis

There is no specified method as per the tax law, but the

company should specify the method used.

> Use of interquartile range

There is no specified method as per the tax law, but the

company should specify the method used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specified method as per the tax law, but the

company should specify the method used.

> Simple, weighted or pooled results

There is no specified method as per the tax law, but the

company should specify the method used.

> Other specific benchmarking criteria, if any

There is no specified method as per the tax law, but the

company should specify the method used.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not provided.

> Consequences of failure to submit, late submission or

incorrect disclosures

The late submission penalty is applied as per the below:

> XAF10 million if submitted after 15 May to 31 May

> XAF20 million if submitted after 1 June to 30 June

> XAF25 million if submitted after 1 July to 31 July

> XAF5 million for each month from 1 August

Non-correct disclosure and absence of transfer pricing return

are sanctioned as follows:

> Rejection of deductibility of intragroup transaction

> Fine of 5% of the total amount of the intragroup

transactions of the company with a minimum of XAF50

million per fiscal year

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties cannot be assessed if companies make the

adjustment before any tax audit and no later than 30 June.

Any adjustment after 30 June will not be accepted.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not provided.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

The enterprise can request total or partial deductibility of the

expenses.

10. Statute of limitations on transfer pricing

transfer pricing assessments

There is no specific statute of limitation for transfer pricing, so

the statute of limitation that will be applied is the one for the

annual tax return which is three years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high, medium or low)

Medium.

> Specific transactions, industries and situations, if any, more

likely to be audited

Medium.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The tax law in Chad is silent on APAs.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Yes, indeed, when a loan is concluded with a parent company,

the General Tax Code provides two types of limitations in

deduction of related loan interest. The first limitation relates

to the basis of calculation. Indeed, the basis of calculation of

allowable interest on loan granted by a shareholder cannot

exceed half of the share capital of the company. The second

limitation relates to the applicable rate, which should be a

maximum of the Bank of Central African States (Banque des

États de l’Afrique Centrale — BEAC) rate plus two points.

When a loan is concluded with affiliate companies that are not

parent companies, the interest is not deductible for corporate

income tax purposes.

Anselme Patipewe Njiakin

anselme.patipewe.njiakin@td.ey.com

+ 235 62 32 02 27

Contact

Alexis Popov

alexis.popov@ey-avocats.com

+ 33 6 46 79 42 66

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Internal Tax Service (Servicio de Impuestos Internos — SII).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 41E of the Income Tax Law (ITL) establishes that

any cross-border transaction held with a related party, or

with an entity domiciled in a tax haven, or in a back-to-back

transaction or any transaction resulting from a restructuring

process is subject to transfer pricing regulations.

> Section reference from local regulation

Article 41E defines situations where parties are deemed

to be related, for example, if the counterparty is domiciled

or resident in a jurisdiction or territory considered as a

preferential tax regime. For this purpose, any jurisdiction or

territory included by SII in the list of Article 41H of the ITL

would be considered as a preferential tax regime.

Additionally, the natural persons will be considered as related

parties if they are spouses or have a kinship by consanguinity

or affinity up to the fourth degree, inclusive.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No, all taxpayers have right to require an extension of 90

days to comply with the transfer pricing obligations, from the

beginning of the law.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Chile has been a member of the OECD since May 2010.

Although the transfer pricing rules do not mention the OECD

Guidelines, the SII applies the OECD Guidelines as a source of

1http://homer.sii.cl/

interpretation on transfer pricing audits or APAs.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Master File and CbCR are applicable for headquarter

entities of Chilean multinational groups that meet the

requirements. Master File is applicable from FY2020.

Local File is applicable for some Chilean entities that

belongs to multinational groups. The obligation to submit

the Local File annually applies from FY2020.

> Effective or expected commencement date

Local File and Master File are applicable from FY2020.

> Material differences from OECD report template or format

Along with the Master File document, additional

information such as intercompany agreements, full

shareholder chart and APAs in force, among other

information, must be attached.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the transfer pricing documentation is recognized by

the law as a valid proof during a transfer pricing audit. From

FY2020 the documentation is mandatory for some taxpayers

in Chile.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, the law specifically determines that branches are

considered as individual entities for transfer pricing purpose.

> Should transfer pricing documentation be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Transfer pricing documentation should always be prepared

by taxpayers with related-party transactions, but it is only

mandatory to submit annually for those taxpayers that meet

the following requirements:

> Being classified as large taxpayer

> Having related-party transactions higher than CLP200

million

> Belonging to an MNE that is obligated to submit the CbCR

in any jurisdiction

> Master File

Master File is applicable from FY2020, and it is only mandatory

for those HQ entities of Chilean MNE groups that are obligated

to submit the CbCR in Chile.

> Local File

Local File is applicable from FY2020.

> CbCR

Since 1 January 2016, Chilean parent companies or

controllers of MNE groups with revenues higher than EUR750

million, or its equivalent amount in CLP, must prepare the

CbCR form (Affidavit No. 1937).

Additionally, since the commercial year 2018, Form 1907,

Annual Transfer Pricing Affidavit, includes some specific fields

to notify which entity of the group is submitting the CbCR and

in which jurisdiction it is being done.

> CbCR notification and CbC report submission requirement

Only the ultimate parent company (surrogate parent entity)

that consolidates the financial statements in Chile will be in

charge of submitting a CbCR (Affidavit No. 1937). According

to Chilean rules, a different entity may be appointed to submit

this report. Only in such a case, the Chilean entity appointed

by the foreign ultimate parent entity has to notify the SII of

such appointment within 30 days prior to the expiration date

on 30 June. However, the appointment of a surrogate entity is

not mandatory.

> CbCR notification included in the statutory tax return

Since the commercial year 2018, the CbCR notification is

included in Form 1907. The SII has included some specific

fields in this form to inform which entity of the group is

submitting the CbCR and in which jurisdiction it is being done.

> Economic analysis

Taxpayers should prepare a transfer pricing study that includes

the economic analysis done in order to prove the prices,

values or margins obtained in transactions with foreign related

parties. The SII may require these analyses for any transaction

carried out with a foreign related party. However, for the

annual Form 1907, it is only necessary to inform the method

for those transactions higher than CLP200 million.

c) Specific requirements

> Treatment of domestic transactions

Although Chilean transfer pricing rules do not include a formal

obligation to inform transactions between Chilean related

parties, there is a general rule in the Chilean ITL that gives

the SII the authority to assess whether these transactions

were carried out according to the market prices. In practice, a

transfer pricing team of the SII assesses transactions between

Chilean related parties.

> Local language documentation requirement

Some information can be provided in English; however, the

default language for the documentation must be Spanish.

> Safe harbor availability, including financial transactions, if

applicable

The ITL establishes that the royalty rate cannot exceed 4% of

the company’s sales when the said transaction has been held

with a related party, and other specific conditions need to be in

place. This is a limit to the deductibility of expenses.

> Is aggregation or individual testing of transactions preferred

for an entity

Both alternatives are applicable if they are duly explained

considering the terms of the case.

> Any other disclosure or compliance requirement

With the new transfer pricing obligations in place (i.e., Form

1950, Annual Master File Affidavit, and Form 1951, Annual

Local File Affidavit), a lot of information should be included as

part of this compliance, for example, legal structures, related-

party agreements, financial statements, organizational chart

with the detail of employees by area, among others.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers listed by the Large Taxpayers Directorate (grandes

contribuyentes) or classified as large size must file another

Form 1913, Global Characterization of the Taxpayer, which

must be submitted before the annual income tax return in

any case before 30 April. This affidavit has several questions

related with transfer pricing matters.

> Related-party disclosures along with corporate income tax return

The transfer pricing return (Form 1907, Annual Transfer

Pricing Affidavit) must be filed by the last business day of June

with respect to the information of the prior fiscal year (a three-

month extension may be obtained, one time only each year).

All transactions with foreign related parties must be reported,

but only transactions greater than CLP200 million in annual

basis (approximately USD300,000) need include details about

transfer pricing methodology for analysis. This threshold is not

applicable to financial operations that must be fully reported

regardless of the amount. The mentioned financial operations

include date, maturity, interest rate, principal and kind of

interest rate.

Taxpayers that meet any of the following conditions must file

the transfer pricing return (Form 1907):

> Companies considered medium or large size as of 31

December of the commercial year to be disclosed

> Companies that entered into transactions with parties

domiciled in a jurisdiction or territory which is considered

a preferential tax regime, according to Article 41H of the

ITL

> Small companies that have entered into transactions of

more than CLP500 million (approximately USD725,000 or

the equivalent in a foreign currency) with non-domiciled

related parties as of 31 December of the commercial year

to be disclosed

Transactions with related parties must be registered by the

type of transaction and by related entity. The SII also requires

technical aspects to be filed, such as:

> Transfer pricing method used

> Profit-level indicator (PLI) applied

> Global or segmented analysis

> Tested party and its result in the transaction analyzed

> Whole operating margin of the Chilean entity, regardless

of the method selected for the economic analysis

> Other information or documents to be filed

There are other Forms to be filed annually, such as, 1913

which is only applicable for large taxpayers in Chile, Form

1951 (Local File), applicable for those entities that belongs to

a MNE group filing the CbCR anywhere, with transactions with

related parties higher than CLP200 million and being large

entities.

And other Forms such as Form 1937, which is the CbCR and

the Form 1950 (MasterFile) that must be submitted by those

entities that are obligated to file the CbCR in Chile.

All of them have the same deadline, last business day of June

of each year.

Some of those forms, such as 1950 and 1951, require also to

include some documents together with the Form, for instance,

copy of the intercompany agreements, financial statements,

group shareholding charts, among other information.

> Related-party disclosures in financial

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporate income tax return must be filed by 30 April or after,

depending on the result of the taxes to be paid (payment or

refund).

> Other transfer pricing disclosures and return

Transfer pricing return (Form 1907) should be filed by the last

business day of June with respect to the information of the

prior fiscal year (a three-month extension may be obtained,

one time only each year).

> Master File

Master File should be filed by the last business day of June with

respect to the information of the prior fiscal year (a three-

month extension may be obtained, one time only each year).

> CbCR preparation and submission

The CbCR (Form 1937) must be prepared and submitted by

the last business day of June with respect to the information

of the prior fiscal year (a three-month extension may be

obtained, one time only each year).

> CbCR notification

If the Chilean entity is designated as surrogate entity, it has to

notify from 1 June to 30 June. The constituent entities should

notify CbCR through the Form 1907 at the end of June (or

September).

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation must be prepared

contemporaneously and provided upon request. It is highly

recommended that the transfer pricing documentation be

prepared in Spanish; however, for Form 1951, it is possible to

attach it in English.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The same as Form 1951, if the form is not applicable, the

entity should file the Local File upon requested — usually in a

period of maximum 30 days.

> Time period or deadline for submission on SII request

The SII allows a maximum of 30 days for delivery from the

time of the request.

d) Are there any new submission deadlines per

COVID-19-specific measures? If Yes, specify which

deadlines are impacted

No. All taxpayers have the right to request an extension of 90

days to comply with the transfer pricing obligations.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes; however, for domestic transactions, there are no methods

determined by law.

b) Priority and preference of methods

The transfer pricing methods accepted are the same as those

established by the OECD Guidelines. Additionally, a sixth or

“other” method is acceptable, when not one of the other

methodologies is applicable.

Transfer pricing rules in Chile consider the “best method rule,”

meaning taxpayers must choose the method that best reflects

the transaction’s economic reality to determine its market

value. The taxpayer should be able to demonstrate or sustain

the applicability of such a method over the others.

8. Benchmarking requirements

> Local vs. regional comparables

Foreign comparable entities and transactions are accepted

in the absence of local comparable entities and transactions,

if they are similar in functions, assets and risks of the tested

party or tested transaction.

> Single-year vs. multiyear analysis

Single-year testing is recommended for tested parties.

However, for the comparable information, it is usual to apply

multiple-year analysis to perform the range of the comparable

values.

If considering the characteristics of the company is necessary

to apply a multiple-year approach for the tested party, it is

possible to explain the economic reasons to apply it.

> Use of interquartile range

Although the Chilean transfer pricing Rule (ITL Article 41E)

does not state a formal parameter to compare the prices,

values or margins obtained by the tested party with the

interquartile range, its use is highly recommended because the

SII usually applies this criteria on transfer pricing audits. The

SII usually applies the interquartile range, and now, under the

instructions of the Form 1951, the interquartile range must be

determined and informed.

> Fresh benchmarking search every year vs. rollforwards

and update of the financials

The Chilean transfer pricing rules do not specify whether a

fresh benchmarking is necessary every year; nevertheless, the

practice follows the OECD recommendations, considering both

options.

> Simple, weighted or pooled results

The weighted average is usually used; however, it is not

mandatory. Best practice must be applied by tax authority.

> Other specific benchmarking criteria, if any

It is important that the financial information used for the

tested party be comparable to the financial information used

for the benchmark of comparable information; for example,

differences in accounting standards used may require some

comparability adjustments.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The monetary penalty for not having Forms 1907, 1937, 1950

or 1951; submitting them late; or filing them with mistakes is

between 10 Chilean annual tax units and 50 Chilean annual

tax units, which is approximately USD8,540 to USD42,702,

but no more than an amount equal to 15% of the equity of the

taxpayer.

> Consequences of failure to submit, late submission or

incorrect disclosures

The monetary penalty for not having Forms 1907, 1937, 1950

or 1951; submitting them late; or filing them with mistakes is

between 10 Chilean annual tax units and 50 Chilean annual

tax units, which is approximately USD8,540 to USD42,702,

but no more than an amount equal to 15% of the equity of the

taxpayer.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Regarding transfer pricing adjustments, price, value or

profit margin differences that result from applying Chilean

transfer pricing rules are subject to a single tax penalty of 40%

(before January 2017, the rate was 35%) of the adjustment

determined.

If the SII determines the transfer pricing adjustment as a result

of a transfer pricing audit without enough collaboration of the

taxpayer, an additional 5% may be applied, unless the taxpayer

rendered the information and documentation required during

the audit process by the SII, as determined by the former in a

notification.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

The application of penalties depends on the potential

adjustment determined by the Chilean IRS. Having available

the TP documentation would imply a better defense of the

transfer pricing methods applied however if it is deemed non-

contemporaneous it might be considered not enough proof

about the proper application of the methods but this lack of

information has not a specific penalty, unless it involves a fault

in presentation of the Form 1951 (local File).

> Is interest charged on penalties or payable on a refund?

Interest and readjustments for inflation are determined under

the application of ITL Article 53.

b) Penalty relief

There is no prescribed penalty relief for not preparing

and submitting transfer pricing documentation. However,

maintaining contemporary transfer pricing documentation

would be accepted by the SII as an important proof of the

taxpayer’s “good faith.” In these cases, the transfer pricing

penalty applicable to the potential adjustments may be

reduced.

There are discounts applicable if the payment is made in a

short period.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitations is three years from the

latest date on which the tax was due. It could be extended to

six years if no return is filed or if the authorities find that the

returns are false.

In Chile, the transfer pricing rules are “substance over form.”

In this sense, the SII can challenge not only the arm’s-length

principle but also the effectiveness of the transaction and its

economic substance.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No formal communication regarding impact on tax audit

deadlines. However, some tax auditors may provide a short

extension to answer questions. The hard deadline for their

internal procedures have not been moved. The SII has an

electronic space in its website where taxpayers may upload

relevant information, so it is not necessary to give information

physically.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Currently, there is a high probability that the SII will audit

transfer pricing (most likely if the company has expenses

related to services received, royalties paid or interest paid or is

operating in loss).

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium or high

depending on the specific audit programs determined annually

by the SII.

> Likelihood of an adjustment, if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. If the

methodology is challenged, the SII would probably get a

different result than the taxpayer.

> Specific transactions, industries and situations, if any, more

likely to be audited

In Chile, there are specific programs that assess transfer

pricing transactions in the mining industry. The transactions

that the SII assesses in a transfer pricing audit are intragroup

services (management, technical and routine services),

payment of royalties, interest accrued, payments for

reimbursement of expenses, commodity transactions from

different industries, and others.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Taxpayers can propose APA procedures in relation to their

transactions. To this end, it is necessary to submit a formal

request and a transfer pricing study. The SII, within six months

of the taxpayer sharing all the necessary information, can

accept all or part of the taxpayer’s request or refuse it. The

SII could subscribe to unilateral or multilateral APAs. The

decision of the SII cannot be challenged through a legal or

administrative process.

> Tenure

The APA, once stipulated, can last up to four commercial

years, after which it can be extended with a prior agreement

between the parties involved. This term could be reduced if

economic circumstances change drastically from one year to

another.

Currently, the Chilean Administration is very interested in

signing these kinds of agreements, so it is recommended to

use this approach in Chile now.

> Rollback provisions

There is none specified in the law, although it can be discussed

during an APA.

> MAP opportunities

MAP process is recognized by the tax treaties signed by Chile;

however, it is not currently being applied.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No; however, APAs have been used by the SII and taxpayers

more than before.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

For transfer pricing purpose, the thin-capitalization analysis is

based on benchmarking, in order to prove if this transaction

would be agreed between unrelated parties. These analyses

are based on the OECD Guidelines, without any specific rule

about that.

On the other hand, there are specific tax thin-capitalization

rules applicable for withholding-tax purposes.

Janice Stein

Janice.Stein@cl.ey.com

+ 56226761334

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

State Taxation Administration (STA)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

As of 31 December 2021, there are five STA releases that

form the overall framework for TP enforcement in mainland

China:

> Bulletin Gonggao [2021] No. 24 (Bulletin 24) — Bulletin

on Simplified Procedures for Unilateral Advance Pricing

Arrangements (effective from 1 September 2021)

> Bulletin Gonggao [2017] No. 6 (Bulletin 6) — Bulletin

on Supervisory Measures for Special Tax Investigation

Adjustments and Mutual Agreement Procedures (MAPs)

(effective from 1 May 2017)

> Bulletin Gonggao [2016] No. 64 (Bulletin 64) — Bulletin on

Issues Related to Improving the Administration of Advance

Pricing Arrangements (effective from 1 December 2016)

> Bulletin Gonggao [2016] No. 42 (Bulletin 42) — Bulletin

on Improving Administration of Related-Party Transaction

Reporting and Contemporaneous Documentation (effective

from the fiscal year 2016 and onward)

> Circular Guoshuifa [2009] No. 2 (Circular 2) —

Implementation Measures for Special Tax Adjustments

(Trial Implementation) (effective from 1 January 2008)

Other relevant STA releases include:

> Circular Guoshuifa [2012] No. 13 — Notice on

Internal Procedures of Special Tax Adjustments (Trial

Implementation): sets out the guidelines for different tax

authorities across China to coordinate their work on tax

investigations (effective from 1 March 2012)

> Circular Guoshuifa [2012] No. 16 — Notice Regarding

Procedural Guidelines for Joint Review of Significant

Special Tax Adjustments Cases (Trial Implementation): sets

up a joint panel review mechanism for cases involving large

taxpayers (capital over RMB100 million or revenues from

main operations over RMB1 billion) to ensure consistency

1http://www.chinatax.gov.cn/eng/

(effective from 1 March 2012)

> Bulletin Gonggao [2013] No. 56 — Bulletin on the

Implementation Measures for Tax Treaty Mutual

Agreement Procedures: supplements Circular 2 guidance

on MAPs under tax treaties — relevant regulations and

rulings (effective from 1 November 2013)

> Bulletin Gonggao [2015] No. 45 — Bulletin on

Strengthening the Follow-Up Monitoring of Cost Sharing

Arrangements: modifies Circular 2 by eliminating

preapproval requirements for entering into a CSA while

strengthening the follow-up monitoring (effective from 16

July 2015)

> Section reference from local regulation

According to Bulletin 42, a related-party relationship is defined

as follows:

> The enterprise directly or indirectly owns 25% or more of

the shares of the other enterprise; a third party directly

or indirectly owns 25% or more of the shares of both the

enterprise and the other enterprise.

> Where one enterprise owns shares of the other enterprise

through an intermediary and the enterprise owns 25% or

more of the shares of the intermediary, the percentage of

indirectly owned shares is deemed to be the same as the

percentage of the other enterprise’s shares owned by the

intermediary.

> Where more than two individuals who are spouses, lineal

relatives by blood, or under other custodianship or family

maintenance relationships co-own the shares of one

enterprise, the percentage of owned shares is jointly

calculated.

> Where one enterprise owns the shares of another

enterprise or a third party owns the shares of both

enterprises, but the percentages of the shares being

owned does not meet the threshold set out in (1), debt

between the enterprise and the other enterprise accounts

for 50% or more of total paid-in capital of any of the two

enterprises, or 10% or more of one enterprise’s debt is

guaranteed by the other enterprise (other than loans or

guarantees between independent financial institutions).

> Where one enterprise owns the shares of another

enterprise or a third party owns the shares of both

enterprises, but the percentages of the shares being

owned does not meet the threshold set out in (1), one

enterprise’s business operations depend on the other

enterprise’s patents, non-patented know-how, trademarks,

copyrights or other concessions.

> Where one enterprise owns the shares of another

enterprise or a third party owns the shares of both

enterprises, but the percentages of the shares being

owned does not meet the threshold set out in (1), one

enterprise’s business operations, such as the purchase,

sales, receipt of services or provision of services, are

controlled by the other enterprise.

> More than half of the board members or senior

management (including board secretary of a listed

company, general manager, vice general manager, chief

finance officer and other personnel stipulated in the

articles of association) of one enterprise are appointed or

delegated by the other enterprise; such personnel of one

enterprise simultaneously act as board members or senior

management of the other enterprise; or such personnel of

both enterprises are appointed by a third party.

> Two individuals who are spouses, lineal relatives by blood,

or under other custodianship or family maintenance

relationship have one of the relationships stated under

(1)-(5) with one enterprise and the other enterprise

respectively.

> The two parties have other common interests in

substance.

Except for conditions under (2), when the related-party

relationships change over the fiscal year, they should be

recognized on the basis of the actual duration of such

relationships.

Two parties that have one of the relationships stated

under (1)-(5) merely because their shares are owned by

the state, or board members or senior management who

are appointed by the departments administering state-

owned assets, should not be regarded as related parties.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/no)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

China is not a member of the OECD.

The Chinese TP framework is generally consistent with the

framework established by the OECD Guidelines. The STA has

observer status on the OECD’s TP working group and has been

involved in the OECD/G20 BEPS project, including the revisions

to the OECD Guidelines relating to risks and intangibles. Still,

while reference may be made to the OECD Guidelines, the STA

does not see itself as bound by them. The STA has also been

involved in the development of the United Nations Practical

Manual on Transfer Pricing for Developing Jurisdictions

(UN Manual) and has contributed one of the four sections in

chapter 10 on jurisdiction practices. The UN Manual is largely

consistent with the OECD Guidelines, but there are some

differences.

Key areas in which the Chinese approach may differ from other

jurisdictions’ understanding of the OECD Guidelines approach

are location-specific advantages (LSAs) or other local market

features, local intangibles and intra-group services, as follows:

> The STA places considerable emphasis on LSAs and

takes the view that profits in China should be higher

because of the characteristics of the local market, such as

location savings and market premiums. Under Bulletin 42,

specific documentation of the role of LSAs is a required

component of the Local File. Under Bulletin 64, the role

of LSAs is also a required topic to be addressed in APA

application.

> The STA pays more attention to local contributions to

intangibles. China’s “Country Practices” section of the

UN Manual, for example, emphasizes the role played by

Chinese affiliates in developing marketing intangibles and

manufacturing process improvements. Bulletin 6 retains

the framework with respect to the functions that are

relevant in determining the allocation of profits from the

use of intangible property. After BEPS reforms, the OECD

Guidelines identifies five relevant functions: development,

enhancement, maintenance, protection and exploitation

(i.e., DEMPE). Bulletin 6 adds a sixth function: promotion

(i.e., DEMPEP). While promotion functions can likely be

subsumed under the other DEMPE functions in an OECD

framework, the identification of promotion as a separate

function demonstrates the importance China places on

value created through marketing activities by Chinese

companies.

> The STA increasingly challenges charges made for

headquarters services, requiring efficient application of

the benefits test. Bulletin 6 follows the internationally

accepted and OECD-sanctioned “benefit test.” That is,

an intra-group service is recognized only if the activities

of the service provider provide the service recipient with

economic and commercial value that will enhance its

commercial position, and if an independent enterprise, in

comparable circumstances, would be willing to pay a third

party to perform the activity or to do it itself.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, China adopted BEPS Action 13 for TP documentation

effective from 1 January 2016.

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

It covers Master File, Local File and CbCR.

> Effective or expected commencement date

BEPS Action 13 came to effect in China on 1 January 2016.

> Material differences from OECD report template or format

For the Master File, Bulletin 42 requests more detailed

information, such as details on industrial structure

adjustments (Article 12-(2)), and information on the main

functions, risks, assets and personnel of the group’s major

R&D facilities (Article 12 (3)). In addition, the Master File

should state which entity within the group should prepare

and file the CbC report (Article 12-(5)).

For the Local File, Bulletin 42 requires a detailed analysis

of location-specific factors and the value chain, as well

as location-specific factors’ contributions to the value

chain (Article 14-(3)-a/b); detailed disclosure of related

service transactions (Article 14-(3)-e); disclosure of foreign

investment (Article 14-(3)-c); disclosure of related-party

share transfer (Article 14-(3)-d) and disclosure of APAs in

other jurisdictions or regions (Article 14-(3)-f).

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The Master File and Local File should be prepared in

accordance with the requirements under Bulletin 42,

and those additional items identified above should be

addressed for compliance purposes.

> CbCR notification and CbC report submission requirement

There is no CbCR notification requirement in China.

However, in the Master File, taxpayers should state which

entity within the group should prepare and file the CbC

report (Article 12-(5)). The CbC report should be prepared

and submitted by 31 May of the following year.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 12 May 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, there are TP documentation rules, which require

contemporaneous documentation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch of a foreign company is required to comply

with the local TP rules.

> Does transfer pricing documentation have to be prepared

annually?

Yes, TP documentation has to be prepared annually. There

is no minimum requirement. In practice, taxpayers should

prepare or update the full report.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

TP reports if it has related-party transactions (RPTs).

b) Materiality limit or thresholds

> Transfer pricing documentation

Refer to the Master File and Local File thresholds below.

> Master File

The Master File thresholds are as follows:

> There are cross-border RPTs during the year, and the

ultimate holding company of the MNE group has prepared

a Master File.

Or

> The annual RPTs exceed RMB1 billion.

> Local File

The Local File thresholds are as follows:

> Tangible asset transfers exceed RMB200 million (in case

of toll manufacturing, value should be based on annual

import and export values for customs purposes).

Or

> Financial asset transfers exceed RMB100 million.

Or

> Intangible asset transfers exceed RMB100 million.

Or

> The aggregate amount of other RPTs exceeds RMB40

million (including service transactions, intangibles

licensing, tangible property rentals and interest on loans).

> CbCR

Chinese resident taxpayers that are the ultimate parent

company of a group whose consolidated revenue in the

previous year exceeded RMB5.5 billion are required to file

a CbC report. China will also accept “surrogate” filings by a

Chinese resident taxpayer that is so designated by its group.

Since China has an extensive tax treaty and information

exchange network, the STA will be receiving and actively

reviewing CbC reports filed by groups with ultimate parent

companies in other jurisdictions. While there is no local filing

requirement, Article 8 of Bulletin 42 states that Chinese tax

authorities may request a Chinese taxpayer to provide its

group’s CbC report in the course of an investigation. This can

take place if the ultimate parent company is required by its

home jurisdiction to prepare a CbC report but China has been

unable to receive the report because of the parent company’s

failure to file, the absence of a treaty or exchange mechanism

between China and that jurisdiction or the failure of such an

exchange mechanism to work in practice.

> Economic analysis

There is none specified.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation requirement for domestic

transactions. However, taxpayers that deal only with domestic

related parties can be exempted from documentation.

> Local language documentation requirement

The TP documentation needs to be submitted in the local

language. Article 21 of Bulletin 42 mandates the use of

Chinese language in TP documentation.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified in the regulation. Technically speaking,

individual testing of transactions is generally preferred by tax

authorities, whereas aggregation testing of transactions is still

often observed in practice for compliance purposes.

> Any other disclosure or compliance requirement

Special item files: Bulletin 42 also provides documentation

requirements for “special item files” with respect to CSAs and

thin capitalization, if applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

China does not have TP-specific returns. However, the return

disclosures described below are extensive.

> Related-party disclosures along with corporate income tax return

Under the authority of Article 43 of the Corporate Income Tax

Law (CITL), Article 1 of Bulletin 42 requires that taxpayers

complete and submit a set of comprehensive RPT annual

reporting forms along with their annual tax filing on or before

31 May of the following calendar year. For taxable years before

2016, there were nine RPT forms. For taxable year 2016

and after, there are up to 22 RPT forms that a taxpayer may

need to prepare. Three of the RPT forms implement the CbCR

requirement, if applicable; there will be three additional forms

that are English translations of these three. The other 16 RPT

forms are:

> Enterprise Information Return

> Summary of Annual Related-Party Transactions Form

> Related-Party Relationships Form

> Ownership Transfer of Tangible Asset Transactions Form

> Ownership Transfer of Intangible Asset Transactions Form

> Use Right Transfer of Tangible Asset Transactions Form

> Use Right Transfer of Intangible Asset Transactions Form

> Financial Asset Transactions Form

> Financing Transactions Form

> Related-Party Service Transactions Form

> Equity Investment Form

> Cost-Sharing Agreement Form

> Outbound Payment Form

> Overseas Related-Party Information Form

> Financial Analysis of Related-Party Transactions Form

(unconsolidated)

> Financial Analysis of Related-Party Transactions Form

(consolidated)

> Related-party disclosures in financial statement/annual

report

In general, the annual report would include a section of

related-party disclosures.

> CbCR notification included in the statutory tax return

There is none specified. However, the name and location of its

ultimate parent company should be stated in the RPT form,

and whether the local entity is designated to file the CbC

report of the group.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

31 May.

> Other transfer pricing disclosures and return

31 May.

> Master File

Master File should be ready within 12 months after the

financial year-end of the ultimate parent company.

> CbCR preparation and submission

31 May.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The Local File and special item files should be ready by 30 June

of the following year. The Master File should be ready within

12 months after the financial year-end of the ultimate parent

company.

c) Transfer pricing documentation/Local File submission deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

There is no statutory deadline.

> Time period or deadline for submission on tax authority

request

The documentation should be submitted within 30 days upon

request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions — Yes

> Domestic transactions — yes

b) Priority and preference of methods

Under Bulletin 6, there is no priority among TP methods. All

the methods identified by the OECD Guidelines are considered

reasonable: CUP, resale price, cost plus, TNMM and profit

split (including both contributory profit split and residual

profit split). Other methods are also acceptable, if they are

consistent with the arm’s-length principle. Bulletin 6 identifies

three methods that are frequently used for asset valuation

as allowable “other methods:” the cost method, the market

method and the income method. This is consistent with the

OECD Guidelines after BEPS reforms. Bulletin 6 provides that

TNMM is not appropriate in transactions where significant

intangible assets are involved, but it does not define what

intangibles would be considered significant. For TNMM, while

all PLIs are recognized in principle, the ones most often used in

practice are operating margin and markup on total costs.

In applying TNMM, database searches for comparable

companies are generally expected to be limited to publicly

traded companies. In any event, non-public Chinese companies

are not required to publicly file their financial statements, so

there are no jurisdiction-specific databases available.

Bulletin 6 is generally consistent with current practice with

respect to toll manufacturing. If comparable companies that

has the same business model cannot be found, the value

of materials and equipment provided by the principal must

be added back to the cost base, when applying a cost-plus

method. While working capital adjustments are not allowed in

any other case, they are allowed in toll manufacturing cases, if

the adjustment is no more than 10%.

8. Benchmarking requirements

> Local vs. regional comparables

Pan Asia-Pacific or Chinese companies are acceptable as

comparables. Tax authorities have a clear preference for

local Chinese comparables, but given the limited number

of potential comparables, they will accept regional sets of

comparables if necessary. Where foreign comparables are

used, tax authorities will seek to make adjustments for LSAs.

Article 24 of Bulletin 6 makes it clear that publicly available

data is preferred. In addition, Bulletin 6 explicitly authorizes

tax authorities to use information that is not publicly available,

e.g., secret comparables. Such nonpublic information is used

in practice, especially in a risk assessment context.

> Single-year vs. multiyear analysis for benchmarking

Multiyear testing (up to three years) is acceptable.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Fresh benchmarking search is the suggested practice; however,

there is no specification from the regulation.

> Simple, weighted or pooled results

There is a preference for weighted average for arm’s-length

analysis in practice. However, Bulletin 6 provides a wide

latitude to tax authorities to use arithmetic means, weighted

averages or interquartile ranges in examinations.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Taxpayers that do not provide contemporaneous

documentation or relevant information on related party

transactions or provide false or incomplete information that

does not truly reflect the situation of their related party

transactions shall be subject to different levels of fines, ranging

from less than CNY 10,000 up to CNY 50,000, in accordance

with Article 70 of the Tax Collection and Administration Law

and Article 96 of the Tax Collection Regulations. In addition,

tax authorities also have the authority to deem such taxpayers’

taxable income by reference to the profit level of comparable

companies, or the taxpayer’s cost plus reasonable expenses

and profit, or apportioning a reasonable share of the group’s

total profits; or the deemed profit determined based on other

reasonable methods according to Article 44 of the CITL and

Article 115 of the Detailed Implementation Regulation (DIR).

> Consequences of failure to submit, late submission or

incorrect disclosures

General penalties that are applicable to tax record

maintenance and tax filing requirements also apply to

TP matters. Under Article 62 of the Tax Collection and

Administration Law, taxpayers failing to fulfil tax-filing

obligations may be fined between RMB2,000 and RMB10,000.

This would apply to failure to file TP disclosure forms with

the annual tax return. Under Article 60, taxpayers failing to

maintain accounting books and other relevant information,

or failing to provide such information to tax authorities

upon request, may be fined between RMB2,000 and

RMB10,000. This would apply to failure to maintain or provide

contemporaneous documentation.

Under the CITL and implementation regulations, if a taxpayer

continues to refuse to provide information or provides false

information, the tax authorities can assess taxable income on

a deemed basis, rather than on the basis of TP results.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

While there are no penalties on TP adjustments, there is a 5%

interest surcharge if the taxpayer did not file TP disclosure

forms or fails to meet the contemporaneous documentation

requirements. To meet these requirements, in addition to

preparing the documentation described above, the taxpayer

must provide it to tax authorities within 30 days of the

request (prior to 2016, within 20 days of the request). In all

events, whether there is an interest surcharge or not, interest

will be applied to the under-reported tax resulting from TP

adjustments — based on the base RMB lending rate published

by the People’s Bank of China.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Taxpayers that do not provide contemporaneous

documentation or relevant information on related party

transactions or provide false or incomplete information that

does not truly reflect the situation of their related party

transactions shall be subject to different levels of fines, ranging

from less than CNY 10,000 up to CNY 50,000, in accordance

with Article 70 of the Tax Collection and Administration Law

and Article 96 of the Tax Collection Regulations. In addition,

tax authorities also have the authority to deem such taxpayers’

taxable income by reference to the profit level of comparable

companies, or the taxpayer’s cost plus reasonable expenses

and profit, or apportioning a reasonable share of the group’s

total profits; or the deemed profit determined based on other

reasonable methods according to Article 44 of the CITL and

Article 115 of the DIR.

> Is interest charged on penalties or payable on a refund?

Refer to the above section.

b) Penalty relief

As discussed above, the 5% interest surcharge can be avoided

if TP disclosure forms are filed and contemporaneous

documentation requirements are met.

10. Statute of limitations on transfer pricing

assessments

The duration could be as long as 10 years. For example, if the

tax authorities initiate a TP audit in 2022, the covered period

could be from 1 January 2012 to 31 December 2021.

Article 24 of Bulletin 42 states that contemporaneous

documentation should be maintained for 10 years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing -related audits (high/medium/

low)

The likelihood may be considered to be high, because Chinese

tax authorities would screen and select the TP audit targets

every year on the basis of the information collected from

the tax filing systems and other sources. They use big data

analysis and internet information to conduct risk assessments

and categorize taxpayers by risk levels — as high, medium and

low — to identify audit targets.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high, because Chinese

tax authorities take a clear stand on local contributions and

locally developed intangibles, and often test the effectiveness

of TNMM, which is commonly used to compensate the local

subsidiaries.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. Even though the

TP method can be sustained, the profit margins would usually

be adjusted upward.

> Specific transactions, industries and situations, if any, more

likely to be audited

In recent years, the STA has put in place a taxpayer monitoring

system, to differentiate “low-risk” from “high-risk” taxpayers,

on the basis of their compliance with tax requirements and the

tax positions taken. High-risk taxpayers are much more likely

to face formal tax audits. Two industries that are currently

being analyzed by tax authorities are pharmaceuticals and

luxury goods. This focus illustrates the degree of importance

the STA places on LSAs, as the STA finds that both industries

enjoy substantial market premiums. In addition to LSAs, the

tax authorities recently have been paying close attention

to outbound payments of royalties and service fees. With

respect to royalties, tax authorities have focused on the

extent to which the Chinese taxpayer has made contributions

to the value of licensed intangibles and possibly developed

local intangibles, thereby suggesting royalty rate reductions

are appropriate. For services, tax authorities have sought

authentication that services were actually provided, and that

costs were appropriately captured and allocated based on

actual benefits received.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APAs are available in

China. Guidance regarding the APA process and procedures

is provided in Bulletin 64. To further promote APAs, Bulletin

24 provides a simplified procedure for unilateral APA in

which the tax authorities should decide whether to accept

the application within 90 days, and once accepted, the tax

authorities should in principle complete the negotiation within

six months (excluding the additional time that may be needed

for collection of further information). Requirements for APA

applicants are that their RPT volume should be in excess of

RMB40 million for each of the past three years. They must

have duly filed RPT forms with their tax returns and they must

have met contemporaneous documentation requirements.

There is no application fee.

> Tenure

The duration of an APA is generally three to five years.

> Rollback provisions

Rollback provisions are available. The retrospective period can

extend to a maximum of 10 prior years, if the RPTs are the

same or similar to those covered by the APA.

> MAP opportunities

Yes, the taxpayer may request an MAP.

> Application for an MAP must be made within a reasonable

period of time from the first notification of the action

resulting in taxation not in accordance with the provisions

of the double taxation treaty (DTT).

If the application is submitted in person, the application

date is deemed to be the submission date; if the

application is submitted by email, the application date is

the date that the STA receives the application.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The CIT law has a thin-capitalization rule disallowing interest

expense arising from excessive related-party loans. The safe

harbor debt-to-equity ratio for enterprises in the financial

industry is 5:1 and for enterprises in other industries is

2:1. However, if there is sufficient evidence (e.g., a thin

capitalization special item file) to show that the financing

arrangement is at arm’s length, these interests may still be

fully deductible even if the ratios are exceeded.

Travis Qiu

Travis.qiu@cn.ey.com

+ 86 21 22282941

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

National Tax and Customs Authority (Dirección de Impuestos y

Aduanas Nacionales (DIAN))

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The transfer pricing regime is included in Articles 260-1

to 260-11 in the Colombian Tax Code and is regulated by

Regulatory Decree 2120 of 2017. The regime has been in

force since 2004; however, the aforementioned decree came

into effect from 1 January 2017.

> Section reference from local regulation

The following section has reference to transfer pricing:

> Articles 260-1 to 260-11 of the Colombian Tax Code

> Regulatory Decree 2120, from December 2017

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD transfer pricing guidelines/UN

tax manual/EU Joint Transfer Pricing Forum

Colombia is a member of OECD, but its guidelines are not

legally binding. Notwithstanding, guidelines are used as by tax

authorities as technical reference criteria for transfer pricing

matters.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

1www.dian.gov.co

Yes.

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

Yes, it covers all three.

> Effective or expected commencement date

It is effective from the financial year 2017.

> Material differences from OECD report template or format

The Master File and CbC reports follow the OECD approach.

The Local File was the equivalent of the previous transfer

pricing study presented by taxpayers until the financial year

2016.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable since there is no penalty protection in

Colombia

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 21 June 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, and local taxpayer is subject to transfer pricing rules.

Furthermore, branches and permanent establishments.

> Does transfer pricing documentation have to be prepared

annually?

Yes, transfer pricing documentation must be prepared annually

under local jurisdiction regulations. Taxpayers must prepare a

Local File that includes the analysis of the transactions subject

to study, complying with the local regulatory requirements

mentioned in Articles 260-1 to 260-11 of the Colombian

Tax Code and the Regulatory Decree 2120. They should

demonstrate that intercompany transactions were carried out

at arm’s length. The group’s Master File must be submitted as

well.

The documentation must be updated annually, with updates

to transactions and amounts, the financial information of the

comparable set, economic analysis and functional analysis.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each local entity of an MNE must prepare and submit its

obligations separately.

b) Materiality limit or thresholds

> Transfer pricing documentation

Transfer pricing documentation in Colombia is composed by

Local File and Master File, please refer the following sections

> Master File

It must be filed by entities that meet the requirements to

prepare the Local File.

> Local File

Yes, if taxpayers whose gross equity is equal to or greater

than 100,000 tax units (COP3,630,800,000 for tax year

2021) or whose gross revenues are equal to or greater

than 61,000 tax units (COP2,214,788,000 for tax year

2021) and intercompany transactions surpass 45,000 tax

units (COP1,633,860,000 for tax year 2021) per type of

transaction, the taxpayer must file a Local File for those

transactions.

In case there are transactions with entities located, resident

or domiciled in tax havens, the taxpayer is subject to transfer

pricing obligations regardless of their revenues or equity, and

the transactions threshold per type of transaction to prepare

and submit the Local File and Master File is 10,000 tax units

(COP363,080,000 for tax year 2021).

> CbCR

81,000,000 tax units (COP 2,940,948,000,000 for tax year

2021)

> Economic analysis

It must be included in the Local File.

c) Specific requirements

> Treatment of domestic transactions

Transactions between a regular taxpayer and a local related

party located in a free trade zone are subject to transfer

pricing regulations.

> Local language documentation requirement

The Local File needs to be submitted in the local language

(Spanish), as mandated by law.

The Master File may be provided in either English or Spanish.

However, at any time during their review, tax authorities might

request an official translation of a Master File provided in

English.

> Safe harbor availability including financial transactions if

applicable

There are no formal safe harbors in Colombia. Companies that

exceed the thresholds detailed above must comply with formal

obligations and demonstrate that intercompany transactions

were carried out in compliance with the arm’s-length principle.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

As part of the transfer pricing return, taxpayers must disclose

information about related parties, such as whether they are a

foreign or local related party (free trade zone), the jurisdiction

of residence and the tax identification number. Information

about transactions carried out in tax-haven jurisdictions must

also be disclosed.

Other information disclosed on the transfer pricing return

includes the type of intercompany transaction, the amount of

the transaction, the transfer pricing methodology applied, the

tested party, the price or margin obtained in the transaction

and the arm’s-length range. It is also necessary to include

information regarding comparability adjustments, the amount

of the adjustments included in the income tax return (if any)

and the financial information that was used (segmented or

complete information).

> Related-party disclosures along with corporate income tax

return

There are no specific transfer pricing disclosures to be

included in the corporate income tax return. All transfer

pricing disclosures are to be included in the transfer pricing

informative return.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

This is not applicable; it is included in the transfer pricing

return.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

7 April to 6 May 2022.

> Other transfer pricing disclosures and returns

For the financial year 2021, the Local File, transfer pricing

return and CbCR notification will be due between 7 and 20

September 2022. The Master File will be due between 12

and 23 December 2022. The specific date for a taxpayer will

depend on the last digit of its Tax ID number.

> Master File

The Master File must be prepared by 30 November 2022 and

must be submitted to the tax authorities between 12 and 23

December 2022.

> CbCR preparation and submission

The CbCR submission deadline is between 12 and 23

December 2022.

> CbCR notification

The CbCR notification must be filed between 7 and 20

September 2022.

b) Transfer pricing documentation/Local File preparation

deadline

The Local transfer pricing documentation must be prepared by

30 June 2022 and must be submitted to the tax authorities

between 7 and 20 September 2022.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Transfer pricing documentation must be submitted to the tax

authorities between 7 and 20 September 2022.

> Time period or deadline for submission upon tax authority

request

The transfer pricing return must be filed with the tax

authorities on specific dates depending on the last digit of the

Tax ID

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

For the analysis of both international and domestic

transactions (the latter refers only to transactions with local

related parties located in a free trade zone), Colombian tax law

has established five transfer pricing analysis methods, which

follow the OECD Guidelines. They are: CUP, resale price, cost-

plus, TNMM and profit-split (which can be applied either in the

form of a contribution analysis or a residual analysis).

Method selection should be based on the characteristics of

the transaction under analysis. The selected method should

be the one that best reflects the economic reality of the

transaction, provides the best information and requires the

fewest adjustments.

The use of internal comparable, if existing, is prioritized.

Special considerations for the analysis of services and

financing transactions, purchase and sale of shares, or

transactions involving the purchase and sale of commodities or

fixed assets, are applicable.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement or tax authority preference for

local jurisdiction comparables and all jurisdictions could be

included in the benchmarking study. If a geographic criterion is

applied, it must be supported in the search strategy process.

> Single-year vs. multiyear analysis for benchmarking

The regulation provides that single-year testing (1x1) should

be used.

> Use of interquartile range

Yes, interquartile range calculation using spreadsheet quartile

formulas is acceptable. However, the regulations allow the use

of other statistical measures (including the total range).

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking

search every year; however, the comparability factors

of the comparable companies should be evaluated to

confirm whether the comparables still comply with those

characteristics. Regulations require the disclosure of the date

on which the search was run and any updates on the financial

information.

> Simple, weighted or pooled results

Weighted average is the best practice.

> Other specific benchmarking criteria, if any

There are no specific benchmark criteria required in the local

regulation. However, the common practice is to the use the

information of companies with public financial information

available and not affected by controlled transactions.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Transfer pricing documentation

Penalty regarding transfer pricing documentation is given

below:

> Late filing: Within the five days following the deadline,

0.05% of the total amount of the transactions subject

to analysis. After, it will be 0.2% of the same base

per month of delay, with a limit of 20,000 tax units

(COP726,160,000 for tax year 2021).

> “Inconsistencies”: 1% of the value of the transactions

reported with inconsistencies, limited to 5,000 tax units

(COP181,540,000 for tax year 2021).

> Non-submission: 4% of the total amount of the

transactions subject to analysis, with a limit of 25,000 tax

units (COP907,700,000 for tax year 2021).

> Consequences of failure to submit, late submission or

incorrect disclosures

Same as above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

A penalty of up to 100% of the additional tax could apply.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

A penalty of up to 100% of the additional tax could apply.

> Is interest charged on penalties or payable on a refund?

Interest rate is applied on eventual amendments to the income

tax return derived from transfer pricing adjustments. The

rate changes quarterly; in the last three years, it has been, on

average, around 30%. Penalties do not trigger interest.

b) Penalty relief

Transfer pricing documentation

Reduced penalty (before the tax authority’s penalty order):

> When the taxpayer amends its transfer pricing

documentation for inconsistencies or omissions before the

tax authority issues its penalty order, the penalty might be

reduced to 50% of the amount determined in the official

assessment.

Transfer pricing return

Reduced sanction (before the tax authority’s penalty order):

> When the taxpayer amends its transfer pricing return for

inconsistencies or omissions before the tax authority issues

its penalty order, the penalty might be reduced to 50% of

the amount determined in the official assessment.

> The transfer pricing return can be voluntarily amended for

two years from the original date of filing.

For a self-assessment or acceptance of the challenges made by

the tax authorities, the applied penalty could be decreased up

to 10% of its original value.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for transfer pricing assessments is

five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high, tax authorities

undertake regular audit programs, which may increase the

likelihood to be audited.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

This is the same in above section.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

This is the same in above section.

> Specific transactions, industries and situations, if any, more

likely to be audited

Tax authorities have changed their audit processes, focusing

on the oil and gas, mining, and pharmaceutical industries.

In addition, tax authorities challenge the benefits and actual

rendering of general and specialized services (such as

accounting, administrative, marketing or technical assistance).

During an audit, the tax authorities have required companies

to evidence the real provision, usefulness, non-duplication

and business benefits of the services charged, as well as its

compliance with Article 107 of the Colombian Tax Code. It

might be also required to demonstrate how the charges for

services were calculated by the provider.

Local tax authorities are currently challenging special

transactions (such as services and intercompany loans),

economic and extraordinary adjustments, unusual approaches

for analysis — irrespective of the industry — or the use of gross

margin methods.

Commodities sale and purchase transactions have also become

a focus in transfer pricing audits.

Methods such as cost-plus or resale price are normally

challenged it the benchmark is compounded by external

comparables.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No specific distinction; any related-party transaction covered

by local regulations may be part of an APA.

There is no specific APA program for low-tax jurisdictions.

> Tenure

The APA agreement will be valid for the year it is subscribed

to, the year before and up to three taxable years after.

> Rollback provisions

Refer to section above.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalisation or debt

capacity in the jurisdiction

Thin-capitalization rules are applicable specifically for

intercompany debt. The ratio allowed by tax regulations is 2:1

intercompany debt-to-equity.

Andres Parra

Andres.Parra@co.ey.com

5714847600

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Congolese tax authorities (formerly Direction Générale des

Impôts et des Domaines (DGID))

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and effective

date of applicability

General Tax Code, Articles 120 to 120 H, Volume 1: The law

was introduced in 2012. To date, there are no rulings or other

particular texts regarding transfer pricing.

> Section reference from local regulation

Article 120 D of General Tax Code

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Congo is not a member of the OECD.

However, Congo is a member of the OECD/G20 Inclusive

Framework on BEPS. Also, the Congolese transfer pricing

regulations are consistent with the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

This is not applicable.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Congo is a member of the OECD/G20 Inclusive Framework on

BEPS.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

This is not applicable.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

It does not have any transfer pricing documentation guidelines

or rules at the moment. However, a detailed transfer pricing

instruction is expected to be issued by the Congolese Tax

Authorities.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes

> Should transfer pricing documentation be prepared

annually?

Transfer pricing documentation (Local File) and the transfer

pricing return need to be prepared annually under local

jurisdiction regulations and submitted to the tax authorities.

At a minimum, transaction values must be updated, and a

memo that confirms changes to prior-year content should be

prepared, if any.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes

b) Materiality limit or thresholds

> Transfer pricing documentation

Entities that generate more than XAF500 million of turnover

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

Needs to be filed with the tax authorities.

> CbCR

This is not applicable.

> Economic analysis

This is applicable

c) Specific requirements

> Treatment of domestic transactions

This is not applicable.

> Local language documentation requirement

French.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is Aggregation or Individual Testing of transactions

preferred for an entity

There is none specified.

> Any other disclosure or compliance requirement

None has been specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The transfer pricing return needs to be prepared annually

under local jurisdiction regulations and submitted to the tax

authorities.

> Related-party disclosures along with corporate income tax return

The transfer pricing statement needs to be submitted annually.

This form needs to be submitted, at the latest, six months

after the legal deadline for submitting the financial statement

return. Filing has to be done by courier and in French. Only

cross-border intragroup transactions exceeding a threshold of

XAF50,000,000, per type of transaction, need to be disclosed

on this tax return form.

> Related-party disclosures in financial

> CbCR notification and CbC report submission requirement

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

20 May.

> Other transfer pricing disclosures and return

The transfer pricing return and transfer pricing Local File need

to be submitted within six months of the legal deadline for

submitting the CIT return, i.e., 20 November.

The format of a transfer pricing return has not been specified

by the local tax authorities until now. Taxpayers are therefore

free to use any format to file the transfer pricing return.

> Master File

There is none specified.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation must be provided upon

request in the case of a tax audit.

Transfer pricing documentation is mandatory and must be filed

with the tax authorities every year no later than 20 November.

c) Transfer pricing documentation and Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Each year 20 November.

> Time period or deadline for submission on tax authority

request

Each year 20 November.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes Specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

It is applicable.

> Domestic transactions

It is not applicable.

b) Priority and preference of methods

The tax authorities accept the following methods: CUP, resale

price, cost-plus, profit-split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

There is none specified.

> Single-year vs. multiyear analysis

There is none specified.

> Use of interquartile range

There is none specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is none specified.

> Simple vs. weighted average

There is none specified.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

Penalties specific to a failure to comply with the transfer

pricing documentation requirements apply.

Failure to submit local transfer pricing return and/or transfer

pricing documentation may result in penalties equal to

XAF5,000,000.

Failure to submit the documentation within the tax authority’s

request may result in penalties equal to XAF10,000,000 for

each fiscal year audited.

Partial submission of the documentation may result in

penalties equal to XAF5,000,000 for each fiscal year audited.

In addition to the fiscal penalties generally applied as a

consequence of a transfer pricing reassessment, transfer

pricing reassessments from the tax authorities (deemed not to

be reflecting the arm’s-length principle) trigger an adjustment

of the taxable profit for CIT purposes (at one-third of their

amounts).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties are generally applied as a result of a transfer pricing

reassessment, regardless of the compliance with transfer

pricing documentation requirements.

After a transfer pricing reassessment is made, the additional

profit is qualified as a deemed distribution of a benefit.

The tax treatment of such “benefit” transfer may trigger

consequences, such as additional CIT (30% of profit) and a

deemed transfer of a dividend (17%). Furthermore, penalties

of 50% for CIT and 100% for deemed transfer of dividend may

apply.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Penalties are generally applied as a result of a transfer pricing

reassessment, regardless of the compliance with transfer

pricing documentation requirements.

After a transfer pricing reassessment is made, the additional

profit is qualified as a deemed distribution of a benefit.

The tax treatment of such “benefit” transfer may trigger

consequences, such as additional CIT (30% of profit) and a

deemed transfer of a dividend (17%). Furthermore, penalties

of 50% for CIT and 100% for deemed transfer of dividend may

apply.

> Is interest charged on penalties or payable on refund?

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for transfer pricing adjustments is

the same as for all Congolese corporate tax assessments (four

years following the year for which the tax is due).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by local authority

> Likelihood of transfer pricing-related audits (high, medium

or low)

The likelihood may be considered to be high, as taxpayers that

have been audited once usually enter a recurring four-year

audit cycle, and transfer prices will always be analyzed, to a

greater or lesser extent, during tax audit.

> Likelihood of transfer pricing methodology being challenged

(high, medium or low)

The likelihood may be considered to be medium or low, as

the application of the law is recent and tax authorities are

improving their skills regarding this regulation.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high, medium or low)

The likelihood may be considered to be medium or low, as

the application of the law is recent and tax authorities are

improving their skills regarding this regulation.

> Specific transactions, industries and situations, if any, more

likely to be audited

All types of intra-group transactions (e.g., management fees,

and royalties and licenses) are subject to scrutiny.

13. Advance Pricing Agreement and Mutual

Agreement Procedure

> Availability (unilateral, bilateral and multilateral)

Bilateral and unilateral APAs are available.

> Tenure

APAs have a fixed term of three years. This can be renewed.

Administrative fees are required to be paid to the Congolese

authorities for entering into an APA.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Crespin Simedo

Crespin.Simedo@cg.ey.com

+ 221 77644 56 96

Contact

1. Tax authority and relevant transfer pricing

(TP) regulation or rulings

a) Name of tax authority1

Tax Administration of Costa Rica (Dirección General de

Tributación, or DGT)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Executive Decree No. 41818-H (the TP Decree), which

contains TP regulations, came into effect on 26 June 2019,

following publication in the Official Gazette No. 145. The

TP Decree replaces Executive Decree No. 37898-H which

originally adopted TP regulations applicable to individuals or

business entities that conduct related-party transactions from

13 September 2013.

On 13 September 2016, the DGT issued DGT-R-44-2016, the

TP information return regulations that complemented Article 8

of Decree No. 37898-H. However, on 5 June 2017, the Costa

Rican Tax Authorities published Resolution DGT-R-28-2017 in

the Official Gazette, which modified Article 4 of regulations

DGT-R-44-2016 and suspended the term for the submission of

TP information until further notice.

On 21 April 2017, the Costa Rican Tax Authorities published,

in the Official Gazette, Resolution DGT-R-16-2017, which adds

the Master File and Local File to the existing TP documentation

requirements, in accordance with BEPS Action 13.

Costa Rican taxpayers that have transactions during the

relevant fiscal year with associated enterprises must prepare

a Master File and a Local File, and retain them for four

years. Taxpayers will only need to submit this information if

requested by the tax authorities. If requested, taxpayers will

have 10 working days to submit this information.

On 13 November 2019, the Tax Authorities published

the DGT-R-49-2019 resolution which replaces Resolution

DGT-R-16-2017 about TP documentation requirements (local

file and Master File). Although Resolution DGT-R-49-2019

supersedes Resolution DGT-R-16-2017 and includes several

changes, it also maintains some of the requirements of

Resolution DGT-R-16-2017.

> Section reference from local regulation

1http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/

nrm\_texto\_completo.aspx?param1=NRTC&nValor1=1&n-

Valor2=75647&nValor3=93918&strTipM=TC

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Costa Rica has formally become an OECD member as of 25

May 2021. The OECD Guidelines are a recognized source of

technical reference; however local regulations prevail.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No, documentation requirements have incorporated some

elements of BEPS Action 13, while adding additional local

requirements.

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

Yes, both are covered.

> Effective or expected commencement date

It is effective from 2017.

> Material differences from OECD report template or format

There are significant differences between the OECD report

template or format and the documentation requirements

under local jurisdiction regulations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does it need to be submitted or

prepared contemporaneously?

Yes, Executive Decree No. 41818-H and Resolution

DGT-R-49-2019 provide the guidelines or rules for TP

documentation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

TP documentation has to be prepared annually under local

jurisdiction regulations. The TP report and return must

be prepared annually with updates to all the information

that allows a correct TP analysis. The local tax authorities

require the most recent available financial information for

comparables and the tested parties.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

There is no materiality limit.

> Local File

There is no materiality limit.

> CbCR

Entities whose global and accumulated gross revenues are

equal to, or higher than, EUR750 million or its equivalent in

the local currency during the reporting tax year must submit

the information corresponding to the CbC report.

The following companies or entities, whose global and

accumulated gross revenues are equal to or higher than

EUR750 million or its equivalent in the local currency during

the reporting tax year, must submit the CbC report in Costa

Rica:

> Each ultimate parent entity (parent company or controlling

company) of a group or a multinational group that is a

tax resident in Costa Rica; an “ultimate parent entity” is

defined as a parent or controlling company that holds

sufficient direct or indirect interest in one or more group

entities, and is required to prepare consolidated financial

statements under applicable accounting standards, or

would be required to do so if the share interest were listed

on a stock exchange in its jurisdiction of tax residence.

> A surrogate parent entity (when designated as a sole

substitute by the ultimate parent), if the surrogate parent

entity is a constituent entity and tax resident in Costa

Rica; “surrogate parent entity” refers to an entity of the

group designated as a sole substitute of the ultimate

parent entity, for purposes of presenting the CbC report

in the tax jurisdiction of the surrogate parent entity on

behalf of the group.

Nevertheless, an ultimate parent entity residing in Costa Rica

is not required to provide the information relating to the CbC

report to the Costa Rican Tax Administration if in that year the

multinational group has the obligation to provide, and indeed

provides the information through a surrogate parent entity

residing abroad.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The TP documentation needs to be submitted in Spanish.

Executive Decree No.41818-H mandates the use of local

language in TP documentation.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred, if possible.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers are obligated to file a TP information return

annually when one or more of the following conditions are

met:

> The taxpayer conducts cross-border and local related-

party transactions.

> Such taxpayer falls under the category of “large

taxpayers” (grandes contribuyentes) or “large regional

companies” (grandes empresas territoriales), or is an

individual or entity operating under the free trade zone

regime.

> Such taxpayer carries out national or cross-border

transactions with related parties and separately or jointly

exceed the amount equivalent to 1,000 (thousand) base

salaries in the corresponding year.

However, on 5 June 2017, the Costa Rican tax authorities

published Resolution DGT-R-28-2017 in the Official

Gazette, which suspends the term for the submission of TP

information until further notice.

> Related-party disclosures along with corporate income tax

return

Related-party disclosures have to be made in specific TP

returns. No related-party disclosures need to be made on

general income tax returns.

> Related-party disclosures in financial statement/annual

report

Not applicable.

> CbCR notification included in the statutory tax return

There is none specified.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is two months and 15 days after the end of

the fiscal year.

> Other transfer pricing disclosures and return

The tax authorities suspended the term for the submission of

TP information until further notice.

> Master File

Master File needs to be prepared as per local requirements,

which include some of the OECD BEPS Action 13

requirements. The Master File needs to be prepared in Spanish.

> CbCR preparation and submission

For a reporting fiscal year commencing at any point in 2017,

CbC reports shall be filed no later than 31 December 2018.

For the subsequent reporting fiscal years, a CbC report shall be

filed no later than 31 December of the year following, which is

the last day of the reporting fiscal year.

> CbCR notification

Notifications should be submitted by the last working day of

March each year at the latest. Only Costa Rican tax-resident

constituent entities that are UPEs of an MNE group with

annual consolidated group gross revenue equal to or exceeding

EUR750 million during the reporting fiscal year need to file the

notification.

b) Transfer pricing documentation/Local File preparation

deadline

Taxpayers must prepare and maintain TP documentation

annually. The TP Executive Decree does not state a deadline.

The documentation must be at the disposal of the DGT upon

request.

c) Transfer pricing documentation and Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of TP

documentation.

> Time period or deadline for submission on tax authority

request

The time period is 10 working days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions —yes

> Domestic transactions — yes

b) Priority and preference of methods

The specified methods are CUP, resale price, cost-plus, profit-

split and TNMM; and the valuation of goods with international

quotations method that can be applied as an alternative to the

CUP method. The TP Executive Decree requires the application

of the most appropriate TP method.

8. Benchmarking requirements

> Local vs. regional comparables

There are no benchmarking requirements for local and

regional comparables considering the lack of financial

information available on local comparables. Thus, international

comparables are accepted by the tax authorities.

> Single-year vs. multiyear analysis

There is multiple-year testing for comparables. In practice, the

number of years is three.

> Use of interquartile range

This is not specified. However, the spreadsheet quartile

calculation is preferred and common in practice.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search every year over the update of

the financials of a prior study is preferred. A TP report must be

prepared annually, updating all the information that allows a

correct TP analysis. In practice, local tax authorities expect to

see the most recent comparable information and use the most

recently available financial information for the comparables

and the tested party.

> Simple, weighted or pooled results

The weighted average is the common practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

No express monetary penalties are applied when taxpayers

provide incomplete TP documentation or the TP information

return. Nevertheless, the monetary penalties for failure to

provide complete information set forth in the Tax Code of

Standards and Procedures should apply by default.

> Consequences of failure to submit, late submission or

incorrect disclosures

No express monetary penalties are applied when taxpayers

fail to maintain contemporaneous TP documentation or the

TP information return. Nevertheless, the monetary penalties

for non-compliance set forth in the Tax Code of Standards and

Procedures should apply by default.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No express monetary penalties are applied when taxpayers fail

to maintain contemporaneous transfer pricing documentation

or the transfer pricing information return. Nevertheless, the

monetary penalties for non-compliance set forth in the Tax

Code of Standards and Procedures should apply by default.

> Is interest charged on penalties or payable on a refund?

In the case of a TP income adjustment, surcharges and penalty

interest apply, per the general provisions of the Tax Code of

Standards and Procedures.

b) Penalty relief

No penalty relief regime is in place.

10. Statute of limitations on transfer pricing

assessments

The standard four-year statute of limitations on general tax

assessments should apply. This statutory period is extended to

10 years for unregistered taxpayers, fraudulent returns filed

and failure to file. The term is extended in cases of amended

returns.

The statute of limitations starts the next month following the

due date of the tax return.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a general tax audit is categorized as high,

especially for taxpayers characterized as large taxpayers

and multinational companies with related transactions. The

likelihood of TP assessments as part of a general tax audit is

considered high as well. For taxpayers characterized as large

taxpayers, the DGT designates a fiscal auditor in charge of

supervising the entity’s tax information, giving the DGT greater

visibility of the taxpayer and triggering audits in case minor

changes occur (e.g., decrease in operating income).

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

In case TP is scrutinized, the likelihood that the TP

methodology will be challenged is also high. In the past, the

DGT effectively tried to apply only the CUP method. Although

in recent years the DGT has accepted the use of the TNMM,

it prefers the use of the CUP method whenever internal

comparables exist.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high; in practice, the

resolution in most cases results in an adjustment.

> Specific transactions, industries and situations, if any, more

likely to be audited

The companies that are characterized as large taxpayers have

a higher likelihood of being audited.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APAs are contemplated under the provisions of the TP

Executive Decree.

> Tenure

The duration of an APA is a maximum of five years.

> Rollback provisions

There is none specified.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The thin-capitalization rule establishes a limitation to interest

deduction equal to 20% of EBITDA (i.e., earnings before

interest, taxes, depreciation and amortization), excluding

interests paid on loans with local financial institutions

supervised by the Superintendence of Financial Entities

(Superintendencia General de Entidades Financieras or SUGEF)

or foreign financial institutions supervised in their jurisdiction.

The interest expense that exceeds this threshold should be

considered as non deductible for income tax purposes and

could be taken as a deducible expense in the following tax

periods, provided the interest expenses in each year does not

exceed 20% of the company’s EBIDTA.

This limitation will come into effect with the second tax period

from the date the recent Tax Reform (1 July 2020) enters

into force with a 30% threshold for the first two tax periods.

The limitation will be reduced 2% each year until it reaches the

mentioned 20% threshold.

Paul De Haan

Paul.DeHaan@cr.ey.com

+506-2208-9955

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Directorate General for Taxation (Direction Générale des

Impôts — DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are Articles 36, 36 Bis and 38 of the General Tax Code;

Article 50 Bis of the Tax Procedure Book; Article 15 of the

2017 Finance Law; and Article 14 of the 2018 Finance Law.

Article 15 of the 2017 Finance Law requires companies to

file a TP return. This provision of the law is applicable since 1

January 2017.

Article 14 of the 2018 Finance Law requires companies to

file a CbCR and introduces thin-capitalization rules. These

provisions of the law are applicable since 1 January 2018.

> Section reference from local regulation

Articles 36, 36 Bis and 38 of the General Tax Code, Article 50

Bis of the Tax Procedure Book.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines,

UN tax manual OR EU Joint Transfer Pricing Forum

Cote d’Ivoire is not a member of the OECD; however, it follows

the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

1http://www.dgi.gouv.ci/

Cote d’Ivoire has adopted BEPS Action 13 for TP

documentation in terms of TP return and CbCR.

> Coverage in terms of Master File, Local File and CbCR

Master or Local File is not applicable, but CbCR is required.

> Effective 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.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report typically is sufficient to

achieve penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, there are TP documentation rules and requirements to file

a TP return and the CbCR.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

There is no specific requirement to prepare the master and

Local Files to the tax authorities. However, in case of tax audit,

only at the request of the tax authorities, the company could

have to justify transactions with affiliate companies, methods

of determination of prices, etc. Therefore, this documentation

and information will have to be up to date. The minimum

requirement to achieve this is updating transaction values and

preparing a memo that confirms and lists changes to prior

year content.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

A separate TP report is required per legal entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

There is no materiality limit.

> Local File

There is no materiality limit.

> CbCR

This is applicable for companies with aggregated value of sales

of EUR750 million or more.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is no specific requirement.

> Local language documentation requirement

The TP documentation needs to be in French.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no specific requirement.

> Any other disclosure/compliance requirement

There is no specific requirement.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The TP return includes intercompany transactions with related

parties.

The TP return must include a description of the transfer pricing

methods applied for international intragroup transactions.

The TP return must reflect the accounted amounts (not the

paid amounts).

> Related-party disclosures along with corporate income tax

return

Refer to the point above.

> Related-party disclosures in financial statement and annual

report

There is no specific requirement.

> CbCR notification included in the statutory tax return

There is none specified.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 30 June, if required to file a certified financial

statement, and 30 May for all other companies.

> Other transfer pricing disclosures and return

TP return will have to be submitted by 30 June, if required to

file a certified financial statement, and by 30 May for all other

companies.

> Master File

This is not applicable.

> CbCR preparation and submission

The documentation should be submitted no later than 12

months after the end of the fiscal year (December 31).

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

TP return

It is 30 June for companies required to provide a certified

financial statement and 30 May for all the other companies.

CbCR

The documentation should be submitted no later than 12

months after the end of the fiscal year (December 31).

> Time period or deadline for submission upon tax authority

request

Taxpayers have to submit TP documentation within a

maximum period of two months. This period may be extended

by one month.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No changes to the local TP rules.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

There is none specified.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific guidance. However, tax authorities

could accept local jurisdiction comparables or West African

comparables.

> Single-year vs. multiyear analysis for benchmarking

There is no specific guidance. Three-year testing could be

acceptable.

> Use of interquartile range

There is no specific guidance on the use of the interquartile

range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific guidance. There is no need to conduct

a fresh benchmarking search every year; updates could be

acceptable.

> Simple, weighted or pooled results

There is no specific guidance. The simple average for arm’s-

length analysis could be preferred.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is no specific requirement

> Consequences of failure to submit, late submission or

incorrect disclosures

CbCR

A fine of XOF5 million (approximately EUR7,500).

A CbCR that contains wrong information is punishable by a

fine of XOF2 million (approximately EUR3,049) by mistake or

omission.

TP return

Denial of deductibility of amounts recorded in accounts books.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Please refer to “Penalty exposure” above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is no specific requirement.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

Company can address a request for penalty relief to the

Directorate General of Taxation.

10. Statute of limitations on transfer pricing

assessments

The limitation period is set to three years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is no specific requirement.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium. This is a new

issue that requires focus during the next three years.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Same as the above section.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Same as the above section.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is no APA program available in Cote d’Ivoire.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

No.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is no specific requirement.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The total amount loaned may not exceed the share capital

of the borrowing company. This rule does not apply to sums

borrowed from shareholders of holding companies subject to

the special tax regime for Ivorian holding companies.

The total amount paid may not exceed 30% of the year-end

profit before deduction of corporate income tax, interest

charges, amortization and depreciation for the year (EBITDA).

The interest rate applicable to the loan must not exceed the

current central bank interest rate plus two percentage points.

The loan must be repaid within five years of the date on which

the funds are made available, and the borrowing company

must not be subject to any liquidation procedure throughout

this period. Related-party interest paid is deductible for tax

purposes if the share capital of the borrowing company is fully

paid up.

Eric Nguessan

eric.nguessan@ci.ey.com

+ 2250708025038

Contact

Alexis Popov

alexis.popov@ey-avocats.com

+ 33 6 46 79 42 66

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority1

Ministry of Finance (Ministarstvo Financija).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 13 of the Corporate Income Tax (CIT) Act (in force as

of 2005, latest update of respective article as of 1 January

2021).

Article 14 of the CIT Act (in force as of 2005, latest update of

respective article as of 1 January 2017).

Article 14a of the CIT Act (respective article in force as of 1

January 2017).

Article 37 of the CIT Bylaw (in force as of 2005, latest update

of respective article as of 3 January 2017).

Article 40 of the CIT Bylaw (in force as of 2005, latest update

of respective article as of 1 January 2021).

Article 47b of the CIT Bylaw (in force as of 2005, latest update

of respective article as of 13 January 2018).

Bylaw for concluding APA (as of 29 April 2017).

> Section reference from local regulation

Article 13 of the CIT Act defines related parties as parties

in which one entity participates directly or indirectly in the

management, control or capital of the other party or the same

persons participate directly or indirectly in the management,

control or capital of both parties.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

1http://www.porezna-uprava.hr/

a) Extent of reliance on OECD Transfer Pricing Guidelines,

UN tax manual or EU Joint Transfer Pricing Forum

Croatia is not a member of the OECD; however, the provisions

of relevant Croatian tax legislation are generally based on the

OECD Guidelines. Furthermore, the Ministry of Finance issued

instructions for the tax officials performing transfer pricing

audits, which are also based on the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Croatia has adopted BEPS Action 13 only in relation to CbCR

as of 1 January 2017; no Master File and Local File rules have

been adopted at the time of this publication.

> Coverage in terms of Master File, Local File and CbCR

The master and Local Files are not covered.

> Effective or expected commencement date

This is not applicable.

> 

Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment on the exchange of CbCR

Yes, it was signed on 6 July 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation needs to be prepared annually

under local jurisdiction regulations. New benchmark study

should be prepared, in case there are material changes in the

facts and circumstances of the transactions.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

Annual consolidated group gross revenue equaling to or

exceeding EUR750 million.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation requirement for domestic

transactions in case one party is in a favorable tax position

(e.g., if the concerned party pays CIT at lower rates or has tax

losses carried forward from previous periods).

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language (i.e., Croatian).

> Safe harbor availability, including financial transactions,

if applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

The Croatian CIT legislation does not define aggregation or

individual testing of transactions. As OECD Guidelines are

used and adhered to by the Croatian Tax Authorities in their

assessment of transfer prices, aggregation of transaction

should be justified if in line with the OECD’s recommendations.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Other than the PD-IPO return, the CIT Act and CIT Bylaw

do not prescribe specific requirements for separate returns

(including information returns) for related-party transactions.

> Related-party disclosures along with corporate income tax

return

A form outlining the relevant information on transactions with

related parties (PD-IPO form) will need to be submitted with

the CIT return.

> Related-party disclosures in financial statement and annual

report

Yes.

> CbCR notification included in the statutory tax return

CbCR notification is a separate filing and is not included in the

statutory tax return.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Four months after the fiscal year-end (30 April if the fiscal year

corresponds to the calendar year).

> Other transfer pricing disclosures and return

Four months after the fiscal year-end (30 April if the fiscal year

corresponds to the calendar year).

> Master File

This is not applicable.

> CbCR preparation and submission

The report should be filed 12 months after the end of the fiscal

year for which the report is prepared.

> CbCR notification

Four months after the fiscal year-end (30 April if the fiscal

year corresponds to the calendar year). CbCR notification has

to be submitted in the first year. Subsequent filing of the CbCR

notification (along with the CIT return) is needed only if there

is a change in information on ultimate parent entity (UPE)/

surrogate parent entity (SPE).

b) Transfer pricing documentation/Local File preparation

deadline

There is no transfer pricing documentation preparation

deadline. The changes to the CIT Act and Bylaw that apply

to fiscal years starting as of 1 January 2021 define that the

taxpayer is obligated to confirm the arm’s-length nature of its

intercompany pricing at the year-end. If prices are not at arm’s

length, the taxpayer is obligated to increase its tax base in the

CIT return. This implies that transfer pricing documentation

should be available along with the deadline for filing the CIT

return, although transfer pricing documentation continues to

be submitted only upon request (usually in the course of a tax

audit or upon filing the CIT return if specifically requested by

the taxpayer’s tax officer).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation; however, it is to be submitted as

supporting documentation upon filing the CIT return if

specifically requested by the taxpayer’s tax officer.

> Time period or deadline for submission on tax authority

request

The prescribed deadline for provision of any documentation

to the tax authorities is eight days. In practice, this deadline is

generally extended.

> Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Transfer pricing documentation: Due to changes in Croatian

legislation (in force as of 8 April 2020), the deadline for

submission of CIT returns is extended to six months instead of

four months after financial year-ends (i.e., from 30 April 2021

to 30 June 2021).

CbCR notification: Together with CIT return (i.e., on 30 June

2021). Respective change does not apply to taxpayers whose

financial year is different than calendar year.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

CIT Act regulations do not provide detailed rules on how

to arrive at the arm’s-length price that should be applied in

related-party transactions. However, the CIT Act prescribes

the methods that a taxpayer can use to determine the arm’s-

length price: CUP, resale minus, cost plus, profit split and

TNMM. All the five standard methods are allowed; however,

traditional transactional methods (CUP, resale minus and

cost plus) should have the priority when establishing whether

the conditions imposed between related parties are at arm’s

length.

If possible, the CUP method should be applied. Other available

methods, i.e., transactional profit methods (profit split and

TNMM), should be used when traditional methods cannot be

reliably applied.

8. Benchmarking requirements

> Local vs. regional comparables

Croatian CIT legislation does not prescribe any rules regarding

the search approach for preparation of a benchmark analysis.

However, the OECD approach is followed.

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis (up to three years), as per common practice,

is applicable.

> Use of interquartile range

Spreadsheet quartile is used, as per common practice;

however, there is no preference as such.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific provision in the legislation in relation

to performing a fresh benchmarking search every year or

updating the financials of a prior study. Per common practice,

a fresh benchmarking search is usually performed after a

three-year period, while, in between, update of the financials

of a prior study is accepted.

> Simple vs. weighted average

Both the weighted average and simple average are used in

practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The Croatian tax legislation does not envisage penalties for

incomplete documentation. If transfer pricing documentation

is not complete, the Croatian tax authorities could reject

transfer pricing documentation and determine arm’s-length

prices under their own parameters. If intercompany prices

are not at arm’s length as determined by the Croatian tax

authorities, penalty interest for late payment of tax liability

could be imposed. Fines of up to HRK200,000 (approximately

EUR27,000) for a company and HRK20,000 (approximately

EUR2,700) for the responsible individual within the company

may also be imposed for any underestimation of the CIT

liability. Penalty interest would also be calculated from the date

the tax was due until the date the tax is paid.

> Consequences of failure to submit, late submission or

incorrect disclosures

Fines of up to HRK200,000 (approximately EUR27,000) for a

company and HRK20,000 (approximately EUR2,700) for the

responsible individual within the company may be imposed for

any underestimation of the CIT liability. Penalty interest would

also be calculated from the date the tax was due until the date

the tax is paid.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

There is none specifically prescribed.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above.

> Is interest charged on penalties or payable on a refund?

There is none specifically prescribed. However, general

penalties may apply as noted above.

b) Penalty relief

There are no specific provisions concerning penalty relief.

10. Statute of limitations on transfer pricing

assessments

According to the Croatian General Tax Act (GTA), as of 1

January 2017, the statute of limitations for determining tax

liabilities by the tax authorities and for the taxpayers’ right for

claiming a tax refund for a particular tax period expires at the

end of the sixth year following the year in which the tax liability

has arisen. For example, a CIT return for FY2020 should have

been submitted by 30 April 2021, and thus the statute-of-

limitations period commences on 1 January 2022.

The statute of limitations for collection of tax and interest

commences in the year following the year in which the

taxpayer determined the tax liability itself or by the end of

the year in which the resolution by which the tax authorities

determined the tax liability and interest became enforceable.

According to GTA provisions, tax authorities can perform a

tax audit in three years following the commencement of the

statute of limitations.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Once a tax audit is initiated, there is a high risk of transfer

pricing being reviewed within the audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high if the taxpayer

is not able to support the prices applied in intercompany

transactions with the appropriate documentation.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high if the taxpayer

is not able to support the prices applied in intercompany

transactions with the appropriate documentation.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Yes. The Bylaw for concluding APA was introduced on 29 April

2017 and allows unilateral, bilateral, and multilateral APA.

> Tenure

APAs are concluded for a period of up to five years.

> Rollback provisions

There is none specified.

> MAP opportunities

Yes.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No, the Croatian tax authorities have published translated

guidance on the transfer pricing implications of the COVID-19

pandemic issued by the OECD on 18 December 2020. OECD

Guidance in relation to the impact of COVID-19 pandemic on

the APAs should be applied by Croatian tax authorities.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest limitation rule

As of 1 January 2019, new rules for interest limitation has

been introduced in Croatian CIT legislation. As a tax-deductible

expense, a taxpayer is entitled to borrowing costs incurred in

the tax period up to:

> 30% earnings before interest, taxes, depreciation and

amortization (EBITDA)

> EUR3 million (if the higher amount is achieved this way)

The non deductible borrowing costs are those costs exceeding

the taxable interest income or other economically equivalent

taxable income.

The amount of non deductible exceeding costs is reduced for

the amounts for which the tax base is increased under thin-

capitalization rules and the interest on loans between related

parties.

“Borrowing costs” include interest on all forms of debt and

other costs economically equivalent to the interests and the

costs incurred in connection with the collection of funds

(including loans from unrelated parties).

The exceeding borrowing costs may be transferred to the

following three tax periods, but in each period up to the

maximum prescribed amount.

Thin-capitalization rule

According to Croatian CIT legislation, thin-capitalization rules

apply to loans provided by non residents holding at least 25%

of the equity or voting rights in a Croatian taxpayer, loans

provided by third parties not being Croatian tax residents that

are guaranteed by the shareholder and loans provided by

related parties not being Croatian tax residents.

On the basis of the thin-capitalization rule, interests on loans

exceeding 4:1 debt-to-equity ratio are not tax deductible.

Masa Saric

Masa.saric@hr.ey.com

+ 385989806068

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Cyprus Tax Department, Ministry of Finance.

b) Relevant transfer pricing section reference

Currently, the arm’s-length principle is codified in Cyprus

Income Tax Law (L.118(I) of 2002, as amended, Section 33)

with wording similar to that of Article 9 of the OECD Model Tax

Convention (on associated enterprises).

In March 2017, the Cyprus Tax Department issued a tax

circular introducing a transfer pricing documentation

requirement for taxpayers claiming the benefits of the so-

called IP Box regime on embedded IP incomes. The transfer

pricing study should be prepared in accordance with the OECD

Transfer Pricing Guidelines.

On 30 June 2017, the Cyprus Tax Department issued a tax

circular (the Circular) revising the transfer pricing framework

for companies carrying out intragroup financing activities in

Cyprus. More specifically, the scope of the application of the

Circular is limited to intragroup financing activities (granting of

loans or cash advances) that are financed by debt instruments,

regardless of whether the source of funding is with related or

third parties.

As of 1 July 2017, Cypriot entities granting loans financed out

of debt should support the margin (spread) to be applied on

the above intragroup (back-to-back) financing arrangements

with a transfer pricing study, which must be prepared by an

independent advisor based on the OECD Transfer Pricing

Guidelines. The Circular includes additional guidance in

terms of substance and transfer pricing requirements in

line with the OECD Transfer Pricing Guidelines, as well as

guidance to the required content of a transfer pricing study.

Based on the Circular, the transfer pricing analysis of such

financing arrangements should be conducted on the basis of

documenting the remuneration of the Cypriot financing entity,

irrespective of the intercompany interest rates applied on the

incoming and outgoing loans.

The provisions of the Circular are effective from 1 July 2017

and cover all existing and future financing arrangements,

irrespective of any tax rulings issued prior to 30 June 2017.

Cyprus is expected to introduce detailed transfer pricing

legislation and transfer pricing documentation requirements

1https://www.mof.gov.cy

in 2021, which will be based on the OECD Transfer Pricing

Guidelines with effect as of 1 January 2022 (please see

section below for additional details).

> Section reference from local regulation

Section 33 of the Cyprus Income Tax Law (L118(I) of 2002,

as amended, Section 33) refers to transactions between

connected and related parties.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Cyprus is not a member of the OECD. However, the local

transfer pricing regulations are expected to be in line with the

OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Cyprus has adopted BEPS Action 13 only in relation to CbCR.

No Master File and Local Files rules have been adopted (refer to

the above section for details of the upcoming adoption of such

rules for the tax year 2022 onward).

> Coverage in terms of Master File, Local File and CbCR

CbCR is covered, while Master File and Local File are not

covered for the year 2020. Please refer to the above

section for details of the upcoming adoption of such rules

for tax year 2022.

> Effective or expected commencement date

Cyprus is expected to introduce detailed transfer

pricing legislation and transfer pricing documentation

requirements in 2021, which will be based on the OECD

Transfer Pricing Guidelines with effect as of 1 January

2022.

> 

Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

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

on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 1 November 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

There is none specified apart from the documentation

requirements limited to intercompany loans financed by debt

and for embedded intellectual property (IP) income for the tax

year 2020. For documentation requirements on all other types

of transactions with respect to tax year 2022 and onward,

please refer to the above section for details of the upcoming

adoption of new transfer pricing legislation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

A local branch of a foreign company should be considered as a

separate legal entity for Cypriot tax purposes; thus, it should

be subject to local transfer pricing rules.

> Does transfer pricing documentation have to be prepared

annually?

With regard to the existing transfer pricing documentation

rules in place (i.e., intercompany loans financed out of debt),

the prepared transfer pricing documentation needs to be

updated annually in cases where any amendments compared

with the previous year (e.g., modification of loans, and

changes in functional and risk profile) were concluded.

Based on the upcoming transfer pricing legislation (with

respect to tax year 2022 and onward), the documentation will

have to be prepared annually.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Each entity having a documentation requirement is expected

to prepare a separate Local File documenting its intercompany

transactions falling under the scope of the local transfer

pricing legislation.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality threshold for the tax year 2020. For the

tax year 2022, it is expected that a materiality threshold will

be introduced.

> Master File

This is not applicable at the present; however, such

documentation requirement is expected to be introduced

during 2021, effective as of 1 January 2022. Based on the

provisions of the draft expected legislation, companies are

exempt from the requirement to prepare a Master File if they

are not the ultimate parent entity or a surrogate parent entity

of their corporate groups for CbCR purposes.

> Local File

This is not applicable at the present; however, such

documentation requirement is expected to be introduced

during 2021, effective as of 1 January 2022. Based on the

provisions of the draft expected legislation, Cypriot companies

having intercompany transactions of an aggregated amount of

EUR750,000 or higher per type of transaction are expected to

have a documentation obligation for the year 2022 onward.

> CbCR

Companies with consolidated group revenue of EUR750 million

or more in the preceding fiscal year are required to comply

with the CbCR legislation.

> Economic analysis

There is no materiality threshold.

c) Specific requirements

> Treatment of domestic transactions

There is documentation obligation for domestic transactions

only for intragroup financing transactions related to loans

financed out of debt. The broader transfer pricing rules to be

introduced in 2021 are not expected to include an exception

for domestic transactions.

> Local language documentation requirement

Local transfer pricing documentation may be prepared in

English. If requested by the tax authorities, taxpayers should

also be prepared to provide the Local File translated in Greek

within 60 days upon request.

> Safe harbor availability including financial transactions if

applicable

Safe harbor is available for companies performing pure

intermediary financing activities, at the rate of 2% on assets

after tax and, for companies with functions similar to a

regulated financial institution, a return on equity of 10% after

tax. No other safe harbor rules are available.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

For the year 2020 and 2021, Cypriot companies may

voluntarily submit an electronic Summary Information Table

(SIT), containing basic information on their intercompany

transactions concluded within the year.

For the tax year 2022, Cypriot companies should have an

obligation to submit an SIT, irrespective of their requirement to

prepare Local File documentation. The SIT should be submitted

within nine months following the end of the tax year.

It should be noted that local transfer pricing documentation

and the SIT should be signed off by a person in Cyprus with

license to act as an auditor according to Cyprus Companies

Law.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Current transfer pricing rules provide for the electronic

submission of a SIT, containing basic information on taxpayer’s

intercompany transactions concluded within the year.

The submission of the SIT is voluntary for tax year 2020 and

2021; however, it is expected to be mandatory from year 2022

onward.

> Related-party disclosures along with corporate income tax

return

Related-party balances and transactions are disclosed on an

aggregated basis in the company’s income tax return.

> Related-party disclosures in financial statement/annual

report

Related-party transactions and balances are required to be

disclosed in the “Notes of the Financial Statements” prepared

under IFRS.

> CbCR notification included in the statutory tax return

Statutory annual tax return does not make reference to CbCR

notifications.

> Other information/documents to be filed

There are none specified other than the above.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is within 15 months from the financial year-

end (e.g., for the fiscal year ending 31 December 2020, the

deadline is 31 March 2022).

> Other transfer pricing disclosures and return

The SIT should be submitted within nine months from the

corresponding year-end (e.g., for the tax year 2022, the

deadline for the submission of the SIT is 30 September

2023). With an expected effect for tax year 2022 onward, the

expected deadline for the preparation of the Local File is 12

months from the tax year-end. Local File should be delivered to

the tax authorities within 60 days upon their formal request.

> Master File

With an expected effect for tax year 2022 onward, the

expected deadline for the preparation of the Master File is the

same as the deadline for the Local File, i.e., 12 months from the

tax year-end.

The Master File is also not submitted electronically but is

expected to be delivered to the Cypriot tax authorities within

60 days upon their formal request.

> CbCR preparation and submission

The deadline is within 12 months from the end of the fiscal

year (e.g., for groups with year-end 31 December 2021, the

reporting deadline is 31 December 2022).

> CbCR notification

The deadline is by the last day of the reporting fiscal year (i.e.,

for fiscal years ending on 31 December 2021, the deadline is

by 31 December 2021).

b) Transfer pricing documentation/Local File preparation

deadline

Up to tax year 2020, the time frame for the preparation of

transfer pricing documentation reports (e.g., for supporting

the embedded IP income or for loans financed by debt) is the

same as the filing deadline for company tax returns (which is

15 months from the end of the relevant tax year).

For years 2022 onward, the expected transfer pricing

regulations indicate that the transfer pricing documentation

files should be prepared within 12 months from the respective

tax year-end.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

The deadline is within 60 days upon the tax authorities’ formal

request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

Currently, the arm’s-length principle is codified in the Cyprus

Income Tax Law (L.118(I) of 2002, as amended, Section 33)

with wording similar to that of Article 9 of the OECD Model

Tax Convention (on associated enterprises), and no specific

guidelines have been issued with regard to the preferred

transfer pricing methods.

8. Benchmarking requirements

> Local vs. regional comparables

Pan-European benchmarking studies are expected to be

preferred by the tax authorities upon the introduction of the

legislation in 2022. For the years 2020 and 2021, this is not

applicable.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year (three years) analysis is accepted.

> Use of interquartile range

Spreadsheet quartile function is generally accepted.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

This is not applicable for the tax years 2020 and 2021. Based

on the expected legislation to be effective as of 1 January

2022, a search may be used for a maximum of three years

with appropriate updates performed each year.

> Simple, weighted or pooled results

Weighted average is accepted.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Any transfer pricing adjustments that may arise during a

tax audit may trigger additional income tax liability (plus

applicable interest and penalties).

> Consequences of failure to submit, late submission or

incorrect disclosures

Any transfer pricing adjustments that may arise during a

tax audit may trigger additional income tax liability (plus

applicable interest and penalties).

There are no specific transfer pricing penalties at present.

However, it is expected that the Assessment and Collection

of Taxes Law of Cyprus will be amended in 2022 to

include administrative penalties relative to transfer pricing

documentation.

More specifically, the upcoming penalties are expected to be

triggered in the events of:

> Late submission of the SIT

> Late delivery of transfer pricing documentation files to the

tax authorities upon official request

> Non-submission of the SIT

> Non-delivery of transfer pricing documentation

> Non-accurate or incomplete submission or delivery of the

SIT of transfer pricing documentation file.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

This is not applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

> This is not applicable.

> Is interest charged on penalties or payable on a refund?

It is evaluated on a year-by-year basis.

b) Penalty relief

The taxpayer has the right to submit an objection; however,

the burden of proof lies with the taxpayer.

10. Statute of limitations on transfer pricing

assessments

The statute of limitation is the same as it is for income tax (i.e.,

6 years from the end of the year of assessment, which may be

increased to 12 years in the case of fraud).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium. Tax

authorities have initiated transfer pricing audits; however,

the authorities usually challenge the pricing applied on

intercompany transactions and frequently request documents

supporting the pricing during tax audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be low but expected to

be increased in the following years. In case transfer pricing

is reviewed as part of the audit, the probability that transfer

pricing methodology will be challenged is currently low since

there is currently no detailed transfer pricing legislation.

Moreover, the introduction of the expected broader local

transfer pricing requirements in 2022 will likely result in a

more in-depth evaluation of the transfer pricing methodologies

in place by taxpayers.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

This is not applicable at the present, since there are no specific

guidelines yet with regard to which is the most acceptable

transfer pricing methodology. The applicability of the above

will need to be assessed upon the introduction of the broader

local transfer pricing legislation in 2022.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No APA program available. In the upcoming transfer pricing

legislation that is expected to be enacted in 2022, both

unilateral, bilateral and multilateral APAs will be available.

> Tenure

In particular, APAs will be codified in the law that will provide

for both unilateral, bilateral and multilateral APAs to be agreed

with the tax authorities for over a fixed period of time.

> Rollback provisions

This is not applicable.

> MAP opportunities

MAP opportunities are applicable under the bilateral double

tax treaties.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable. Anti-Tax Avoidance Directive provisions

for the interest limitation rules are applied as of 1 January

2019.

Charalambos Palaontas

charalambos.palaontas@cy.ey.com

+ 35799335335

Contact

Philippos Raptopoulos

philippos.raptopoulos@cy.ey.com

+ 35796795016

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Ministry of Finance (Ministerstvo Financí České Republiky —

MF).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Czech Income Tax Act and Directives D-10, D-34, D-32

and D-334 of the Czech MF and General Financial Directorate

(the Directives are not legally binding, but are widely

respected); transfer pricing obligation applicable since 1993.

> Section reference from local regulation

Section 23/7 of the Czech Income Tax Act.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

This is not applicable.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The Czech Republic is a member of the OECD. However, the

OECD Transfer Pricing Guidelines are not implemented into the

Czech tax legislation directly, but the recommendation to use

Transfer Pricing Guidelines is present in Guideline D-22.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes; however, only the CbCR obligation has been effectively

adopted.

> Coverage in terms of Master File, Local File and CbCR

1https://www.financnisprava.cz/assets/cs/prilohy/d-zakony/D-332.pdf

The master and Local Files are not covered. However,

Directive D-334, containing similar requirements on the

scope of transfer pricing documentation and issued by the

Czech MF, is followed in the Czech Republic.

> Effective or expected commencement date

There is none specified.

> Material differences from OECD report template or format

There is none specified.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is no concept of penalty protection in Czech tax law.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The Czech Republic tax legislation currently does not have

a formalized legal requirement for the existence of transfer

pricing documentation. However, Czech taxpayers generally

bear the burden of proof in tax proceedings; thus, upon a tax

audit, they are obligated to demonstrate that their transfer

prices are in line with the arm’s-length principle. In recent

years, the transfer pricing documentation has always been

required during tax audits.

Directive D-334 outlines the requirements of the expected

scope of documentation of a transfer pricing methodology

agreed upon between related parties.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation should be prepared annually

under the local jurisdiction regulations (although it is not

legally obligatory; refer to the previous section).

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

There is no materiality limit.

> Local File

There is no materiality limit.

> CbCR

If the consolidated revenues of the group amounted to at least

EUR750 million in the previous fiscal year, they need to submit

a CbCR.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

The same rules apply with respect to cross-border and

domestic transactions.

> Local language documentation requirement

Based on the Czech Tax Code, all documents provided to the

tax authorities have to be in the Czech language. However,

transfer pricing documentation is also accepted in English at

times.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

This is not applicable.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is none specified.

> Related-party disclosures along with corporate income tax

return

Effective from 1 January 2001, the executives of a controlled

entity are required to complete a memorandum with respect

to relationships and transactions with companies in the group.

This does not apply if a controlling agreement is concluded.

Note that this is based on commercial legislation, rather than

tax legislation, and the memorandum has no direct tax impact

or tax aspects.

From 2014, taxpayers are obliged to fill in a mandatory

enclosure with the CITR that includes reporting of intragroup

transactions. Qualifying companies have to submit information

regarding related parties, such as name and registered office.

They should also present a list of selected transactions entered

into with the aforementioned related parties in a special

enclosure with their tax return. The transactions are to be

classified by type, such as sale of goods, provision of services,

financial transactions and payment of royalties.

In addition, all taxpayers are required to disclose, in the CITR,

whether they were engaged in transactions with related

parties.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The CITR needs to be submitted three months after the year-

end or six months after the year-end, if the taxpayer is subject

to the obligatory audit or the tax return is filed by a certified

tax advisor.

> Other transfer pricing disclosures and return

A transfer pricing appendix to the CITR needs to be submitted

three months after the year-end or six months after the year-

end, if the taxpayer is subject to the obligatory audit or the tax

return is filed by a certified tax advisor.

> Master File

This is not applicable.

> CbCR preparation and submission

The report needs to be filed 12 months after the year-end.

> CbCR notification

The notification filing deadline is the end of the respective

year. It needs to be filed only if there are changes in the filed

information, compared with the notification for the previous

year.

b) Transfer pricing documentation/Local File preparation deadline

Upon the request of the tax authorities.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

The taxpayer has to deliver the transfer pricing documentation

within the prescribed deadline, which is usually 15 days, but it

may be extended to at least 30 days.

d) Are there any new submission deadlines per

COVID-19-specific measures? If Yes, specify which

deadlines are impacted

This is not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The MF follows the OECD Guidelines. The CUP method is

generally preferred. Use of profit-based methods is acceptable

where substantiated.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local jurisdiction

comparables. There is a preference for local comparables, even

though EU comparables are usually accepted in practice.

> Single-year vs. multiyear analysis for benchmarking

Multiyear (three years) analysis, as per common practice, is

preferred.

> Use of interquartile range

Spreadsheet quartile is used as per common practice.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking

search every year; however, an update of the financials is

recommended annually.

> Simple, weighted or pooled results

The weighted average, as per common practice, is preferred.

> Other specific benchmarking criteria, if any

There is a 25% independence threshold based on Czech tax

law.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

This is not applicable.

> Consequences of failure to submit, late submissions or

incorrect disclosures

There are no specific penalties for not having transfer pricing

documentation.

There is a penalty of up to CZK1.5 million (approximately

EUR60,000) for not filing the CbCR.

There is a penalty of up to CZK0.5 million (approximately

EUR20,000) for not filing the CbCR notification or the transfer

pricing appendix to the CITR.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Generally, when the tax authority successfully challenges

transfer pricing, a penalty of either 20% of the unpaid tax

or 1% of the decreased or reduced tax loss will be applied.

Thereafter, interest is assessed at 14% above the “repo rate”

(or repurchase agreement rate) of the Czech National Bank

(Czech: Česká Národní Banka — CNB), for a maximum of five

years.

> Is interest charged on penalties or payable on a refund?

No.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

This is not applicable.

b) Penalty relief

No penalty relief regime is in place. It is at the discretion of the

MF to decrease penalties; however, this is limited to specific

situations.

When the tax authorities issue a final report (decision) about

the tax audit, including calculation of the tax assessment

and a payment order, the taxpayer may appeal to the Appeal

Financial Directorate. Although bringing an appeal does not

suspend the effect of the contested decision, the additional

tax, penalties and late–payment interest do not have to be paid

until the appeal decision date.

Subsequently, the taxpayer may sue the Appeal Financial

Directorate in the Regional Court. The additional tax, penalties

and late-payment interest are already payable.

The Regional Court judgment may be appealed to the Supreme

Administrative Court.

Regardless of the above-described remedies provided by Czech

domestic law, the taxpayer’s respective counterparty may,

upon the tax assessment, initiate the MAP on the basis of the

EU Arbitration Convention or the respective double tax treaty

before its tax authorities (if enabled by law in the respective

jurisdiction).

10. Statute of limitations on transfer pricing

assessments

The statute of limitations could be three years as of the CITR

deadline, but it may be extended in the case of tax scrutiny,

supplementary CITR, tax losses (up to an additional 5 years to

the standard statute of limitations for the year when the tax

loss was realized and the subsequent five years) or investment

incentives (up to an additional 10 years to the standard statute

of limitations).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Overall, the likelihood may be considered to be medium.

However, the transfer pricing audits are initiated on the basis

of the results of complex screening performed by the Czech

tax authorities and risk profiles of taxpayers (though not

regularly).

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high; as mentioned

above, the tax audits are initiated when the tax authorities

have a specific suspicion.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high, as the tax

authorities generally take a pragmatic approach and focus

on areas where it is relatively easy for them to make the

adjustment.

> Specific transactions, industries and situations, if any, more

likely to be audited

Intangibles, royalties, long-term losses and service fees are

seen as the most common transfer pricing audit issues.

Although no specific jurisdiction is targeted for transfer pricing

audits, transactions with tax-haven jurisdictions are closely

scrutinized. The scrutiny of transfer pricing will only intensify,

and in press statements, the MF has directed that the tax

authorities should particularly focus on transfer pricing. In

addition, they have created a specialized group of full-time

specialists within the tax authority dedicated to transfer

pricing issues.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral or multilateral)

An APA program is available, and Czech taxpayers may

request unilateral, bilateral and multilateral APAs. Upon the

taxpayer’s request, the tax administrator decides whether

the taxpayer has chosen a transfer pricing method that would

result in a transfer price determination on an arm’s-length

basis. As of 2018, Czech tax non residents may ask an APA for

the allocation of profits to a permanent establishment. D-32

details the procedure for issuing binding assessments and the

particulars for the application.

> Tenure

The tenure period is usually three or four years.

> Rollback provisions

The binding assessment can be issued only for transactions

that are effective in a particular tax period or that will be

effective in the future. It is impossible to apply for a binding

assessment of business relationships that have already

affected tax liability. However, in practice, the decisions are

respected for previous periods as well.

> MAP opportunities

MAP procedure is available in line with the EU arbitration

convention and respective double tax treaties.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The tax deductibility of financing expenses (interest and

associated expenses) with respect to related-party loans

(including back-to-back loans) is limited by a debt-equity

ratio of 4:1 (6:1 for banks and insurance companies).

Financing expenses with respect to profit-participating loans

are non deductible for tax purposes. Also, limitations are

imposed on the deductibility of financing expenses related to

shareholdings.

Further, in 2019, the interest deductibility limitation rule

was implemented through the Anti-Tax Avoidance Derivative

(ATAD) transposition. A deductibility limit for exceeding

borrowing costs is the higher of 30% tax earnings before

interest, tax, depreciation and amortization (EBITDA) or

CZK80 million. The rule does not apply to stand-alone

taxpayers or to listed financial enterprises. Borrowing costs

subject to this rule are defined broadly in line with ATAD.

Disallowed exceeding borrowing costs may be carried

forward and claimed in future tax periods (however, transfer

to previous tax periods and transfer of unused capacity to

future tax periods are not allowed). The interest deductibility

limitation rule applies together with the thin-capitalization rule

and other limitations on financing expenses.

Libor Fryzek

Libor.Fryzek@cz.ey.com

+ 420 731 627 004

Contact

Democratic Republic of Congo (DRC)

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

General Direction of Tax (Direction Générale des Impôts — DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

TP regulations and rulings include:

> Law n°004/2003, dated 13 March 2003, as amended and

completed to date related to reform of the tax procedure

at Articles 24 bis (TP documentation requirements).

> Article 24 ter (filing obligation of TP return)

> Article 24 quarter (conclusion of Advance Pricing

Agreements)

> Article 93 bis (TP return penalties)

The effective date of application is 1 January 2015.

> Section reference from local regulation

Special tax provisions, refer above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The DRC is not a member of the OECD, but in practice, it

follows the OECD methods.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

There’s only the requirement for Local File documentation.

BEPS Action 13 provisions and CbCR are not applicable.

> Effective or expected commencement date

Effective date is 1 January 2015, and the filing requirement is

since 1 January 2017.

> Material differences from OECD report template or format

Local TP requirements do not follow the BEPS Action 13

format for the Local File.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, a local TP documentation has to be provided to the DGI

only upon request in case of a tax audit.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity

No, TP reports aren’t required for each entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

First filing requirements in 2017 of a TP return

(documentation allégée) of the TP documentation. The filing

due date is two months after the filing of the corporate income

tax (i.e., 30 June).

The filing obligation is applicable only to companies realizing

an annual net turnover of USD1 million.

Filing of the TP return is only applicable for transactions above

or equal to USD20,000 on each transaction realized with

affiliated companies outside the DRC.

> Master File

This is not applicable.

> Local File

As of 1 January 2017, there is an obligation to file the TP

return with the DGI.

Local TP documentation has to be provided to the DGI only

upon request in case of a tax audit (since 2015).

> CbCR

This is not applicable.

> Economic analysis

It’s not provided by the law; however, in practice, the following

analysis methods are used: CUP, resale price method (RPM),

cost plus method, comparable profits method (CPM), TNMM

and the transactional profit split method (PSM).

There’s the possibility to obtain prior agreement on the

method for determining the price of intragroup transactions

for a period not exceeding four years (since 2020). This was

further confirmed in the new Finance Bill for 2022.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. However, domestic transactions are expected to

follow arm’s-length principles as they may be under scrutiny

during tax audit.

> Local language documentation requirement

French.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

As a note, the TP return does not replace the supporting

documents relating to each transaction.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The document to be filed with the tax authority is the

TP return. It has to be submitted in French as part of the

taxpayer’s annual tax return. Online submission is permissible.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The corporate income tax (CIT) compliance deadline is 30

April, following each fiscal year-end.

> Other transfer pricing disclosures and return

The annual TP return due date is 30 June of each year.

> Master File

There is no filing requirement; it’s to be kept in-house in case

of a tax audit.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

It should be available by the time of a tax audit (accounts

examination on site).

c) Transfer pricing documentation/Local File submission

deadline

There is no filing requested for the TP documentation.

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

This is not applicable.

> Time period or deadline for submission upon tax authority

request

The deadline is 20 days following the tax auditor’s request of

the TP documentation.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost plus,

profit split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

Both can be applicable. However, if local comparables are

applicable, it would be preferred.

> Single-year vs. multiyear analysis for benchmarking

There is none specified provided.

> Use of interquartile range

There is none specified provided.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is none specified provided.

> Simple, weighted or pooled results

There is none specified provided.

> Other specific benchmarking criteria, if any

There is none specified provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The risk of non-compliance is that in the event of an audit by

the DGI, the absence of complete TP documentation could

lead tax administrators to reject certain deducted professional

charges linked to these transactions. In addition, since the

publication of the 2020 Finance Law, the failure to declare

the documentation of the transfer price gives rise to a fine of

CDF500,000 (approximately USD270) per day of delay.

> Consequences of failure to submit, late submission or

incorrect disclosures

The risk of non-compliance is that in the event of an audit

by the DGI, the absence of TP documentation could lead

tax administrators to reject certain deducted professional

charges linked to these transactions. In addition, since the

publication of the 2020 Finance Law, the failure to declare

the documentation of the transfer price gives rise to a fine of

CDF500,000 (approximately USD270) per day of delay.

> If an ad justment is sustained, can penalties be assessed if

documentation is deemed incomplete?

There’s no guidance provided; however, after a TP

reassessment is made, the profit indirectly transferred should

be qualified as a deemed distribution of a benefit. Such

“benefit” transfer should entail a CIT of 30% and withholding

tax (WHT) of 20% on the distributed amounts payments.

Accordingly, penalties will apply at the rate of 20% of the tax

evaded, or discretionary taxation, and 40% if recurring. The

recovery penalties are set at 2% of the principal per month of

delay.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is none specified.

> Is interest charged on penalties or payable on a refund?

In the case of a reassessment or a discretionary taxation, a

delayed interest of 2% is applied per month of delay, capped at

50% of the tax evaded or reconstituted by the office.

b) Penalty relief

There is none specified provided, but we can assume that

further discussion can be held with the DGI.

10. Statute of limitations on transfer pricing

assessments

Five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium. However,

during normal audits, queries on TP are formulated by the tax

inspectors.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium if they assume

that the company chose this method to lower the taxable base.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be low if management can

explain the methodology used and, as written, obtain prior

agreement on the methodology.

> Specific transactions, industries and situations, if any, more

likely to be audited

The industries are large companies: telecommunication, oil

and gas, mining, and subcontracting mining companies.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

This is not applicable.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

The possibility to initiate an APA has been added into the

Law (Article 24 quarter) for a maximum period of four years.

Practical aspects of submission are to be clarified.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are debt-to-equity rules. The DRC does not have any

thin-capitalization rules, but several measures may apply to

related-party transactions.

The DRC has several measures applicable to related-party

transactions that are not conducted on an arm’s-length basis.

These provisions include the disallowance of loan interest with

respect to rates exceeding the annual average of the effective

rates charged by the credit institutions of the jurisdiction in

which the lending company is established, and the repayment

of principal beyond five years.

Management fees paid to a related party may be deducted

from the CIT base if the following conditions are satisfied:

> The services rendered can be clearly identified, i.e., they are

genuine services that are effectively rendered and directly

related to operating activities.

> The services cannot be rendered by a local company,

i.e., overhead expenses recharged to the local entity are

excluded.

> The amount paid for the services corresponds to the

remuneration paid in identical transactions between

independent companies.

Eric Nguessan

eric.nguessan@ci.ey.com

+ 2250708025038

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority 1

Danish Customs and Tax Administration (Skattestyrelsen)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The following regulations contain references to TP

documentation:

> Tax Assessment Act Section 2, which states that controlled

transactions should be at arm’s length

> Tax Control Act Section 37–42, which defines the

documentation requirements that are further detailed in the

executive order

> Executive Order No. 1297 of 31 October 2018

> Section reference from local regulation

> Tax Assessment Act Section 2: The arm’s-length principle

> Tax Control Act Section 37-42 has reference to TP

documentation.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No, none relating specifically to COVID-19 situation.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Denmark is a member of the OECD.

The OECD Guidelines are generally recognized as a source

for interpretation (soft law) of the Danish TP rules (the arm’s

length principle).

b) BEPS Action 13 implementation overview

1https://www.skat.dk/

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Denmark has adopted BEPS Action 13 for TP documentation

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

It covers the Master File, Local File and CbCR.

> Effective or expected commencement date

It is applicable for years beginning on or after 1 January

2016.

> Material differences from OECD report template or format

There are no material differences from the OECD report

template or format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, TP documentation is required to be prepared

contemporaneously to offer protection from penalties and

discretionary assessment.

Under the current law, documentation for financial years

starting prior to 1 January 2021 should be submitted only

upon request, with 60 days to submit. This deadline cannot be

extended.

For financial years starting on or after 1 January 2021,

new legislation requires TP documentation to be submitted

annually. The deadline for submitting is 60 days after the filing

of the tax return. Generally, the tax return filing is due six

months after the end of the financial year (please see Section

6. a for more details).

For companies with calendar year fiscal years, this means that

TP documentation (Master File and Local File) must be filed to

the tax authorities no later than 29 August in the following

fiscal year (i.e. 29 August 2022 for companies with fiscal year

end 31 December 2021).

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local Danish branch is required to prepare TP

documentation.

> Does transfer pricing documentation have to be prepared

annually?

Yes, TP documentation for Danish entities and branches is

subject to requirement of being contemporaneously prepared

and needs therefore to be prepared annually.

Non-compliance with the deadline may mean that:

> Taxable income may be determined on a discretionary/

estimated basis. (The burden of proof shifts from the tax

authorities to the taxpayer.)

> TP penalties can be imposed.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

TP documentation exemption clause: Companies belonging

to a consolidated group with fewer than 250 employees (FTE)

and either of the following are exempt from the requirement to

prepare TP documentation:

> Less than Danish krone (DKK) 125 million in assets

> Less than DKK250 million in revenue

Note that the thresholds are at consolidated basis for the

group, not only the Danish entities/branches.

The exemption does not apply to transactions with

counterparties resident in jurisdictions that are not EU/EEA

members and do not have a double-tax treaty with Denmark.

When exempt, the company is still subject to TP principles

(the arm’s-length principle) and the exemption from preparing

TP documentation does not mean that the entity/branch

cannot be subject transfer pricing scrutiny by the Danish tax

authorities.

> Master File

No separate threshold. See above for TP documentation.

> Local File

No separate threshold. See above for TP documentation

> CbCR

CbC report filing and CbCR notification requirements apply

in line with the OECD Guidelines. The threshold for CbCR is

DKK5.6 billion (EUR750 million)

> Economic analysis

There is no materiality limit.

A controlled transaction can be deemed insignificant if it is

a non-reoccurring transaction with a limited/low economic

value. Transactions that are deemed immaterial for transfer

pricing purposes should be identified and listed but are not

subject to detailed documentation requirements (not subject

to a comparability/economic analysis).

c) Specific requirements

> Treatment of domestic transactions

For fiscal years starting before 1 January 2021 there is no

exemption for domestic transactions. Domestic transactions

should therefore be included for TP documentation

purposes, despite often being within a consolidated tax

group (mandatory joint taxation). Despite the documentation

requirement, the DTA will generally only take an interest in

such transactions in cases of asymmetric tax regimes (tonnage

or hydrocarbon taxation, etc.) or in case of entity-specific

carryforward losses within a mandatory joint taxation.

For fiscal years starting on or after 1 January 2021, an

exemption from documenting domestic transactions for Danish

TP documentation purposes has been introduced. Following

this, preparation of TP documentation covering domestic

transactions will only be required in cases of being between

parties subject to asymmetrical tax regime (tonnage tax,

hydrocarbon tax, special losses within the joint taxation group,

etc.) or when required to understand the basis for a cross-

border transaction.

> Local language documentation requirement

TP documentation is required to be prepared in Danish,

English, Swedish or Norwegian language.

> Safe harbor availability, including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Generally individual testing per transaction type and

counterparty.

> Any other disclosure/compliance requirement

No other requirements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

TP-specific disclosures are embedded within companies’/

branches’ tax returns.

In certain cases however, e.g., for companies subject to

hydrocarbon taxation, companies/branches are required to

report controlled transactions using Form 05.022.

> Related-party disclosures along with corporate income tax

return

In the tax return, entities and branches are required to report

controlled transactions. The taxpayer is requested to specify

nature and volume of controlled transactions, jurisdiction of

counterparties, assess whether the entity/branch is subject to

exemption from Danish TP documentation requirements, etc.

Information regarding the TP method applied and outcome

testing is not reported in this form. Also, the tax return does

not include a statement that controlled transactions are on

arm’s-length terms and conditions.

> Related-party disclosures in financial statement/annual

report

No.

> CbCR notification included in the statutory tax return

No.

Notification for the CbCR must be filed separately for Danish

entities and branches before the end of the fiscal year.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

General principle is six months after fiscal year-end, meaning

that entities/branches with calendar year fiscal year have filing

deadline on 30 June.

The six-month filing deadline applies also to entities/branches

with non-calendar year fiscal year, however with the exemption

that tax return filing deadline can never be later than 1

September. This means that certain entities/branches can be

subject to a filing deadline shorter than six months.

> Other transfer pricing disclosures and return

Form 05.022 (if applicable) is subject to the same filing

deadline as the corporate income tax return.

> Master File

Sixty days after deadline for filing the tax return. This applies

only for fiscal years starting on or after 1 January 2021. This

means that many MNEs will have to accelerate the preparation

of the Master File to meet the Danish filing deadline.

For fiscal years starting prior 1 January 2021, the Master File

should be contemporaneously prepared but only be filed upon

request (within 60 days after the request).

> CbCR preparation and submission

No later than 12 months after the fiscal year-end of the fiscal

year the reporting concern.

> CbCR notification

The deadline is by the end of the fiscal year in question.

b) Transfer pricing documentation/Local File preparation

deadline

For financial years starting prior to 1 January 2021, TP

documentation should be finalized at the time the tax return

is submitted — i.e., the TP documentation should be prepared

contemporaneously and submitted only on request. At request

the entity/branch will have 60 days to file the documentation

(consisting of Master File and Local File).

For financial years starting on or after 1 January 2021, TP

documentation must be submitted within 60 days after the

deadline of the tax return. For calendar year companies, this

means 29 August (year-end + six months + 60 days).

Missing or insufficient TP documentation, or TP

documentation that can be evidenced not being

contemporaneously prepared, expose the taxpayer to potential

discretionary assessments of the taxable income and potential

penalties for non-compliance with Danish TP documentation

requirements.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Yes, refer to the above point b). The submission deadline

for fiscal years starting on 1 January 2021 or later apply to

Master Files as well as Local Files. The deadline can be extended

only in special cases.

> Time period or deadline for submission upon tax authority

request

For financial years starting prior to 1 January 2021, the

taxpayer has to submit the TP documentation within 60 days

once requested by the tax authorities. Hence, it requires

Danish taxpayers to be able to submit the TP documentation

(Master File and Local File) 60 days after their filing of the tax

returns. The deadline cannot be extended.

For financial year-end starting on or after 1 January 2021, TP

documentation should be submitted (without request) within

60 days after the tax return filing deadline.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Not currently.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The following TP methods are accepted: CUP, resale price, cost

plus, profit split, TNMM and others. When selecting the most

appropriate method, the taxpayer should consider the aspects

regarding the application of methods stated in the OECD

Guidelines.

8. Benchmarking requirements

> Local vs. regional comparables

Local benchmarks are not required as per local requirements.

Consequently, pan-European benchmarks are accepted.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year testing is generally accepted but not always

recognized. For principal TP structures, there is a tendency

to test whether the margins of limited-risk entities (contract

manufacturer or limited risk distributor) are within the

interquartile range every year (single-year testing). It should

not automatically be taken for granted that multiyear testing

can mitigate the TP risk attributable to single-year outcomes.

> Use of interquartile range

Yes, the interquartile range calculation using spreadsheet

quartile formulas is preferred.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Frequency of new benchmarks and benchmark refreshes/roll-

forwards are consistent with recommendations as per OECD

Guidance.

> Simple, weighted or pooled results

There is a preference for the weighted average for arm’s-

length analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The penalty amounts to DKK250,000 per legal entity per year

for which either no, insufficient or non-contemporaneously

prepared TP documentation is submitted. Penalties are non-

deductible for tax purposes.

Penalties can be reduced by 50% if sufficient TP

documentation is subsequently submitted.

No automatic penalty regime as there will be an individual

assessment of penalties on a case-by-case basis if gross

negligence or intend. Tax authorities have the burden of proof.

> Consequences of failure to submit, late submission or

incorrect disclosures

Same penalty regime as specified above.

In case of no or late submission, it should be expected that

penalties will be imposed.

In addition, if the taxpayer does not fulfil the disclosure

requirements as stated in tax returns and Form 05.022

(refer to the section above on TP-specific returns), or if the

information provided is not correct, a penalty can be imposed.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

If the tax authorities increase the income, an additional fine of

10% may be imposed on the income adjustment. The penalty

amounts are non deductible.

Where there is an income adjustment, a non deductible

surcharge will be levied on all prior-year adjustments of

corporate taxes payable. In addition, interest will be charged

on the related late payment of taxes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above.

> Is interest charged on penalties or payable on a refund?

Non deductible interest accrues on late tax payments related

to assessments for prior years’ income. The interest was 0.7

% in 2020, 2019 and 2018 (0.8% in 2017, 2016, 2015 and

2014).

Refunds are also subject to interest.

b) Penalty relief

If the taxpayer provides insufficient or no documentation

and subsequently provides documentation that meets the

requirements, the fine will be reduced to half of the original

amount (DKK125,000). However, the 10% penalty on any

income adjustment could still apply. As stated above, adequate

TP documentation submitted in due time will provide penalty

protection.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for a TP assessment is 1 May of the

sixth year following the fiscal year concerned (e.g., the statute

of limitations for the fiscal year 2016 is 1 May 2022).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high, especially in

cases of business restructurings, operating losses, material

intragroup financing arrangements, IP asset transfers,

decreases in taxable income, etc.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Depending on the circumstances, the likelihood of a challenge

can be considered high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Depending on the circumstances, the likelihood of an

adjustment can be considered high.

> Specific transactions, industries and situations, if any, more

likely to be audited

The tax authorities are particularly focused on:

> Valuation of intellectual property (IP), particularly related to

the transfer of intangible assets abroad to low-tax countries

> Loss-making entities

> Business restructurings

> Group financing, including intercompany loans, cash pools

and guarantees

> Management services — both inbound and outbound

> Licensing (royalty)

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APAs are available.

> Tenure

The tenure is usually five years, but may be shorter or longer.

> Rollback provisions

Rollback is available on request although they will not prevent

Danish Customs and Tax Administration from initiating tax

audits of previous income periods.

> MAP opportunities

MAPs are available.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under thin-capitalization rules, interest paid by a Danish

company or branch to a foreign group company is not

deductible to the extent that the Danish company’s debt-to-

equity ratio exceeds 4:1 at the end of the debtor’s financial

year and that the amount of controlled debt exceeds DKK10

million.

The Danish thin-capitalization rules are supplemented through

an “interest ceiling rule” and earnings before interest, taxes,

depreciation and amortization (EBITDA) rule.

Justin Breau

justin.breau@dk.ey.com

+ 4525293932

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Tax Administration of the Dominican Republic (Dirección

General de Impuestos Internos, or DGII)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 281 of the Dominican Tax Code and Decree No.

78-14.

Decree 256-21 that modifies Articles 5,7,10 and 18 of

Decree No. 78-14, applicable from FY2021.

General Norm 08-2021 that regulates CbC report and

notification, applicable from FY2022.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The Dominican Republic is not an OECD member and there is

no reference in which the OECD Guidelines can be relied upon

for interpretation.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

1 https://dgii.gov.do/Paginas/default.aspx

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

All three, i.e., Master File, Local File and CbCR, are covered.

> Effective or expected commencement date

1 January 2021 for Local File and Master File.

The general norm will apply as of the 2022 multinational

group’s reporting tax year.

> Material differences from OECD report template or format

There are significant differences between the OECD report

template or format and the documentation requirements

under local jurisdiction regulations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does it need to be submitted or

prepared contemporaneously?

Yes, they need to be prepared and submitted annually.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

The TP documentation report and return must be prepared

annually, with updates to all the information that allows a

correct TP analysis. The local tax authorities require the most

recent available financial information for the comparables and

the tested party.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes

b) Materiality limit or thresholds

> Transfer pricing documentation

Taxpayers are exempt from preparing a TP study in certain

situations:

> Taxpayers whose total amount of intercompany

transactions does not exceed Dominican peso (DOP)

12,193,981.70 (adjusted every year for inflation) and

have no transactions with entities located in tax havens or

under preferential tax regimes

> For related-party transactions with entities resident in

the Dominican Republic, provided such intercompany

transactions do not result in a tax deferral or overall

reduction of tax revenues

Nevertheless, taxpayers excluded from the documentation

requirements are still subject to complying with the arm’s-

length principle and are required to file the TP information

return.

> Master File

> Taxpayers whose total amount of intercompany

transactions does not exceed DOP12,193,981.70

(adjusted annually for inflation) and who have no

transactions with entities located in tax havens or under

preferential tax regimes

> Taxpayers conducting related party transactions with

entities resident in the DR (for the local transactions part

only), provided that such intercompany transactions do

not result in a tax deferral or reduction of the taxable

income

> Local File

> Taxpayers whose total amount of intercompany

transactions does not exceed DOP12,193,981.70

(adjusted annually for inflation) and who have no

transactions with entities located in tax havens or under

preferential tax regimes.

> Taxpayers conducting related party transactions with

entities resident in the DR (for the local transactions part

only), provided that such intercompany transactions do

not result in a tax deferral or reduction of the taxable

income.

A detailed analysis should be performed by the taxpayer

to determine if there are any indications of tax deferral or

reduction of the taxable income.

Taxpayers excluded from this documentation requirement are

still subject to comply with the arm’s-length principle and to

file the transfer pricing informative return.

The Tax Administration reserves the right to require any

information it deems necessary to analyze the arm’s length

nature of the intercompany transactions performed.

> CbCR

Taxpayers that are the ultimate parent entity or constituent

entity of a multinational group that is tax resident in the

Dominican Republic and has consolidated annual revenue

equal or greater than DOP38.8 billion (approx. EUR600

million).

> Economic analysis

Refer the section above.

c) Specific requirements

> Treatment of domestic transactions

Taxpayers with domestic transactions are not obligated to

prepare a TP documentation report unless the amounts agreed

upon between the parties reduce tax liability or produce

deferred taxation in the Dominican Republic. Notwithstanding

the above, taxpayers with domestic transactions must file the

TP return.

> Local language documentation requirement

The TP documentation needs to be submitted in the local

language. Article 21 of General Norm No. 07-14 states that

entities and individuals must file (when required by the Tax

Administration) accounting and financial documents that

support the information provided in the corresponding tax

return. These documents must be filed in Spanish.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

In practice, tax administration tends to prefer an individual

testing of transactions, if possible.

> Any other disclosure/compliance requirement

Transfer pricing informative return (DIOR), that must be filed

on an annual basis.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Article 18 of Decree No. 256-21 states that taxpayers should

file an annual informative return (DIOR).

Information to be disclosed includes related parties’

tax address and tax identification numbers, transaction

classifications, amounts, profit-level indicator of the tested

party of each transaction, interquartile range or results of

comparables, and the methods applied for analysis, among

others. The return should be filed within 180 days for fiscal

years previous to FY2022. For FY2022 and onward, the return

should be filed within 120 days after the closing date of the

fiscal year, by the time the corporate income tax return (IR-2)

is filed.

> Related-party disclosures along with corporate income tax return

No.

> Related-party disclosures in financial statement/annual report

No.

> CbCR notification and CbC report submission requirement

Yes.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing should be made within 120 days after the closing

date of the fiscal year.

> Other transfer pricing disclosures and return

For fiscal years prior to FY2022, the filing of the DIOR should

be made within 180 days after the fiscal year-end. From

FY2022 and onwards this return should be filed within 120

days after the fiscal year end, by the time the corporate

income tax return (IR-2) is filed.

> Master File

From fiscal year 2021 all taxpayers must submit to the DGII

the Master File within 180 days after the transfer pricing

informative return is filed.

> CbCR preparation and submission

From FY2022, CbCR should be submitted within 12 months

from fiscal year-end.

> CbCR notification

A constituent entity of a multinational group that is tax

resident in the Dominican Republic must notify the DGII as to

whether it is the ultimate parent entity (UPE) or the surrogate

parent entity. The constituent entity must use the formal

communication procedures for notifying the DGII and report

whether it is the UPE or surrogate parent entity no later than

the last day of the multinational group’s reporting tax year.

In addition, when a constituent entity of a multinational group

that is resident for tax purposes in the Dominican Republic is

not the UPE or the surrogate parent entity, it must notify the

DGII of the legal name and tax residence jurisdiction of the

reporting entity no later than three months before the end of

the multinational group’s reporting tax year.

If the constituent entity fails to notify the DGII of the reporting

entity, all taxpayers that are constituent entities of the

multinational group, resident or domiciled in the Dominican

Republic, will be appointed, and the penalties provided in

Article 281 ter. of the Dominican Tax Code will be applied.

b) Transfer pricing documentation/Local File preparation

deadline

The documentation must be readily available by the time the

transfer pricing informative return (DIOR) is filed.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

From FY2021 and onward, the Local File and Master File must

be submitted to the DGII within 180 days of the filing date of

the transfer pricing informative return or DIOR.

> Time period or deadline for submission upon tax authority

request

The taxpayer has five days to submit the TP documentation

once requested by the tax authorities in an audit inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions — Yes

b) Priority and preference of methods

Article 281 of the Dominican Tax Code establishes the

following methods to assess the arm’s-length standard: CUP,

resale price, cost plus, TNMM, profit split and transparent

market concept (the sixth method).

8. Benchmarking requirements

> Local vs. regional comparables

There are no benchmarking requirements for local and

regional comparables, considering the lack of financial

information available on local comparables. Thus, international

comparables are accepted by the tax authorities.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year testing for the comparables is applicable. In

practice, the number of years is three.

> Use of interquartile range

Article 12 of Decree No. 78-14 requires the application of an

interquartile range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search every year over the update

of the financials of a prior study is preferred. A TP report

must be prepared annually, updating all the information that

allows a correct TP analysis. Additionally, in practice, local

tax authorities expect to see the most recent comparable

information and to use the most recent available financial

information for the comparables and the tested party.

> Simple, weighted or pooled results

Weighted average is common in practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Article 281 ter of the Dominican Tax Code, with reference

to Article 257, dictates that failure to provide complete TP

documentation could result in penalties of up to three times

0.25% of the previous year’s gross income or from 5 to 30

minimum wages.

> Consequences of failure to submit, late submission or

incorrect disclosures

Article 281 ter of the Dominican Tax Code, with reference to

Article 257, dictates that failure to provide TP documentation

on time, or failure to provide true, complete or accurate

information, could result in penalties of up to three times

(0.25% of the previous year’s gross income or from 5 to 30

minimum wages).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Any additional tax generated by DGII price adjustments should

be subject to surcharges (10% for the first month and 4% for

the subsequent months) and interest (1.10% on a monthly

basis).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Any additional tax generated by DGII price adjustments should

be subject to surcharges (10% for the first month and 4% for the

subsequent months) and interest (1.10% on a monthly basis).

> Is interest charged on penalties or payable on a refund?

Refer to the section above for interests charged on penalties.

No interest is paid on refunds.

b) Penalty relief

Taxpayers can benefit from reductions of the surcharges

assessed as a result of any DGII adjustment:

> A 40% reduction of the surcharges is assessed if the

company decides to voluntarily amend its tax return without

any prior notice from the tax authorities.

> A 30% reduction of the surcharges is assessed if, after being

audited, the difference between the estimated tax and the

effectively paid tax represents less than 30% of the latter.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations is three years; the term is affected by

amended returns. However, if a taxpayer fails to file a return,

the period is extended to five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits

(high/medium/low)

The likelihood of a general tax audit is currently categorized as

medium. The likelihood of a TP assessment as part of a general

tax audit is considered high. In the past five years, the DGII has

been active in tax audits regarding TP issues.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

In case TP is scrutinized, the likelihood that the TP

methodology will be challenged is high. In practice, the DGII

has continued to focus on TP with no exceptions to large and

non-large taxpayers and with a current focus on, and auditing,

MNEs with complex transactions. The methodologies applied

by these types of enterprises tend to be challenged by the

DGII in TP audits. For instance, the DGII has been adjusting

commodities transactions with the use of the sixth method.

In addition, the DGII has been challenging comparables when

using the TNMM, agreements when using the CUP method and

royalty transactions, among others.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high because, in most

audits, the DGII challenges either the methodology or the

comparables.

> Specific transactions, industries and situations, if any, more

likely to be audited

The hospitality and commodities industries are more likely to

be audited.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APAs, bilateral or multilateral, are contemplated in Article 281

bis of the Dominican Tax Code and in Decree No. 78-14.

> Tenure

Taxpayers can request an APA for a certain time period and

renew it for an additional three years.

APAs should be requested within the first three months of the

corresponding taxpayer’s fiscal year and can be requested,

among others, for financing transactions with third parties to

exceed the thin-capitalization rules.

The DGII must issue a response within the first 24 months

after the request is filed. If no response is issued, the request

may be presumed to have been denied.

The decree establishes the information that must be included

in the APA request.

Furthermore, Article 281 of the Dominican Tax Code

contemplates a protection regime (regimen de protección)

oriented to specific industries or economic activities, even

though the law does not mention the specific industries or

activities subject to this regime. The DGII could determine a

minimum price or margin if the taxpayer agrees and reflects

it in its income tax return. Such a price or margin could be

calculated having regard to the total value of income, assets,

costs and expenses, and other variables that may be justified.

The DGII issues a corresponding resolution once the industry

or economic activity is selected.

> Rollback provisions

There is none specified.

> MAP opportunities

No .

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Article 287 of the Dominican Tax Code states that the

limitation on interest deduction will be limited to the

indebtedness capacity of the entity, considering that,

numerically, this capacity could not exceed three times the

value of its equity.

Paul A De Haan

Paul.DeHaan@cr.ey.com

+ 506-2208-9955

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Internal Revenue Service (Servicio de Rentas Internas, or SRI)

and National Customs Service (Servicio Nacional de Aduanas

del Ecuador, or SENAE).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The transfer pricing regime is part of the corporate income

tax (CIT) enacted in the ax aw (Ley Orgánica de Régimen

Tributario Interno, or LORTI), and its application is prescribed

in LORTI, tax administration resolutions and communications,

and a technical guidelines document prepared by the SRI that

is available on its website.

As the OECD’s Transfer Pricing Guidelines are used as a

technical reference, the OECD BEPS Actions 8, 9 and 10

are also used as guidelines for the pertinent transactions.

However, LORTI, tax administration resolutions, Ecuadorian

laws or international treaties signed by Ecuador hold

supremacy over the OECD Guidelines. In this regard, Action 13

is not applicable, as SRI resolutions define adaptations to the

content of the documentation and to the methodology to be

accepted by local tax administration.

> Section reference from local regulation

Related parties are defined in LORTI’s first unnumbered article

after the fourth, its regulations’ Article 4 and SRI’s resolution

on tax havens, as transactions with those regimes are deemed

as related-party transactions per Ecuadorian tax law.

In addition, tax law includes definitions of the arm’s-length

standard, the methods accepted locally, comparability criteria

and penalties for late completion of the taxpayer’s transfer

pricing obligations.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Ecuador is not a member of the OECD; however, in May 2017,

Ecuador became part of the OECD Forum on Transparency and

Information Exchange.

In September 2018, Ecuador signed a multilateral agreement

between competent authorities for the Common Reporting

Standard (CRS) MCAA, which is the first international

agreement for the adoption of the automatic exchange

of financial information under the Convention on Mutual

Administrative Assistance.

In December 2018, local government established a

commission to coordinate and establish the steps to follow for

addition process of Ecuador as member of the OECD.

The OECD Guidelines are applicable as technical guidelines for

matters not being regulated by any internal law, regulation

or resolution or by any international treaty. The regulation

established that the guidelines to analyse a transaction will be

those that were the most current on 1 January of the fiscal

year during which the transaction was made. In this regard,

the OECD Guidelines amendments including the BEPS actions

will be applicable for transactions that Ecuadorian companies

hold with related parties (domestic or cross-border) starting 1

January 2018.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> 

Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The BEPS Action 13 format report is not sufficient to achieve

penalty protection. To achieve this standard, all the specific

regulations of SRI resolutions on documentation, including the

local tax administration transfer pricing guidelines, must be

closely followed.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No, Ecuador is not part of the Inclusive Framework.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Ecuador has its own local transfer pricing documentation

guidelines supported in the LORTI, tax administration

resolutions and communications, and a technical guidelines

document prepared by the SRI. The OECD Transfer Pricing

Guidelines must be used as the transfer pricing technical

reference for items not covered by laws, treaties or SRI

resolutions.

Tax law regulation on transfer pricing includes many factors,

such as:

> Compulsory delivery of documentation when a defined

threshold is met

> Thresholds based on the addition of transactions following

rules that cover profit and loss and balance sheet accounts

> Domestic transactions affected by the transfer pricing

regime — may not be part of the threshold calculations if

certain conditions are met

> Certain indirect allocated expenses paid to related parties

being restricted

> The CIT for banana exports becoming revenue-based

where the taxable revenue is derived from transfer prices

calculated by the SRI

> The use of the interquartile range, when more than

one comparable is found, being compulsory for every

applicable method — transfer pricing adjustment to be

calculated to the median of the comparable set

> The use of a single year (contemporaneous to the

transaction) of financial statements of comparable

companies being requested, as well as the exclusion of

companies with more than one business activity

> The tax administration’s likely usage of secret comparable

> Application of the transfer pricing regime being waived if

certain conditions are met

> Specific regimes applying for crude oil, metallic minerals

and banana exports

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, local branch needs to comply with regulations applicable

to any other entity.

> Should transfer pricing documentation be prepared

annually?

Yes, transfer pricing documentation must be prepared annually

under local jurisdiction regulations. It must cover every

transaction, independently of the obligation of filing it when

the thresholds are met, which are explained in the section

below.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Transfer pricing documentation rules in Ecuador requires

stand-alone transfer pricing reports for each entity in the

jurisdiction because domestic transactions are affected by the

transfer pricing regime. They may not be part of the threshold

calculations if certain conditions are met.

b) Materiality limit or thresholds

> Transfer pricing documentation

The tax administration has defined “relevant transactions” to

exclude domestic (exceptions apply) and certain cross-border

transactions to quantify the amount that triggers the transfer

pricing formal obligations, as explained below:

> Taxpayers are required to file the Transfer Pricing Annex

(transfer pricing Annex) if the relevant transactions exceed

USD3 million.

> Taxpayers are required to submit the Transfer Pricing

Report (transfer pricing Report) if the relevant

transactions exceed USD15 million.

Notwithstanding the thresholds that trigger documentation

submission, the SRI may require, at any time, the transfer

pricing Annex or the transfer pricing Report, even though

the company does not reach the threshold amounts, and on

transactions that did not accumulate for the threshold.

> Master File

The issuance of a BEPS master and Local File is not required by

Ecuadorian tax law. However, taxpayers have the obligation

to issue a local transfer pricing report according to the

specifications defined by local regulations.

> Local File

Same as above.

> CbCR

Issuance of a CbCR is not required by Ecuadorian tax law.

> Economic analysis

Ecuadorian tax law does not establish any thresholds for the

preparation of economic analysis. All transactions, regardless

of their amount, must comply with the arm’s-length principle

and therefore should have an analysis.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions will receive the same treatment as

foreign transactions.

> Local language documentation requirement

The official national language, Spanish, shall be used for

documentation presented for administrative procedures with

public institutions in Ecuador.

> Safe harbor availability, including financial transactions, if

applicable

Taxpayers may obtain exemption from the transfer

pricing regime when they comply with all these conditions

concomitantly:

> Have a payable CIT greater than 3% of their taxable

revenues

> Not perform any transactions with tax havens, or lower- or

preferred tax jurisdictions

> Not have government contracts related to the exploration

and exploitation of nonrenewable resources

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transaction for an entity is preferred to

document the accomplishment of the arm’s-length standard.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The transfer pricing regime requires several specific

obligations to be fulfilled in terms of the information that is

required by the tax administration, as well as by the external

auditors because of Tax and Companies Laws compliance

requests.

The following is typical information that should be prepared

and shared or submitted to government institutions:

> Audited financial statements and their notes, including tax

and transfer pricing compliance assessments and opinions

that make it compulsory to communicate the transfer

pricing analysis outcome before the issuance of the audit

report

> Income tax return, which includes transfer pricing-specific

fields (amount of related-party transactions that trigger

local transfer pricing obligations) and the recognition of

any potential transfer pricing adjustment that affect the

income tax calculation

> Informative transfer pricing form (transfer pricing Annex)

> Transfer pricing Report

> Tax Compliance Report, which must be filed by external

auditors each year, including details of transfer pricing-

related information

The transfer pricing Report and the transfer pricing Annex,

typically due in June, have specific classifications for financial

transactions; the Tax Compliance Report, typically due in

July, includes specific sections for them. Companies having

an absolution to Advance Pricing ruling requests must file a

compliance report in May.

> Related-party disclosures along with corporate income tax

return

Detailed information about the related parties involved in

transactions held by Ecuadorian taxpayers must be disclosed

in an appendix in the transfer pricing documentation and

in the main documentation as well. This appendix must be

filed concomitantly to the documentation and consists of a

summary of the transactions and the analysis results.

> Related-party disclosures in financial statement and annual

report

Financial statements in Ecuador follow the IFRS accounting

standards, and by law, the external auditors must include in

the notes to the financial statements an opinion about the

accomplishment of the arm’s-length standard for the related-

party transactions for the audited year.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The tax administration has defined two types of regime

for taxpayers when referring to companies incorporated in

Ecuador: 1) General Regime and 2) Special Taxpayers.

General Regime

For this regime the submission deadline for the specific

obligations to be fulfilled by taxpayers under the General

Regime is defined according to the ninth digit of their tax

identification number.

Special Taxpayer

For this regime the submission deadline for the specific

obligations to be fulfilled by taxpayers is until 9 April.

> Other transfer pricing disclosures and return

The transfer pricing Annex and transfer pricing Report must be

filed no later than two months after filing the CIT return. In this

sense, deadlines will be established according to the taxpayer

regime detailed in the corporate income tax return section.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation must be prepared annually

under local regulations. Documentation requirements will

be determined according to the thresholds of related-party

transactions (domestic, foreign and tax havens). Local transfer

pricing documentation must be submitted according to what is

specified in the previous section.

c) Transfer pricing documentation and Local File submission

deadline

Local transfer pricing documentation must be submitted

according to what is specified in the previous section.

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The transfer pricing Annex and transfer pricing documentation

must be submitted within two months after the CIT return of

the company.

> Time period or deadline for submission on tax authority

request

When the tax authority notifies the taxpayer of non-

compliance or late submission of the transfer pricing Report

and transfer pricing Annex, it will establish a deadline of 5 to

10 business days to submit information.

However, if the tax authority detects inconsistencies in

declarations or annexes filed by the taxpayer, it will establish a

deadline of 10 to 20 business days for the taxpayer to present

the correction of the detected errors.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

The legislation accepts the following methods:

> CUP

> Resale price

> Cost plus

> Transactional profit split

> TNMM

The five transfer pricing methods in the OECD Transfer Pricing

Guidelines (profit split and residual profit split are recognized

as one method) may be used.

> Domestic transactions

Same as above.

b) Priority and preference of methods

Our regulations do not establish the compulsory hierarchy

application between direct and indirect methods and allowed

the Ecuadorian tax administration to issue technical guidelines

that all taxpayers must follow unless they can document the

reasons behind the use of a different methodology.

8. Benchmarking requirements

> Local vs. regional comparables

The SRI prefers the use of local comparable companies instead

of foreign comparable companies; however, the use of a local

company as a comparable will be limited to the fact that its

information be available in public sources as of 9 April of the

fiscal year following the fiscal year analyzed (Example: for the

year 2021 the financial information of the local comparable

must be public until 9 April 2022).

> Single-year vs. multiyear analysis

The PLI for analyses must be calculated only with the financial

information for the year when transactions were made.

> Use of interquartile range

Interquartile ranges are compulsory whenever more than one

comparable is available.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search needs to be conducted every

year. For the application of methods that use external

comparable companies (resale price, cost plus and especially

TNMM), the same fiscal year must be used for the tested party

and the comparable companies.

> Simple vs. weighted average

Simple average.

> Other specific benchmarking criteria, if any

> The PLI should be calculated using just the financial

information for the year under analysis (2021). Tax

authority requires the use of contemporaneous financial

information with the 2021 information of the comparable

companies and tested party.

> In the absence of financial data for the contemporaneous

fiscal year, the financial information of the prior year

(2020) may be used, if it shows that the relevant

conditions were similar in both periods.

> The use of financial information of more than one year to

calculate the PLI (average calculation for the PLI of the

comparable companies) should be factually justified based

on business cycles or other comparability criteria.

> The use of comparable companies with operating losses is

allowed as long as the taxpayer can demonstrate reliably

and with documentation that there are market situations

that led both the comparable company and the tested

party to incur losses in the year under analysis.

> If the selected method requires a PLI, it must not use a

denominator that contains the operations that are being

tested, unless it is duly verified that its use does not

influence the result of the analysis.

> More detailed review of the comparable companies is

required to identify other business segments that are

not comparable with the tested party. Local tax authority

prefers a comparison using the segmented financial

information excluding the non-comparable business

segmented financial information.

> The application of working capital adjustments to the

financial information of the comparable companies and

the tested party must be explained and supported. Since

transfer pricing documentation 2018, there is not an

obligation to apply working capital adjustments and the

company can use the non-adjusted range.

> The arm’s-length range should be calculated with regular

statistics formulas (EY interquartile range or weighted

average is not allowed).

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Ecuador has a specific transfer pricing penalty regime.

Penalties of up to USD15,000 would be applied if taxpayers

do not submit the transfer pricing report or the transfer

pricing annex, or if inaccuracies, mistakes, differences, lack

of information (incomplete documentation) or false data is

detected.

> Consequences of failure to submit, late submission or

incorrect disclosures

Tax administration issued a document (Instructivo para el

Establecimiento de Sanciones Pecuniarias) that is used to

establish the penalty amount according to the seriousness

of the fault or misdemeanour (late delivery or incomplete or

erroneous information sent by the local taxpayers). Based

on this document, late filing could result in a penalty of up to

USD333.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

A 20% surcharge on the assessment will be applied.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

A 20% surcharge on the assessment will be applied.

> Is interest charged on penalties or payable on a refund?

A specific interest rate will be charged on adjustments and is

paid on refunds. This interest rate is variable and is defined as

1.5 times the Ecuadorian lending rate.

b) Penalty relief

No penalty relief regime is in place.

The 20% surcharge may be prevented when an assessment is

accepted at the draft stage of the administrative action, before

the final assessment has been issued. Once the adjustment

has been assessed, a claim resource may be presented before

the tax authority, to be resolved by a claims team.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations is four years from the date of the CIT

return filing.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high, medium

or low)

If a taxpayer is selected for a general tax audit, the likelihood

that transfer pricing is reviewed as part of that audit may be

considered to be high.

> Likelihood of transfer pricing methodology being challenged

(high, medium or low)

If transfer pricing is reviewed as part of the audit, the

likelihood that the transfer pricing methodology will be

challenged may be considered to be high. In audits in which

transfer pricing is a subject, the percentage of reviews where

assessments are based on challenging the methodology (or at

least the set of comparable companies) is more than 75%.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high, medium or low)

The likelihood of a transfer pricing adjustment during a

transfer pricing audit may be considered to be high, as the

local tax administration tends to propose very unorthodox

positions from an OECD point of view.

> Specific transactions, industries and situations, if any, more

likely to be audited

Recent activities have been focused on intangible property —

and services-related transactions. Nevertheless, the likelihood

of methodologies being challenged during an audit are similar

for every taxpayer.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA-like procedure that takes the form of pricing

or methodology consultations and information disclosure.

> Tenure

The ruling term includes the year before the response date (in

cases where the response is issued before the CIT return filing

for the previous year), the year when the response is issued

and the following three tax years.

> Rollback provisions

In case that the answer to the consultation would result in

favourable terms to the taxpayer, the taxpayer will have to

carry out amendments to the tax return for the fiscal years’

previews to the date of favourable answer from the tax

administration.

> MAP opportunities

No.

14. Have there been any impacts or changes

to Advanced Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Due to the impact of the pandemic, the deadlines to resolve

the APAs were extended by law because of the inability of tax

administration officials to work remotely from their homes.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

When a transaction is performed between related parties, a

thin-capitalization rule should be met.

The interest generated by foreign loans granted directly or

indirectly by related parties to banks, insurance companies,

and entities of the financial sector of the popular and solidarity

economy will be deductible provided that the ratio between the

total external loans and equity does not exceed 300%. In case

of excess, the interest would be non deductible.

For other companies and individuals, the interest generated

by foreign loans granted by related parties will be deductible,

provided they do not exceed the 20% of the earnings

before interests, taxes, profit sharing, depreciations and

amortizations. In case of excess, the interest would be non

deductible.

Alexis Carrera

alexis.carrera@ec.ey.com

+ 593995653220

Contact

1. Tax authority and relevant transfer pricing

(TP) regulations or rulings

a) Name of tax authority1

Egyptian Tax Authority (ETA)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Egyptian Income Tax Law (ITL) No. 91 of 2005, Article 30

of the ITL

> 

Articles 38, 39 and 40 of executive regulations

> 

TP guidelines issued in October 2018

> 

Articles 12 and 13 of Unified Tax Procedures Law No. 206

and amended Law No. 211 of 2020

> 

Articles 1, 14,15,16,17,18,19 and 20 of the executive

regulations to the Unified Tax Procedures Law

> Section reference from local regulation

To raise taxpayer awareness of TP principles and how to

apply Article 30 of the ITL and Articles 38, 39 and 40 of

its executive regulations, the ETA, with the assistance of

the OECD, issued its first version of TP guidelines back in

2010. This was followed by the issuance of a new updated

version of these TP guidelines in October 2018. In issuing the

updated version, the ETA used the OECD TP guidelines as a

basic reference and relied heavily on it. The ETA decided to

introduce the new version of its TP guidelines in a series of

parts, with the first part focusing on the main concepts and

issues. Accordingly, the first part provides taxpayers with

guidance on the arm’s-length principle, comparability analysis,

TP methods and documentation requirements; and second

part focuses on principles and application of APAs in detail.

The upcoming versions of the TP guidelines will address other

issues, such as the application of the arm’s-length principle to

transactions involving intangible property, intragroup services

and CCAs. ETA will also offer further explanation to the tax

treatment of permanent establishments (PEs) including the

attribution of profits between the head office and the PE. ETA

also plans to issue separate guidance focusing on industry-

specific guidelines to address key TP issues for certain

industries and provide a practical guide to the appropriate

application of the arm’s-length principle in such industries.

1 http://www.mof.gov.eg/English/About%20MOF/Pages/Egyptian%20

Tax%20Authority.aspx

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:

> The expected profit from the transaction prior to tax

deduction is minimal as compared with the tax benefits

attained from the examined transaction.

> The transaction resulted in obvious tax exemptions that

do not reflect the risks experienced by the taxpayer or its

financials based on the transaction.

> The transaction includes some criteria that have

contradictory impacts eliminating each other.

In all cases, the burden of proving the transaction’s ineffective

purpose falls upon the ETA. However, the taxpayer may

provide evidence that could disprove accusations of taking an

inflexible stand toward tax planning.

To ensure that the ETA does not act ineffectively, the Minister

of Finance issues a decree forming a committee led by the

head of the ETA or his or her deputy to examine cases of

tax avoidance. The taxpayer would not be penalized for tax

avoidance unless the committee decides otherwise.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19 ?

(Yes/No)

No.

3. OECD Guidelines treatment and reference

a) Extent of reliance on OECD TP guidelines/UN tax

manual/EU Joint Transfer Pricing Forum

Egypt is not a member of the OECD. However, Egypt heavily

relied on the OECD Transfer Pricing Guidelines in issuing the

Egyptian TP guidelines in October 2018.

Furthermore, pursuant to the executive regulations of the ITL,

in the case that none of the five methods referred to in the law

(CUP, resale price, profit split, transactional net margin and

cost plus) are applicable, any other acceptable method suitable

for the taxpayer may be followed.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Yes, all three are covered.

> Effective or expected commencement date

This is applicable for transactions carried out from fiscal year

starting on or after January 1, 2018.

> Material differences from OECD report template or format

There is none specified.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is none specified.

c) Is the jurisdiction part of the OECD/G20

Inclusive Framework on BEPS?

Yes, it is part of the inclusive framework.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, it needs to be submitted contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch of a foreign company needs to comply with

the local TP rules.

> Does transfer pricing documentation have to be prepared

annually?

Yes, TP documentation has to be prepared annually.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-

alone TP reports, provided that it engages in related-party

transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

It is not applicable as transfer pricing documentation in Egypt

is applicable as per OECD BEPS Action 13.

> Master File

During the fiscal year, any taxpayer with overall related-party

transactions exceeding EGP8 million in value must prepare and

submit a Master File as per the specified deadlines.

> Local File

During the fiscal year, any taxpayer with overall related-party

transactions exceeding EGP8 million in value must prepare and

submit a Local File as per the specified deadlines.

> CbCR

An Egyptian parent company of a multinational group with

consolidated group revenue of at least EGP3 billion has to file

CbC report in Egypt.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions,

as all related-party transactions should be documented.

> Local language documentation requirement

The TP documentation needs to be submitted in the local

language (i.e., Arabic). Any correspondence with the ETA

should be in Arabic; however, the ETA will accept English

documentation, but may ask for an official translated copy.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Depending on the nature of transactions.

> Any other disclosure or compliance requirement

There is none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no separate returns to be filed for TP. However,

disclosure of related-party transactions is required on the

corporate tax return (CTR), specifically in Table 508 of such

CTR.

> Related-party disclosures along with corporate income tax

return

The CTR, in its related-party disclosure section Table 508,

requires taxpayers to provide the following information:

> Name of the related party or parties

> The nature of the relationship

> Type of the related parties’ transactions

> The value of the transactions for current and previous

year

> The jurisdiction of origin for goods and jurisdiction of the

services supplier

> The pricing method used in each related-party transaction

> Identical information concerning transactions with

unrelated parties

> Related-party disclosures in financial statement/annual

report

Yes, related-party transactions are required to be disclosed in

financial statement and annual reports.

> CbCR notification included in the statutory tax return

No, CbCR notification is to be submitted separately by the last

day of the fiscal year to which the CbCR relates to.

> Other information/ documents to be filed

There is none specified.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporate income tax return is required to be submitted within

four months from the end of the financial year.

> Other transfer pricing disclosures and return

None specified.

> Master File

For Egyptian entity having headquarters in Egypt or Egyptian

entity part of overseas multinational group with no Master File

submission requirement at ultimate parent entity’s jurisdiction,

the Master File in Egypt is required to be submitted along with

the Local File. For Egyptian entity part of overseas multinational

group where Master File submission requirement is specified

in the ultimate parent entity’s jurisdiction, the Master File in

Egypt is required to be submitted on the same date as per the

timeline at ultimate parent entity’s jurisdiction.

> CbCR preparation and submission

CbC report must be filed within one year after the end of the

reporting fiscal year.

> CbCR notification

CbCR notification must be submitted not later than the last

day of the fiscal year to which the CbCR relates to.

b) Transfer pricing documentation/Local File preparation

deadline

There is none specified. The deadlines specified relate to

preparation of the Local File.

c) Transfer pricing documentation/Local File submission

deadline

There is none specified. The deadlines specified relate to

submission of the Local File.

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, Local File shall be submitted within two months following

the filing or submission of CTR.

> Time period or deadline for submission on tax authority request

There is none specified.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions - Yes

b) Priority and preference of methods

In Articles 39 and 40 of the ITL, the executive regulations

establish the methods of determining the arm’s-length price.

According to Article 39, the fair-market price shall be

determined according to the CUP, cost-plus or resale price

methods.

The amendments under Article 39 added two new methods

of determining the arm’s-length price: the transactional net

margin method and the profit-split method.

According to amendments under Article 40, the hierarchical

approach in selecting TP methodology was canceled. The

taxpayer has the right to choose one of the methods referred

to in Articles 39 and 40, according to the nature of the

transaction and the conditions of dealing, and there is no

longer a priority in applying a certain method before the other.

The taxpayer has the right to follow any appropriate method,

provided that adequate documents are available to support the

application of that method are presented.

8. Benchmarking requirements

> Local vs. regional comparables

In Egypt, there is a lack of local comparable data; however,

ETA accepts Middle East and Africa comparables. Global

comparables are accepted if sufficient efforts are made to

demonstrate that local comparables are not available.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year analysis (three years) is preferred.

> Use of interquartile range

There are no preferences officially stated in the guidelines;

however, full range is used as a practice.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year; however, updating the financials of a prior study

is required. In general, a fresh benchmarking study should be

conducted every three years.

> Simple, weighted or pooled results

The weighted average is used for arm’s-length analysis;

however, there are no preferences officially stated in the

guidelines.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The consequence for incomplete three-tiered documentation

is likely to be considered as non-compliance with submission

timelines resulting in prescribed penal provisions and/or

additional challenges during audit.

Penalties for non-submission, late submission or incomplete

documentation are based on the following:

> For corporate income tax returns due to be filed on or

after 20 October 2020, failure to declare accurate value

of related party transactions (Table 508), penalty at the

rate 1% of the total value of the undeclared related-party

transactions (local and cross-border transactions) during

the fiscal year.

> Failure to submit a Master File or Local File by prescribed

due date, penalty at the rate 3% of the total value of

the related-party transactions (local and cross-border

transactions) during the fiscal year.

> Failure to submit a country-by-country (CbC) report (if the

taxpayer is the ultimate parent entity of a multinational

group) or notification (if the taxpayer is the constituent

entity) by prescribed due date, penalty at the rate 2% of

the total value of the related-party transactions (local and

cross-border transactions) during the fiscal year.

Where there is multiple non-compliance, the penalties payable

by a taxpayer for a fiscal year are capped at 3% of the total

value of the related-party transactions (local and cross-border

transactions) for that year.

The penalties related to the Master File, Local File and CbC

report or notification apply to documents required to be

submitted to the Tax Authority on or after 4 December 2020.

> Consequences of failure to submit, late submission or

incorrect disclosures

As per the Unified Tax Procedures Law, there are additional

penal provisions for non-submission, late submission or

incorrect submission.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties for audit adjustment are based on the following:

> Twenty percent of the difference between final tax due as

per the Egyptian Tax Authority (ETA) and the tax due as

per the tax return, this will apply if the difference is less

than 50% of the final tax due.

> Forty percent of the difference between final tax due as

per the ETA and the tax due as per the tax return, this will

apply if the difference is more than 50% of the final t

ax due.

It is important to note that the penalties set forth above

can be reduced by 50%, if an agreement is made between

the taxpayer and the ETA before the appeal committee.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

This is not applicable.

> Is interest charged on penalties or payable on a refund?

Central bank credit and debit rate plus 2% on the due amount.

b) Penalty relief

There is none specified.

10. Statute of limitations on transfer pricing

assessments

The term could be as long as five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium. There is no

formal TP scrutiny yet — it is during the corporate income tax

audit phase where the tax inspector will inspect the taxpayer’s

books and request to file the TP study during the corporate

income tax inspection in case it’s not filed before. And it will

inform the Transfer Pricing department within the ETA for

further review. Recently, the Transfer Pricing department has

formally started sending notices to the taxpayers who have

not submitted their TP documentation to send notifications

to taxpayers with related-party transactions requesting TP

documentation.

Considering the TP guidelines published on 23 October 2018,

if a taxpayer does not submit adequate TP documentation, the

ETA is likely to treat the taxpayer as a high-tax risk, increasing

the likelihood of audit and a TP adjustment. As this could also

shift the burden of proof to the taxpayer to disprove the ETA’s

assessment position, taxpayers with related-party transactions

should review the new guidelines and ensure they can produce

adequate TP documentation.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of the methodology being challenged may

be considered to be low. In case a valid TP analysis is

performed with adequate justification on selection of the most

appropriate method, it is unlikely to be challenged.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If the tax authority has challenged the TP methodology, the

likelihood of an adjustment may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

The scenarios listed below could trigger questionings or tax

inspections:

> 

Change in business model

> Consistent loss makers

Sector-specific TP audit challenges:

> Distribution

> Services

> Manufacturing

In practical experience, pharma sector taxpayers face audit

challenges as compared to other sectors.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Yes, unilateral APAs are available in Egypt. However, so far, no

APA has been entered into by ETA.

> Tenure

There is none specified.

> Rollback provisions

There is none specified.

> MAP opportunities

Yes.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There are no COVID-19-related impacts on transfer pricing-

specific audits. Pending TP audits are continuing; however, the

Egyptian Tax Authority has demonstrated flexibility in terms of

timelines due to current circumstances.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under the new tax law, the maximum debt-to-equity ratio is

4:1. If the debt exceeds such ratio, the excess interest may not

be claimed as a deductible expense.

Heba Wadie

heba.wadie@eg.ey.com

+ 201099916730

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Directorate General of Internal Taxes (Dirección General de los

Impuestos Internos, or DGII) and Ministry of Finance (Ministerio

de Hacienda, or MH)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Articles 62 A, 124, 147, 199-A, 199-B, 199-C, 199-D and

244 of the Salvadoran Tax Code

> Administrative Guideline, or Guía de Orientación (GO),

No. 001/2018, intended to provide general guidance

to taxpayers about the tax treatment of related-party

transactions or transactions with entities domiciled in tax

haven jurisdictions

Transfer pricing regulations have been effective as of 29

December 2009.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19 ?

(Yes/No)

Not applicable.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

El Salvador is not a member of the OECD.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

1 https://www.mh.gob.sv/

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, there are the Articles 62-A, 124, 147, 199-A, 199-B,

199-C, 199-D and 244 of the Salvadoran Tax Code, as well

as Administrative Guideline, or Guía de Orientación (GO), No.

001/2018, which is intended to provide general guidance

to taxpayers about the tax treatment of related-party

transactions or transactions with entities domiciled in tax

haven jurisdictions.

Taxpayers should prepare and maintain contemporaneous

transfer pricing documentation within the first five months

following the close of the financial year (i.e., by 31 May).

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

Yes, the minimum requirement to achieve this would be that

the transfer pricing report and return must be prepared

annually, updating all the information that allows a correct

transfer pricing analysis. Use of the most recently available

financial information for the comparables and the tested party

is requested.

In addition, the documentation is necessary for the external

tax auditor to verify and reflect in the tax audit report that the

said transactions comply with transfer pricing regulations.

Under the rules of the Tax Code (TC), when a taxpayer has

assets with a value exceeding USD1,142,857 or sales higher

than USD571,429 during the previous fiscal year, it must

appoint an external tax auditor (certified public accountant) to

perform a statutory tax audit and file the resulting tax audit

report (dictamen fiscal) within the first five months following

the tax year that was audited (deadline of 31 May or, when

applicable, the next business day).

Subsection (f) of Section 135 of the TC includes an obligation

for an external tax auditor to include a note in its report

regarding transactions conducted by the taxpayer with its

related parties or entities domiciled in tax haven jurisdictions,

indicating whether the taxpayer complies with the transfer

pricing legislation.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes .

b) Materiality limit or thresholds

> Transfer pricing documentation

For Form F982, the threshold is USD571,429 on intercompany

transactions.

> Master File

El Salvador has not implemented or included Master File

requirements.

> Local File

El Salvador has not implemented or included Local File

requirements.

> CbCR

El Salvador has not implemented or included CbCR

requirements.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation requirement for domestic

transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language, per Article 333 of the Civil and Commerce

Procedural Code.

> Safe harbor availability, including financial transactions, if

applicable

There are no specific requirements for preparing safe harbor

availability.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred, if possible.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Section 124-A of the TC establishes an obligation for taxpayers

to file an information return for transactions conducted with

related parties (Form F-982) within the first three months

that follow the fiscal year-end, when these transactions

(individually or in the aggregate) are equal to or exceed

USD571,429 annually. Form F-982 is to be filed separately

from the income tax return.

> Related-party disclosures along with corporate income tax return

Under the TC, when a taxpayer has assets with a value in

excess of USD1,142,857 or sales higher than USD571,429

during the previous fiscal year, it is required to appoint an

external tax auditor (certified public accountant) to perform a

statutory tax audit and file the resulting tax audit report within

the first five months following the tax year that was audited

(deadline of 31 May or, when applicable, the next business

day).

Subsection (f) of Section 135 of the TC includes an obligation

for an external tax auditor to include a note in its report

regarding transactions conducted by the taxpayer with

its related parties or with entities domiciled in tax-haven

jurisdictions, indicating whether the taxpayer complied with

the transfer pricing legislation.

> Related-party disclosures in financial statement/annual report

Same as above.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The documentation has to be filed on or before 30 April.

> Other transfer pricing disclosures and return

The documentation has to be filed on or before 31 March.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Taxpayers should prepare and maintain contemporaneous

transfer pricing documentation within the first five months

following the close of the financial year (i.e., by 31 May).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No, the submission is to be done upon request of the tax

authorities.

> Time period or deadline for submission on tax authority

request

There is no specific time range, but the tax authority usually

grants 15 working days to submit the documentation once

requested.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

International transactions — Yes

Domestic transactions — Yes

b) Priority and preference of methods

The law does not regulate specific transfer pricing methods,

but it establishes that tax authorities are empowered to apply

the market price method when adjusting prices.

Additionally, the GO establishes that the following methods are

acceptable: CUP, resale price, cost-plus, TNMM and profit split.

8. Benchmarking requirements

> Local vs. regional comparables

Considering the lack of financial information available on local

comparables, international comparables are accepted by the

tax authorities.

> Single-year vs. multiyear analysis

Multiyear testing is for the comparables only; in practice, the

number of years is three.

> Use of interquartile range

The spreadsheet quartile calculation is indicated in the GO.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking study needs to be conducted every year.

In practice, local tax authorities require use of the most recent

available financial information for the comparables and the

tested party.

> Simple vs. weighted average

The weighted average is preferred for arm’s-length analysis; in

practice, three-year weighted average arm’s-length ranges are

frequently calculated.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

In case of incomplete or incorrect information is filed in

the transfer pricing return, Section 244 literal (l) of the TC

establishes a penalty of 0.5% of the taxpayer’s equity (as

reflected on the taxpayer’s balance sheet), minus any surplus

on the revaluation of assets, with a minimum of three monthly

minimum wages.

When there is no balance sheet, or it is not possible to

determine the taxpayer’s equity, a penalty of nine monthly

minimum wages applies. In addition, if the documentation

is not complete or does not allow full confirmation that all

transactions comply with the arm’s-length principle, the tax

administration is empowered to adjust such transactions to the

median of the interquartile range.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to maintain transfer pricing documentation leads

to a penalty of 2% of the taxpayer’s equity, as reflected on

the taxpayer’s balance sheet, minus any surplus on the

revaluation of assets. This is imposed when the taxpayer does

not have supporting documentation or fails to comply with

the obligation to maintain all documentation for 10 years for

transactions conducted with related parties, and those with

individuals or legal entities domiciled, incorporated or resident

in tax-haven jurisdictions. The said penalty cannot be less than

nine monthly minimum wages. 2

Failure to comply with Section 135-(f)

In case the external tax auditor fails to comply with the new

requirement under Section 135 (f) of the TC, a penalty of five

monthly minimum wages is established for the tax auditor,

regardless of any other penalty that may be imposed by the

local certified public accounting council for not complying with

the responsibilities of the profession.

Additionally, when the tax auditor’s non-compliance is

because the taxpayer failed to provide the information and

documentation requested and required by the tax auditor, a

penalty of 0.1% of the taxpayer’s equity (as reflected on the

taxpayer’s balance sheet), minus surplus on the revaluation of

assets, would be imposed on the taxpayer. The said penalty is

at least four monthly minimum wages.

Failure to file related-parties information return

In case of non-compliance with the filing obligation of the

information return, Section 244 literal (l) of the TC establishes

a penalty of 0.5% of the taxpayer’s equity (as reflected on

the taxpayer’s balance sheet), minus any surplus on the

revaluation of assets, with a minimum of three monthly

minimum wages.

When there is no balance sheet, or it is not possible to

determine the taxpayer’s equity, a penalty of nine monthly

minimum wages applies.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In the case of adjustments for underpayments either

on income tax or value-added tax, depending on certain

circumstances, penalties from 25%–50% of the unpaid tax

could be applicable. The penalties could not be less than

USD568 or USD2,736, depending on the type of sanction

applied.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

In the case of adjustments for underpayments either

on income tax or value-added tax, depending on certain

circumstances, penalties from 25%–50% of the unpaid tax

2 The minimum wage is established by El Salvador’s Labor Minis-

try. As of 1 January 2015, and according to Executive Decree No.

104 published in the Official Gazette No. 119, the monthly com-

mercial minimum wage to which the TC refers was established as

USD251.70.

could be applicable. The penalties could not be less than

USD568 or USD2,736, depending on the type of sanction

applied.

> Is interest charged on penalties or payable on refund?

No.

b) Penalty relief

According to Section 261 of the TC, if there is voluntary

disclosure and payment is received by the tax authorities

before any notice of an examination, a 75% penalty reduction

applies; if an examination is already ongoing, a 30% penalty

reduction may still apply.

After a tax audit, the Tax Authority (Reviewer Office) issues

an audit report that contains the findings of the audit (e.g.,

potential tax adjustments, if any). The taxpayer has five days

to file the initial “non-conformity” script and 10 additional

days to file the corresponding proofs (15 working days in

total). The tax authority will review the arguments and proofs

filed, and issue a resolution. After the tax authority sends the

letter of determination (its final resolution that contains the

final tax adjustments and penalties in charge of the taxpayer),

the taxpayer has 15 working days to file an appeal before the

Administrative Board of Appeals (still at an administrative

level).

The appeals process has three phases (up to one to three

years): the initial appeal script, the proofs phase and the

final allegations phase. Once the Administrative Board issues

its resolution, in case it is unfavorable for the taxpayer, the

taxpayer can file a complaint script at a judicial level (within

60 working days from the date of notification of the final

resolution).

10. Statute of limitations on transfer pricing

assessments

Under the current legislation, and in particular under the rules

of the TC, the ordinary statute of limitations is three years;

however, when no tax return has been filed, the statute of

limitations is extended to five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high, medium

or low)

The likelihood of a general tax audit currently is categorized as

medium. As part of every general tax audit, the tax authorities

review compliance with transfer pricing regulations. Thus, the

likelihood that transfer pricing will be scrutinized as part of a

general tax audit may be considered to be high.

> Likelihood of transfer pricing methodology being challenged

(high, medium or low)

In case transfer pricing is scrutinized, the likelihood that

the transfer pricing methodology will be challenged may be

considered to be medium. In practice, the DGII consistently has

been questioning the application of transfer pricing methods

(i.e., the CUP method with internal comparables instead of the

TNMM), the profit-level indicator and the use of comparables

with losses, mainly.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high, medium or low)

It’s high, because in most audits, the DGII challenges either the

methodology or the comparables.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is none specified.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

No.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

No.

Paul A De Haan

paul.dehaan@cr.ey.com

+ 506-2208-9955

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Estonian Tax and Customs Board

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The following articles of the Estonian Income Tax Act relate to

transfer pricing:

> Article 8: Associated persons

> Article 50, sections 4 to 8: Taxation of profits transferred

> Article 53, sections 4 to 6: Permanent establishments

> Article 14, section 7: Sole proprietors

> Article 50, section 7: Documentation requirements

Current Estonian transfer pricing legislation is effective as of 1

January 2007 and amended as of 1 January 2011.

> Section reference from local regulation

Article 8 — Associated persons of Estonian Income Tax Act —

has reference to transfer pricing.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Yes. Significantly updated transfer pricing regulation enters

into force on 1 January 2022.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Estonia is an OECD member.

1 httransfer pricings://www.riigiteataja.ee/en/eli/516012017002/

consolide

The tax authorities follow the OECD Guidelines. However,

domestic legislation is the prevailing law.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Current transfer pricing regulation, in effect since 2007, has

been deemed to be generally compliant with BEPS Action 13.

Estonian transfer pricing regulation is being aligned with OECD

Guidelines post-BEPS. Comes into force 1 Jan 2022.

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

The regulation covers CbcR, Master File and Local File.

> Effective or expected commencement date

New transfer pricing regulation comes into force 1 January

2022. CbCR requirements came into force in April 2017 to be

applicable retrospectively starting for FY2016.

> Material differences from OECD report template or format

There are no material differences; however, there are

some additional requirements stipulated in local regulation

compared with those of BEPS Action 13.

The additional requirements for Master Files are the following:

> Group legal and ownership structure chart should

include parent undertakings, subsidiaries and associated

enterprises. An overview of the activities of the members

of the consolidated group should be provided.

> Important business restructurings in the previous financial

year should include changes in the structure of the

consolidated group and in the activities of the members of

the consolidated group.

> Description of the MNE's business is not required to be

prepared in relation to the five main products. Instead, a

general overview of the business activities of the group

should be provided (including the changes in the business

strategy compared with the previous financial year).

> Brief written functional analysis describing the principal

contributions to value creation by individual entities within

the group (in the controlled transactions) should also

include changes compared with the previous financial

year.

> 

General information about controlled transactions should

be provided, including parties to the transaction, their

type (tangible or intangible property, or services) and

values.

> List of expense distribution agreements should be

provided along with preliminary decisions regarding

transfer prices.

> Group's transfer pricing policy should be described.

The additional requirement for Local Files is listed below:

> 

Detailed description of the business and business strategy

of the local entity should include the description of

changes in the entity’s business strategy compared with

the previous financial year.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Considering the above should be sufficient.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 Jan 2016. The intended first

information exchange was by September 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, do they need to be submitted or

prepared contemporaneously?

Yes, transfer pricing documentation must be submitted upon

request.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, all Estonian group companies and permanent

establishments are obliged to prepare transfer pricing

documentation to prove the arm’s-length nature of the

intercompany transactions.

> Should transfer pricing documentation be prepared

annually?

Yes, transfer pricing documentation must be updated annually

with the most recent data per company or group, industry

(if need be), as well as a functional analysis and economic

analysis, if changes have occurred, and benchmark studies.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit based on transaction value;

however, transfer pricing documentation is applicable to:

> A resident credit institution, financial institution, insurance

agency or a listed company

> A counterparty that is a resident of a low-tax-rate territory

> A resident legal person or a non resident with a permanent

establishment in Estonia meeting the following criteria:

a. Number of employees (including associated persons)

is at least 250.

b. Turnover of the financial year preceding the

transaction with associated persons was at least EUR50

million.

c. Consolidated balance sheet total assets were at least

EUR43 million.

> Master File

No specific limits or thresholds are applicable.

> Local File

No specific limits or thresholds are applicable.

> CbCR

Consolidated revenues of the group in the previous fiscal year

amounted to at least EUR750 million.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for all related-party

transactions, domestic and cross-border.

> Local language documentation requirement

Transfer pricing documentation needs to be submitted in the

local language (i.e., Estonian). Transfer pricing documentation

may also be prepared in English, but the tax authorities may

require translation of certain parts of the documentation.

> Safe harbor availability, including financial transactions, if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure or compliance requirement

Taxpayers must, on quarterly basis, declare to the tax

authorities all intra-group loans and other similar financing

instruments (cash pools, deposits, overdrafts, etc.), except

to immediate subsidiaries, within previous quarter, including

provided and received amounts and actual received interest.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Currently, Estonian tax laws do not require a separate return

for related-party transactions.

> Related-party disclosures along with corporate income tax

return

An annual report, including a description of transactions with

related parties, must be filed within six months of the end

of the relevant financial year. If a taxpayer has obligation to

prepare transfer pricing documentation, such documentation

must be completed every financial year.

Transfer pricing documentation does not have to be filed with

the tax return or annual report.

> Related-party disclosures in financial statement and annual

report

An annual report, including a description of transactions with

related parties, must be filed within six months of the end of

the relevant financial year.

> CbCR notification included in the statutory tax return

CbCR notification should be filed electronically on the tax

authority website (as a separate form and not as part of the

tax return) or by email on annual basis within six months after

the end of the financial year for which the reporting is to be

made.

If Estonian tax resident is the reporting entity of the MNE

group meeting the threshold of EUR750 million, it should

submit the CbC report to the tax authority by 31 December

of the calendar year following the financial year that is a

reporting year.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

It should be filed by the 10th date of each month.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The filing deadline is 31 December (12 months after the end of

the financial year for which reporting is to be made).

> CbCR notification

It should be filed within six months after the end of the

financial year for which the reporting is to be made.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation should be finalized by the time

of submitting upon request.

c) Transfer pricing documentation and Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation, but it needs to be prepared annually.

> Time period or deadline for submission on tax authority

request

Taxpayers are obligated to submit transfer pricing

documentation within 60 days of the tax authority’s request.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes

> Domestic transactions

Yes

b) Priority and preference of methods

The Tax and Customs Board accepts the CUP, resale price,

cost-plus, profit-split and TNMM methods or, if necessary, any

other suitable method. There is no hierarchy of methods; all

are treated equally. However, if available, internal and Estonian

domestic data is preferred for determining the arm’s-length

price.

8. Benchmarking requirements

> Local vs. regional comparables

Local benchmarks are preferred, but pan-European sets are

acceptable.

> Single-year vs. multiyear analysis

Multiyear analysis is acceptable.

> Use of interquartile range

Estonian legislation does not define arm’s-length range.

However, interquartile range is commonly applied in practice.

As of 2022, arm’s length range defined as interquartile range.

EY quartile is used in common practice.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A benchmarking search must be up to date every year. Fresh

benchmarking search must be performed every three years in

case no major changes in the controlled transaction take place,

otherwise yearly; update of benchmark study’s financials must

be performed yearly.

> Simple vs. weighted average

A simple average is used in common practice, but not specified

in transfer pricing regulation.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

If the required documentation or the relevant tax return is

not submitted on time, the fine may be as high as EUR3,200.

Failure to submit information to the tax authority intentionally,

or submission of false information if the tax or withholding

obligation is decreased thereby or the claim for refund is

increased, is punishable by a fine of up to EUR32,000. When

a taxpayer intentionally submits wrong information on its tax

return that reduces the tax paid, a criminal penalty may be

imposed, and the fine may be as high as EUR16 million.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The income tax rate is 20% on the gross amount of the

difference between the transfer price and arm’s-length price

(i.e., 20/80 of the net amount) and is payable even if a

company has losses.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

The income tax rate is 20% on the gross amount of the

difference between the transfer price and arm’s-length price

(i.e., 20/80 of the net amount) and is payable even if a

company has losses.

> Is interest charged on penalties or payable on a refund?

If tax is assessed, interest on the tax amount at the rate of

0.06% per day, up to the principal tax amount, will be imposed

retroactively as of the date when the tax was supposed to be

paid until actual payment (here, interest is subject to income

tax at the rate of 20/80 as a non-business-related expense).

b) Penalty relief

There is no penalty relief if a taxpayer has the necessary

documentation, but the transfer pricing is determined to be

at non-arm’s length and there is an income tax adjustment.

However, imposing a fine is probably more an exception than

a rule. Interest for the delay of the tax payment is always

assessed.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for making an assessment of tax

is three years. In the event of intentional failure to pay or

withhold an amount of tax, the limitation period for making

an assessment of tax is five years. The statute of limitations

begins as of the due date of submission of the tax return that

was either not submitted or contained information leading to

an incorrect determination of the tax due.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high, medium

or low)

The likelihood may be considered to be high in the case

of intra-group loans, management and support services,

restructurings, intellectual property transactions, large-

amount transactions, and primary business transactions;

it may be considered to be high in the case of large

multinationals.

> Likelihood of transfer pricing methodology being challenged

(high, medium or low)

The likelihood may be considered to be medium; refer to the

section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high, medium or low)

The likelihood may be considered to be medium to high; refer

to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

Intragroup financing and management and support services

are under critical scrutiny regardless of the industry and

company. Additionally, primary business transactions of a

company are always under critical scrutiny, as well as large-

amount transactions and transactions involving intellectual

property.

On 1 January 2018, an amendment to the Income Tax Act

came into force, obligating Estonian resident companies and

non resident companies with a permanent establishment in

Estonia to prove at the request of the tax authorities that their

intra-group loan granted to a shareholder, partner or member

of the company (with a term exceeding 48 months) does not

constitute hidden profit distribution. If the circumstances of a

loan transaction indicate a hidden profit distribution, income

tax at the rate of 20% on the loan amount shall apply (tax

base is divided by 0.8 before multiplied by the tax rate). Tax

authorities are required to allow the company at least 30 days

to demonstrate their capacity and intention of collecting the

loan.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Currently, Estonian tax laws do not provide an opportunity to

conclude APAs.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Yes, however no concrete procedure is established in the

legislation. MAP has been applied in practice.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Exceeding borrowing costs are taxable if they exceed EUR3

million and 30% of EBITDA.

Ranno Tingas

ranno.tingas@ee.ey.com

+ 3725111848

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Fiji Revenue and Customs Services (FRCS)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and

the effective date of applicability

Legal Notice 11, Fiji Transfer Pricing Regulations 2012, has

reference to TP.

> Section reference from local regulation

Section 3 (Associates), subsection 2 of the Fiji Transfer Pricing

Regulations, has reference to TP.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Fiji is not a member of the OECD. The FRCS adopts the

positions outlined in the OECD Guidelines for MNEs and tax

administrations, and it proposes following the OECD Guidelines

in administering Fiji’s TP rules. Consequently, the FRCS

Guidelines supplement, rather than supersede, the OECD

Guidelines, and the OECD Guidelines should be referred to if

more detail is required.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

1 https://www.frcs.org.fj/

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does it need to be submitted or

prepared contemporaneously?

A clarification from the tax office is that it must be prepared.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Fiji’s TP regulations apply equally to branches (and other

permanent establishments as defined in Article 5 of the OECD

Convention Model Tax Convention).

> Does transfer pricing documentation have to be prepared

annually?

Yes, the minimum requirement to achieve this is a TP analysis

or transfer pricing documentation of the foreign jurisdiction

benchmarking documentation.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is no specific requirement for domestic transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted

in the local language, according to Fiji Transfer Pricing

Regulations 2012 Part III.

> Safe harbor availability including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no separate TP return required to be filed in Fiji.

> Related-party disclosures along with corporate income tax

return

There are no specific disclosure requirements. However, it is

advisable to provide details of the following, together with

the income tax return; otherwise, the FRCS may disallow a

deduction for the same:

> Payments to non residents, such as dividends, interest,

management fees, “know-how” payments, royalties or

contract payments made

In some instances, the FRCS may require additional details

before assessing an income tax return.

> Related-party disclosures in financial statement/annual

report

Yes, there is a requirement for such disclosure.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is 31 March or three months after the

financial year-end.

> Other transfer pricing disclosures and return

The filing deadline for other TP disclosures and return is

usually the fiscal year-end or the date of the extension.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation needs to be finalized by

the time of lodging the tax return to achieve penalty protection

(e.g., where there is a contemporaneous requirement). Dates

depend on the fiscal year-ends. For example, for FYs ending

31 December, the deadline is usually at the end of the third

month — i.e., March — of the following year, or at the date the

tax office provides for under the tax agent lodgment program.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

The transfer pricing documentation should be submitted each

year, along with the tax return.

> Time period or deadline for submission upon tax authority

request

The taxpayer has 14 days to submit the transfer pricing

documentation once requested by the tax authorities, but an

extension can be requested.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

FRCS has extended the deadline for tax returns due for filing

during the months of April 2021 to 31 December 2021 and

waived all late filing penalties until 31 December 2021 for

taxpayers and tax agents affected by movement restrictions,

lockdowns or containment zones.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — It applies to international

transactions.

> Domestic transactions — There is none specified for

domestic transactions.

b) Priority and preference of methods

The FRCS accepts the most reliable method or methods

chosen from the following:

> CUP

> Resale price

> Cost-plus

> Profit-split

> TNMM

TNMM and the profit-split method are the most commonly

used in Fiji. Because Fiji is in a developing state, most

transactions are cross-border and performed by

multinationals.

8. Benchmarking requirements

> Local vs. regional comparables

A local benchmarking can be used for benchmarking

requirements in Fiji.

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis (five years) is a common practice.

> Use of interquartile range

In recent TP audits, the interquartile range was used by the tax

authorities.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year, and financial updates are acceptable.

> Simple, weighted or pooled results

The weighted average is a common practice.

> Other specific benchmarking criteria, if any

The FRCS, at most times, uses the Australian Taxation Office

(ATO) industry benchmarking on profitability.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Will apply as below. The law requires satisfactory

documentation to be maintained.

> Consequences of failure to submit, late submission or

incorrect disclosures

In accordance with the Income Tax (Transfer Pricing)

Regulations 2012, the following penalties apply:

> Failure to keep required transfer pricing documentation is

an offense, and upon conviction, the person is liable for a

fine of at least Fijian dollar (FJD)100,000.

In accordance with the Tax Administration Decree, the

following penalties apply:

> For failing to keep, retain or maintain accounts, documents

or records as required under a tax law:

> If the failure is knowingly or recklessly made, the taxpayer

faces a penalty equal to 75% of the amount of tax payable

for the tax period to which the failure relates.

> In any other case, the taxpayer faces a penalty equal to

20% of the amount of tax payable for the tax period to

which the failure relates.

> For making false or misleading statements:

> 

If the statement or omission was made knowingly or

recklessly, the taxpayer faces a penalty equal to 75% of

the tax shortfall.

> 

In any other case, the taxpayer faces a penalty equal to

20% of the tax shortfall.

> The amount of penalty imposed under the

abovementioned cases is increased by 10 percentage

points if this is the second application of the penalties

related to making false or misleading statements, and

25 percentage points if this is the third or a subsequent

application.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above. Yes adjustments can be made at

the discretion of the Commissioner or the CEO.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the section above. Yes penalties can be assessed.

> Is interest charged on penalties or payable on a refund?

No interest is charged on penalties. As for refunds, the

market interest rate determined by the Reserve Bank of Fiji is

applicable on refunds withheld by the tax office.

b) Penalty relief

Shortfall penalties may be reduced by 10 percentage points

if the person voluntarily discloses the shortfall prior to the

earlier of:

> The discovery by the FRCS of the tax shortfall

> The commencement of an audit of the tax affairs of the

taxpayer

Shortfall penalties may also be reduced if a taxpayer has a

historically good compliance record.

10. Statute of limitations on transfer pricing

assessments

There is no specific statute of limitations applying only to TP

assessments. Accordingly, the statute of limitations applying to

all assessments will also apply to TP assessments.

In accordance with the Tax Administration Decree, the

amendment of a tax assessment may be made:

> In the case of fraud, willful neglect or serious omission by

or on behalf of the taxpayer, at any time

Or

> In any other case, within six years of the date the FRCS

served the notice of assessment on the taxpaye

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood is usually low as the FRCS lacks the qualified

resources to conduct such related audits repeatedly. Tax audits

are undertaken at the discretion of the FRCS. The FRCS selects

audit targets based on certain criteria and risk profiling,

including:

> Company incurring ongoing losses

> Lower-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

> Those who offer special reduced tax rates for a particular

activity

> Poor compliance processes and records

> Intragroup charges — e.g., management and technical fees

> Large royalty payments and excessive debt levels (i.e.,

interest payments)

> Transfer of intangibles

> Business restructurings

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

From experience, if a tax audit is conducted on a TP client,

there is a medium likelihood that the FRCS will look into

the basis of the related-party transaction. In other words,

a referral is made to the TP team, which in most cases will

conduct an analysis of the methodology — a challenge will be

low.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high; if the

methodology is challenged, the tax office will divert resources

to the case if the exposure is substantial.

> Specific transactions, industries and situations, if any, more

likely to be audited

Manufacturing and services, such as banking and insurance

(refer to the section above for more details), are more likely to

be audited.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APAs were not available in Fiji at the time of this publication

but may be considered later in the context of introducing

a binding rulings process. Currently, there is one APA in

existence in Fiji.

However, the FRCS encourages taxpayers to discuss related-

party transactions with the FRCS prior to entering into them,

with a view toward eliminating any TP implications of the

same, even though such discussions are not binding on either

party.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

An entity may have offshore borrowings up to FJD5 million

per year without the prior approval of the Reserve Bank of Fiji.

Foreign-owned companies may borrow locally any amount if a

total debt-to-equity ratio of 3:1 is maintained. The total debt

consists of local and offshore borrowings. Equity includes paid-

up capital, shareholders’ non-interest-bearing loans, retained

earnings and subordinated interest-bearing loans.

Steve Pickering

steve.pickering@fj.ey.com

+ 61 2 9248 5532

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority1

Finnish Tax Administration

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The relevant reference is the Act on the Tax Assessment

Procedure, Sections 14a to 14e, 31, 32, 75 and 89. The

previous Finnish transfer pricing rules entered into force on 1

January 2007. The current provisions concerning the Master

and Local Files under BEPS Action 13, as well as the rules

on CbCR, entered into force on 1 January 2017. The rules

concerning CbCR apply, however, to financial years that began

on or after 1 January 2016.

> Section reference from local regulation

Act on the Tax Assessment Procedure, Section 14 and 31

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Finland is a member of the OECD.

The Finnish transfer pricing regulations and tax practice in

general follow the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

1 https://www.vero.fi/en/businesses-and-corporations/about-corpo-

rate-taxes/transfer\_pricing/

Finland has adopted BEPS Action 13 for transfer pricing

documentation in its local regulations.

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

The master and Local Files are covered in accordance with

OECD recommendations.

> Effective or expected commencement date

1 January 2017

> Material differences from OECD report template or format

There are no material differences between the OECD report

template or format and Finland’s regulations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No; however, it is possible that the penalties can be reduced

or removed if the taxpayer presents supplementary transfer

pricing documentation that supports the arm’s-length nature

of the intragroup transactions. Determination of penalties will

be made on a case-by-case basis.

According to a decision issued by the Finnish Supreme

Administrative Court in 2014, penalties should not be

assessed in transfer pricing cases where the taxpayer has

adequately followed the arm’s-length principle in intragroup

pricing.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Sections 14a to 14e of the Act on the Tax Assessment

Procedure contain rules on the preparation of transfer pricing

documentation. No contemporaneous documentation during

the tax year would be required. The Finnish tax authorities

have also issued separate guidelines concerning transfer

pricing.

Finland has implemented the Master and Local File

requirements as well as CbCR as proposed in BEPS Action 13.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes; however, there is no annual obligation to submit transfer

pricing documentation. The completed transfer pricing

documentation should be submitted only if requested by the

tax authorities. There are no specific, separate minimum

requirements for how the documentation should be updated

from year to year (the standard requirements apply).

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No; however, all cross-border transactions should be presented

in the documentation, which involve the local entities.

b) Materiality limit or thresholds

> Transfer pricing documentation

The obligation to prepare transfer pricing documentation

is stated in Section 14a of the Act on the Tax Assessment

Procedure, and the transfer pricing documentation applies to

the following entities:

> A company that together with its group companies

employs 250 people or more

> A company that together with its group companies has

a consolidated turnover of EUR50 million or more and

consolidated net assets of EUR43 million or more

> A company that does not qualify as a small or medium-

sized enterprise as defined in the EU Commission

Recommendation (2003/361/EC) concerning the

definition of micro, small and medium-sized enterprises

The documentation requirements apply if one of the

abovementioned criteria is fulfilled. The figures used in

calculating the above-mentioned criteria are figures for the

consolidated group.

> Master File

The obligation to prepare Master File documentation applies if

one of the above-mentioned criteria is fulfilled, and if the total

value of the taxpayer’s cross-border intercompany transactions

during the fiscal year in question exceeds EUR500,000.

> Local File

The obligation to prepare Local File documentation applies

if one of the above-mentioned criteria is fulfilled. Local File

documentation needs to be prepared, although if the total

value of intercompany transactions between two parties

does not exceed EUR500,000, less-extensive documentation

is allowed (functional analysis, comparability analysis and

description of the transfer pricing method may be omitted).

> CbCR

Finnish CbCR requirements apply if the group revenue exceeds

EUR750 million in the financial year immediately preceding

the reporting financial year.

> Economic analysis

Refer to the section below.

c) Specific requirements

> Treatment of domestic transactions

There is no transfer pricing documentation obligation

for domestic transactions. Arm’s-length pricing should

nevertheless also be applied in domestic transactions.

> Local language documentation requirement

Transfer pricing documentation can be prepared in Finnish,

Swedish or English. The Finnish Tax Administration can request

a Finnish or Swedish translation in case the documentation

is prepared in English. However, in practice this is not very

common.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is preferred

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

If a taxpayer (including a Finnish branch of a foreign company)

is obligated to prepare the transfer pricing documentation in

Finland, the Finnish tax authorities also require Form 78 to

be completed and disclosed with the annual corporate income

tax return. Information regarding cross-border intragroup

transactions, which normally cannot be directly found in the

company’s financial statements, is reported on Form 78.

However, information regarding the transfer pricing method

applied is not reported in this form.

> Related-party disclosures along with corporate income tax

return

There is none specified.

> Related-party disclosures in financial statement and annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

There is a separate process to be followed where a CbC report

is required.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The corporate income tax return has to be filed at the end of

the fourth month after the end of the financial year (i.e., 30

April if the financial year ends on 31 December).

> Other transfer pricing disclosures and return

It is the same as the deadline for filing the corporate income

tax return (i.e., 30 April if the financial year ends on 31

December).

> Master File

The deadline is 60 days upon request. However, there is no

obligation to provide the Master File earlier than six months

after the end of the accounting period.

> CbCR preparation and submission

The CbC report should be submitted within one year from the

end of the financial year (i.e., by 31 December 2021 for a

financial year that ends on 31 December 2020).

> CbCR notification

CbCR notification should be submitted by the last day of the

financial year of the ultimate parent entity. For example, if

FY2021 of the ultimate parent entity ends on 31 December

2021, the CbCR notification for that financial year should be

submitted by 31 December 2021.

b) Transfer pricing documentation/Local File preparation

deadline

There is no specific deadline for the preparation of transfer

pricing documentation (Master File and Local File), but a

taxpayer should be prepared to provide the transfer pricing

documentation within 60 days if requested by the tax

authorities. However, a taxpayer is not obligated to provide the

transfer pricing documentation earlier than six months after

the end of the accounting period.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory requirement to submit transfer pricing

documentation to the tax administration every year.

> Time period or deadline for submission on tax authority

request

A taxpayer must deliver the transfer pricing documents within

60 days upon request. However, a taxpayer is not obligated

to provide the transfer pricing documentation earlier than six

months after the end of the accounting period.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes, there is a transfer pricing

documentation obligation.

> Domestic transactions: There is no transfer pricing

documentation obligation for domestic transactions;

however, the arm’s-length principle should also be followed

for domestic transactions.

b) Priority and preference of methods

Taxpayers may choose any of the OECD transfer pricing

methods, as long as the chosen method or a combination

of the chosen methods results in arm’s-length pricing. In its

selection of the most suitable method, a taxpayer should

consider the aspects regarding the application of methods as

stated in the OECD Guidelines.

8. Benchmarking requirements

> Local vs. regional comparables

There are no specific regulations governing the preparation

of benchmarking studies, but the preference is for local or

Nordic comparables. Pan-European comparables are, however,

generally accepted in local tax practice.

> Single-year vs. multiyear analysis for benchmarking

Multiyear (e.g. three-year) analysis is followed, as per common

practice.

> Use of interquartile range

Both EY and spreadsheet quartiles are used, as per common

practice. Finland follows the OECD Guidelines and IQR range is

preferred.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no requirement to conduct a fresh benchmarking

search every year.

> Simple, weighted or pooled results

No preference is stipulated by law. However, the Finnish Tax

Administration has used weighted average in their guidance.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

A tax penalty of up to EUR25,000 can be imposed for failure to

comply with the transfer pricing documentation requirements,

even if the pricing of intragroup transactions has been at arm’s

length.

> Consequences of failure to submit, late submission or

incorrect disclosures

A tax penalty of up to EUR25,000 can be imposed for failure to

comply with the transfer pricing documentation requirements,

even if the pricing of intragroup transactions has been at arm’s

length.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

A tax penalty of up to EUR25,000 can be imposed for failure to

comply with the transfer pricing documentation requirements,

even if the pricing of intragroup transactions has been at arm's

length.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

A tax penalty of up to EUR25,000 can be imposed for failure to

comply with the transfer pricing documentation requirements,

even if the pricing of intragroup transactions has been at arm's

length.

> Is interest charged on penalties or payable on a refund?

If the income of the taxpayer is adjusted upward, the resulting

additional tax liability will incur interest at two different rates.

A lower rate of interest, adjusted annually (2% in 2018), is

calculated until approximately 10 months after the end of

the financial year. An interest at a higher rate (7% in 2018)

applies from approximately 10 months after the end of the

financial year until the due date of the additional tax liability

resulting from the adjustment. Somewhat different rules apply

to the calculation of interest for the tax assessment for years

preceding 2017.

The rate of interest payable on tax refunds varies annually and

was 0.5% during 2021.

b) Penalty relief

It is possible that the penalties can be reduced or removed

if the taxpayer presents supplementary transfer pricing

documentation that supports the arm’s-length nature of the

intragroup transactions. Determination of penalties will be

made on a case-by-case basis.

According to a decision issued by the Finnish Supreme

Administrative Court in 2014, penalties should not be

assessed in transfer pricing cases where the taxpayer has

adequately tried to follow the arm’s-length principle in its

intragroup pricing.

The following dispute resolution options are available if an

adjustment is proposed by the tax authority:

> The taxpayer can initiate an MAP procedure in order to

remove the double taxation.

> The taxpayer can also appeal the tax assessment decision.

10. Statute of limitations on transfer pricing

assessments

The time limit for the adjustment of income, due to the failure

to apply arm’s-length principles to the pricing of a transaction,

is six years after the end of the calendar year during which

the financial statement was closed. This statute of limitations

applies to financial years that ended on or after 1 January

2017. The previous rules were, in this regard, identical.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high, as transfer

pricing is one of the key topics of the tax authorities.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of a challenge to the transfer pricing

methodology should be moderate, provided that the

transactions are reflecting the commercial rationale and the

pricing models follow the OECD recommendations.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium to high; it is

very typical that a reassessment will be imposed by the tax

office if a challenge is made during a tax audit.

> Specific transactions, industries and situations, if any, more

likely to be audited

Transactions involving transfer of intellectual property rights

and business restructurings

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

It is possible to apply for an APA with the Finnish Tax

Administration. There is, however, no formal APA program

available in Finland.

> Tenure

APAs are concluded for a fixed term, but there are no formal

rules concerning the term in Finland.

> Rollback provisions

There is none specified.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty (DTT) to which Finland is signatory.

Most of Finland’s DTTs permit taxpayers to present their

case to the tax authority of the Ministry of Finance within

three years from the first notification to the taxpayer of the

actions giving rise to taxation not in accordance with the DTT.

However, time limits may vary, and the relevant DTT should

be consulted for the applicable time limit. Taxpayers have

three years to present a case to the tax authority under the EU

Arbitration Convention (90/436/EEC).

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no thin-capitalization rules; as such, interest

limitation rules have been implemented instead. As of

the financial year 2019, new rules concerning interest

deductibility have become applicable. Broadly, the deductibility

of a company’s net financing expenses is limited to 25% of

that company’s adjusted taxable income. The adjusted taxable

income is described as “taxable earnings before interest,

tax and depreciation (EBITD)” and is calculated as taxable

income including group contributions received and adding

back interest expenses, group contributions paid and tax

depreciations. The interest deduction limitation is applied only

if the net interest expense exceeds EUR500,000. Non-related

party net interest expense is deductible up to EUR3 million and

is deducted primarily as part of the 25% tax EBITD quota.

Kennet Pettersson

kennet.pettersson@fi.ey.com

+ 358405561181

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

French tax authorities (FTA) (Direction Générale des Finances

Publiques, or DGFiP; formerly, Direction Générale des Impôts,

or DGI)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The regulations or rulings related to TP in the French Tax

Code (FTC) are found in the following articles (applicable since

several years but revised regularly):

> Article 57: arm’s-length principle

> Article 223 quinquies B: annual declaration of related-

party transactions

> Article 223 quinquies C: CbCR

> Article 238A: the reversal of the burden of proof in the

case of transactions with tax haven (entities taxed at less

than half the taxation they have if they were French tax

resident)

> Article 209B: CFC regulation

> Articles 212-I and 39-1 3: part of the thin-capitalization

legislation (applied in the context of intragroup financing

arrangements such as intragroup interest payments or

intragroup debt)

> Article 1735 ter: TP documentation penalty regime

> Article 1729F: CbCR penalties

The regulations or rulings related to TP in the French

Procedural Tax Code (FPTC) are found in the following articles:

> Articles L 13 AA and L 13 AB: TP documentation

requirements applicable to certain taxpayers

> Article R 13 AA-1: additional guidance on how to apply

Article L 13 AA

> Article L 13 B: general TP documentation requirements

for all taxpayers during a tax audit (this reverses the

burden of proof from the tax authority on to the taxpayer

and can only be applied if certain conditions are met)

> Article L 10: general information requests during a tax

audit

1 https://www.impots.gouv.fr/portail/

> Section reference from local regulation

FTC Article 39-12 has reference to TP documentation.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

France is a member of the OECD and concluded an extensive

network of double tax agreements (DTAs) with foreign

jurisdictions based on OECD Model Tax Convention.

The FTA generally considers the French TP regulations to be

consistent with the OECD Guidelines and are following the

BEPS developments closely (certain BEPS initiatives have been

introduced into law).

However, court cases deny the applicability of certain TP

principles when they were released after the conclusion of

the DTA between France and the foreign jurisdiction. This is

notably the case for the provision related to the Authorized

OECD Approach from the OECD PE report in relation to

allocation of capital.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

France has adopted BEPS Action 13. CbCR requirements were

adopted for financial years starting on or after 1 January

2016, whereas Master File and Local File requirements were

adopted for financial years starting on or after 1 January

2018 (previous contemporaneous documentation format was

based on the EUJTPF recommendation).

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

CbCR, Master File and Local File are covered.

> Effective or expected commencement date

CbCR is covered for the financial years starting on or after 1

January 2016.

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:

> The Master File and Local File have to be made available in

electronic format.

> 

All financial data contained in the Master File and local

file have to be made available in an electronic format

that allows the FTA to verify the calculations (e.g., in

spreadsheet).

> Aspecific format, in terms of section headings and

the order of the sections, is specified, but the overall

content required to be included in Master File and local

files is consistent with the OECD’s BEPS Action 13

recommendations.

> The 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.

> The local entity must provide the reconciliation between

management accounts used for TP purposes and statutory

accounts. The reconciliation makes the link between the

costs as booked in the General Ledger, the allocation to

the appropriate "service/product," then the calculation

of the margin and the corresponding revenue booked

as reported in the General Ledger. This requirement is

very restrictive for taxpayers and more burdensome than

what is required in the OECD Guidelines given the need to

fully reconcile the statutory profit and loss (P&L) and the

calculations of transfer prices.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report should be sufficient to

achieve penalty protection, but financial data contained in the

report needs to be provided in electronic format.

In addition, the financial reconciliation required between

management accounts used for TP purposes and statutory

accounts should be provided in the Local File.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does documentation need to be

submitted or prepared contemporaneously?

Yes, and the TP documentation needs to be contemporaneous.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, local branches are under the scope of French TP

documentation requirements.

> Does transfer pricing documentation be prepared annually?

TP documentation needs to be prepared and updated annually

under local jurisdiction regulations.

For financial years starting on or after 1 January 2018, the

OECD’s BEPS Action 13 recommendations (Master File and

Local File) apply with some specific add-ons on financial data

reconciliation.

However, comparable searches only need full updating every

three years under the condition that no material changes

occurred during that period. Still an annual update of the

financials of the comparables is required.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity should prepare a stand-alone TP report.

b) Materiality limit or thresholds

> Transfer pricing documentation

Taxpayers that fulfill at least one of the following conditions

need to prepare TP documentation compliant with Article L 13

AA of the FPTC:

> Entities that generate (at statutory level) more than

EUR400 million of turnover or have at least EUR400

million of gross assets on the balance sheet at the end of

the year

> Entities that are owned, directly or indirectly, by an entity

that passes this EUR400 million threshold

> Entities that own, directly or indirectly, an entity that

passes this EUR400 million threshold

For the Transfer Pricing Statement (Article 223 quinquies B,

refer below for further details), the above-mentioned threshold

of EUR400 million is lowered to EUR50 million.

> Master File

This is not applicable prior to 2018; another format was

applicable.

For financial years starting on or after 1 January 2018, Article

L 13 AA of the FPTC was amended to reflect the outcome of

BEPS Action 13, i.e., the adoption of the Master File (or local

file) approach to TP documentation.

> Local File

This is not applicable prior to 2018; another format was

applicable.

For financial years starting on or after 1 January 2018, Article

L 13 AA of the FPTC was amended to reflect the outcome of

BEPS Action 13, i.e., the adoption of the Local File (or master

file) approach to TP documentation.

> CbCR

The threshold is EUR750 million consolidated revenue.

> Economic analysis

There is no materiality limit prior to 2018.

For financial years starting on or after 1 January 2018, only

the “most important intra-group transactions” need to be

benchmarked. A separate decree, published in July 2018,

specifies that the “most important intra-group transactions”

are cross-border intragroup transactions that exceed

EUR100,000 by type of transactions. A “type of transaction”

is, for example, tangible goods purchase, tangible goods

sale, service provision, trademark royalty, IT license, sale of a

tangible asset or purchase of an intangible asset.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. However, this does not exclude domestic

transactions from potential scrutiny during tax audit.

> Local language documentation requirement

The TP documentation does not need to be submitted in the

local language, and English-language reports are commonly

provided to the FTA. However, the FTA does have the power

to demand a translation into French of all or parts of the

documentation.

> Safe harbor availability, including financial transactions, if

applicable

The only safe harbor available in France relates to intragroup

lending; a French borrower that pays a rate that is equal to or

lower than the “legal rate” will not be questioned or reassessed

on that interest rate. The legal rate is published quarterly by

the FTA and is a variable rate based on data communicated by

French banks to the FTA on interest rates these banks provide

to borrowers on loans of at least two-year maturity. This legal

rate is, thus, a variable rate.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

The local entity must provide in the Local File the reconciliation

between management accounts used for TP purposes and

statutory accounts.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Transfer Pricing Statement CERFA 2257-SD (Article 223

quinquies B) needs to be submitted as part of the taxpayer

annual CIT return. In any way, this form needs to be submitted

electronically at the latest within six months after the legal

deadline for submitting the CIT return itself. The threshold for

entities having to lodge a TP form is the same as for master

file and Local File but lowered from EUR400 million to EUR50

million.

> Related-party disclosures along with corporate income tax

return

The TP documentation (i.e., required by either Article L 13

AA or Article L13B) only needs to be provided upon request

during a tax audit.

The Transfer Pricing Statement (required by Article 223

quinquies B) needs to be submitted as part of the taxpayer’s

annual tax return (CERFA Form 2257-SD). In any way, this

form needs to be submitted at the latest within six months

after the legal deadline for submitting the tax return itself.

Filing has to be done electronically and in French. The

threshold for entities having to lodge a Transfer Pricing

Statement is lowered from EUR400 million to EUR50 million,

but only cross-border intra-group transactions exceeding a

threshold of EUR100,000 per type of transaction need to be

disclosed on this tax return form.

CbCR disclosures or notifications are required by Article 223

quinquies C.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

Yes, this is applicable only if the UPE or the SPE is not located

in a jurisdiction that has adopted CbCR requirements and has

not signed the automatic exchange of information protocol.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Generally, the deadline is three months after the financial

year-end; a minor extension is granted for companies closing

on 31 December (end of April or beginning of May).

> Other transfer pricing disclosures and return

The Transfer Pricing Statement (Cerfa Form 2257-SD) needs to

be submitted with the tax return or not after six months of the

legal deadline for submitting the tax return itself.

> Master File

The Master File should be provided upon request in case of a

tax audit. If not provided upon request, the taxpayer has 30

days after formal request. This can, under very strict situations

be extended to up to 60 days, but the decision to allow such

an extension is at the discretion of the tax inspector and rarely

granted in practice.

> CbCR preparation and submission

It should be submitted within 12 months after the end of the

financial year.

> CbCR notification

The deadline is the same time as submitting the tax return,

i.e., generally, it is three months after the financial year-

end for companies closing on 31 December (end of April or

beginning of May).

b) Transfer pricing documentation/Local File preparation

deadline

TP documentation needs to be provided only upon request in

the case of a tax audit.

However, as the taxpayer has only 30 days to provide its TP

documentation after having received such a request, proactive

preparation is recommended.

The Master File and Local File should be ready at the time of

filing the CIT return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of TP

documentation; it only needs to be finalized by the time it is

submitted upon request.

> Time period or deadline for submission on tax authority

request

The Local File should be provided under very strict situations

upon request in case of a tax audit. If not provided upon

request, the taxpayer has 30 days after the formal request.

This can potentially be extended up to 60 days, but the

decision to allow such an extension is at the discretion of the

tax inspector.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Transfer pricing documentation: No

TP declaration/form/filing: The TP declaration for FYE 31

December 2019 may be submitted up to 31 December 2020

(i.e., 6 months after the revised deadline for filing the CIT

return (see below)). For companies with fiscal year ends other

than 31 December that benefit from a deferred date for filing

their CIT return, deferred filing of the TP declaration is also

permitted. Additional details have not been provided at this

stage by the French Tax Authority.

CbCR notification: Yes for CIT returns due from 31 December

2019 to 29 February 2020, the filing date has been postponed

to 30 June 2020. For returns due from 1 March to 31 March

2020, the filing date has been postponed to 31 July 2020.

CbC report: No

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes, it is applicable.

> Domestic transactions: No TP documentation obligation

exists in France for domestic transactions. However,

domestic transactions can be scrutinized in case of tax

audit.

b) Priority and preference of methods

FTA accepts the following methods: CUP, resale price, cost-

plus, profit-split and TNMM. The CUP method is considered as

the most reliable method when it can be applied.

Other methods may be accepted by the tax authorities if

justified and if the remuneration is compliant with the arm’s-

length principle.

8. Benchmarking requirements

> Local vs. regional comparables

French comparables are preferred when the tested party is

French. However, pan-European comparables are sufficient for

TP documentation penalty protection.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year testing (three years) is preferred.

> Use of interquartile range

The spreadsheet quartile range is preferred.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year. French administrative guidance allows for fully

updating the benchmarking studies every three years instead

of annually on the condition that no material changes occurred

during the period.

However, inspectors tend to ask for an annual refresh of the

financial information (i.e., the addition of the most recent

available financial information) when comparables’ searches

have not been updated.

> Simple, weighted or pooled results

The weighted average is generally used for arm’s-length

analysis.

> Other specific benchmarking criteria, if any

The independence of comparables is required by law.

Independence is either a question of law (exceeding 50% of

ownership) or fact (whether one management’s decision can

be influenced by the other entity).

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Yes, companies that are caught by Article L 13 AA but fail

to meet their transfer pricing documentation requirements

expose themselves to a penalty that is the greater of: A

minimum of EUR10,000 for each fiscal year concerned 5% of

the additional corporate income tax payable as a consequence

of a transfer pricing reassessment 0.5% of the amount of non-

documented transactions

> Consequences of failure to submit, late submission or

incorrect disclosures

Penalties specific to the failure to comply with the TP

documentation requirements apply in addition to the

fiscal penalties generally applied as a consequence of a TP

reassessment. TP reassessments from the FTA trigger an

adjustment of the taxable profit for corporate income tax

purposes (and other taxes depending on the case).

Specific TP penalties apply when the taxpayer fails to answer

the tax authorities’ request for documentation either on the

basis of Article L 13B of the FPTC (which relates to general TP

documentation requirements if the FTA can provide evidence

of a TP issue before it applies this article) or on the basis of

Articles L 13AA and L 13AB of the FPTC (which relate to

special TP documentation requirements).

The failure to provide complete information in the framework

of Article L 13B of the FPTC may result in:

> A reassessment of the company’s taxable profit based on

information the tax authorities possess

> The application of a penalty of EUR10,000 for each year

audited

The failure to provide sufficient TP documentation under the

framework of Articles L 13AA and L 13AB of the FPTC will

trigger penalties. Such TP documentation-related penalties are

the highest of the following amounts:

> A minimum of EUR10,000 per entity and per period not

documented

> A 0.5% charge of the volume of transactions that were not

documented

Or

> A 5% charge of the reassessments based on Article 57 of

the FTC (arm’s-length principle)

The failure to submit a Transfer Pricing Statement as required

by Article 223 quinquies B of the FTC or make erroneous

statements on this tax return form (Form 2257-SD) will trigger

penalties as follows:

> EUR150 if the Transfer Pricing Statement is not submitted

Or

> EUR15 per error with a minimum penalty of EUR60 and a

maximum penalty of EUR10,000

The failure to submit a Transfer Pricing Statement will increase

the risk of a tax audit as the FTA uses this tax return form as a

risk assessment tool.

The failure to comply with the legal CbCR requirements (i.e.,

Article 223 quinquies C of the FTC) will trigger a penalty of

maximum EUR100,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties generally applied as a result of a TP reassessment

regardless of compliance with TP documentation requirements

are as follows:

> After a TP reassessment is made, the additional profit

is qualified as a deemed distribution of a benefit. The

tax treatment of such “benefit” transfer may trigger

the same consequences as a deemed transfer of a

dividend, depending on the definition of “dividend” in

the applicable tax treaty. Accordingly, a withholding tax

on the reassessed amounts is imposed by the FTA when

the applicable tax treaty allows for imposing withholding

taxes. When the double tax treaty permits the FTA

to treat the TP reassessment as a deemed dividend

distribution, the actual withholding tax applied depends

on the relevant tax treaty provisions. In the absence of

a specific tax treaty, the withholding tax rate applied

is 30% and increases to 75% when the foreign entity is

based in a “noncooperative” jurisdiction. Note that the

effective rate will be the grossed-up rate (i.e., 300%

effective withholding tax rate in the case of a reassessed

transaction with a “noncooperative” jurisdiction).

> If the transfer is treated as a deemed dividend, the tax

authorities also usually apply a 10% penalty for not

declaring the withholding tax. Such penalty is applied

regardless of the good faith of the taxpayer.

> However, if certain cumulative conditions are met, at the

request of the taxpayer, the withholding taxes may be

waived. These cumulative conditions are enshrined in

Article L62 A of the FPTC but basically require that the

taxpayer files, before the FTA issues the tax bill, a written

request to apply Article L62 A and that the amounts

classified as deemed dividends are repatriated to the

benefit of the French taxpayer within 60 days from the

request. However, the taxpayer cannot have recourse to

Article L62 A if the non-French related party that entered

into the reassessed transaction with the French entity is

located in a noncooperative state or territory.

> Supplementary penalties apply if the taxpayer committed

a willful offense (formerly referred to as “bad faith”

penalties) (40%) — this is much more frequently applied by

the tax authorities — or acted fraudulently (80%). In these

cases, taxpayers are denied recourse to the European

Union Arbitration Convention and often also from MAPs

through the applicable double tax treaty (possibly subject

to discussion, however, depending on treaty provisions).

It should be noted that the assessment of a TP documentation

penalty under Article L 13AA (TP documentation penalty

regime) does not prevent the taxpayer from seeking recourse

under MAP provisions. In addition, the adjustment may result

in a reassessment of other taxes and contributions, such as

business or local taxes and employee profit-sharing regimes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the section above.

> Is interest charged on penalties or payable on a refund?

Late interest payments are applied in the case of tax

reassessments made on the grounds of Article 57 of the FTC.

The ordinary late payment interest rate is 0.4% per month (i.e.,

4.8% per year), reduced to 0.2% for periods starting on or after

1 January 2018. In other words, when a late payment interest

calculation bridges a period that included months prior to and

after 1 January 2018, 0.4% is applied to the months prior to 1

January 2018 and 0.2% for periods after 1 January 2018.

Tax reimbursements that may be made by the French

Government as a consequence of a MAP do not attract

interest.

b) Penalty relief

During a tax audit and before the tax authorities send the

notice of reassessment, taxpayers, under the framework of

Article L 62 of the FPTC, are allowed to correct their errors or

omissions in consideration of a reduced late-payment interest

rate (3.36% per year), which is equal to 70% of the ordinary

late-payment interest rate. In this respect, taxpayers must

file a complementary tax return and pay the corresponding

additional taxes at the same time.

The taxpayer can contest penalties for willful offense (40%)

or penalties for fraudulent activities (80%) in court if such

penalties are maintained at the end of the usual tax audit

procedures.

10. Statute of limitations on TP assessments

The statute of limitations for TP adjustments is the same as for

all French corporate tax assessments, which is generally three

years following the year for which the tax is due. For example,

a financial year that closed on 31 December 2017 will be

statute-barred by 31 December 2020. Similarly, a financial

year that closed on 31 March 2017 will also be statute-barred

by 31 December 2020 (i.e., calendar-year principle applies).

If no reassessment notice has been received by the taxpayer

by 31 December 2020 at the latest, the year 2017 will be

statute-barred.

However, carry-forward losses can be audited as long as they

are carried forward. But if the losses occurred in periods being

statute-barred, the FTA could only reassess up to the amount

of the losses in those statute-barred years — i.e., they could

not reassess additional taxable income in those statute-barred

years and, at maximum, cancel the losses.

If the FTA request international tax assistance (Article L

188A of the FPTC) — administrative assistance procedures

between tax authorities of different countries — the statute of

limitations is extended up to three additional years in order

to give the non-French authorities the time to respond and

the FTA the time to take into account this response in their

analyses.

The general three-year statute of limitations can also be

extended in specific cases, such as when an asset (e.g., going-

concern and clientele) was transferred but not declared at

the time of transfer (extension from three to six years in this

particular case). An effective extension to 10 years applies in

cases where permanent establishments are deemed to exist by

the FTA and where the non-French entity never declared any

taxable activities in France to the FTA.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of TP scrutiny and related audit

by the local authority

> Likelihood of Transfer pricing-related audits (high, medium

or low)

The likelihood may be considered to be high as taxpayers

that have been audited once usually enter a recurring three-

or four-year audit cycle and transfer prices will always be

analyzed, to a greater or lesser extent, during tax audit.

> Likelihood of TP methodology being challenged (high,

medium or low)

The likelihood may be considered to be high as it is rare that

a French tax inspector would invest the time and effort to

investigate transfer prices in detail without at least trying to

reassess.

> Likelihood of an adjustment if the TP methodology is

challenged (high, medium or low)

The likelihood may be considered to be high as no French tax

inspector would ever challenge a TP methodology without

coming to the conclusion that this challenge is based on the

assertion that the French taxable base was too low. However,

amounts are often subject to discussion on recourses post tax

audit during the pre-litigation phase.

France still has an active litigation activity on TP with several

cases reviewed by courts and several decisions rendered.

> Specific transactions, industries and situations, if any, more

likely to be audited

Loss situations are highly scrutinized and the reason for

opening tax audits and starting discussion on TP from the

beginning of the tax audit in many cases.

In recent years, US-headquartered technology companies have

been subject to highly publicized (in newspapers, for instance)

tax police raids and tax audits.

Also, intra-group financial transactions, in particular with

Luxembourg, have been heavily scrutinized in the past three to

four years.

But, as a general comment, all types of intra-group

transactions (e.g., management fees and royalties or licenses)

are subject to scrutiny.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Bilateral, multilateral and, subject to certain well-defined

conditions, unilateral APAs are available (Article L 80 B 7° of

the FPTC).

> Tenure

APAs have a fixed term of three or five years. An APA

submission, i.e., an official request to be allowed into the APA

program, needs to be lodged at the latest six months before

the start of the first year the APA would apply. For example,

for a 1 January 2020 start of the APA, the APA submission

would need to be lodged by 30 June 2019 at the latest. No

administrative fees are required to be paid to the French

authorities for entering into an APA.

> Rollback provisions

There is no rollback possibility.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty (DTT) to which France is a signatory.

Most of France’s DTTs permit taxpayers to present their

cases to the tax authority within three years from the first

notification to the taxpayers of the actions giving rise to

taxation not in accordance with the DTT. However, time

limits may vary; the relevant DTT should be consulted for the

applicable time limit. Taxpayers have three years to present a

case to the tax authority under the EU Arbitration Convention

(90/436/EEC).

14. Have there been any impacts or changes

to Advanced Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No work of Competent Authority (CA) slowed down and

postponement of several bilateral meetings with counterparty

CAs.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

In an effort to comply with the European Union (EU) Anti-Tax

Avoidance Directive (ATAD), major changes to the current

French interest deductibility limitation rules have been

implemented to fiscal years open as from 1 January 2019:

New general limitation: Net interest expenses are deductible

from the taxable income of a company only to the extent that

they do not exceed the higher of the two following thresholds:

(i) EUR3 million or (ii) 30% of the adjusted taxable income of

the company (i.e., corresponding to the taxable income before

the offset of tax losses and without taking into consideration

net financial expenses and – to some extent – depreciation,

provisions and capital gains or losses), altogether referred to

as the “regular threshold.”

Debt-to-equity ratio: Should the company be thinly

capitalized and exceed a specific 1.5:1 debt-to-equity ratio, a

portion of the net interest expense, determined by application

of the following ratio to the net interest expense, is subject to

the regular threshold:

> Average amount of indebtedness toward unrelated parties +

[1.5 x equity] (numerator)

> Average amount of indebtedness (denominator)

The remaining portion of the net interest expense is to

be tax deductible only within the limit of the higher of the

two following thresholds: (i) EUR1 million or (ii) 10% of the

abovementioned adjusted taxable income (strengthened

threshold). The portion of net interest expense that is subject

to the strengthened threshold corresponds to the difference

between: (i) the total amount of net interest expense

and (ii) the amount of net interest expense subject to the

regular threshold in accordance with the above-mentioned

computation.

According to a specific safe harbor provision, despite the

fact that a company is thinly capitalized, it is subject to the

strengthened threshold if the debt-to-equity ratio of the

company is not higher, by more than two percentage points,

than the debt-to-equity ratio of the consolidated group to

which it belongs (i.e., application of the regular threshold to

the total amount of net interest expense).

Benoit Gabelle

benoit.gabelle@ey-avocats.com

+ 33 6 01 45 38 08

Contact

Emmanuelle Leroy

emmanuelle.leroy@ey-avocats.com

+ 33 6 29 34 07 29

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Transfer pricing desk of the Tax Administration (Direction

Générale des Impôts, Cellule Prix de Transfert)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer pricing reference has been included in the General

Tax Code as early as 2009. However, effective transfer pricing

rules, documentation filing obligations and deadlines, as well

as penalties are applicable as of 1 January 2017 under the

General Tax Code.

A Tax Statement of practice has also been issued by the Tax

Administration on 22 June 2018 to detail the content of the

transfer pricing documentation.

Section 12 and Sections P 831, P 831 bis, P 831 ter, P 832

and P 860 of the General Tax Code contain the main transfer

pricing provisions, effective since 1 January 2017.

> Section reference from local regulation

Under the General Tax Code:

> Section 12 (definition of the transfer pricing scope);

> Sections P 831, P 831 bis, P 831 ter, P 832 and P 860

(transfer pricing documentation content, filing obligation

and deadlines);

> Sections P-1010 bis and P-1010 ter (non-compliance

penalties); and

> Section 11-a of the special regime for group of companies

(definition of related party as companies that are directly

or indirectly under common control whether from a legal

perspective or that are in substance under common

control).

Under the Tax Statement of practice issued by the Tax

Administration, the content of the transfer pricing

documentation is detailed.

1http://www.dgi.ga/

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Not covered in COVID Tracker

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines,

UN tax manual or EU Joint Transfer Pricing Forum

Gabon is a member of the Exchange and Research Centre for

Leaders of Tax Administrations (an OECD body for the fight

against tax evasion). The OECD Guidelines are followed in the

local transfer pricing regulations.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS Action

13 for TP documentation in the local regulations?

Yes.

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

Companies within the TP scope are required to file the local

file and the Master File. The CbCR is also mandatory but has

temporarily been suspended since 2018.

> Effective or expected commencement date

The effective commencement date for the adoption of BEPS

Action 13 was 1 January 2017.

> Material differences from OECD report template or format

There are no material differences between the OECD report

template or format and Gabon’s regulations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No, since the 2018 Tax Statement of practice, mentioned

above, in addition to the TP reports for the Local File and the

Master File, companies are required (effective as of 2018) to

file two transfer pricing returns, namely “PT01” and “PT02,”

to respectively synthetize information from the Master File and

the Local File.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 26 January 2017

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, do they need to be submitted or

prepared contemporaneously?

Yes, the Master File, the Local File and the transfer

pricing returns (PT01 and PT02) need to be submitted

contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Prepared and filed annually

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, stand-alone Local Files need to be prepared for each entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable. We confirm that no threshold is

applicable for Master File.

> Master File and Local File

This is not applicable. We confirm that no threshold is

applicable for Master File.

> Local File

This is not applicable. We confirm that no threshold is

applicable for Local File.

> CbCR

In accordance with Article 831 of the tax code, parent or

ultimate parent corporations are required to file a CbC

report within 12 months of the end of the fiscal year if the

consolidated annual turnover, excluding tax, is greater than or

equal to XAF491,967,750,000 (USD930,470,656).

> Economic analysis

This is applicable for the Local File and the Master File.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions are not included in the scope of transfer

pricing documentation.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language (i.e., French). There is no written law, but in

Gabon, only documents in French or certified translated copies

in French are acceptable.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

NA

> Any other disclosure or compliance requirement

Not to our present knowledge of the applicable rules.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The transfer pricing returns PT01 and PT02 are filed with the

Local File and the Master File.

> Related-party disclosures along with corporate income tax

return

Related-party disclosures are required in the corporate income

tax return.

> Related-party disclosures in financial statement/annual

report

Same as the above.

> CbCR notification included in the statutory tax return

A form has not been specified yet; however, it is expected to

be made through a written official letter as it is the case for

any other formal communication with the Tax Administration.

> Other information or documents to be filed

There is none specified.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

30 April of each year.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

30 April of each year.

> CbCR preparation and submission

31 December of the following year, suspended since 2018.

> CbCR notification

Not later than deadline for filing of statutory corporate tax

return i.e. 30 April of each year.

b) Transfer pricing documentation/Local File preparation

deadline

There is no deadline for preparation. But obviously it is

recommended to prepare it at the same time of the corporate

income tax return and have it ready before the filing deadline.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

April 30 of each year.

> Time period or deadline for submission on tax authority

request

Companies within the scope are required to submit by April 30

of each year. Non-compliance with this obligation will trigger

penalties for not submitting the documentation or providing an

incomplete documentation.

The Tax Administration has, however, the possibility (not

a firm obligation under the law but solely subject to their

appreciation) to request a noncompliant company to submit

the documentation or complete it within 60 days from the

request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No information provided yet from the government or the Tax

Administration. April 30 remains the filing deadline.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

This is not applicable.

b) Priority and preference of methods

The tax authority should accept the methods prescribed by the

OECD (i.e., CUP, resale price, cost-plus, TNMM and profit-split);

there are no preferences.

8. Benchmarking requirements

> Local vs. regional comparables

There is no preference considering there is no official local

database.

> Single-year vs. multiyear analysis for benchmarking

Single-year testing is required, but multiyear also may be

accepted.

> Use of interquartile range

There are no formal requirements for use of the interquartile

range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct fresh benchmarking search every

year; rollforwards and update of the financials are acceptable.

> Simple, weighted or pooled results

Both are acceptable.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

With the draft of the Finance Law for 2017, for failure to

submit the transfer pricing documentation, the taxpayer

is subject to a penalty of 5% of the global amount of the

transaction (a minimum penalty of XAF65 million per year).

For failure to submit the CbC report, the taxpayer is subject to

a penalty of 0.5‰ of the consolidated turnover excluding tax,

capped at XAF100 million per year.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Any adjustment will be apprehended in the frame of a tax

audit.

Tax adjustments for transfer pricing are subject to the normal

penalty rules. In the case of an audit by the tax authorities, an

incorrect corporate tax return is subject to a penalty of 1.5%

based on the amount recovered, capped at 50%. In the case of

willful neglect, the penalty is increased by 100%.

In the case of fraud, the penalty is 150% over and above the

penalty for an incorrect tax return.

> Is interest charged on penalties or payable on a refund?

There is none specified.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not applicable.

b) Penalty relief

Waiving of penalties is possible on special request to the tax

authority. The MAP and the arbitration procedure are some of

the dispute resolution options.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations is four years after the payment of

corporate tax is due. Taxes are due by 30 April following the

calendar year-end.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not covered in COVID Tracker

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high. Although transfer

pricing legislation is relatively new in Gabon, tax audits are

increasingly focusing on related-party transactions.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Refer to the above section.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the above section.

> Specific transactions, industries and situations, if any, more

likely to be audited

The situations are recurrent loss position and failure to file

transfer pricing documentation.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APA programs are

available. APAs are issued for a fixed term that is not provided

by the law and will depend on the sector of activity of the

taxpayer. There is no specific provision in the law for rollback

of APAs, and its acceptability for past years will depend on

discussions with the authorities.

> Tenure

Refer to the section above.

> Rollback provisions

Refer to the section above.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not covered in COVID Tracker.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is mostly included in oil and gas contracts regarding

thin capitalization. Debt capacity rules are included in the

Organization for the Harmonization of Business Law in Africa

(OHADA) Uniform Act on commercial companies.

Nicolas Chevrinais

nicolas.chevrinais@ga.ey.com

+ 24165301003

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority 1

Revenue Service of Georgia (RS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The transfer pricing general principles are provided in

Articles 126 to 129 of the Georgian Tax Code (GTC)2 and the

Instruction on Pricing International Controlled Transactions3

(transfer pricing instruction).

> Section reference from local regulation

Article 126 and Article 127.54 of GTC.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual /EU Joint Transfer Pricing Forum

Georgia is not a member of the OECD.

Georgian transfer pricing rules generally follow the OECD

Guidelines. The transfer pricing Instruction contains a direct

reference to the OECD Guidelines and sets forth that issues not

1https://rs.ge/Home-en

2Law of Georgia No. 5202 of 8 November 2011, https://matsne.gov.

ge/ka/document/view/1043717.

3Approved by Decree No. 423 of the Minister of Finance of Georgia

on 18 December 2013, https://matsne.gov.ge/ka/document/

view/2078069.

4Georgian TP rules also apply to transactions between a Georgian

resident company and an unrelated foreign company, where the latter

is a resident of a jurisdiction with preferential tax treatment. The list of

jurisdictions with preferential tax regimes is determined by Ordinance

No. 615 of 30 December 2016 of the Georgian Government, https://

matsne.gov.ge/ka/document/view/3523434.

regulated by the GTC or the transfer pricing instruction shall

be regulated by the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Georgia has not adopted BEPS Action 13, although it is

anticipated.

> Coverage in terms of Master File, Local File and CbCR

Master File and Local File are not applicable.

> Effective or expected commencement date

This is not applicable.

> 

Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 30 June 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the transfer pricing Instruction5 determines the

information to be included in the transfer pricing

documentation.

5Article 17

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation needs to be prepared annually

under local jurisdiction regulations. Taxpayers with a turnover

of less than GEL8 million (approx. USD3 million) will be

considered to satisfy the documentation requirements even

where the financial indicators of external comparables are only

updated every third year, provided there have been no material

changes to the Georgian enterprise’s business, the business

operations of the comparables or the relevant economic

circumstances. In all other cases, there is no exception or

special rule.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

This is not specified.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

Annual consolidated group revenue of EUR750 million for the

preceding fiscal year.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

The Georgian transfer pricing rules are not applicable to

domestic transactions. Thus, there are no documentation

requirements in this regard.

> Local language documentation requirement

The transfer pricing documentation may be submitted in

Georgian or English. However, whenever the documentation

is submitted in English, the tax authorities may request a

Georgian translation to be arranged by the taxpayer.

> Safe harbor availability, including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

No.

> Any other disclosure or compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable; however, any transfer pricing adjustment

by the taxpayer must be reflected in the monthly corporate

income tax return.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

No.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

This is to be filed on a monthly basis.

> Other transfer pricing disclosures and return

This is to be filed upon request.

> Master File

This is not applicable.

> CbCR preparation and submission

Not later than 31 December of the next year of the reporting

fiscal year of the MNE group.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation should be finalized by the time

of submission upon request.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for submission of transfer

pricing documentation; it only needs to be finalized by the time

of submission upon request.

> Time period or deadline for submission on tax authority

request

Taxpayers are obligated to submit the documentation within

30 calendar days of the tax authority’s request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: yes

> Domestic transactions: no

b) Priority and preference of methods

The transfer pricing law includes five methods similar to those

used in international transfer pricing practices: (1) CUP, (2)

cost-plus, (3) resale price, (4) TNMM, and (5) profit-split. The

CUP method has first priority, whereas the profit-split is the

method to be used as a last resort.

The three traditional methods prevail over the TNMM and

profit-split method. Some other method can be used if none

of the approved methods can provide reliable results, and

such other method yields a result consistent with that which

would be achieved by independent enterprises engaging in

comparable uncontrolled transactions under comparable

circumstances. In such cases, a taxpayer shall bear the burden

of demonstrating that the abovementioned requirements have

been satisfied.

A taxpayer should select the most appropriate method

according to the nature of its business, comparability factors

and the availability of relevant information. If there is a lack

of internal comparables or information (or if these internal

comparables or information is not accurate or reliable

enough), the taxpayer may use external comparables from the

foreign markets. Under the transfer pricing Instruction, use of

secret comparables is prohibited.

8. Benchmarking requirements

> Local vs. regional comparables

The application of foreign comparables is acceptable because

of the lack of information sources within Georgia. But the

impact of geographic differences and other factors need to be

analyzed, and, where appropriate, comparability adjustments

should be made in accordance with the transfer pricing

instruction.

> Single-year vs. multiyear analysis

Generally, a taxpayer is expected to conduct an economic

analysis using the benchmarks relevant to the financial year

in which controlled transactions occurred. However, where

required information is not available, the taxpayer is allowed

to use the benchmarking data for the years preceding the year

of its transaction, but not more than four years prior to the

financial year in which the tested transaction took place.

> Use of interquartile range

The spreadsheet quartile is used as per the Georgian transfer

pricing rule specifying calculation approach.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

It is necessary to conduct a fresh benchmarking search

every year or to update the financials of a prior study.

Taxpayers with a turnover of less than GEL8 million (approx.

USD 3 million) could update an economic analysis based on

external comparables every third year, provided there have

been no material changes to the business operations of the

comparables or relevant economic circumstances.

> Simple, weighted or pooled results

There is no specific regulation in this regard; both simple and

weighted averages may be used.

> Other specific benchmarking criteria, if any

There are no specific regulations in place. The benchmarking

criteria shall comply with the general comparability factors as

determined by the transfer pricing Instruction.6 The applicable

independence criterion is 50% or less.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Penalty of GEL 5,000.

> Consequences of failure to submit, late submission or

incorrect disclosures

No specific penalties are defined for when a taxpayer does not

submit transfer pricing documentation; if the documentation

is not submitted by the deadline, the standard penalty for the

failure to submit information to the tax authorities will apply.

Any transfer pricing adjustment will be treated as distributed

profit and taxed with profit tax according to the Georgian

tax legislation. In addition, if the tax authorities reassess the

transaction, penalties of 50% of the adjusted sum will apply.

The general penalties for failing to submit required information

apply. The penalty is GEL400. A penalty of GEL1,000 applies

in case of repeated violation.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

If the tax authorities reassess the transaction, penalties of 50%

of the adjusted sum will apply.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

6Articles 5 and 6.

Not provided.

> Is interest charged on penalties or payable on a refund?

Interest is not charged on penalties. However, late-payment

interest of 0. 05% per overdue day may apply.

b) Penalty relief

No specific penalty relief is available. In practice, having proper

transfer pricing documentation reduces the risk of transfer

pricing adjustments.

However, the tax authority, the authority considering a

dispute or the court may release a faithful taxpayer from a

tax sanction under GTC, if the tax offense was caused by the

payer’s mistake/lack of knowledge

10. Statute of limitations on transfer pricing

assessments

There is no specific statute of limitations on transfer pricing

assessments. The general statute of limitations in Georgia is

three years. It will be extended for one year, if less than a year

remains before the expiration of the period and the taxpayer

has filed with a tax authority a taxpayer’s claim or a tax return

(including an adjusted tax return) for the relevant period. Tax

cannot be reassessed after this period has elapsed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high; from 1 January

2017, the existing regulation for levying a profit tax in Georgia

changed and the so-called tax on distributed profits model was

introduced. In particular, the object of taxation of a resident

entity became only distributed profit, and, according to the

new regulation, controlled transitions with related parties are

deemed as distribution of profit if they do not comply with the

arm’s-length principle. Thus, the likelihood of the potential

transfer pricing audit may further increase.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high; refer to the

section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high; refer to the

section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

A unilateral APA (between a resident taxpayer and the RS) is

available. The fee to apply for an APA is GEL30 000.

The transfer pricing Instruction and the GTC also refer to a

possibility of conclusion of a bilateral or multilateral APA.

Procedures related to such APAs may differ from those

outlined for a unilateral APA. Further clarifications regarding

the details and the way of application for a bilateral or

multilateral APA may follow from the Georgian Ministry of

Finance.

> Tenure

The tenure could be as long as three years (with a possibility of

extension).

> Rollback provisions

No rollback is allowed.

> MAP opportunities

Subject to the provisions of the applicable tax treaty, where

a Georgian enterprise becomes aware that the actions of the

Revenue Service or a tax treaty partner will result in taxation

not in accordance with the provisions of the relevant tax

treaty, the Georgian enterprise may present the case the RS

and request that the case be resolved by mutual agreement

procedure.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

No.

Anuar Mukanov

anuar.mukanov@kz.ey.com

+ 7 701 959 0579

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

German taxes are administered either by the German Federal

Central Tax Office (Bundeszentralamt für Steuern) or by

German state authorities.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

German transfer pricing rules are not included in one

integrated section of the German tax code but in several

provisions in different legislative acts, which are:

> Constructive dividend, Section 8 (3) Corporate Income Tax

Act2

> Hidden capital contribution, Section 4 (1) Income Tax Act3

and Section 8 (1) Corporate Income Tax Act4

> Contribution or withdrawal, Section 4 Income Tax Act5,

(e.g., for partnerships)

> Section 1 Foreign Tax Act6

The most influential provision is Section 1 of the Foreign Tax

Act, which stipulates the arm’s-length principle (gesetze-im-

internet.de/astg/\_\_1.html). The German interpretation of the

arm’s-length principle generally follows the definition in Article

9 of the OECD Model Tax Convention. However, Section 1 (1)

of the Foreign Tax Act stipulates that for the interpretation

of the arm’s-length principle, it is assumed that both parties

involved in an intercompany transaction have full knowledge

about all facts and circumstances (information transparency).

Section 1 Foreign Tax Act has been updated with effect

from 1 January 2022. This does not only concern the

structure of Section 1 but also the content by including the

regulations prescribed by the German Act to Implement

the Anti-Tax Avoidance Directive (ATAD-Umsetzungsgesetz)

and the German Withholding Tax Relief Modernization Act

(Abzugsteuerentlastungsmodernisierungsgesetz). Such

1Foreign Tax Act, Section 1.

2https://www.gesetze-im-internet.de/kstg\_1977/\_\_8.html

3https://www.gesetze-im-internet.de/estg/\_\_4.html

4https://www.gesetze-im-internet.de/kstg\_1977/\_\_8.html

5https://www.gesetze-im-internet.de/estg/\_\_4.html

6https://www.gesetze-im-internet.de/astg/\_\_1.html

changes concern, for instance, the introduction of the DEMPE

concept (Section 1 (3c) Foreign Tax Act or the outsourcing of

the price adjustment clause in Section 1a Foreign Tax Act).

Detailed transfer pricing regulations concerning the cross-

border transfer of functions were incorporated into Section 1

Foreign Tax Act on 1 January 2008. An executive order law

providing details on how the new transfer pricing provisions

relate to business restructurings and transfer of functions is

effective from 2008 (https://www.gesetze-im-internet.de/

fverlv/index.html).

As of 1 January 2013, a law amending Section 1 Foreign Tax

Act incorporates the authorized OECD approach (AOA) on the

allocation of profits to permanent establishments into German

law. The AOA treats a permanent establishment as a (nearly)

fully separate entity for tax purposes. This includes the

recognition of internal dealings between the head office and a

foreign permanent establishment, such as the supply of goods,

a service provision and even licensing arrangements. These

dealings have to be priced in accordance with the arm’s-length

principle (i.e., including a profit element). Given the lack of

legally binding agreements between the different parts of one

enterprise, contemporaneous transfer pricing documentation

becomes crucial to defend the transfer prices applied for

internal dealings. The domestic rules stipulate that Germany

will not tax the profits of the permanent establishment that

are determined based on the AOA if the AOA is not yet

implemented in the applicable double tax treaty. However, for

the treaty relief, the taxpayer has to provide evidence that the

other contracting state does not apply the AOA and that this

will lead to double taxation.

In October 2014, an executive order law with regard to

the application of the arm’s-length principle to permanent

establishments was released (https://www.gesetze-im-

internet.de/bsgav/index.html). The main issues covered by

the executive order law are the attribution of assets and risks

to a permanent establishment, and the allocation of the (free)

capital or surplus to the different parts of the enterprise. In

addition, the executive order law contains specific provisions

with respect to permanent establishments of banks and

insurance companies, and construction and exploration

sites. Notably, the executive order law stipulates that the

taxpayer has to prepare an “auxiliary calculation” on an annual

basis with respect to assets, capital, remaining liabilities,

and revenues and expenses attributable to the permanent

establishment, including deemed revenues and expenses

resulting from internal dealings. The auxiliary calculation

has to be prepared, at the latest, when the tax return for the

respective financial year is filed. The executive order law is

applicable for fiscal years beginning after 31 December 2014.

With regard to transfer pricing documentation and country-by-

country reporting, the following provisions are relevant:

> 

German transfer pricing documentation requirements

are stipulated in Section 90 (3) German General Tax Act

(transfer pricing documentation — https://www.gesetze-im-

internet.de/ao\_1977/\_\_90.html) as well as in an executive

order law to Section 90 (3) (https://www.gesetze-im-

internet.de/gaufzv\_2017/index.html). Section 90 (3)

General Tax Act was amended in December 2016 with

effect for tax periods starting after 31 December 2016

to include the requirement to prepare jurisdiction-specific

(Local File) and global (Master File) documentation. In

addition, the respective executive order law to Section 90

(3) German General Tax Act was also updated with effect

as of 20 July 2017.

> 

In addition, the German legislator introduced non-public

CbCR standards as proposed by the OECD in its report on

Action 13 of the BEPS project with mandatory CbCR for

fiscal years beginning after 31 December 2015 in Section

138a German General Tax Act (https://www.gesetze-

im-internet.de/ao\_1977/\_\_138a.html). The bill also

included the implementation of the European Automatic

Information Exchange Directive, which was adopted in

December 2015 and governs the exchange of information

concerning advance cross-border rulings and APAs as well

as some other additional information reporting obligations

imposed on MNEs.

> Section 162 (3) and 162 (4) of German General Tax Act

stipulate penalties in case of non-compliance with transfer

pricing documentation rules (https://www.gesetze-im-

internet.de/ao\_1977/\_\_162.html).

In addition to the above legislation, the German tax authorities

have issued a number of circulars helping to interpret the

German transfer pricing provisions and outlining their

interpretation of the laws. These administrative regulations

do not constitute binding law for taxpayers or the courts, but

are binding for the tax authorities and, therefore, indicate

how the tax authorities will treat specific intercompany

transactions between related parties. The purpose of these

administrative regulations is to provide a directive concerning

the tax treatment of transfer pricing cases, and to ensure a

uniform application of rules and methods. In 2020–21, the

German Ministry of Finance published several circulars that are

essential for transfer pricing purposes, namely the following:

> “Administrative Principles 2020,” dated 3 December

2020, published in the Federal Tax Gazette dated 30

December 2020.

> “Administrative Principles for Transfer Pricing — Principles

for the adjustment of income in accordance with Sec.

1 AStG,” dated 14 July 2021, published in the Federal

Tax Gazette dated 30 September 2021. This circular

is applicable for all open years and replaces many

transfer pricing circulars that had been in place for

many years, such as “Principles for the Examination of

Income Allocation in the case of internationally related

Enterprises,” dated 23 February 1983, known as

“Administrative Principles.”

> “Guidance note on international mutual agreement and

arbitration procedures in the field of taxes on income and

capital,” dated 27 August 2021, published in the Federal

Tax Gazette dated 11 October 2021. This circular replaces

the formular circular on this matter dated 9 October

2018.

In addition, the following circulars are still in place and are of

particular relevance for transfer pricing purposes:

> Released 13 October 2010, “Administrative Principles

for the Examination of Income Allocation between related

parties in cases of cross-border Transfer of Business

Functions” includes 81 pages of clarifications on applying

Section 1(3) Foreign Tax Act7 and the Executive Order Law

on Transfer of Business Functions.

> 

Published in March 2017, “Administrative Principles on

the Profit Attribution to Permanent Establishments”

includes 152 pages of details and clarifications of the AOA

that is implemented in Section 1(5) Foreign Tax Act and

the Executive Law.,

Other relevant circulars include inter alia administrative

circulars concerning cross-border secondment of personnel

(dated 9 November 2001), as well as a circular related to joint

tax audit and simultaneous checks (dated 6 January 2017).

> Section reference from local regulation

In principle, there is no specific percentage of shareholding

required to qualify as a “related party” under German transfer

pricing rules. Section 1 (2) Foreign Tax Act provides for a

minimum direct or indirect shareholding of 25%. However, if

this threshold is not met, transfer pricing adjustments can

nevertheless be made on the basis of Section 8 (3) Corporate

Income Tax Act (constructive dividend) or Section 4 Income

Tax Act (hidden capital contribution), which do not require a

minimum shareholding percentage. Parties can also qualify

as being “related” where one party can exert influence on the

7Please note that as of 1 January 2022, the structure of Section 1 For-

eign Tax Act changed. The transfer of functions rules are now mainly

stipulated in Section 1 (3b) Foreign Tax Act.

other party, or has an interest in the income generated by the

other party.

Following the implementation of the EU Anti-Tax Avoidance

Directive, the definition of the “related party” in Section 1 (2)

Foreign Tax Act was extended with effect of 1 January 2022.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Germany is a member jurisdiction of the OECD. The OECD

Guidelines provides support for domestic use, but do not

constitute binding law in Germany. German transfer pricing

regulations and practices do differ from those of the OECD

Guidelines with regard to certain issues (e.g., the application

of transactional profit methods, documentation requirements

and the treatment of transfers of functions). The German

tax authorities consider the German transfer pricing laws

and regulations to be generally consistent with the OECD

Guidelines. In tax audit practice as well as in tax court

procedures, the OECD Guidelines are often applied and used as

a point of reference. With respect to CCAs, the administrative

regulations even directly reference Chapter VIII of the OECD

Guidelines.

In this regard, the new “Administrative Principles Transfer

Pricing” dated 14 July 2021 reference the OECD Guidelines

(which also form an integral part of the circular as they are

included as an Appendix 1) in order to ensure international

orientation and an alignment with the OECD Guidelines.

However, although the circular includes this statement and

often refers to specific chapters and articles of the OECD

Guidelines, the Administrative Principles Transfer Pricing may

deviate from the OECD Guidelines on certain topics, which is

also stipulated in the circular (“Guidelines” in Chapter 3).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, Germany has adopted BEPS Action 13 for transfer pricing

documentation, effective from 1 January 2016. For this

purpose, Section 90 (3) General Tax Act had been amended.

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

Yes, Section 90 (3) General Tax Act has been amended to

include the obligation to prepare a Master File as well as a

Local File if the specific “de minimis” thresholds are exceeded.

Rules regarding CbCR are governed by Section 138a General

Tax Act.8

> Effective or expected commencement date

German transfer pricing documentation obligations were

implemented in 2003. As of fiscal years starting after 31

December 2016, German taxpayers are obliged to prepare a

Master File- or Local File-type transfer pricing documentation.

With regard to CbCR, the regulation has been effective since

1 January 2016 (with exception for the surrogate companies

effective from 1 January 2017).

> Material differences from OECD report template or format

In principle, there should not be material differences between

the OECD report template or format and Germany’s regulatory

requirements. However, taxpayers need to be aware that

German transfer pricing documentation obligations apply

on a transaction-by-transaction basis and that there are

no materiality thresholds per transaction. In addition, the

catalog provided in the respective executive order law to

Section 90 (3) German General Tax Act slightly differs from

the OECD Local File template. For example, Section 4 (1)

No. 4 lit. a of the executive order law stipulates that the

taxpayer has to document the date or period when transfer

prices have been determined (price-setting approach). In

addition, information available at the time the transfer

prices were determined has to be documented (Section 4

(1) No. 4 lit. b). While these differences could be described

as clarifications of the OECD Local File template, there is no

official statement of the German tax authorities confirming

that the German documentation requirements do not exceed

the requirements as set forth under the OECD Local File

template. In particular, it is questionable whether the specific

documentation obligations listed in Section 4 (2) executive

order law are in compliance with the OECD Local File template,

e.g., the documentation requested for cost allocations or

CSAs, research and development activities, explanations for

losses, and the impact of business strategies and business

restructurings. In practice, German tax authorities often

8https://www.gesetze-im-internet.de/ao\_1977/\_\_138a.html

request very detailed and specific information beyond OECD

requirements.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

It is generally considered reasonable to assume that transfer

pricing documentation prepared in line with the BEPS Action

13 format report would not be considered as being “essentially

unusable” under the German penalty rules and regulations.

However, taxpayers should be aware that this understanding

has not yet been confirmed by a tax court ruling or an official

statement by the German tax authorities. Most importantly,

taxpayers should be aware that penalties may be levied on

a transaction-by-transaction basis without any materiality

threshold in terms of intercompany volume.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, there are transfer pricing documentation guidelines or

rules. The obligation to prepare transfer pricing documentation

is included in Section 90 (3) General Tax Act. Documentation

for extraordinary transactions, such as corporate

restructurings as well as implementation of or changes to

material long-term contractual relationships, must be prepared

within a reasonably short period (i.e., within six months after

the end of the business year in which they occurred).

Documentation for all types of transactions must be presented

to the authorities upon their request, typically in the course of

a tax audit. The time limit for presentation is 60 days following

the request (respectively, 30 days in case of extraordinary

transactions); extensions may be granted for special reasons.

Rules regarding CbCR are governed by Section 138a General

Tax Act.

The statutory rules on transfer pricing documentation are

supplemented by an executive order law to Section 90 (3)

German General Tax Act as well as the new administrative

circular dated 3 December 2020 (“Administrative Principles

2020”).

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, the rules were expanded to cover the income allocation

between an enterprise and its foreign branch.

> Does transfer pricing documentation have to be prepared

annually?

According to German transfer pricing documentation rules,

tax auditors have the right to request transfer pricing

documentation for transactions between a German taxpayer

and its foreign related parties, and the taxpayers have to

submit the documentation within 60 days upon request.

Thus, while there is no strict legal requirement to update

transfer pricing documentation on an annual basis, it is

strongly recommended to at least update budgets, information

on intercompany transaction volumes and segregated

P&L financial data once a year. Regarding the update of

benchmarking studies and other economic analysis, there is no

strict rule in the German transfer pricing law, executive order

law or administrative circular that such studies have to be

updated on an annual basis. In practice, benchmarking studies

are often updated every three years.

For extraordinary business transactions (e.g., transfer of

intellectual property and business restructurings), transfer

pricing documentation has to be prepared contemporaneously,

i.e., at the latest within six months after the end of the fiscal

year in which the transaction took place. Transfer pricing

documentation for extraordinary business transactions has

to be submitted within 30 days upon request by the tax

authorities.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

In principle, yes; however, the necessary information of more

than one entity can be compiled in one report.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is a materiality limit for preparing transfer pricing

documentation. Exception for small- and medium-sized

companies apply. The company does not have to prepare

transfer pricing documentation if annual consideration (paid or

received) from intercompany transactions involving the supply

of goods with foreign related parties do not exceed EUR6

million and if the annual consideration (paid or received)

in connection with other intercompany transactions (e.g.

services) do not exceed EUR600,000. Once these “de minimis”

thresholds are exceeded, the transfer pricing documentation

obligations apply on a transaction-by-transaction basis without

a separate materiality threshold per transaction. Therefore, in

principle, transfer pricing documentation has to be prepared

for every single intercompany transaction upon request by the

tax auditors independent of the transaction volume.

> Master File

There is a materiality limit for preparing the BEPS Master File.

The Master File only has to be prepared by a German entity

where its revenue was higher than EUR100 million in the

preceding fiscal year.

> Local File

Other than the general “de minimis” thresholds described

above, there are no materiality limits for preparing the Local

File.

> CbCR

There is a materiality limit to prepare CbCR. For German

domestic ultimate parent companies, CbCR only has to be

prepared where the consolidated revenues of the group in the

previous fiscal year amounted to at least EUR750 million.

> Economic analysis

There is no materiality threshold for preparing an economic

analysis, i.e., an economic analysis has to be prepared for

each intercompany transaction with a related party if transfer

pricing documentation for this transaction is requested by

the tax authorities independent of the transaction volume.

However, the law does not require a benchmarking study or

database analysis to be prepared if the arm’s-length nature of

the transfer prices can be evidenced otherwise.

c) Specific requirements

> Treatment of domestic transactions

There are no transfer pricing documentation obligations for

domestic intercompany transactions. However, with regard

to domestic intercompany transactions, taxpayers still have

a duty to respond to tax authority inquiries, and to cooperate

with them to clarify the facts and circumstances of the case.

This may include providing existing information related to

the specific transactions upon request of the tax authorities

as well as answering the tax authorities’ questions regarding

these transactions. For domestic transactions, only the general

adjustment provisions are applicable but not Section 1 Foreign

Tax Act.

> Local language documentation requirement

In principle, the transfer pricing documentation has to be

submitted in German (reference Section 2 paragraph 5 of

the executive order law to Section 90 (3) German General

Tax Act). However, the taxpayer can apply for the transfer

pricing documentation to be prepared in a foreign language.

The application has to be filed at the latest without undue

delay after receiving a request for submitting transfer pricing

documentation. In practice, many German tax auditors accept

English transfer pricing documentation reports or are satisfied

with receiving a (partial) German translation of the reports.

> Safe harbor availability, including financial transactions if

applicable

Apart from the “de minimis” thresholds for preparing transfer

pricing documentation mentioned above, there are no safe

harbor rules on which the taxpayer could rely upon.

> Is aggregation or individual testing of transactions preferred

for an entity

In general, the arm’s-length analysis has to be performed on a

single transaction basis. However, in case single transactions

are closely connected to each other such that an analysis

on a single transaction basis is not possible, an aggregated

approach might be followed.

> Any other disclosure/compliance requirement

There are some specific transfer pricing-related Directives on

Administration Cooperation (DAC 6) mandatory disclosure

requirements that may be applicable.9

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are in general no specific transfer pricing-related returns

to be prepared and/or filed.

However, in October 2014, an executive order law with

regard to the application of the arm’s-length principle to

permanent establishments was released (see above). Notably,

the executive order law stipulates that the taxpayer has to

prepare an “auxiliary calculation” on an annual basis with

respect to assets, capital, remaining liabilities, and revenues

and expenses attributable to the permanent establishment,

including deemed revenues and expenses resulting from

internal dealings. The auxiliary calculation has to be prepared,

at the latest, when the tax return for the respective financial

year is filed. The executive order law is applicable for fiscal

years beginning after 31 December 2014. Other than that,

there are no other specific transfer pricing-related returns

required.

> Related-party disclosures along with corporate income tax

return

Apart from the general standard documentation and

notification requirements under the General Tax Act and the

Foreign Tax Act, there are no specific disclosure requirements

specifically related to transfer pricing. However, the relevant

tax return forms may include certain questions or information

relevant for transfer pricing as well (e.g., information on

related parties in low-tax jurisdictions for German CFC

regulations, information on constructive dividends and

information on foreign permanent establishments).

> Related-party disclosures in financial statement/annual

report

Yes, there is certain related-party information to be

disclosed in the financial statements according to German

GAAP.

> CbCR notification included in the statutory tax return

Yes.

> Other information or documents to be filed

Some DAC 6 mandatory disclosure requirements may be

applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

For tax periods beginning after 31 December 2017, the

corporate income tax return generally must be filed by 31

July of the year following the tax year (for previous tax years,

the deadline was 31 May of the year following the tax year).

If the taxpayer is represented by a tax advisor, the tax return

usually can be filed not later than the last day of February of

the second calendar year following the tax year (for previous

tax years, German tax authorities accepted in this case a tax

return filed by 31 December of the year following the tax

year).10

> Other transfer pricing disclosures and return

Transfer pricing documentation (Master File or Local File)

has to be submitted within 60 days upon request. Such

request typically comes within a tax audit that takes place a

number of years after the year in question. Transfer pricing

documentation for extraordinary business transactions has

to be submitted within 30 days upon request by the tax

authorities.

> Master File

Available upon request 60 days — for purpose of conducting a

tax audit.

> CbCR preparation and submission

The deadline for filing the CbC report is one year after the end

of the relevant fiscal year.

> CbCR notification

The CbCR notification has to be filed with the tax return for the

relevant fiscal year.

b) Transfer pricing documentation/Local File preparation

deadline

Ordinary intercompany transactions do not have to be

documented contemporaneously, and it is sufficient if the

transfer pricing documentation is finalized within 60 days upon

request of the tax authorities.

In contrast, extraordinary business transactions need to be

documented contemporaneously, i.e., at the latest within six

months after the end of the fiscal year in which the transaction

took place. Transfer pricing documentation for extraordinary

transactions has to be submitted within 30 days upon request.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

10There was special extension granted for fiscal year 2019 due to

COVID-19. If the taxpayer was represented by a tax advisor, the tax

return for fiscal 2019 could have been filed latest by end of August

2021.

There is no statutory deadline for submission of transfer

pricing documentation.

The transfer pricing documentation has to be submitted within

60 days upon request (30 days for extraordinary business

transactions).

> Time period or deadline for submission on tax authority

request

transfer pricing documentation for ordinary intercompany

transactions has to be submitted within 60 days upon request.

The documentation for extraordinary business transactions

has to be submitted within 30 days upon request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

German tax authorities will analyze the intercompany

transactions in line with the extensive rules and regulations as

explained above. In this regard, they will now especially rely on

the “Administrative Principles Transfer Pricing 2021,” which

generally refer to the OECD Guidelines.

> Domestic transactions

Although Section 1 Foreign Tax Act is not applicable to

domestic transactions, in practice, German tax authorities

generally analyze domestic intercompany transactions

applying the same methods. However, given that Section 1

Foreign Tax Act is not applicable for domestic transactions,

there are some exceptions where the arm’s-length principle

and the relevant methods are not necessarily applicable in

domestic transactions (e.g., use of intellectual property for

free).

b) Priority and preference of methods

German tax auditors will analyze the arm’s-length nature of the

transfer prices based on Section 1 Foreign Tax Act. It should

be emphasized that the structure and partially the content of

Section 1 Foreign Tax Act has been revised with effect of 1

January 2022. The law does not prioritize any transfer pricing

methods anymore but suggests that the arm’s length price

shall generally be determined based on the transfer pricing

method best suitable with respect to the comparability analysis

and the availability of third-party comparable data, Section

1 (3) Sentence 5 et seq. Foreign Tax Act. Any differences

between the circumstances of the third-party comparable

transactions and the transaction under review that may have

an impact on the application of the transfer pricing method

should be eliminated by appropriate adjustments if this leads

to an increase of the comparability. If no comparable data

exists, the law stipulates that taxpayers have to conduct a

hypothetical arm’s-length analysis to derive arm’s-length

transfer prices.

Following the application of the arm’s length principle, Section

1 (3a) Foreign Tax Act further describes how to proceed with

the derived range of values. If only limited comparability

exists, the range of available third-party comparable data

must be narrowed (e.g., if there is no specific indication, the

interquartile range should be used according to Section 1 (3a)

Sentence 3 Foreign Tax Act).

In case the value used by the taxpayer is outside the full

range or limited range, the arithmetic mean of the range of

values is assumed to be the arm’s-length transfer price for the

transaction under review, if the taxpayer cannot prove that

another value within the range better complies with the arm’s-

length principle.

If a hypothetical arm’s-length analysis is applied to derive

arm’s-length transfer prices, the range of negotiation is

defined by the minimum price a hypothetical seller would

accept and by the maximum price a hypothetical purchaser

would pay. The taxpayer must use the arithmetic mean of

the range of values if the taxpayer provides no reasons that

another value within the range of negotiation complies with

the arm’s-length principle.

8. Benchmarking requirements

> Local vs. regional comparables

Local benchmarks are preferred, but European benchmarks

are usually accepted if no local benchmarks are available. In

tax audits, the validity of benchmark studies is often a major

point of dispute between the taxpayer and the tax authorities.

> Single-year vs. multiyear analysis for benchmarking

Single-year testing is preferred for tested arm’s-length

analysis, but multiyear analyses are often accepted. Again, in

tax audits, the validity of benchmark studies is often a major

point of dispute between the taxpayer and the tax authorities.

> Use of interquartile range

The interquartile shall be used to test the arm’s-length nature.

This is now also suggested by Section 1 (3a) Sentence 3

Foreign Tax Act if there is no specific indication to use another

narrowing method.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no legal requirement to perform a new benchmarking

search or a financial update of a benchmarking study on an

annual basis.

In practice, a fresh search is recommended to be performed

latest every three years while a financial update shall be

prepared annually.

> Simple average, weighted average or pooled results

The weighted average is preferred for testing the arm’s-length

analysis.

> Other specific benchmarking criteria, if any

Usually, benchmarking studies should not include other

companies with a common shareholder that owns 25% or

more of the company’s shares, and should also exclude the

company’s own subsidiaries in which it has a share of 25% or

more.

9. Transfer pricing penalties and relief

a) Penalty exposure

The tax authority can impose a penalty of EUR10,000 for

failing to provide a county-by-jurisdiction report, providing an

incomplete report, or providing the report late (Section 379

(2) no 1c, (5), General Tax Act.

If a taxpayer does not comply with the transfer pricing

documentation requirements to the extent outlined in Section

90(3) German General Tax Act, a refutable assumption

applies, and the tax authorities are allowed to assume that

the taxpayer’s income had been reduced by the amount of

inappropriate transfer prices, thereby forming the basis of a

transfer pricing adjustment.

The tax authorities may apply Section 162 (3) General Tax

Act if the taxpayer submits insufficient or no documentation,

or if extraordinary transactions have not been recorded

contemporaneously. In all three cases, the tax authority is

authorized to estimate the income provided the taxpayer does

not rebut the assumption. This also holds true when a taxpayer

does not disclose relevant data available only from the foreign

related parties. If the tax authorities have to estimate the

arm’s-length transfer prices and it is only possible to determine

the relevant income within a certain range, the range may be

fully exploited to the taxpayer’s detriment.

If the taxpayer fails to submit transfer pricing documentation,

or if the documentation submitted is insufficient or essentially

unusable, a penalty of 5% to 10% on the income adjustment

may be applied, with a minimum penalty of EUR5,000.

In addition, for late filing, the taxpayer may face a penalty of

up to EUR1 million (minimum penalty of EUR100 per day of

delay, Section 162 (4) General Tax Act).

The ultimate amount is finally up to the discretion of the tax

authority as far as not explicitly stipulated in law.

Penalties are imposed after the closing of a tax audit.

The aforementioned penalties constitute non deductible

expenses for tax purposes. Section 146(2c) of the General

Tax Code further allows the assessment of penalties of up

to EUR250,000 in case documents are not provided to tax

auditors in a timely manner upon request.

As of 2017, the penalty regime has been tightened and follows

a transactional approach. The penalty regime for late filing is

currently checked for compliance with EU laws by the ECJ (see

case C-431/21).

As mentioned above, non-compliance with the CbCR obligation

may be subject to a penalty of up to EUR10,000 according to

Section 379 General Tax Code.

b) Consequences for incomplete documentation

The tax authority can impose a penalty of EUR10,000 for

failing to provide a county-by-jurisdiction report, providing an

incomplete report, or providing the report late (Section 379

(2) no 1c, (5), General Tax Act.

> Consequences of failure to submit, late submission or

incorrect disclosures

If a taxpayer does not comply with the transfer pricing

documentation requirements to the extent outlined in Section

90(3) German General Tax Act, a refutable assumption

applies, and the tax authorities are allowed to assume that

the taxpayer’s income had been reduced by the amount of

inappropriate transfer prices, thereby forming the basis of a

transfer pricing adjustment.

The tax authorities may apply Section 162 (3) General Tax

Act if the taxpayer submits insufficient or no documentation,

or if extraordinary transactions have not been recorded

contemporaneously. In all three cases, the tax authority is

authorized to estimate the income provided the taxpayer does

not rebut the assumption. This also holds true when a taxpayer

does not disclose relevant data available only from the foreign

related parties. If the tax authorities have to estimate the

arm’s-length transfer prices and it is only possible to determine

the relevant income within a certain range, the range may be

fully exploited to the taxpayer’s detriment.

If the taxpayer fails to submit transfer pricing documentation,

or if the documentation submitted is insufficient or essentially

unusable, a penalty of 5% to 10% on the income adjustment

may be applied, with a minimum penalty of EUR5,000.

In addition, for late filing, the taxpayer may face a penalty of

up to EUR1 million (minimum penalty of EUR100 per day of

delay, Section 162 (4) General Tax Act).

The ultimate amount is finally up to the discretion of the tax

authority as far as not explicitly stipulated in law.

Penalties are imposed after the closing of a tax audit.

The aforementioned penalties constitute non deductible

expenses for tax purposes. Section 146(2c) of the General

Tax Code further allows the assessment of penalties of up

to EUR250,000 in case documents are not provided to tax

auditors in a timely manner upon request.

As of 2017, the penalty regime has been tightened and follows

a transactional approach. The penalty regime for late filing is

currently checked for compliance with EU laws by the ECJ (see

case C-431/21).

As mentioned above, non-compliance with the CbCR obligation

may be subject to a penalty of up to EUR10,000 according to

Section 379 General Tax Code.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties can be assessed based on the taxpayer’s non-

compliance with the documentation requirements. An actual

income adjustment is not subject to penalties. If the taxpayer

fails to submit transfer pricing documentation or if the

documentation provided is unusable or insufficient, a penalty

of 5% to 10% on the income adjustment may be applied, with a

minimum penalty of EUR5,000.

If no or insufficient transfer pricing documentation for a

certain transaction is submitted, the burden of proof shifts

to the taxpayer, and the German tax authorities can assess

income adjustments up to the most unfavorable point (for the

taxpayer) within the arm’s-length range. Taxpayers, therefore,

have to ensure that their transfer pricing documentation is

complete and includes all intercompany transactions they are

involved in, e.g., including intercompany financial transactions.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

If documentation is deemed non-contemporaneous, the tax

authorities may claim that the documentation provided is

unusable or insufficient since the information/data is outdated.

In such case, a penalty of 5% to 10% on the income adjustment

may be applied, with a minimum penalty of EUR5,000 (see

above).

> Is interest charged on penalties or payable on a refund?

Interest is only assessed on the additional tax payments

(6% per annum, which is non deductible for tax purposes),

Section 238 (1) General Tax Act. Interest starts accruing 15

months after the end of the calendar year in which the tax

liability arose, Section 233a General Tax Act.11 The penalties

constitute non deductible expenses for tax purposes.

In its decision dated 8 July 2021, the German Federal

Constitutional Court held that interest payments made in

accordance with Section 233a General Tax Act in conjunction

with Section 238 (1) General Tax Act are inconsistent with the

German principle of equality stipulated in Art. 3 (1) German

Constitutional Law. This holds true if the aforementioned

legislation was applied to interest periods starting 1 January

2014 onward. The current legislation is still applicable to

interest periods ending prior to or anytime in 2018. However,

the Court set a deadline for the German legislator to revise the

respective section of the General Tax Act until 31 July 2022.

b) Penalty relief

The taxpayer is required to present compliant transfer pricing

documentation to the German tax authority to avoid penalties.

The taxpayer can avoid the consequence of a refutable

assumption (Section 162 (3) General Tax Act) if the taxpayer

submits sufficiently compliant transfer pricing documentation

any time prior to a ruling of a lower tax court. In this case,

the court will not apply Section 162 (3) General Tax Act in its

ruling. However, penalties for late submission will be levied.

In general, if an adjustment is assessed by the tax authorities

in post-audit tax assessment notes that the taxpayer does not

want to accept, the taxpayer is able to appeal the assessment

11There was special extension granted for FY 2019 due to COVID-19

pandemic. With respect to fiscal year 2019, the interest starts

accruing 21 months after the end of the calendar year in which the

tax liability arose (i.e., 1 October 2021).

at the local tax authority. Separate appeals will have to be filed

against any penalty assessments. If an appeal is rejected by

the tax authorities, the taxpayer can file a claim at the local tax

court.

In case the adjustment is not in line with respective double tax

treaties or with the EU Arbitration Convention, the taxpayer

may also file a request for MAP or arbitration at the Federal

Central Tax Office.

10. Statute of limitations on transfer pricing

assessments

In general, the assessment period for taxes (Section 169

General Tax Act) is four years. For customs duties, it is shorter,

and in cases of grossly negligent evasion of taxes or tax fraud,

it is much longer (10 years in the case of tax fraud). These

periods commence at the end of the calendar year in which

the tax liability arose. No special time limit provisions apply if

intercompany transactions are involved.

However, taxpayers should be aware that under

specific circumstances tax authorities are allowed to

retroactively adjust the transfer price within a period

of up to 7 years (reduced from prior 10 years due

to changes in local law and especially in Section 1

Foreign Tax Act as consequence of implementation of

the German Withholding Tax Relief Modernization Act

(Abzugsteuerentlastungsmodernisierungsgesetz) in cases

where a significant intangible asset has been transferred

between related parties (so-called price adjustment clause now

stipulated in Section 1a Foreign Tax Act).

The general regime of the statute of limitations applies in

accordance with the General Tax Act. Accordingly, each case

has to be carefully considered to determine the specific statute

of limitations. Most taxes are levied by way of assessment.

Assessments can be made only within the statutorily

prescribed assessment period, which is subject to the statute

of limitations for assessments.

The assessment period, however, does not start before the end

of the calendar year in which the taxpayer has submitted the

tax return (but also does not start later than three years after

the year the tax liability arose), Section 170 General Tax Act.

There are a number of statutory exceptions to the end of the

statute of limitations for assessments (e.g., it should be kept in

mind that the limitation period is interrupted when a tax audit

begins), Section 171 General Tax Act.

Section 175a General Tax Act stipulates that tax assessments

can be amended due to the result of an MAP or EU arbitration

procedure up to one year after the effective date of such

agreement, regardless of whether the aforementioned statutes

of limitations have expired before.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a tax audit in Germany may be considered to

be high for domestic and foreign groups of companies. Usually,

a tax audit covers a three- to four-year period on a continuous

basis. The likelihood of transfer pricing issues being scrutinized

during a tax audit is also high and continuously rising. It is

expected that transfer pricing issues will continue to attract

significant attention in tax audits, in particular, with respect to

transactions qualifying as extraordinary business transactions

under the documentation provisions, such as the transfer

of functions. Further, many tax audits increasingly focus

on (brand) royalty charges and financing transactions. The

German Federal Tax Office often joins the local tax authorities

within an ongoing tax transfer pricing audit, especially with

regard to financing transactions.

In the last years, German tax authorities have been very active

with regard to coordinated tax audits with other jurisdictions,

mostly within the EU (Section 12 of the EU Administrative

Assistance Act).

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the transfer pricing mechanism will be

challenged if transfer pricing is reviewed as part of the audit

is also high in view of the generally firm tax audit environment

regarding transfer prices in Germany.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

In case the transfer pricing methodology is challenged, there

is a high likelihood that tax authorities will claim an adjustment

based on their own methodology and estimates applied to

the detriment of the taxpayer. The likelihood of whether

the taxpayer’s position can ultimately be defended strongly

depends on the fact and circumstances of the case.

> Specific transactions, industries and situations, if any, more

likely to be audited

The likelihood of a transfer pricing audit is particularly high in

the following circumstances:

> Companies facing (long-term) losses

> Companies being involved in a business restructuring

> Companies that have intercompany business transactions

with related parties located in low-tax jurisdictions

> Companies that have significant intercompany financing

transactions.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

In Germany, taxpayers may apply for a bilateral or multilateral

APA in relation to transfer pricing questions. German tax

authorities usually do not grant unilateral APAs on transfer

pricing questions in cases where there is a double tax treaty

including an article on MAPs. The German Ministry of Finance

issued an APA circular on 5 October 2006 that defines the

APA procedures and provides guidance with regard to the

negotiation of APAs. Additionally, Section 89a General Tax

Code has been introduced, which provides a local legislative

basis for the APA procedure. Based on the new law, binding

up-front multilateral agreements are now also possible for non-

transfer pricing-related matters.

In this context, the fees for APAs have been revised:

EUR30,000 for a new APA and EUR15,000 for a renewal of

the APA. Aforementioned fees are reduced to 25% in case the

APA does not concern transfer pricing (i.e., EUR7,500 for a

new APA, EUR3,750 for renewal of APA). For small taxpayers

(i.e., those with intercompany tangible goods transactions

below EUR6 million and other intercompany transactions

below EUR600,000), the filing fee is limited to EUR10,000 for

a new APA and EUR7,500 for a renewal of APA. Beyond this,

reduced fees may also apply in case of a coordinated bilateral

or multilateral tax audit. This has to be evaluated for the

individual case.

The administrative competence for APAs is centralized in the

Federal Central Tax Office.

> Tenure

From application to conclusion, the APA process can take

18 months to several years. According to the APA circular,

the APA term should be not less than three years and not

more than five years. In practice, however, APAs can and

have already been negotiated for (much) longer time periods

depending on the facts and circumstances of the case.

According to Section 89a (3) General Tax Code, an agreement

reached between two competent authorities will be made

conditional in two regards: the taxpayer must consent to the

intergovernmental agreement and must waive its right to

appeal tax assessments to the extent that they are in line with

the content of the APA.

> Rollback provisions

There is no automatic rollback procedure. In contrast, Section

89a (1) General Tax Code now stipulates that an APA will only

cover such transactions that can be assessed in detail and

have not been realized yet.

> MAP opportunities

In this regard, special attention shall be paid to the revised

circular “Guidance note on international mutual agreement

and arbitration procedures in the field of taxes on income

and capital” dated 27 August 2021 (replacing circular dated

9 October 2018) which comments on various questions

concerning the application and conduct of aforementioned

procedures.

The taxpayer must be eligible under one of Germany’s

double taxation treaties, or the EU Arbitration Convention

(90/436/EEC) or (for FYs starting 1 January 2018 onwards)

the implementation of the EU Directive on Tax Dispute

Resolution Mechanisms (EU-Doppelbesteuerungsabkommen-

Streitbeilegungsgesetz) to request an MAP. A formal and

timely request to the Federal Central Tax Office, including a

description of the facts and a legal assessment, is required.

The request has to be submitted by the taxpayer or an

authorized representative. MAP requests are accepted in the

case of a taxpayer-initiated foreign bona fide adjustment.

A taxpayer has to present the case to the tax authority within

three years from the first notification to the taxpayer of the

actions giving rise to the MAP.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

After the unplanned stop in the beginning of the COVID-19

crisis in 2020, the tax audits meanwhile generally continue

(some still with delay). The procedure always depends on the

individual tax auditor, also whether virtual or physical meetings

take place.

With regard to APAs (in particular critical assumptions)

German tax authorities/the competent authority takes a

case-by-case approach and carefully examines the impact of

the COVID-19 crisis on the particular industry the taxpayer

operates in.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are specific interest barrier rules (so-called German

Zinsschranke), see Section 4h Income Tax Act12 and Section 8a

Corporate Income Tax Act.13

12https://www.gesetze-im-internet.de/estg/\_\_4h.html.

13https://www.gesetze-im-internet.de/kstg\_1977/\_\_8a.html.

Alessia-Maureen Dickler

alessia-maureen.dickler@de.ey.com

+ 49 160 939 24086

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Ghana Revenue Authority (GRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer Pricing Regulations, 2020 L.I. 2412.

> Section reference from local regulation

Section 31 of the Income Tax Act 2015, Act 896 (as amended)

Section 128 of the Income Tax Act 2015, Act 896 (as

amended)

Paragraph 1 of the Transfer Pricing Regulations, 2020

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Ghana is not a member of the OECD.

The OECD Guidelines are considered as an interpretive guide

by the Commissioner-General (CG) of the GRA.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

> Coverage in terms of Master File, Local File and CbCR

The regulation covers CbcR, Master File and Local File.

1https://gra.gov.gh/

> Effective or expected commencement date

November 3, 2020.

> 

Material differences from OECD report template or format

Low-value services — acceptable markup on cost up to 3%.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Filing of report within deadline protects against penalty for

failure to submit report.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the transfer pricing documentation needs to be

contemporaneously maintained and submitted to the tax

authority.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes. transfer pricing documentation has to be prepared

contemporaneously under local jurisdiction regulations. The

documentation must produce evidence that all related-party

transactions in a year satisfy the arm’s-length principle.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

There is no official guidance in this area.

b) Materiality limit or thresholds

> Transfer pricing documentation

See below.

> Master File

None.

> Local File

$200,000.

> CbCR

Annual consolidated group revenue of GHS2.9 billion or more.

> Economic analysis

$200,000.

c) Specific requirements

> Treatment of domestic transactions

Yes, there is a documentation obligation for domestic

transactions. The Transfer Pricing Regulations do not

discriminate between domestic and cross-border transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

English.

> Safe harbor availability, including financial transactions if

applicable

> Low-value services with a cost-plus markup that does not

exceed 3%.

> Technology transfer agreements registered with the Ghana

Investment Promotion Centre where the charges for

royalties, know-how or management/technical fee does not

exceed 2% of net profit.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure or compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Regulation 11(1) of the 2020 Regulations L.I. 2412 requires

all taxpayers who engage in transactions with persons with

whom they are in a controlled relationship to file transfer

pricing returns.

> Related-party disclosures along with corporate income tax

return

See previous answer.

> Related-party disclosures in financial statement/annual

report

In the financial statements.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Not later than four months after the end of each basis period.

> Other transfer pricing disclosures and return

Not later than four months after the end of each basis period.

> Master File

Not later than four months after the end of each basis period.

> CbCR preparation and submission

Twelve months after the last day of the reporting fiscal year of

the MNE group.

> CbCR notification

Twelve months after the last day of the reporting fiscal year of

the MNE group.

b) Transfer pricing documentation/Local File preparation

deadline

Not later than four months after the end of each basis period.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Not later than four months after the end of each basis period.

> Time period or deadline for submission upon tax authority

request

There is no specified time in legislation. In practice, the

transfer pricing unit has been known to give clients 14

days, as it is the unit’s expectation that taxpayers have this

documentation already as required by law.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: yes

> Domestic transactions: yes

b) Priority and preference of methods

None.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local comparables. In

practice, comparables from economies similar to Ghana are

acceptable to the GRA.

> Single-year vs. multiyear analysis for benchmarking

None are specified, but multiyear analysis inferred.

> Use of interquartile range

Three-year interquartile range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no legal requirement to conduct a fresh benchmarking

search every year. In practice, benchmarking is updated on a

three-year basis.

> Simple, weighted or pooled results

Weighted average.

> Other specific benchmarking criteria, if any

Independence threshold of 50%.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

Penalties for making false or misleading statements apply,

calculated as 100% of the tax shortfall where the statement

was made without reasonable excuse; it’s 30% of the tax

shortfall in any other case. Applicable for Local File specifically.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Having documentation does not preclude adjustments.

If an adjustment is sustained, it becomes an adjusted

assessment for which payment must be made within 30 days.

After these 30 days, interest may be assessed, computed

at 125% of the statutory (central bank prime) rate and

compounded monthly.

If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

If an adjustment is sustained, it becomes an adjusted

assessment for which payment must be made within 30 days.

After these 30 days, interest may be assessed, computed

at 125% of the statutory (central bank prime) rate and

compounded monthly. Having documentation does not

preclude adjustments.

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

b) Penalty relief

The burden of proof for arm’s length is on the taxpayer. If

the taxpayer can prove that it complies, it is an acceptable

defense.

Dialogue with the tax authorities and provision of

documentation to support arm’s length is the first line of

dispute resolution. Taxpayers who are entitled to benefits

under Ghana’s double tax agreements may also avail

themselves to the MAP. For other taxpayers, the next option

would be to go to court.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitations prescribes 12 years after

the end of the relevant year of assessment, after which the CG

cannot recover tax. The tax law, however, mandates records to

be maintained for a maximum of six years from the financial

year-end. When fraud is involved, there is no limit.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

None.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

High.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of the pricing method being challenged in a

transfer pricing audit may be considered to be medium to high

and depends on client-specific circumstances.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. Almost all the

audit cases we have been involved in have seen adjustments

proposed by the GRA.

> Specific transactions, industries and situations, if any, more

likely to be audited

All sectors.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

This is not available.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Where there is an effective double tax agreement, MAPs are

available.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

None.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

A resident person, other than a financial institution, is deemed

to be thinly capitalized if the ratio of interest-bearing or foreign

currency-denominated debt (to a non resident parent) to

equity exceeds 3:1. Interest deductions or exchange losses

arising on debt in excess of the 3:1 ratio are disallowed.

Isaac N Sarpong

isaac.sarpong@gh.ey.com

+ 233 57 765 3377

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Commissioner of Income Tax, Income Tax Office.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The reference is stated under the heading “Anti-avoidance.”

This does not set out any specific TP rules but refers to

documents published by the OECD as part of its Transfer

Pricing Guidelines for Multinational Enterprises and Tax

Administrations. This was effective from 1 January 2011

onward.

“Artificial and fictitious” definition is effective from 25 October

2018.

> Section reference from local regulation

> Income Tax Act 2010 Section 40(3)(c)

> Income Tax Act 2010 Section 74

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Gibraltar is not a member of the OECD.

The general anti-avoidance provisions in the tax law state that

those provisions must be construed in a manner that best

secures consistency among those powers and internationally

accepted principles for the determination of profit in respect of

activities within a multinational group of companies — notably,

the rules that, at 1 January 2011, were contained in Article

9 of the Model Tax Convention on Income and on Capital

1https://www.gibraltar.gov.gi/income-tax-office

published by the OECD — and such documents issued by the

OECD on or after 1 January 2011, which are designated by

the relevant minister and published in the Gibraltar Gazette.

From 25 October 2018 onward, “artificial and fictitious” is

defined in terms of being “not consistent with the international

standard of the arm’s-length principle as defined by the OECD

as part of their Transfer Pricing Guidelines for Multinational

Enterprises and Tax Administrations as amended from time to

time.”

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Gibraltar has not adopted or implemented BEPS Action 13 for

TP documentation.

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

There is a requirement for CbCR. Master File and Local File

are not required.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

No.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

This is not applicable.

> Does transfer pricing documentation have to be prepared

annually?

This is not applicable.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

This is not applicable.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The report is applicable to MNE groups with total consolidated

revenue of EUR750 million (in accordance with EU Directive

2016/881).

> Economic analysis

There’s no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is no specific requirement for treatment of domestic

transactions.

> Local language documentation requirement

There is no requirement to submit the documentation in the

local language.

> Safe harbor availability, including financial transactions if

applicable

The Commissioner of Income Tax may tax an entity on the

basis that the deduction for expenses incurred other than on

an arms-length basis in favor of a connected party is restricted

to the lower of (i) 5% of gross turnover and (b) 75% of the net

profit of the entity before taking account of those expenses.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

There is no specific requirement in tax legislation, however,

these are generally required by the applicable accounting

standards.

> CbCR notification included in the statutory tax return

The CbCR notification filing deadline is nine months after the

fiscal year-end.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The corporate income tax return filing date is nine months

after the end of the month in which the fiscal year ends.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The filing deadline for CbC preparation and submission is 12

months after the relevant financial year.

> CbCR notification

The CbCR notification filing deadline is nine months after the

fiscal year-end.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

The authorities may impose a deadline of 30 days (or more) for

providing information when an inquiry is made.

d) Are there any new submission deadlines per

COVID-19-specific measures? If Yes, specify which

deadlines are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions: No

> Domestic transactions: No

b) Priority and preference of methods

There is nothing specific in the legislation, other than the

above-mentioned reference to documents published by the

OECD.

8. Benchmarking requirements

> Local vs. regional comparables

There is none specified.

> Single-year vs. multiyear analysis for benchmarking

There is none specified.

> Use of interquartile range

There is none specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is none specified.

> Simple, weighted average or pooled results

There is none specified.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable

> Consequences of failure to submit, late submission or

incorrect disclosures

There are no specific transfer pricing penalties. If tax is

underpaid, or paid late, a surcharge of 10% of the underpaid

amount is due immediately after the date at which the tax was

due. A further surcharge of 20% of the underpaid amount is

due if the amount remains underpaid after another 90 days.

Additional penalties are payable for failing to comply with

specific provisions in the Income Tax Act 2010, though none

specifically relate to TP.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the section above.

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

b) Penalty relief

There is no specific provision in the legislation for relief from

surcharges. Penalties may be removed at the discretion of the

Commissioner of Income Tax.

10. Statute of limitations on transfer pricing

assessments

The Commissioner of Income Tax has one year from the date

that a return is received to give notice of his or her intention

to make an inquiry about a return. After that date expires,

for up to six years from the end of the relevant accounting

period or tax year, the Commissioner of Income Tax may raise

an assessment upon discovery that a person has not had

the tax assessed or was assessed at a lesser amount than

ought to have been assessed. There is a limit of twenty years

after the end of the relevant financial year end for additional

assessments to be raised when any form of fraudulent or

willful default or neglect has been committed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Formal tax audits are relatively rare. Ad hoc queries are

frequently raised by the Income Tax Office on behalf of the

Commissioner of Income Tax, though queries relating to TP are

relatively uncommon.

In practice, because of Gibraltar’s relatively low rate of

corporate tax (12.5% for most companies), the requirement

to justify transfer pricing is more likely to arise from the

jurisdiction in which the Gibraltar taxable entity’s counterparty

is taxable. This would not apply when the counterparty is

based in a zero-tax jurisdiction.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be low, as formal audits

are very rare occurrences. If they occur, it is likely that a

potential issue has been identified.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium. Again, if

an audit takes place, it is likely that a potential issue was

identified.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Taxpayers may request advance tax rulings from the

Commissioner of Income Tax, in accordance with the Income

Tax (Tax Rulings) Rules 2018, which is effective from 25

October 2018. A standard form is provided, which should be

used to request a ruling.

In determining whether sufficient evidence has been provided,

the Commissioner must take into account any relevant OECD

or other international benchmarks or standards.

> Tenure

A tax ruling will specify a period, not exceeding three years,

during which it may be relied upon.

> Rollback provisions

There is none specified.

> MAP opportunities

No.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest paid is deemed a dividend where the debt-to-equity

ratio exceeds 5:1 and the interest is paid to a connected party

that is not a company, or interest is paid to an arm’s-length

party where the loan is secured by assets belonging to a

connected party that is not a company.

Neil Rumford

neil.rumford@gi.ey.com

+ 350 200 13 200

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Ministry of Finance.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer pricing in Greece is driven by the Income Tax Code (L.

4172/2013) and the Tax Procedures Code (L. 4174/2013),

double taxation treaties, and supranational norms. Other

decisions and guidelines issued are provided below:

> 

Circular POL 1142/02.07.2015 aims to clarify transfer

pricing issues affecting intercompany transactions

pertaining to tax years starting 1 January 2014. It

provides long-anticipated clarifications on matters

including the concept of “associated or affiliate persons,”

the calculation of the interquartile range, the use of

databases for comparable company search and the

benchmarking studies to be used for documentation

purposes.

> 

Issued by the General Secretary of Public Revenues,

Decision 1097/2014, as amended by Decision

1144/2014, provides the mandatory contents of the

transfer pricing documentation file for intercompany

transactions referring to financial years starting on or

after 1 January 2014.

> 

Decision 1284/2013 of the General Secretary of Public

Revenues determines the procedures for the conclusion,

amendment, revocation and annulment of an APA. The

decision refers to the procedures of both unilateral and

bilateral APAs for cross-border intercompany transactions

that take place in financial years starting 1 January 2014.

> 

APA guidelines and templates from the Ministry of Finance

were issued in October 2014.

The CbCR requirements that are applicable to Greek tax

resident entities that are members of an MNE group with a

consolidated group turnover exceeding EUR750 million were

introduced by L. 4484/2017 in August 2017.

> Section reference from local regulation

The Income Tax Code (L. 4172/2013, Article 2) defines the

1https://www.minfin.gr & https://www.aade.gr

term “associated person,” which applies to legal persons,

individuals and any other body of persons. The term

encompasses two persons whereby:

> One of them directly or indirectly holds shares, parts or

quotas of at least 33% in the other, which is estimated on

the basis of total value or number, or equivalent profit

participation rights or voting rights.

> A third person, directly or indirectly, participates in them

in any of the aforementioned ways.

> There is, between them, direct or indirect management

dependence or control, the possibility of one person

exercising a decisive influence on the other, or the

possibility of a third person doing so on both of them.

Circular 1142/2015 provides examples of cases in which

management dependence or control, or the possibility of one

person exercising a decisive influence exists.

Circular 1049/2019 regulates issues related to the MAP in

accordance with bilateral conventions for the avoidance of

double taxation.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Greece is a member of the OECD. The aforementioned

legislative framework confirms the application of the OECD

Guidelines. More specifically, according to the Income Tax

Code, the provisions regarding intercompany transactions are,

in principle, interpreted and implemented in accordance with

the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Greece has adopted the three-tier approach (i.e., Master File,

Local File and CbCR) as described in OECD BEPS Action 13.

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

Both the Master File and Local File are covered (with

minimum content defined in local rules), whereas entities

subject to documentation requirements need to prepare

both files.

> Effective or expected commencement date

The Master File and Local File are required since the

financial year 2008; however, the required minimum

content of the files became closer to the suggested

content in BEPS Action 13 from the financial year 2014.

> Material differences from OECD report template or format

The main differences of the minimum required content of

the Master File for Greek transfer pricing documentation

purposes and the sample content suggested under BEPS

Action 13 are:

> The Greek rules require the description and high-level

functional analysis in the Master File to be performed for

all material transactions relevant to the Greek entities, and

not to be limited to the services, intangibles and financial

transactions.

> The Greek rules require special reference to the group’s

business strategy.

> The Greek rules require reference to CCAs or court

decisions relevant for transfer pricing purposes apart from

reference to APAs.

> The Greek rules require a short description of the entities

with which the Greek entities report intercompany

transactions to be included also in the Master File.

The main differences of the minimum required content of

the Local File for Greek transfer pricing documentation

purposes and the sample content suggested under BEPS

Action 13 are:

> The Greek rules require analysis of all transactions, not

only of material transactions.

> The Greek rules require explicit reference to the group

pricing policy applied and to any debit or credit transfer

pricing adjustments that may have taken place.

> The Greek rules require analysis to be included regarding

any business restructurings subject to “transfer of

functions” rules (Article 51 of the Income Tax Code).

> The Greek rules require a flowchart of transactions.

> The Greek rules require additional information such

as financial statements of affiliates with which ICO

transactions exist and that are located in noncooperative

jurisdictions.

> The Greek rules require a statement to be included by the

taxpayer committing that additional information may be

provided upon request.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The penalties for late/inaccurate filing of the CbCR stands at

EUR10,000, while the penalty for the non-filing of the CbCR

amounts to EUR20,000.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016. The MCAA on the

exchange of CbCRs was ratified by L. 4490/2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, there are transfer pricing documentation guidelines or

rules in Greece. The transfer pricing documentation file has

to be prepared annually up to the deadline for the submission

of companies’ corporate income tax return; it has to be

submitted to the Greek tax authorities within 30 days following

their request.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch of a foreign company that is subject to

documentation requirements has to prepare a transfer pricing

documentation file and disclose its intragroup transactions by

filing a summary information table (SIT).

> Does transfer pricing documentation have to be prepared

annually?

Yes, the transfer pricing documentation has to be prepared

annually under local jurisdiction regulations. Furthermore,

all sections of the transfer pricing documentation files have

to be updated. If profit-based documentation methods are

applied through the performance of a comparability search,

the comparable data defined on the basis of the benchmarking

study can be used for the next two consecutive financial

years. However, the comparable companies’ financial data

should be annually updated, and the compliance of the final

set of comparable companies with the comparability and

independence requirements should be examined for each

financial year.

The transfer pricing file as per Decision 1097/2014 consists of

both a Master File and a Local File in line with the OECD BEPS

Action 13 initiative:

> The Master File is common for all group companies and

contains common, standardized information for the group

affiliates as well as for the branches.

> The Local File (Greek file) contains additional information

regarding the Greek companies.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, its entity subject to documentation requirements

is required to prepare a stand-alone transfer pricing

documentation file.

b) Materiality limit or thresholds

> Transfer pricing documentation

Persons subject to documentation requirements include

taxpayers with a total value of intercompany transactions

of more than EUR200,000 or EUR100,000, depending on

whether their turnover is more or less than EUR5 million,

respectively.

Entities exempt from income tax obligations are also exempt

from transfer pricing documentation requirements.

> Master File

Persons subject to documentation requirements are also

subject to Master File preparation requirement. Liable

persons include taxpayers with a total value of intercompany

transactions of more than EUR200,000 or EUR100,000,

depending on whether their turnover is more or less than

EUR5 million, respectively.

Entities exempt from income tax obligations are also exempt

from transfer pricing documentation requirements.

Taxpayers qualifying as subject to documentation

requirements need to document all transactions irrespective

of value, whereas expense transactions fully tax-adjusted

for corporate income tax purposes are exempt from

documentation requirements.

> Local File

Persons subject to documentation requirements are also

subject to Local File preparation requirement. Liable

persons include taxpayers with a total value of intercompany

transactions of more than EUR200,000 or EUR100,000,

depending on whether their turnover is more or less than

EUR5 million, respectively.

Entities exempt from income tax obligations are also exempt

from transfer pricing documentation requirements.

Taxpayers qualifying as subject to documentation

requirements need to document all transactions irrespective

of value, whereas expense transactions fully tax-adjusted

for corporate income tax purposes are exempt from

documentation requirements.

> CbCR

The CbCR requirements are applicable to Greek tax resident

entities that are members of an MNE group with a consolidated

group turnover exceeding EUR750 million.

On 1 December 2017, Greece’s Independent Public Revenue

Authority (AADE) published Decision 1184/2017, providing

guidelines on the implementation of CbCR in Greece.

> Economic analysis

Taxpayers qualifying as subject to documentation

requirements need to document all transactions irrespective of

value, whereas expense transactions fully tax-adjusted for CIT

purposes are exempt from documentation requirements.

c) Specific requirements

> Treatment of domestic transactions

There is no specific requirement for the treatment of domestic

transactions in a distinct manner. Domestic transactions are in

scope of transfer pricing documentation requirements similar

to cross-border transactions.

> Local language documentation requirement

On the basis of Decision 1097/2014, the transfer pricing

documentation (i.e., Master File and Local File) needs to be

submitted to the Greek tax authorities upon request in the

Greek language. The Local File is required to be maintained in

Greek even prior to submission.

> Safe harbor availability including financial transactions, if

applicable

There are no safe harbor rules available.

> Is aggregation or individual testing of transactions preferred

for an entity

There is not an explicit reference in the Greek transfer

pricing rules; however based on Greek transfer pricing rules’

reference to OECD Guidelines, the preferred approach is

individual testing, while aggregation is acceptable upon proper

justification.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Companies must submit a Summary Information Table (SIT) of

their intercompany transactions to the tax administration up to

the deadline for the submission of companies’ CIT returns.

> Related-party disclosures along with corporate income tax return

Taxpayers disclose their intragroup transactions by annually

filing electronically a SIT of transfer pricing information. For

intragroup transactions taking place from 1 January 2015,

the SIT must be filed up to the deadline for the submission of

companies’ CIT returns.

> Related-party disclosures in financial statement/annual report

This is not applicable.

> CbCR notification included in the statutory tax return

There is a CbCR notification and CbC report submission

requirement in Greece.

A taxpaying member of an MNE group, which is subject to

CbCR submission requirements, should release under Table Θ

of its CIT return:

> The group it belongs to

> Whether it has submitted a CbCR

> The jurisdiction or tax jurisdiction of the UPE

> The jurisdiction or tax jurisdiction to which the CbCR has

been submitted

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The CIT return filing deadline is six months following the

year-end (for entities with 31 December as year-end, this is, in

principle, by 30 June of the next year).

> Other transfer pricing disclosures and return

Companies are obligated to electronically submit a SIT of their

intercompany transactions to the tax authorities up to the

deadline for the submission of companies’ CIT return (i.e., in

principle, 30 June for companies with a financial year-end on

31 December).

> Master File

The taxpayer should submit the transfer pricing file consisting

of a Master File and a Local File within 30 days upon tax

authorities’ request. Master File and Local Files, although

not required to be submitted until requested, they should be

prepared by the time of the CIT return filling deadline.

> CbCR preparation and submission

The UPE of an MNE group or any other reporting entity,

established in Greece, must submit the CbCR for each

financial year electronically to the competent authority

within 12 months from the end of the MNE group’s reporting

financial year. If the application for submitting the CbCR is not

operational because of a technical failure, the deadline will be

extended by seven working days.

> CbCR notification

In general, the deadline is on the last day of the reference

year; however, for reporting financial year 2016, an extension

of the notification deadline has been granted. This means

that constituent entities should submit the notification by the

deadline for the CbCR submission (i.e., for MNE groups with

a reporting financial year ending on 31 December 2016, the

first notification must be filed by 31 December 2017).

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation should be prepared

annually up to the deadline for the submission of companies’

CIT return (in principle, within six months from the year-

end); it is not filed with the tax authorities until it is officially

requested.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

The taxpayer should be able to present the transfer pricing file

to the audit authorities within 30 days following their request

(requests always require the files to be submitted in Greek).

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — yes

> Domestic transactions — yes

b) Priority and preference of methods

Greek regulations follow the OECD Guidelines. More

specifically, Decision 1097/2014, as amended by Decision

1144/2014, adopts the OECD authorized methods. However,

the traditional transaction methods (CUP, resale price and

cost-plus) are preferred, while transactional profit methods are

allowed when the traditional methods do not lead to reliable

results. In particular, transactional profit transfer pricing

methods, such as the TNMM and profit-split, can be used

only in cases in which the above traditional transfer pricing

methods are considered ineffective because of the absence of

available or sufficient comparables, provided that a detailed

justification is included in the documentation files.

8. Benchmarking requirements

> Local vs. regional comparables

For performing the comparable company search, any database

may be used as long as relevant details on the database are

included in the transfer pricing file. In practice, the Greek tax

authorities accept pan-European benchmarking studies; in

case that the Greek entity is the tested party then feasibility of

a local (Greek) benchmarking study is advisable to be checked

based on availability of Greek potentially comparable entities.

> Single-year vs. multiyear analysis for benchmarking

If profit-based documentation methods are selected to

calculate the acceptable interquartile range, the weighted-

average financial data of the comparable companies for the

three financial years preceding the year under review should

be utilized (this is a legal requirement).

The tested party’s results should always refer to one year (this

is a legal requirement).

> Use of interquartile range

The arm’s-length range, determined based either on prices or

on profit margins, is the interquartile range; the calculation

method coincides with the spreadsheet formula.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

On the basis of Decision 1142/2015, the comparable data

defined based on a benchmarking study can be used for the

next two consecutive financial years; however, the financial

data should be annually updated, and the compliance of the

final set of comparable entities with the comparability and

independence requirements should be examined for each

financial year (this is a legal requirement).

> Simple, weighted or pooled results

The weighted average is preferred in testing an arm’s-length

analysis.

> Other specific benchmarking criteria, if any

The search strategy should incorporate the independence

criteria as provided by the Greek legislation currently in force.

In this respect, the term “associated person” refers to persons

that:

> Are affiliated, due to the participation of one person,

to the other, holding, directly or indirectly, shares,

partnership units or equity participation of at least 33%

based on value or number, or profit rights or voting rights

> Are affiliated to any other person holding, directly or

indirectly, shares, partnership units, voting rights or equity

participation of at least 33% based on value or number, or

profit rights or voting rights in one of the affiliate persons

> Are affiliated to any other person with which there is a

direct or indirect significant management dependence or

control; or the person that exercises decisive influence

on or may significantly influence the company’s decision-

making; or in cases where both persons have an exclusive

direct or indirect relationship of material management

dependence or control; or may be of significant

management influence by a third party

In light of the above, a 33% shareholding screening step, as

well as a 33% subsidiary screening step, should be included.

The final set of comparable observations should consist of at

least five observations in order to calculate the interquartile

range. Furthermore, the calculation of the quartiles should be

based on a specific formula (this is a legal requirement) that is

identical to the spreadsheet formula.

During the comparability search, information reasonably

available to the taxpayer when preparing the documentation

should be used, while the use of databases is restricted to

releases available two months prior to a company’s year-end

and up to the deadline for the submission of the companies’

CIT return (this is a legal requirement).

The profit margins of the controlled entity should be calculated

with reference to the local tax legislation irrespective of

the accounting standards used for drafting its financial

statements.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Penalty will not be imposed for filing incomplete

documentation.

> Consequences of failure to submit, late submission or

incorrect disclosures

Transfer pricing penalties include:

> Penalties for the late filing of the SIT are calculated

at 0.1% on the value of the transactions subject to

documentation requirements (minimum penalty of

EUR500 and maximum penalty of EUR2,000). In the event

of filing an amended SIT, a penalty applies only to the

extent that the declared amounts are amended and such

amendments exceed the amount of EUR200,000. In the

event that the amended amounts exceed EUR200,000,

the penalty is calculated at 0.1% on the value of the

transactions subject to documentation requirements

(minimum penalty of EUR500 and maximum penalty of

EUR2,000).

> Penalties for an inaccurate filing of the SIT are calculated

at 0.1% on the value of the amounts to which the

inaccuracy relates (minimum penalty of EUR500 and

maximum penalty of EUR2,000). If the inaccuracy consists

of differences in the amounts declared and does not

exceed 10% of the value of the total transactions subject

to documentation, no penalty applies.

> Penalties for the non-filing of the SIT are calculated

at 0.1% on the value of the transactions subject to

documentation requirements, with a minimum penalty of

EUR2,500 and a maximum penalty of EUR10,000.

> In the case of failure to provide the tax authorities with

transfer pricing documentation within 30 days from the

official request, a penalty of EUR5,000 applies, which is

increased to EUR10,000 if transfer pricing documentation

is provided after 60 days, and to EUR20,000 if it is

provided after 90 days or not provided at all.

> The penalty for non-submission of the CbCR has been set

at EUR20,000, whereas the penalty for late submission

or submission of inaccurate information has been set at

EUR10,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In the case of non-compliance with the arm’s-length principle,

the difference in taxable profits will increase the tax base of

the company. In addition, the general income tax inaccuracy

penalties, ranging from 10% to 50% of the tax underpayment,

as well as default interest, will apply.

If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No, there are not penalty provisions in the Tax Procedures

Code (L. 4174/2013) on the submission of an incomplete or

noncompliant transfer pricing documentation file, unless it

is considered that its non-compliance is equivalent to non-

submission (in which case the non-submission penalties are

applicable).

> Is interest charged on penalties or payable on a refund?

In the case of late payment of any amount of tax within

the statutory period, including the late submission of tax

returns, the taxpayer is obligated to pay interest on that

amount starting from the statutory deadline. The interest rate

currently is set at 8.76% annually (0.73% monthly).

b) Penalty relief

No penalty relief is available.

Upon the completion of a tax audit, the taxpayer is notified

of a temporary assessment note. According to Article 28 of

L. 4174/2013 (Tax Procedures Code), the taxpayer may file,

within 20 days, a memo to the tax authorities stating his or her

views of the tax audit’s findings.

Within one month from the receipt of the taxpayer’s memo or

from the due date for such submission, the tax auditors shall

issue the final assessment note, which will be handed over to

the taxpayer together with the relevant audit report.

Within 30 days of the notification of the final assessment note,

the taxpayer may file an administrative appeal before the

Dispute Resolution Department of Article 63 of L. 4174/2013,

seeking a revision of the case (tax audit results and final

assessment note). The Dispute Resolution Department should

issue its decision within 120 days from the filing or submission

of the administrative appeal.

If the Dispute Resolution Department fails to issue a decision

within 120 days, the appeal is deemed to have been implicitly

rejected. Having said that, the Dispute Resolution Department

will examine only the tax items challenged by the company

through the administrative appeal. In the case of an adverse

decision on the administrative appeal or implicit rejection

thereof, the taxpayer may appeal before the Administrative

Court within 30 days as of the notification of the decision (or

the implicit rejection).

EU arbitration through a MAP procedure and through double

tax treaties’ MAP procedure may be available depending on

the tax residency of the counterparties and their eligibility.

10. Statute of limitations on transfer pricing

assessments

Taxpayers must keep documentation files for a period equal to

the statute of limitations for the performance of a tax audit,

as specified by the provisions of the general tax provisions

applicable for the said financial year.

Open tax years as of 1 January 2022 are, in principle, the

financial year 2016 and onward, whereas the statute of

limitations is, in principle, six years following year-end.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

In the course of the statutory audit, certified auditors may be

required to issue a tax certificate to the companies they audit

by performing a special audit of their tax affairs, which takes

place at the same time as the statutory audit. Based on this,

the transfer pricing documentation file should be available

to the certified auditors before the tax certificate is issued.

Further, based on our recent experience, local tax authorities

tend to scrutinize taxpayers’ transfer pricing arrangements in

the course of tax audits, focusing especially on the review of

the benchmarking studies included in the documentation files.

The likelihood of a tax audit by the local tax authorities,

in general, can be considered as high, based on recent

experience. Further, in the course of general audits, the

likelihood that transfer pricing will be reviewed is characterized

as certain, based on the audit program followed by the Greek

tax authorities. Tax authorities tend to challenge related-party

transactions, and there is a clear trend toward increased

awareness of transfer pricing issues among local tax auditors.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium; the Greek tax

auditors are focused more on the results of the transfer pricing

policy rather than on the policy itself unless they find this as

an opportunity to assess differences. Nevertheless, there were

few recent cases that the Greek tax auditors challenged the

transfer pricing methodology.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high; usually, the

authorities challenge the transfer pricing methodology only if

it leads to an adjustment.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The Tax Procedures Code, along with implementing decisions,

provides the possibility of an APA from 1 January 2014. An

APA will cover any relevant criteria used for the intragroup

pricing.

These criteria mainly include the transfer pricing method, the

comparable data to be used and any relevant adjustments to

be made as well as the critical assumptions under which the

approved transfer pricing methodology will remain valid.

A taxpayer in Greece may apply for a unilateral, bilateral or

multilateral APA.

> Tenure

An APA term cannot exceed four years and a retroactive effect

is not possible.

> Rollback provisions

There is none specified.

> MAP opportunities

Greece has concluded, so far, 57 deferred tax claims (DTCs),

which (except for the DTC with the United Kingdom) contain

MAP provisions. In addition, MAP under EU Arbitration

Convention (EUAC) is feasible.

The submission of a written request (by Greek tax residents)

in Greek language is required for the initiation of a MAP by

the Greek competent authority. Depending on its content, a

MAP request is submitted to and examined by the following tax

authorities of the Independent Authority for Public Revenues:

> All MAP requests except for transfer pricing cases should

be addressed to the Independent Authority for Public

Revenue’s International Economic Relations Directorate —

Tax Affairs Section.

> MAP requests for transfer pricing cases should be

addressed to the Independent Authority for Public

Revenue’s General Directorate of Tax Administration

Directorate of Audits — Section D.

> A copy of the request, without its accompanying

documents, should be also communicated to the

Independent Authority for Public Revenue’s International

Economic Relations Directorate — Section A.

A MAP case must be presented within the time limits laid

down by the applicable DTC or EUAC from the first notification

of the action resulting in taxation not in accordance with

the provisions of the DTC. Most of the DTCs that Greece has

concluded set a time limit of two or three years. The EUAC sets

a limit of three years unless a year is statutorily barred.

MAP or judicial appeal procedure can be pursued

simultaneously provided the hearing of the case has not taken

place upon the filing of the MAP request.

There is no suspension of tax collection during the MAP

process.

Following BEPS Action 14 minimum standard, Greece has

adopted part V of the Multilateral Instrument (MLI) on the

MAP. Greece has made notification on a number of matters.

Additionally, Greece has chosen to apply Part VI of the MLI on

Mandatory Binding Arbitration (MBA). Greece reserved the

right to set a three-year period limit for MAP, following which

a taxpayer may request initiation of the MBA mechanism,

instead of a two-year period, provided for in Article par. 1 (b)

of the MLI. The MLI has not been ratified yet by the Greek

Government in order for the covered agreements to be

modified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under the GITC (article 49 of L.4172/2013, as amended

by article 11 of L. 4607/2019), the maximum threshold up

to which exceeding borrowing costs are deducted is 30% of

taxpayers EBITDA, while the threshold up to which exceeding

borrowing costs are fully deductible is EUR3 million. On the

other hand, GITC allows to a taxpayer to carry forward without

any time limitation exceeding borrowing costs, that cannot

be deducted in the current tax year. It should be noted that

the maximum threshold up to which exceeding borrowing

costs are deducted does not apply to exceeding borrowing

costs incurred on loans used to fund a long-term public

infrastructure project, in cases where the project operator,

borrowing costs, assets and income are all in the EU.

Based on the relevant provisions, the aforementioned EBITDA

is defined as the sum of taxable income, tax-adjusted amounts

for exceeding borrowing costs as well as tax-adjusted amounts

for depreciation and amortization, while tax exempt income is

not taken into account for such calculation. For the purposes

of applying the above, exceeding borrowing costs are defined

as the difference between a taxpayer’s taxable interest

revenues and other economically equivalent taxable revenues

and the deductible borrowing costs of such taxpayer, while

the term “borrowing costs” includes interest expenses on all

forms of debt as well as expenses incurred in connection with

the raising of finance. The interest limitation rule expressly

excludes from its scope several types of financial undertakings

(e.g. credit institutions, insurance companies, alternative

investment funds, UCITS).

Christos Kourouniotis

christos.kourouniotis@gr.ey.com

+ 306942294565

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Tax Administration Superintendence (Superintendencia de

Administración Tributaria — SAT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are Articles 54 to 67 of LAT or Tax Legislation Update

(TLU) (Ley de Actualización Tributaria — Decree No. 10-2012)

and Articles 37 to 66 of the TLU Regulations No. 213-2013.

In addition, in October 2016, the tax authorities published

transfer pricing technical guidelines that establish parameters

related to the presentation, content, calculation formulas and

analysis to perform an adequate and standardized transfer

pricing analysis. But most importantly, they refer to BEPS

initiatives such as the Master File requirement as part of

transfer pricing documentation.

Regarding the validity of these guidelines, pursuant to

Section 3(h) of the Organic Law of the Tax Administration

Superintendence, Decree 1-98 of the Guatemalan Congress,

the Guatemalan tax authorities are empowered to issue and

implement any sorts of mechanisms or guidance that may

enable the taxpayers to comply with their tax obligations

more easily. However, the transfer pricing guidelines have not

been ratified by the Guatemalan Congress and should not be

understood as legally binding to the taxpayer.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

1https://portal.sat.gob.gt/portal/

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Guatemala is not a member of the OECD, and there is no

specific reference to the OECD Guidelines in the regulations.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

It has not been formally implemented in the transfer pricing

legislation. However, in October 2016, the tax authorities

published transfer pricing technical guidelines that refer to

BEPS initiatives such as the Master File requirement as part of

the transfer pricing documentation.

> Coverage in terms of Master File, Local File and CbCR

It has not been formally implemented in the transfer

pricing legislation. However, in October 2016, the tax

authorities published transfer pricing technical guidelines

that refer to BEPS initiatives such as the Master File

requirement as part of the transfer pricing documentation.

In such guidelines, the tax authorities indicate that the

transfer pricing documentation must contain information

related to the MNE group listing the information to be

included.

> Effective or expected commencement date

The Master File requirement on the transfer pricing

technical guidelines is applicable for transactions from

fiscal year 2016 onward.

> 

Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, and the transfer pricing documentation needs to be

contemporaneous.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

The transfer pricing report and return must be prepared

annually, updating all the information that allows to a correct

transfer pricing analysis. The local tax authorities require

use of the most recent available financial information for the

comparables and the tested party.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no specific requirement for the treatment of domestic

transactions.

> Local language documentation requirement

According to Article 369 of the Guatemalan Commerce Code,

accounting must be kept in Spanish. In addition, even when

the transfer pricing regulations do not expressly state this as

mandatory, the Law of the Judicial Branch, in its Article 37,

provides that all documents proceeding from abroad that have

been prepared in a foreign language should be translated in

order to be fully effective in Guatemala prior to being filed

before any governmental entity.

> Safe harbor availability including financial transactions, if

applicable

There is no specific requirement for safe harbor availability.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred, if possible.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Regulations to Chapter VI of the TLU were enacted in 2013.

The main provision of these regulations is the filing obligation

in the form of a transfer pricing information return.

From FY2015 onward, taxpayers are required to file a transfer

pricing information return in the form of an appendix to the

annual income tax return, which must be presented by 31

March each year. Such appendix is a separate form from the

income tax return.

> Related-party disclosures along with corporate income tax

return

Taxpayers are required to attach their audited financial

statements that must be prepared according to “generally

accepted accounting principles.”2 No mandatory provisions

regarding the inclusion of intercompany transactions are in

force; however, it is common practice for external auditors to

include a section on intercompany transactions.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The documentation should be submitted on or before 31

March.

> Other transfer pricing disclosures and return

Transfer pricing informative return should be submitted on or

before 31 March.

2In 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 clas-

sification 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

> Master File

The documentation should be prepared by the time of lodging

the tax return, to be submitted upon request.

> CbCR preparation and submission

There is none specified.

> CbCR notification

There is none specified.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation needs to be prepared by

the time of lodging the tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

The taxpayer needs to submit the transfer pricing

documentation within 20 days once requested by the tax

authorities.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

Acceptable transfer pricing methods are the CUP, resale price,

cost plus, profit split, TNMM, and the imports and exports

valuation method (the “sixth method”).

The CUP, resale price and cost plus methods take priority

over the transactional methods. In addition, the sixth method

is preferred for transactions involving imports or exports of

goods with well-known prices in international markets.

8. Benchmarking requirements

> Local vs. regional comparables

There is no benchmarking requirement using local comparable

companies because of the lack of publicly available financial

information.

> Single-year vs. multiyear analysis

Multiyear testing is preferred for the comparables; in practice,

the number of years is three.

> Use of interquartile range

Spreadsheet quartile is preferred, as per common practice.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The transfer pricing report and return must be prepared

annually, updating all the information that allows a correct

transfer pricing analysis. Additionally, in practice, local

tax authorities expect to see the most recent comparable

information and to use the most recent available financial

information for the comparables and the tested party.

> Simple, weighted or pooled results

The weighted average, as per common practice, is preferred.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

According to Article 66 of the Regulations to the TLU,

penalties for failure to comply with the transfer pricing

obligations correspond to the general tax penalties. According

to Article 94 (13) of the Tax Code, penalties for failure to

present the transfer pricing documentation upon request

of the tax authority would be GTQ5,000 for the first time,

GTQ10,000 for the second time and GTQ10,000 plus 1% of

the taxpayer’s gross income from then on.

Additionally, if the taxpayer does not comply with the

submission of the requested transfer pricing information, the

tax authorities generally apply the fine provided in Article 93

of the Tax Code regarding the tax offense involving refusing to

cooperate with the requirements performed within a tax audit

process. Penalties imposed may consist of fines or eventually

lead to closure of the business.

In addition, any additional tax generated by price adjustments

made by the SAT is subject to surcharges and penalty interest.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, in case of incorrect compliance:

> Afine equivalent to 100% of the tax due

> 

Late payment interest defined by the SAT

> GTQ100 (approximately USD12.90) as a formal fine

for the rectification (applicable for the transfer pricing

return)

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, in case of incorrect compliance:

> Afine equivalent to 100% of the tax due

> 

Late payment interest defined by the SAT

> GTQ100 (approximately USD12.90) as a formal fine for

the rectification (applicable for transfer pricing return)

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

b) Penalty relief

Penalties can be reduced up to 85% for the failure to submit

documentation (only for the first time) if the omission is

corrected by the taxpayer.

When the taxpayer accepts the errors in the determination

of tax liability, before the tax authorities pre-grant a hearing,

the taxpayer must pay the resulting tax and interest payments

with a discount of 40% and penalty for late payment reduced

by 80%, provided it makes the payment within the next five

days from the date of issue of the administrative record

(Section 145 “A” Tax Code).

However, upon the letter of determination issued by the tax

authorities, the fine equal to 100% of the omitted tax may be

reduced as follows (Section 46 Tax Code):

>  If the payment is made at the administrative hearing

granted by the tax authorities, a 75% discount should be

granted.

> 

If the payment is made before filing for an administrative

appeal, a 50% discount should be granted.

> If the payment is made before filing a claim before the Tax

Court, a 25% discount should be granted.

According to the local tax code, taxpayers may express their

disagreement with the position taken by tax authorities. In the

first stage, the administrative procedure is available prior to

the judicial process.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on assessments is four years from

the date of filing the tax return.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a general tax audit and transfer pricing

assessments as part of a general tax audit may be considered

to be high. The SAT has been active in performing transfer

pricing audits on taxpayers and sending massive requests to

submit transfer pricing documentation from most taxpayers

that inform intercompany transactions each year.

Likelihood of transfer pricing methodology being challenged

(high/medium/low)

When transfer pricing is scrutinized, the likelihood that the

transfer pricing methodology will be challenged may be

considered to be high. In practice, the SAT consistently has

been questioning the application of transfer pricing methods

(i.e., sixth method instead of the CUP method), comparables

with losses, and the formulas and interest rate for capital

adjustments to the comparables, among others.

Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

In most audits where the SAT challenges either the

methodology or the comparables, the likelihood of an

adjustment may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

Taxpayers that have not complied with previous transfer

pricing obligations, experiencing losses, and transactions

regarding the import and export of commodities are more

likely to be audited.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

APAs are contemplated in Article 63 of the TLU. Taxpayers can

request an APA for a maximum of four years. The procedures

for establishing an APA are established in Articles 57 to 63 of

the Regulations to the TLU.

> Tenure

The term could be as long as four years.

> Rollback provisions

This is not applicable.

> MAP opportunities

No.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Paul A De Haan

paul.dehaan@cr.ey.com

+ 506-2208-9955

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Guinean Revenue Authorities (Direction Générale des Impôts

— DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are the General Tax Code (GTC) Articles 117

(arm’s-length principle) and Article 23 of the finance law

N°L/2018/069/AN of 26 December 2018 relating to year

2019 (annual declaration of foreign related-party transactions

and TP documentation obligation).

The effective date of applicability is 1 January 2019.

> Section reference from local regulation

Title 1 Direct Taxes: Chapter 1, Determination of the net

profits or net income of the various categories of income,

Section 3, BIC and Paragraph 3 — Control of declarations.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Guinea is not a member of the OECD. However, in practice,

Guinea adopts its principles.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Although this has not been officially formalized, the content of

the TP regulations is largely based on the provisions of BEPS

Action 13.

> Coverage 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.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Local specifications are to be considered particularly for

businesses trading in marketable commodities, such as

extractive industries, as specific provisions apply, and those

being involved in intragroup transaction with central supply

entities.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, it needs to be prepared and made available to tax

authorities in electronic version and in French during a tax

audit.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

This obligation to prepare a TP documentation applies in

particular to entities established in Guinea:

> Whose annual turnover excluding taxes or gross assets

appearing in the balance sheet is more than GNF1,000

billion (Guinean francs)

> Who hold or control, at the financial year-end closing,

directly or indirectly, more than half of the capital or voting

rights of a company whose annual turnover excluding taxes

or gross assets, appearing in the balance sheet, is more

than GNF1,000 billion

> Which are held or controlled at the end of the financial year,

directly or indirectly, for more than half of their capital

or voting rights by a company, whose annual turnover

excluding taxes or gross assets in the balance sheet is more

than GNF1,000 billion

In addition, entities that do not meet the threshold

requirements for documentation obligation (i.e., GNF1,000

billion) must nevertheless provide the completed simplified

declaration (which included a file that can be assimilated

to CbCR) as soon as their annual turnover, excluding taxes,

or the gross asset listed in their balance sheet is more than

GNF1,000 billion.

> Master File

As from financial years opened after 1 January 2019, the

content of the documentation is largely aligned with BEPS

Action 13 (Master File and Local File).

> Local File

As from financial years opened after 1 January 2019, the

content of the documentation is largely aligned with BEPS

Action 13 (Master File and Local File).

> CbCR

See the above answer.

> Economic analysis

There is no materiality limit prior to 2019. For financial years

starting on or after 1 January 2019, only the transaction with

related entities that amount to more than GNF1 billion are

concerned.

c) Specific requirements

> Treatment of domestic transactions

The same rules apply for domestic transactions.

> Local language documentation requirement

The documentation must be provided in French and in

electronic version.

> Safe harbor availability, including financial transactions, if

applicable

There is no specific guidance.

> Is aggregation or individual testing of transactions preferred

for an entity

No.

> Any other disclosure or compliance requirement

There is none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The TP return needs to be submitted in French as part of the

taxpayer’s annual tax return, at the latest on 30 April. Online

submission is not yet possible.

> Related-party disclosures along with corporate income tax

return

The TP documentation needs to be provided only upon

request during a tax audit, at the latest on 31 July.

> Related-party disclosures in financial statement/annual

report

No.

> CbCR notification included in the statutory tax return

Yes.

> Other information/documents to be filed

None.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 30 April following each fiscal year-end.

> Other transfer pricing disclosures and return

The annual TP return due date is 30 April of each year.

> Master File

The TP documentation must be prepared and made available

at the latest three months after the filing of the annual tax

return (which is due on April 30 of each year).

> CbCR preparation and submission

CbCR is included in the TP return as an appendix, and

therefore, the deadline for submission is 30 April of each year.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

It should be available by the time of a tax audit (accounts

examination on site).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

The deadline is 30 days, following the tax auditor’s request for

the TP documentation.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The law does not refer to any priority or preference methods.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific indication. However, local comparables are

preferred.

> Single-year vs. multiyear analysis for benchmarking

There is no guidance provided.

> Use of interquartile range

There is no guidance provided.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no guidance provided.

> Simple, weighted or pooled results

There is no guidance provided.

> Other specific benchmarking criteria, if any

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

None.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to respond or a partial response is subject to either of

the following sanctions:

> A maximum fine of 1% of the amount of the transactions

concerned by the documents that have not been made

available to the Tax Administration after formal notice,

knowing that this fine must be adjusted depending on the

seriousness of the shortcomings noted

> In the event of rectification and if the amount is higher, a

10% increase in the reassessed amounts charged to the

taxpayer, without prejudice to other penalties and fines

which are actually applicable

In addition, the absence of a response or a partial response

may result in the automatic imposition of fines on the

taxpayer.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

After a TP reassessment is made, the profit indirectly

transferred should be qualified as a deemed distribution of a

benefit. Such “benefit” transfer should entail CIT (25%) and

withholding tax (WHT) on distributed amounts payments at

10%.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

NO

> Is interest charged on penalties or payable on a refund?

No interest will apply on the penalties mentioned above.

b) Penalty relief

Subject to further negotiations with tax authorities.

10. Statute of limitations on transfer pricing

assessments

Three years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

First, it should be noted that the probability depends on the

sector of economic activity the taxpayer operates in. For

instance, companies in these business sectors — mining, oil and

gas, banking, insurance, and telecommunications — are much

more likely to be controlled.

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

The industries are large companies: telecommunications,

oil and gas, mining, and financial institutions and insurance

companies.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

This is not applicable.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Guinea does not have specific thin-capitalization rules, but

the following limitations are imposed for the deductibility of

interest paid to foreign parties in respect of funds provided to

local companies:

> The interest rate must be capped to Central Bank of the

Republic of Guinea (Banque Centrale de la République de

Guinée — BCRG) interest rate.

> The share capital of the local company must be fully paid.

> The total amount of the loan must not exceed the share

capital (limitation not usually applied).

> In addition, under the 2019 Finance Act, the deductibility of

loan interest among related companies is now limited to 15%

of the borrowing company’s restated income. The restated

result is the result of the ordinary activities of the entity to

which are added:

> The deductible interest expense pursuant to Article

97, i.e., compliance with the general conditions for the

deductibility of expenses, compliance with the WHT due,

compliance with the limit of the normal refinancing rate of

the BCRG and release of at least half of the capital

> Tax on industrial or commercial profits, corporation tax

and minimum flat tax

> Allowances for depreciation deductible, pursuant to Article

98

> Depreciation allowances deductible, pursuant to Articles

101 and 102 of tax code

Eric Nguessan

Eric.nguessan@ci.ey.com

+ 2250708025038

Contact

Alexis Popov

alexis.popov@ey-avocats.com

+ 33 6 46 79 42 66

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Tax Administration of Honduras (Servicio de Administración de

Rentas — SAR).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> 

Decree No. 232-2011, effective from 1 January 2014,

establishes Transfer Pricing Law, Articles 1 to 22.

> Executive Decree No. 027-2015, effective from 18

September 2015, contains regulations on transfer pricing,

Articles 1 to 40.

> Communication-DEI-SG-004-2016.

> Article 113 of Tax Code.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Honduras is not a member of the OECD.

The OECD Guidelines can be relied upon for interpretation

of the rules, as long as they do not contradict the Honduran

tax system; however, local transfer pricing regulations

prevail.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

1https://www.sar.gob.hn/

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines and rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, transfer pricing documentation must be prepared

contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the transfer pricing report and return must be prepared

annually, updating all the information that allows a correct

transfer pricing analysis. Use of the most recent available

financial information for the comparables and the tested party

is requested.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

Through Article 113 of Decree No. 170-2016 and in effect

since 2017, the obligation to document domestic related-

party transactions is repealed except those transactions

carried out with domestic (related or not) entities established

under a special tax regime. However, domestic related-party

transactions must be informed annually in the transfer pricing

informative return.

> Local language documentation requirement

The documentation needs to be submitted in the local

language, according to Civil Code, Article 45.

> Safe harbor availability, including financial transactions, if

applicable

There is no specific safe harbor available in Honduras.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred, if possible

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

An information return on the transactions conducted with

related parties should be filed annually, as follows:

> For fiscal years that end in December, taxpayers must file

the transfer pricing return between 1 January and 30

April.

For a special fiscal year that does not end in December,

taxpayers must file the transfer pricing return (Declaración

Jurada Informativa Anual Sobre Precios de Transferencia)

within three months after the fiscal year-end.

> Related-party disclosures along with corporate income tax

return

Taxpayers must report on the income tax return whether they

conducted transactions with related parties and disclose the

total amount of such related-party transactions, indicating

whether they are assets, liabilities, income or expense items.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The corporate income tax return should be filed annually, as

follows:

> For fiscal years that end in December, taxpayers must file

the return between 1 January and 30 April.

> For a special fiscal year that does not end in December,

taxpayers must file the return within three months after

the fiscal year-end.

> Other transfer pricing disclosures and return

There is none specified.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Taxpayers are required to prepare transfer pricing

documentation annually by the due date of the income tax

return. The documentation should be filed only if requested by

the SAR.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

10 days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions

Yes.

> Domestic transactions

Not applicable after FY2017. However, domestic related-party

transactions must be informed annually in the transfer pricing

informative return.

b) Priority and preference of methods

The provisions require the application of the most appropriate

transfer pricing method. The specified methods are the

CUP (and the “sixth method” that is considered within the

CUP method), resale price, cost plus, profit split, TNMM and

any other alternative method (as long as it is possible to

demonstrate that no other method can be reasonably applied

and that it represents what third parties will agree upon under

comparable arm’s-length circumstances). A taxpayer can

use an alternative method when it is in accordance with the

international practice and standards and previously approved

by the SAR.

8. Benchmarking requirements

Local vs. regional comparables

There are no benchmarking requirements for local and

regional comparables, considering the lack of financial

information available on local comparables. Thus, international

comparables are accepted by the tax authorities.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year testing (up to five years) is acceptable for the

comparables. However, in practice the number of years is

three.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is requested by regulations.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search vs. a financial update needs

to be conducted every year. The transfer pricing report and

return must be prepared annually, updating all the information

that allows a correct transfer pricing analysis. Additionally, in

practice, local tax authorities expect to see the most recent

comparable information and to use the most recent available

financial information for the comparables and the tested party.

> Simple, weighted or pooled results

Weighted average is preferred, as per common practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

If taxpayers fail to provide information or provide false,

incomplete or inaccurate information in response to a request

by the SAR, a penalty of USD10,000 applies.

If taxpayers report taxable income less than it should have

been under arm’s-length conditions, a penalty of 15% on the

corresponding income adjustment applies.

If taxpayers fail to provide the correct information or fail to

declare a correct taxable income, then the penalties will be the

greater of 30% or USD20,000.

If taxpayers fail to comply with any other provision of the

Transfer Pricing Law, a penalty of USD5,000 applies.

> Consequences of failure to submit, late submission or

incorrect disclosures

If taxpayers fail to provide information or provide false,

incomplete or inaccurate information in response to a request

by the SAR, a penalty of USD10,000 applies.

If taxpayers report taxable income less than it should have

been under arm’s-length conditions, a penalty of 15% on the

corresponding income adjustment applies.

If taxpayers fail to provide the correct information or fail to

declare a correct taxable income, then the penalties will be the

greater of 30% or USD20,000.

If taxpayers fail to comply with any other provision of the

Transfer Pricing Law, a penalty of USD5,000 applies.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the section above.

> Is interest charged on penalties or payable on a refund?

In the case of a transfer pricing income adjustment, interest

applies (3% on a monthly basis, up to 36%), per the general

provisions of the Tax Code.

b) Penalty relief

Article 162 of the Tax Code indicates that taxpayers can

benefit from reductions of the surcharges assessed for non-

compliance of a formal obligation:

> 50% reduction, if the taxpayer rectifies before any

competent authority proceeding

> 30% reduction, if the taxpayer rectifies before the

competent authority assesses and notifies the penalty or

initiates the collection process and without the taxpayer

initiating any reconsideration request process

> 10%reduction, if it rectifies before the collection process

of the penalty conducted by the judicial authority

> If the taxpayer is categorized as a small taxpayer, it has an

additional reduction of 20%

If an adjustment is proposed by the tax authority, dispute

resolution options available are:

> An appeal that has to be filed with the Honduran tax

authorities — first administrative instance

> An appeal that has to be filed with the Secretary of

Finance — second administrative instance

> An extraordinary review appeal

10. Statute of limitations on transfer pricing

assessments

The term could be five to seven years. It can be extended with

the filing of an amended return.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a general tax audit may be considered to be

high, as is the likelihood of transfer pricing assessments as

part of a general tax audit. During the past years, the SAR has

sent information requests to several taxpayers related to their

documentation reports, therefore initiating transfer pricing

audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high, given the overall

firm stance of tax authorities.

> Specific transactions, industries and situations, if any, more

likely to be audited

Any intercompany transaction and any industry and situation.

In the past, the SAR has focused its transfer pricing audits in

services transactions, questioning whether the services have

been rendered, the need of the services, the allocation of the

expense, as well as the benefit the services provide.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APAs are contemplated under the provisions of Decree

232-2011 and Executive Decree 027-2015. However, the

corresponding regulations have not yet been enacted.

> Tenure

The duration of an APA is a maximum of five years.

> APA rollback provisions

This is not applicable.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Paul De Haan

Paul.DeHaan@cr.ey.com

+ 506-2208-9955

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Inland Revenue Department (IRD).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

On 13 July 2018, the Government of Hong Kong Special

Administrative Region gazetted Inland Revenue (Amendment)

(No. 6) Ordinance 2018 (the Amendment Ordinance).

The Amendment Ordinance codifies transfer pricing principles

into the Inland Revenue Ordinance (Cap. 112) (IRO). The

effective dates for the regulations are staggered across the

accounting period beginning on or after 1 January 2018 (for

CbCR), 1 April 2018 (for Master File and Local File) and years

of assessment beginning on or after 1 April 2018 (for the

Fundamental Transfer Pricing Rule (FTPR) and APAs).

Other relevant sections of the IRO include:

> Section 16, about deductibility of expenses in arriving at

assessable profits

> Section 17, about prohibited deductions

> Section 61A, about transactions designed to avoid tax

liability

In addition, the Departmental Interpretation and Practice

Notes (DIPN) contain the IRD’s interpretation and practices

related to the law. These notes are issued as information

and guidance and have no legal binding force. The relevant

prevailing DIPNs include:

> DIPN 45, Relief from Double Taxation due to Transfer

Pricing or Profit Reallocation Adjustments, issued in April

2009

> DIPN 48, Advance Pricing Arrangement, revised in July

2020

> DIPN 51, Profits Tax Exemption for Offshore Private Equity

Funds, issued in May 2016

> DIPN 52, Taxation of Corporate Treasury Activity, issued in

September 2016

1https://www.ird.gov.hk

> DIPN 53, Tax Treatment of Regulatory Capital Securities,

revised in August 2020

> DIPN 58, Transfer Pricing Documentation and Country-by-

country Reports, issued in July 2019

> DIPN 59, 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

Sections under Inland Revenue Ordinance (Cap. 112)

(IRO). The key sections that are specific for transfer pricing

regulations are Sections 50AAC to 50AAO, Sections 58B to

58O and Schedule 17I.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No) 2

No ; however, on 28 July 2021, the IRD published an update

on “Tax Issues arising from the COVID-19 Pandemic.” It is

stated that the IRD will generally follow the “Guidance on

the transfer pricing implications of the COVID-19 pandemic”

released by the OECD, which maintains that the arm’s-length

principle remains the applicable standard for the purpose

of evaluating the transfer pricing of controlled transactions

in the face of the pandemic, though due regard must be

given as to how the outcomes of the economically significant

risks controlled by the parties to the transactions have been

affected by the pandemic.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Hong Kong is a BEPS Associate jurisdiction (announced in June

2016). The Hong Kong transfer pricing framework is largely

based on the OECD Guidelines, and the IRD generally will not

differ from the transfer pricing methodologies recommended

2https://www.ird.gov.hk/eng/tax/tia\_covid19.htm

by OECD Guidelines. The Amendment Ordinance specifically

references the 2017 OECD Guidelines within the legislation

and indicates that the arm’s-length provision (along with other

rules) should be consistently determined in accordance with

OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, the Amendment Ordinance (gazetted on 13 July 2018)

adopts the OECD’s recommended three-tiered documentation

structure, comprising a Master File, Local File and the CbCR

based on BEPS Action 13.

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

The Amendment Ordinance covers the Master File, local

file and CbCR.

> Effective or expected commencement date

The effective date is the accounting period beginning on

or after 1 January 2018 (for CbCR) and 1 April 2018 (for

Master File and Local File).

> Material differences from OECD report template or format

The prescribed information required to be disclosed in

the Master File and Local File is consistent with the OECD

Action 13 requirements.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The scale of penalties to be imposed on a person, in relation

to transfer pricing examinations, is a function of the nature of

transfer pricing treatment and the effort spent to determine

the arm’s-length amount. The availability of documented

transfer pricing treatment and its ability to satisfy the

reasonable efforts test in determining the arm’s-length amount

will be used as a basis to determine whether a person is liable

to additional tax and the level of additional tax applicable.

Please refer to penalty relief for further details.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work 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 Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 26 July 2018.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the Amendment Ordinance gazetted on 13 July 2018

introduced mandatory transfer pricing documentation

requirements and rules in Hong Kong. The documentation is

required to be prepared contemporaneously if the Hong Kong

entity meets certain thresholds and is to be submitted upon

request.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local transfer

pricing rules.

> Should transfer pricing documentation be prepared

annually?

The Amendment Ordinance assesses the taxpayers’ obligation

for preparing transfer pricing documentation on an annual

basis. Taxpayers that exceed the documentation threshold in

the specific accounting period are required to prepare transfer

pricing documentation for that accounting period.

Taxpayers that meet the exemption thresholds have no

mandatory requirements to prepare the Master File and local

file. However, it is required that their related-party transactions

be at arm’s length.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

transfer pricing reports if it has related-party transactions that

meet the materiality thresholds.

b) Materiality limit or thresholds

> Transfer pricing documentation

For fiscal years starting on or after 1 April 2018, Hong Kong

taxpayers are required to prepare Master File and Local File

documentation. Exemptions based on business size and

related-party transaction volume have been adopted.

A waiver on the requirement to prepare Master File and local

file documentations for specified domestic transactions has

also been applied.

Specifically, enterprises engaging in transactions with

associated enterprises will not be required to prepare master

file and Local File documentation if they can meet either one of

the following exemption criteria:

> 

Exemption based on size of business (satisfying any two of

the three conditions):

> Total revenue not more than HKD400 million

> Total assets not more than HKD300 million

> Average number of employees not more than 100

> Exemption based on related-party transactions (if the

amount of a category of related-party transactions,

excluding specified domestic transactions, for the relevant

accounting period is below the proposed threshold, an

enterprise will not be required to prepare a Local File for

that particular category of transactions):

> Transfer of properties (other than financial assets and

intangibles): HKD220 million

> Transactions in respect of financial assets: HKD110

million

> Transfer of intangibles: HKD110 million

> Any other transaction (e.g., service income and royalty

income): HKD44 million

> Exemption in respect of domestic transactions: master

and Local Files need not be prepared for specified domestic

transactions between associated persons.

If an enterprise is fully exempted from preparing a Local File

(i.e., its related-party transactions of all categories are below

the prescribed thresholds), it will not be required to prepare a

Master File either.

> Master File

Please refer to the requirements on materiality limit and

threshold for transfer pricing documentation.

> Local File

Please refer to the requirements on materiality limit and

threshold for transfer pricing documentation.

> CbCR

The CbCR filing threshold is HKD6.8 billion for Hong Kong

ultimate parent entities (which is set in accordance with the

OECD recommendation, i.e., EUR750 million).

> Economic analysis

Please refer to the requirements on materiality limit and

threshold for transfer pricing documentation.

c) Specific requirements

> Treatment of domestic transactions

Domestic related-party transactions are exempted from being

adjusted on the basis of the FTPR, which requires transactions

to meet the arm’s-length principles, to the extent that it

meets certain conditions such as not having a Hong Kong tax

advantage or not having a tax avoidance purpose.

The Local File of the Hong Kong entity is not required to cover

specified domestic transactions.

> Local language documentation requirement

The transfer pricing documentation may be prepared in either

English or Chinese.

> Safe harbor availability including financial transactions if

applicable

Please refer to the requirements on materiality limit and

threshold for transfer pricing documentation.

> Is aggregation or individual testing of transactions preferred

for an entity

The application of aggregation or individual testing is generally

consistent with the OECD Guidelines. Therefore, the testing

approach should be assessed on a case-by-case basis.

> Any other disclosure or compliance requirement

There is none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Supplementary Form S2 is an additional form to the profits tax

return for transfer pricing purposes.

In addition, having declared the obligation to prepare master

file and Local File in the Supplementary Form S2 of the profits

tax return, selected taxpayers may be requested to complete

Form IR1475, Transfer Pricing Documentation — Master File

and Local File, electronically and submit it to the IRD within

one month upon receipt of the request.

> Related-party disclosures along with corporate income tax

return

IRD announced on 23 January 2019 a revised profits

tax return for corporations (i.e., BIR51 and a set of new

Supplementary Forms S1 to S10). With effect from the year

of assessment 2018–19, Hong Kong taxpayers are required

to disclose certain related-party information (i.e., the location

of the non resident associated persons) and confirm their

transfer pricing documentation compliance in the BIR51 and

Supplementary Form S2, Transfer Pricing.

> Related-party disclosures in financial statement/annual

report

Yes, related-party transactions are required to be disclosed

in the annual financial statement. Please refer to HKAS 24

(Revised), Related Party Disclosures.

> CbCR notification included in the statutory tax return

The CbCR notification is separately filed. However, Hong Kong

taxpayers are required to confirm their CbCR compliance in

the revised tax returns, which are effective from the year of

assessment 2018–19.

> Other information/documents to be filed

There is none specified.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Tax returns are normally due for filing within one month from

the date of issue of the profits tax return, but an extension of

time may be granted if a reasonable request is filed with the IRD.

Tax representatives can apply for an extension under the

Block Extension Scheme; the due date is normally extended

as follows. The Block Extension Scheme for lodgement of

2020–21 tax returns by tax representatives can be found here:

ird.gov.hk/eng/pdf/bel21e.pdf

Accounting date Extended due date

For N Code Return (accounting date

between

2 May

1 April 2020 and 30 November 2020) 31 May 2021

For D Code Return (accounting date

between

15 November

1 and 31 December 2020) 16 August 2021

For M Code Return (accounting date

between

1 January 2021 and 31 March 2021) 15 November 2021

For M Code Return and current year

loss cases

31 January 2022

> Other transfer pricing disclosures and return

It is included within the profits tax return (i.e., Supplementary

Form S2), and therefore, the same dates apply.

If the taxpayer is selected to complete the Form IR1475 as

mentioned above, the form is required to be submitted within

one month upon receipt of the request.

> Master File

A Master File has to be prepared within nine months after the

end of the Hong Kong entity’s accounting period.

> CbCR preparation and submission

A CbCR has to be prepared and submitted within 12 months

after the end of the ultimate parent entity’s accounting period

when there is a CbCR filing obligation for the Hong Kong

ultimate parent entity or a local filing requirement.

> CbCR notification

CbCR notifications are due within three months after the end

of the ultimate parent entity’s accounting period.

b) Transfer pricing documentation/Local File preparation

deadline

The Master File and Local File must be prepared within nine

months after the end of the Hong Kong entity’s accounting

period.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation.

> Time period or deadline for submission on tax authority

request

There is no specific guidance on the time to submit transfer

pricing documentation. However, typically, in an audit or

inquiry, a taxpayer is given 30 days (extensions are available)

to reply to the tax authorities.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is no extension in terms of preparation or submission

deadlines for Master File, Local File, CbCR and CbCR

notification.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

The IRD recognizes the methods outlined in the OECD

Guidelines, which include the traditional transaction methods

(CUP, resale price and cost plus) and profit methods (profit

split and TNMM). Other methods are also allowed, to the

extent that the OECD-recognized methods are not applicable.

> Domestic transactions

Same as the international transactions (however, this applies

only when the domestic related-party transactions are not

exempted from transfer pricing rules and documentation).

b) Priority and preference of methods

The most appropriate method should be selected. Although

traditional transaction methods may be preferred, as they

are considered to be the most direct means of establishing

the arm’s-length price, the profit methods are accepted in

circumstances where traditional methods are not comparable

or reliable.

8. Benchmarking requirements

> Local vs. regional comparables

The quality of comparable data is more important than the

number of comparables identified. DIPN 59 suggests that

Hong Kong comparables should be considered in the first

instance. If there are no Hong Kong comparables, or the

potential Hong Kong comparable companies identified are

not applicable, then it may be necessary to consider using

comparables from other jurisdictions. Appropriately selected

overseas data is accepted by the IRD. The same or similar

market principle is important. Jurisdictions recognized

as Hong Kong’s closest reference jurisdictions in terms of

demographics, size of economy and stage of economic

development should be considered.

> Single-year vs. multiyear analysis

Multiple-year data is considered useful in providing information

about the relevant business and product life cycles of the

comparables.

> Use of interquartile range

The use of ranges, such as an interquartile range, would be

accepted.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Financials should be updated every year, and new searches

should be performed every three years.

> Simple, weighted or pooled results

Weighted average data for each comparable, computed based

on the most recently available three to five years of data, is

considered to be typically reflective of a normal product life

cycle.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

> Consequences of failure to submit, late submission or

incorrect disclosures

According to the Amendment Ordinance, penalties in relation

to Master File and Local File will be a fine at level 5 (i.e.,

HKD50,000), along with a court order due to failure to comply

without reasonable excuse. A fine will be escalated to level 6

(i.e., HKD100,000) when there is a failure to comply with the

court order.

In addition, a failure to file or notify CbCR without a reasonable

excuse will trigger a fine at level 5 (i.e., HKD50,000), with a

further fine of HKD500 for every day thereafter under certain

conditions, along with a court order. On failure to comply with

the court order, the fine will be at level 6 (i.e., HKD100,000).

For filing misleading, false or inaccurate information, the

fine will be at level 5 (i.e., HKD50,000). If such misleading,

false or inaccurate information is filed with willful intent,

penalties will be either on summary conviction (i.e., a fine at

HKD10,000 and imprisonment for six months) or on conviction

on indictment (i.e., a fine at HKD50,000 and imprisonment

for three years). These penalties related to CbCR apply to

directors and key officers as well as service providers engaged

by the reporting entity.

In addition to the transfer pricing penalties stated above, the

IRD can impose penalties for the broader corporate tax-related

issues.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, for transfer pricing-specific adjustments, penalties

assessed will be limited to the amount of tax undercharged.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, for transfer pricing-specific adjustments, penalties

assessed will be limited to the amount of tax undercharged

> Is interest charged on penalties or payable on a refund?

It is not applicable on penalties. However, there may be

interest charges under unconditional holdover of the tax in

dispute. Tax reserve certificates can be purchased to address

this.

b) Penalty relief

The scale of penalty to be imposed on a person is a function

of the nature of transfer pricing treatment and the effort

spent to determine the arm’s-length amount. In order to have

a documented transfer pricing treatment, a person must

have records that are prepared within nine months after the

year-end of the relevant accounting period of the person. Such

records should also sufficiently explain the applicability of the

arm’s-length nature of the transactions.

For the purpose of maintaining consistency in penalty

calculation and in the generality of cases, the following penalty

loading table is used.

Transfer pricing

treatment

Normal loading Maximum with

commercial

restitution

No documented

transfer pricing

treatment

50% 75%

Documented

transfer pricing

treatment without

reasonable efforts

25% 50%

Documented

transfer pricing

treatment with

reasonable efforts

Nil Nil

The domestic objection and appeal process for income tax is

available to the taxpayer. In addition, the taxpayer may request

to resolve the issue through an MAP if the counterparty to the

transaction is a resident of a jurisdiction that has a tax treaty

with Hong Kong.

10. Statute of limitations on transfer pricing

assessments

It will be six years after the end of the assessment year. In the

case of fraud or willful evasion, the statute of limitations is

extended to 10 years from the end of the assessment year.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Please refer to the expected changes to Hong Kong’s local

transfer pricing rules due to COVID-19.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium to high,

because the IRD has increased its attention on related-party

transactions. While there are no transfer pricing-specific field

auditors, and there is no separate division within the IRD that

deals specifically with transfer pricing cases, transfer pricing

may be reviewed as part of an audit if the IRD suspects that

transactions have not been carried out on an arm’s-length

basis (e.g., goods are sold or purchased at a deflated or

inflated price, service or royalty fees are not commensurate

with the benefits received, or transactions are with tax-haven

locations).

An audit related to transfer pricing will be aimed at reviewing

the intercompany pricing policies and any analysis prepared to

support the pricing, considering the facts of the business and

the transactions. Transfer pricing inquiries typically arise as

part of general field audits, with the deductibility of expenses

or payments to related parties being a common line of inquiry.

Specifically, tax adjustments in such cases arise when the

taxpayer claims that a percentage of revenue is non-Hong

Kong sourced. The IRD expects that a similar percentage of

costs associated with that activity is also non-Hong Kong

sourced.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of the transfer pricing methodology being

challenged may be considered to be medium to high,

depending on the complexity of the related-party transactions.

This is because transfer pricing-associated audits or inquiries

typically arise as part of general field audits, with the

deductibility of expenses or payments to related parties

being a common line of inquiry. Therefore, when viewed

from a corporate tax perspective, there is often a focus

on transactional- and product-level pricing without fully

recognizing the transfer pricing structure and methodology.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood of an adjustment may be considered to

be medium to high if a transfer pricing methodology is

challenged, if the case under review has been ongoing for a

lengthy period and if it involves material tax assessments. The

risk is also high if the taxpayer is unable to provide sufficient

information, on a timely basis, to support its tax positions and

if the responses do not adequately address the information

being requested as part of the audit.

> Specific transactions, industries and situations, if any, more

likely to be audited

The likelihood of a tax audit in Hong Kong may be triggered

by a variety of situations, such as fluctuating profit margins,

if the accounts of a business are heavily qualified, profits or

turnover are deemed unreasonably low, filing of tax returns

is persistently delayed or omitted, business records are not

properly maintained, or requested information is not provided.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

There is an APA program available in Hong Kong. The APA

program will cover unilateral, bilateral and multilateral

agreements.

> Tenure

In general, an APA will apply for three to five years.

> Rollback provisions

Yes, rollback may be considered, subject to certain conditions.

> MAP opportunities

Yes, MAP should be initiated within the time limit from the

first notification of the actions giving rise to taxation not in

accordance with the provisions of the double taxation treaties

(DTTs). In general, the time limit is specified in the MAP article

of the relevant DTT (e.g., three years). Failure to observe the

time limit may result in the rejection of MAP request by the

IRD.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No, in general, the IRD will uphold existing advance pricing

arrangements (APAs), unless a condition leading to the

revocation, cancellation or revision of the APA has occurred.

Where material changes in economic conditions lead to the

breach of the critical assumptions, taxpayers should notify the

IRD not later than one month after the breach occurs.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There is no thin-capitalization rule in Hong Kong.

Martin M Richter

martin.richter@hk.ey.com

+ 852 26293938

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

National Tax and Customs Administration (Nemzeti Adó- és

Vámhivatal — NTCA).1

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Section 18 of the Act on Corporate Tax and Dividend Tax,

Correction of Prices Applied Among Affiliated Companies, has

been applicable since 1996.

> Section reference from local regulation

Based on Section 4.23 of the Act on Corporate Tax and

Dividend Tax, “affiliated company” shall mean:

a) The taxpayer and the person in which the taxpayer has a

majority control — whether directly or indirectly — accord-

ing to the provisions of the Civil Code

b) The taxpayer and the person that has majority control in

the taxpayer — whether directly or indirectly — according

to the provisions of the Civil Code

c) The taxpayer and another person if a third party has

majority control in both the taxpayer and such other

person — whether directly or indirectly — according to

the provisions of the Civil Code, where any close relative

holding a majority control in the taxpayer and the other

person shall be recognized as third parties

d) A non resident entrepreneur and its domestic place of

business and the business establishments of the non

resident entrepreneur, furthermore, the domestic place of

business of a non resident entrepreneur and the person

who maintains the relationship defined under Paragraphs

a)–c) with the non resident entrepreneur

e) The taxpayer and its foreign branch and the taxpayer’s

foreign branch and the person who maintains the rela-

tionship defined under Paragraphs a)–c) with the taxpayer

f) The taxpayer and other person if between them domi-

nating influence is exercised relating to business and

financial policy having regard to the equivalence of man-

agement

1https://en.nav.gov.hu

g) Paragraphs a)–c) notwithstanding, affiliation shall be

considered to exist:

ga) For the purposes of Point 11, Point 53, Paragraph f) of

Subsection (1) of Section 8 and Section 16/A even if the

taxpayer holds directly or indirectly a participation in terms of

voting rights or capital ownership of 25% or more or is entitled

to receive 25% or more of the profits in an entity, with the

proviso that for the purposes of these provisions compliance

with Paragraph f) shall not be taken into account

gb) For the purposes of Section 16/B even if the taxpayer

holds directly or indirectly a participation in terms of voting

rights or capital ownership of 50% or more or is entitled to

receive 50% or more of the profits in an entity, with the proviso

that having regard to participation in terms of voting rights or

capital ownership the influence of persons acting in concert

shall count together and in the case of taxpayers within a

consolidated group of companies for financial accounting

purposes Paragraph f) shall be taken into account

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The Act on CIT contains specific reference to the OECD

Guidelines. If the Hungarian tax laws do not include regulations

on specific issues, the OECD Guidelines may be used as a

primary reference.

A new decree (i.e., Decree No. 32/2017 (X.18.) of the Minister

of Finance on the documentation requirements related to

transfer pricing was published in Hungary, which follows the

recommendations of OECD BEPS Action 13 and implements

the three-tiered approach pertaining to BEPS Action 13 (i.e.,

Master File, Local File and CbCR).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

BEPS Action 13 has been implemented for transfer pricing

documentation in Hungary.

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

It covers Master File, Local File and CbCR.

> Effective or expected commencement date

The documentation requirements under Action 13 are

in place in accordance with the new Hungarian transfer

pricing decree. It is mandatory to prepare the transfer

pricing documentation with the structure regulated by

the new decree for financial years starting on or after 1

January 2018.

> Material differences from OECD report template or format

There are material differences between the formats of the

OECD report template and the local jurisdiction regulations in

the context of the Local File, which are:

> Administrative data of the related parties (i.e., name,

registered seat (official location), tax number or company

registration number, the name and seat of the registering

authority) and the relationship between associated parties

> The date of the preparation of the Local File

> The justification and reasons for consolidation (if such a

report was prepared)

> The details of court or other official procedures (in

progress or finished) related to the arm’s-length price

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report typically would not be

sufficient to achieve penalty protection. See the section above.

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

on BEPS?

Yes, Hungary is part of the OECD/G20 Inclusive Framework on

BEPS.

> d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, signed on 1 December 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, contemporaneous requirement.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, local branches of foreign companies have to comply

with the transfer pricing documentation and CbCR-related

obligations if they conclude that intercompany transactions

and their volume exceed the materiality threshold in a given

year.

> Does transfer pricing documentation have to be prepared

annually?

Transactions have to be documented for each year that falls

under the documentation obligation. Even if the main terms

and conditions of the transaction did not change significantly

compared with the previous year, it is mandatory to prepare

new transfer pricing report covering the relevant financial

year, for financial years starting on or after 1 January 2018.

Updating the benchmarking analysis is required.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

The transfer pricing decree prescribes that local

documentation has to be prepared for each taxpayer for each

intercompany transaction. If intercompany transactions have

been concluded between the local entities, the transactions’

arm’s-length nature should be tested and analyzed from the

perspective of both entities.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is a materiality limit for the preparation of the

transfer pricing documentation (i.e., Local Files and master

file). The materiality limit is HUF50 million (approximately

EUR140,000). When determining whether a transaction falls

under the documentation obligation, the rules of consolidation

also have to be considered (i.e., the transactional value

of the transactions with similar terms and conditions has

to be summed up when tested against the documentation

threshold).

> Master File

The Master File has to be prepared for transactions exceeding

HUF50 million in a given tax year.

> Local File

The Local File has to be prepared for transactions exceeding

HUF50 million in a given tax year.

> CbCR

CbCR has to be prepared and filed according to OECD

standards for all Hungarian tax resident entities that are

members of an MNE group with annual reports that show

consolidated group revenue of at least EUR750 million.

> Economic analysis

There is a materiality limit for the preparation of economic

analysis. If a transaction is considered to be a low value-adding

service, no economic analysis has to be prepared. In every

other case, economic analysis has to be prepared for the

specific transaction.

Specific requirements

> Treatment of domestic transactions

There is no specific requirement for the treatment of domestic

transactions. The obligation and requirements are the same as

for international transactions.

> Local language documentation requirement

There is no requirement for the transfer pricing documentation

to be prepared exclusively in the local language.

In Hungary, the Master File and the Local File can be prepared

in languages other than Hungarian. If the transfer pricing

documentation is prepared in other languages (except English,

German and French), the Hungarian Tax Authority can request

for an attested Hungarian translation of the documents.

However, in line with the current expectation of the Hungarian

Tax Authority, the transfer pricing documentation should be

prepared in Hungarian, English, German or French.

> Safe harbor availability including financial transactions if

applicable

No safe harbors are applicable except for guidance on low

value-added services.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is none specified.

> Related-party disclosures along with corporate income tax

return

Within 15 days of concluding its first contract with a related

party, the taxpayer must report the name, registered seat

and tax number of the contracting party to the NTCA. The

cessation of the related-party status must also be reported.

In the CIT return, the tax base should be adjusted if the

price used in the related-party transaction differs from

the fair market price. In their year-end corporate tax

returns, taxpayers must declare the type of transfer pricing

documentation they have elected to prepare.

According to Hungarian transfer pricing regulations,

the taxpayer is not required to file the transfer pricing

documentation with the NTCA; however, the taxpayer needs to

present the documentation during a tax audit upon request.

> Related-party disclosures in financial statement/annual

report

Companies’ financial statements include certain compulsory

disclosures about related-party transactions (e.g., interest

income and expense received or paid to related parties).

> CbCR notification included in the statutory tax return

No, Hungarian constituent entities (CEs) will need to submit a

notification to the tax authority by the last day of the reporting

fiscal year.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The CIT return deadline is 31 May. The general rule is as

follows: “Taxpayers shall satisfy their obligation to file tax

returns concerning corporate tax and dividend tax by the last

day of the fifth month following the last day of the tax year to

which it pertains.”

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

The deadline for preparing the Master File is the date specified

in the regulations applicable to the ultimate parent company of

the group. However, the Master File must be prepared no later

than 12 months after the last day of the tax year in question.

Additionally, if no Master File is being prepared within the

group, or the ultimate parent company is a Hungarian tax

resident, the deadline to prepare the Master File in this case

is the same as the Local File preparation deadline, i.e., five

months after the last day of the fiscal year.

> CbCR preparation and submission

Reporting entities have to file the CbCR with the Hungarian

Tax Authority within 12 months of the last day of the reporting

fiscal year.

> CbCR notification

The Hungarian subsidiaries of MNEs should notify the

Hungarian Tax Authority about the following information until

the last day of the relevant reporting financial year, i.e., 31

December: the name of the reporting entity, the tax residence

of the reporting entity, the name of the MNE group, and the

reporting fiscal period of the MNE group or the last day of the

reporting FY of the MNE group.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation (i.e., the Local File together

with the Master File) needs to be prepared by the time of filing

the tax return to achieve penalty protection (e.g., if required).

The deadline for the preparation of the Local File is the same as

the deadline for the submission of the CIT return.

As an extension from the general rules, the deadline for

preparing the Master File is the date specified in the legal

regulations applicable to the ultimate parent company of the

group. However, the Master File must be prepared no later than

12 months from the end of the fiscal year.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

The Local File (together with the Master File) has to be readily

available by the documentation deadline. Upon request of

the Hungarian Tax Authority, no extra time is provided for

taxpayers after the CIT return’s submission deadline. If the

transfer pricing documentation is not available upon request,

default penalties for non-compliance can be levied. The

documentation will also have to be prepared regardless of the

fact that penalties are levied. Repeated and higher penalties

may be levied in the case of continued non-compliance.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No, there aren’t any.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The traditional methods (i.e., CUP, resale price and cost plus)

and the profit-based methods recommended by the OECD (i.e.,

TNMM and profit split) are acceptable. Other methods can

also be used, but only after the five major methods have been

rejected.

As an important requirement in a relatively wide array of

cases, the application of the interquartile range is mandatory

since 2015. As a result, taxpayers are required by law to

apply the interquartile range in their pricing and assess their

Hungarian tax liabilities accordingly.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are preferred in the Hungarian unilateral

APA practice, but otherwise not mandated by law.

The Hungarian Tax Authority expects to apply Hungarian

comparables as a first step. As a result, the authority

challenges accepted comparables other than the local

comparables based on the general practice.

Furthermore, if setting the geographic criteria only to Hungary

does not result in sufficient comparable companies, the criteria

can be extended to V4 countries (Czech Republic, Hungary,

Poland and Slovakia). If this still does not provide a sufficient

number of companies, then the geographic criteria can be

extended to Eastern Europe and EU28 countries.

> Single-year vs. multiyear analysis for benchmarking

A multiyear analysis is preferred in testing the arm’s-length

analysis in terms of the PLI2 of the comparable entities.

> Use of interquartile range

It is mandatory by law unless a full functional analysis is

prepared and documented for each comparable used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

In line with the OECD Transfer Pricing Guidelines, a new search

has to be prepared every three years. For the two years not

covered by a new comparable search, the financial update of

the sample is required. With respect to financing transactions,

a new search is expected to be prepared for each year. These

requirements are derived from the practices of the Hungarian

Tax Authority, and they are enforced rigorously. Furthermore,

according to the new Hungarian transfer pricing decree, the

former practice of the Hungarian Tax Authority is supported by

legislation in this respect.

> Simple, weighted or pooled results

The simple average is preferred, but is not mandated by

2A profit level indicator (“PLI”) is a measure of a company’s profitability

(e.g. operating revenue/turnover, operating profit/loss) that is used to

compare comparables with the tested party. If a comparable search is

performed in the Amadeus/TP Catalyst database, the NTCA prefers

a multiyear analysis to be performed when testing the comparable

companies’ PLI. If however, a comparable search is being performed

analysing a financial intercompany transaction, the single-year PLI

should be tested.

law; a pooled method is preferred (every data is a separate

observation).

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

A default penalty of up to HUF2 million (approximately

EUR5,600) may be levied for not fulfilling the transfer pricing

documentation requirements. Repeated infringement of the

documentation requirement may trigger a default penalty of

up to HUF4 million (approximately EUR11,200). Repeated

default on fulfilling the documentation requirement on the

same transfer pricing documentation may trigger a default

penalty four times higher than the default penalty levied when

levying the penalty for the first infringement. As a general

rule, the default penalty can be levied for each missing or

incomplete set of transfer pricing documentation per fiscal

year.

> Consequences of failure to submit, late submission or

incorrect disclosures

Yes, a default penalty of up to HUF2 million (approximately

EUR5,600) may be levied for not fulfilling the transfer pricing

documentation requirements. Repeated infringement of the

documentation requirement may trigger a default penalty of

up to HUF4 million (approximately EUR11,200). Repeated

default on fulfilling the documentation requirement on the

same transfer pricing documentation may trigger a default

penalty four times higher than the default penalty levied when

levying the penalty for the first infringement. As a general

rule, the default penalty can be levied for each missing or

incomplete set of transfer pricing documentation per fiscal

year.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

If a transfer pricing adjustment is assessed, the Hungarian

Tax Authority can levy tax penalty (generally, 50% of the tax

shortage) along with late payment interest (the Hungarian

National Bank (Magyar Nemzeti Bank — MNB) base rate plus

five percentage points from 2019).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

If a transfer pricing adjustment is assessed, the Hungarian

Tax Authority can levy tax penalty (generally, 50% of the tax

shortage) along with late payment interest (the Hungarian

National Bank base rate plus five percentage points from

2019).

> Is interest charged on penalties or payable on a refund?

Yes, it is charged at the prime rate of the Hungarian National

Bank plus five percentage points. No late payment interest

shall be charged on late payment interest.

b) Penalty relief

If taxpayers waive their right to appeal against the resolution

issued at the first instance on posterior tax assessment, and

pay the tax difference imposed in the resolution by the due

date, the taxpayers should be exempt from paying 50% of the

tax penalty imposed.

10. Statute of limitations on transfer pricing

assessments

In the absence of a tax return or appropriate reporting,

the statute of limitations lapses on the last day of the fifth

calendar year calculated from the tax year in which taxes

should have been declared, reported or paid. However, within

the framework of the Arbitration Convention, it is possible

to request a tax base adjustment even after the statute of

limitations has expired.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

After a slowdown in 2020 due to people not being able to work

at 100% capacity, there has been a significant increase in the

number of transfer pricing-specific tax audits in 2021.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The risk of transfer pricing issues being scrutinized during

an NTCA audit is steadily growing. The NTCA now routinely

checks the existence and completeness of the documentation

(i.e., whether all transactions are covered).

For larger transactions, the NTCA usually inspects whether

the content and formal requirements are fulfilled in the

documentation. Since the beginning of 2007, the NTCA has

started to train transfer pricing specialists. Consequently,

the NTCA’s knowledge of the application of transfer pricing

methods has increased significantly. Since 2009, targeted

transfer pricing audits have been commonplace; the number

of audits and the amount of assessments are growing at a rate

of roughly 50% each year. Since 2012, there have been two

groups within the NTCA dedicated to transfer pricing issues.

One group has specialized mainly in transfer pricing audits

of large taxpayers, while the other deals solely with APA and

transfer pricing-related MAP requests. Another specialist

group was set up in late 2017 with the intention to double

transfer pricing audit capacity nationwide. As of 1 October

2021, the group dedicated solely to APA and transfer pricing-

related MAP requests, works under the Ministry of Finance.

The likelihood of comprehensive NTCA audits is characterized

as medium overall.

For medium and large taxpayers, however, the risk of an audit

with a transfer pricing focus can be characterized as high.

Large taxpayers are likely to be reviewed every two to three

years. In particular, the NTCA places significant focus on loss-

making taxpayers and the enforcement of the interquartile

range, especially at limited-risk entities.

In line with the new tax procedural rules implemented in

Hungary effective from 1 January 2018, the tax audit

processes will take shorter duration, which will result in

the taxpayers having limited time available for providing

information during tax audit processes compared with the

former rules.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The NTCA habitually challenges the transfer pricing

methodology, especially for situations in which:

> The profitability of the Hungarian party is not tested in the

documentation.

> The taxpayer came to an unusual conclusion regarding the

transfer prices.

> The pricing method is unusual (i.e., not TNMM).

> The transactions themselves can be regarded as unusual

or unique (especially hybrids, CCAs and certain royalty

arrangements).

The NTCA continuously cooperates with other countries’

tax authorities and follows the international transfer pricing

auditing practices as well, through which it constantly develops

its dedicated transfer pricing experts and their auditing

practices. Based on experience, the NTCA is now rather

knowledgeable about matters concerning method selection;

therefore, the risk of the taxpayer’s application of a particular

transfer pricing methodology being challenged is characterized

as medium to high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Such a likelihood may be considered to be medium to high.

Whenever the NTCA challenges the methodology, it will almost

certainly also prepare an alternative financial analysis that

implies an adjustment.

> Specific transactions, industries and situations, if any, more

likely to be audited

See the “Likelihood of transfer pricing-related audits” section

above.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

On 1 January 2007, a formal APA regime was introduced

in Hungary. Unilateral, bilateral and multilateral APAs are

available according to the provision.

> Tenure

Anonymous prefiling consultation with the Ministry of Finance

APA team is free. APAs may be requested for ongoing and

future transactions, can be relied on for three to five years and

can be extended for a further three years. Starting from the

date of filing a valid APA request, the taxpayer does not have

to prepare transfer pricing documentation for the transactions

covered by the APA.

> Rollback provisions

There is no rollback provision provided by the law.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty (DTT) to which Hungary is a signatory.

Most of Hungary’s DTTs permit taxpayers to present a case

to the Hungarian Tax Authority within three years from the

first notification to the taxpayer of the actions giving rise to

taxation not in accordance with the DTT. However, time limits

may vary, and the relevant DTT should be consulted for the

applicable time limit. Taxpayers have three years to present a

case to the Hungarian Tax Authority under the EU Arbitration

Convention (90/436/EEC).

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

The tax officers expect that some of the previously issued

APAs will have to be modified and renegotiated due to the

crisis.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Based on grandfathering rules, loans concluded before 17

June 2016 (and not modified thereafter) are subject to the

previous thin-capitalization rules that apply a 3:1 debt-to-

equity ratio, although a taxpayer may opt to apply the current

rules instead.

Zoltan Liptak

Zoltan.Liptak@hu.ey.com

+ 36306359204

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Directorate of Internal Revenue.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Reference to transfer pricing can be found in the following:

> Article 57(4) of the Icelandic Income Tax Act No. 90/2003

(documentation requirements), effective from 1 January

2015

> Article 57(3) of the Icelandic Income Tax Act No. 90/2003

(definition of related parties), effective from 1 January

2015

> Regulation No. 1180/2014 on the documentation and

transfer pricing in transactions between related parties,

effective from 1 January 2015

> Regulation No. 1166/2016 on CbCR, effective from 1

January 2017; new Regulation No. 766/2019 effective

from 22 August 2019

> Section reference from local regulation

Article 57 of the Icelandic Income Tax Act No. 90/2003 has

reference to transfer pricing .

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Iceland is a member of the OECD.

Tax authorities recognize the OECD Guidelines. According to

1https://www.rsk.is/english/tax-offices/.

the law, tax authorities may assess and adjust pricing between

related parties on the basis of the OECD principles.

Given the newness of both Chapter IX of the OECD Guidelines

and the domestic transfer pricing rules, it is unclear how

business restructurings will be affected.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

The implementation of BEPS covers Master File, Local Files

and CbCR.

> Effective or expected commencement date

BEPS Action 13 has come into effect from 1 January

2016.

> Material differences from OECD report template or format

In general, the Icelandic transfer pricing rules follow the OECD

Guidelines. However, additional requirements are stipulated in

the following articles of Regulation No. 1180/2014:

> Article 6: Any changes in transfer prices from previous

years should be explained.

> Article 7: For service transactions, the taxpayer should

be able to demonstrate the arm’s-length nature of the

allocation of costs and that the costs charged correspond

to the benefit received.

> Article 8: Transactions involving intangible assets require

additional information related to the intangible asset

itself (e.g., the present value of future income from the

intangible asset).

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No, the Local File must additionally meet the requirements

stated in Articles 6, 7 and 8 of Regulation No. 1180/2014.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 12 May 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the transfer pricing documentation needs to be prepared

before the deadline of the annual tax return.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

The transfer pricing documentation has to be prepared

annually under Iceland’s local jurisdiction regulations, which

follow the OECD Guidelines. Additionally, if there have been

any changes in the transfer prices from the previous year,

the changes must be documented. As part of the tax return,

the taxpayer must file a form (RSK 4.28) providing specific

information on transactions with related parties and whether

each type of transaction has been documented appropriately.

The transfer pricing documentation is to be submitted upon

request from the Directorate of Internal Revenue.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No one report is sufficient for the group.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is a materiality limit for transfer pricing documentation.

In accordance with Article 57(4) of the Icelandic Income Tax

Act, taxpayers reporting a revenue exceeding ISK1 billion in

the previous financial year are required to prepare transfer

pricing documentation for the subsequent financial year.

> Master File

If revenue in 1 fiscal year or total assets at the start or end of

a fiscal year exceed ISK1 billion, the company is required to

prepare a Master File.

> Local File

If revenue in one fiscal year or total assets at the start or end

of a fiscal year exceed ISK1 billion, the company is required to

prepare a Local File.

> CbCR

There is a threshold of EUR750 million or ISK100 billion

consolidated revenue for the preparation of a CbC report.

> Economic analysis

There is a de minimis threshold provided for in Article 12 of

Regulation No. 1180/2014 whereby transactions that have a

limited economic volume and significance on the operations

of the taxpayer should only be mentioned in the transfer

pricing documentation and are not covered further by the

documentation. The de minimis threshold does not apply for

transactions related to intangible assets.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

In accordance with Article 15 of Regulation 1180/2014, the

transfer pricing documentation should be available in Icelandic

or English.

> Safe harbor availability, including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Iceland tax regulations allows for individual testing of

transactions.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Legal entities subject to the documentation requirements

must submit form RSK 4.28 with their tax return by 31 May.

Form RSK 4.28 requires taxpayers to provide the name of

related parties, tax identification numbers, jurisdiction of

incorporation, and type and volume of the transaction as well

as a “check-the-box” confirmation of whether the transaction

has been documented.

> Related-party disclosures along with corporate income tax

return

Yes.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

No, multinationals operating in Iceland and falling within

the scope of Article 91(a) of the Income Tax Act, i.e., with

revenues amounting to ISK100 billion in 2018, should file the

notification with the Directorate of Internal Revenue by the last

day of the reporting period of the ultimate parent entity.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The corporate income tax return filing deadline is 31 May. An

extension can be applied for under certain circumstances.

> Other transfer pricing disclosures and return

The filing deadline for other transfer pricing disclosures and

return is 31 May.

> Master File

Completed upon deadline — by the date of the tax return (31

May).

> CbCR preparation and submission

The CbCR submission deadline is no later than 12 months

following the close of the financial year.

> CbCR notification

The CbCR notification shall be filed no later than 1 month after

the last day of reporting fiscal year of the MNE Group. The

company must file Form RSK 4.31.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation should be finalized along

with the tax returns. The documentation is to be submitted

only upon request by the Directorate of Internal Revenue.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No; however, the documentation should be prepared by the

time the tax return is filed — i.e., 31 May.

> Time period or deadline for submission on tax authority

request

The taxpayer will have 45 days to submit the transfer pricing

documentation once requested by the tax authorities in an

audit or inquiry.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

There is none specified.

b) Priority and preference of methods

The pricing methods are based on the OECD Guidelines. The

provision does not specify any one method or prioritize the

methods.

8. Benchmarking requirements

> Local vs. regional comparables

There are no local benchmarking requirements for Iceland. In

accordance with Article 14 of Regulation No. 1180/2014, the

Directorate of Internal Revenue may request that a benchmark

study be provided.

> Single-year vs. multiyear analysis

As the transfer pricing rules in Iceland have only recently been

implemented, there has been no clear communication on

whether the single-year or multiyear analysis is preferred.

> Use of interquartile range

It is unclear whether the interquartile range will be applied by

the Directorate of Internal Revenue.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Based on the OECD Guidelines, a fresh benchmarking search

every third year is recommended, with an annual update of the

financial data.

> Simple, weighted or pooled results

There has been no clear communication on whether the simple

average or the weighted average will be preferred by the

Directorate of Internal Revenue.

> Other specific benchmarking criteria, if any

There has been no clear communication on what the

appropriate independence criteria should be. However, based

on the definition of “related parties” in Article 57(4) of the

Icelandic Income Tax Act, the independence threshold should

be below 50%.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

According to new law no. 61/2021the penalty amounts are as

follows:

ISK3 million for each financial year in which a company has not

fulfilled its documentation obligation in part or in full.

ISK3 million if the company does not fulfill its obligation to

document within 45 days of request from the tax authority.

ISK1.5 million if the company has submitted documentation

that the DIR does not consider satisfactory and the company

has not made corrections in accordance with the DIR´s

requirements within 45 days.

Penalties may be imposed for a maximum of six income

years immediately preceding the year for which the penalty

was imposed and can amount to a maximum of ISK6 million.

The penalty is reduced by 90%, 60% and 40% respectively, if

deficiencies in documentation are rectified within 30 days, two

months and three months of the DIR´s ruling. Same as below.

> Consequences of failure to submit, late submission or

incorrect disclosures

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The provision states that tax authorities may assess and adjust

pricing between related parties as they are defined in the

provision based on the OECD principles. These adjustments

can be performed within the domestic statute of limitations

period (i.e., for the six previous years from the date of the

adjustment). A 25% penalty can be applied to the adjustment

of pricing in case of underpayments.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above. The penalties are only applied to the

adjustment of pricing in case of underpayments.

> Is interest charged on penalties or payable on a refund?

There is none specified.

b) Penalty relief

According to Article 108 of Act 90/2003 on income tax, the

general rule is that a penalty can be avoided if the taxpayer

is not responsible for the situation causing the adjustment of

pricing or if the situation is caused by a force majeure.

Failure to comply with documentation rules does not provide

penalty relief.

If the taxpayer does not agree with the adjustment proposed

by the Directorate of Internal Revenue, the adjustment can be

appealed to the Internal Revenue Board, which is the supreme

administrative appeals authority for cases regarding taxation,

value-added tax (VAT) and duties; it is independent of the

Directorate of Internal Revenue and the Ministry of Finance.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations period is six years prior to the year of

assessment.

11. Are there any COVID-19 related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit, in general, depends

on several factors, such as the surveillance plan of the tax

authorities, the type of business, revenue and compliance. The

risk can, therefore, be defined as medium.

The Directorate of Internal Revenue has recently established a

dedicated transfer pricing team. Therefore, the likelihood that

a transfer pricing audit will be initiated is considered medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

As a dedicated team has only recently been established by the

Directorate of Internal Revenue, we are unable, at this time,

to assess the likelihood of transfer pricing methodology being

challenged.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

See the previous section.

> Specific transactions, industries and situations, if any, more

likely to be audited

See the previous section.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The Directorate of Internal Revenue has, to date, not issued

any bilateral APAs. Furthermore, it is uncertain, at this time,

whether it will be possible to obtain a binding ruling for

transfer pricing purposes (equivalent to unilateral APAs).

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules are included in the Income Tax Act.

The rules limit interest deduction to 30% of earnings before

interest, taxes, depreciation, and amortization (EBITDA).

The rules do not apply if:

a) Interest expense of taxable party from loan agreements

between related parties is less than ISK100 million.

b) Interest expense of taxable party is from loan agree-

ments between consolidated companies that are jointly

taxed or meet the criteria for joint taxation.

c) The taxable party demonstrates that its equity ratio is

no less than 2% below the equity ratio of the group it is

a part of.

d) The taxable party is a financial institution or an

insurance company.

Símon Jónsson

Simon.Jonsson@is.ey.com

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority1

Income Tax Department under the Central Board of Direct

Taxes (Department of Revenue of the Ministry of Finance).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer pricing legislation in India is contained in Chapter

X of the Income Tax Act, 1961 (the Act). Further, the rules

for interpretation and implementation of the provisions are

contained in the Income Tax Rules, 1962 (the Rules).

Transfer pricing legislation in India is effective from financial

year 2001–02 for international transactions and from

FY2012–13 for specified domestic transactions (SDTs).

> Section reference from local regulation

In the Act, Sections 92 to 92F and Section 286 govern and

regulate the transfer pricing provisions in India. Further,

Sections 270A, 271, 271AA, 271BA, 271G and 271GB

provide for various types of penalties in cases of non-

compliance with the prescribed transfer pricing provisions. The

rules for interpretation and implementation of the provisions

are rules 10A to 10THD, 44G and 44GA of the Rules.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

The CBDT Circular No. 1/2022 dated 11 January 2022 has

extended the due dates for various compliances in India for

the year ending 31 March 2021. Accordingly, the deadline

for India transfer pricing compliances for the year ending 31

March 2021 now stands as follows:

> Filing of accountant’s report and maintenance of transfer

pricing documentation:

> Statutory due date: 31 October 2021

> Revised due date as per the circular: 15 February 2022

1https://www.incometaxindia.gov.in/pages/acts/income-tax-act.

aspx

> Filing of Master File:

> Statutory due date: 30 November 2021

> Revised due date as per the circular: 15 March 2022

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Indian transfer pricing legislation is broadly based on the OECD

Transfer Pricing Guidelines for Multinational Enterprises and

Tax Administrations. Even though India is not a member of

the OECD, the OECD Transfer Pricing Guidelines have been

recognized as providing useful aid in applying the Indian

transfer pricing rules to the extent they are not inconsistent

with the income tax law. During the examination process,

transfer pricing officers (TPOs) have generally acknowledged

and placed reliance on the OECD Transfer Pricing Guidelines,

UN Practical Manual on Transfer Pricing for Developing

Countries (UN transfer pricing manual) as well as other foreign

jurisdiction transfer pricing rules, case law and practices when

applying domestic transfer pricing rules, as long as these

are not inconsistent with any specific provision contained

in the Indian transfer pricing rules. Similarly, courts in India

have acknowledged the relevance of the OECD Transfer

Pricing Guidelines for understanding Indian transfer pricing

rules. However, in certain situations where the Indian rules

specifically deviate from the OECD Transfer Pricing Guidelines,

the courts have held that specific Indian rules take precedence

over the OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

BEPS Action 13 requires countries to adopt a standardized

three-tiered approach to documentation that includes Master

File, Local File and CbCR.

As regards Local File, India has not formally adopted

the Action 13 Local File template; however, the Indian

transfer pricing regulations have specifically prescribed

contemporaneous documentation requirements since the

introduction of the transfer pricing regime in India. The

contents are largely in line with the OECD Transfer Pricing

Guidelines but with certain modifications.

Master File and CbCR were introduced in the Indian transfer

pricing legislation with effect from FY2016–17.

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

Refer to previous question for details.

> Effective or expected commencement date

Transfer pricing documentation requirement is in place

from FY2001–02. Master File and CbCR are applicable from

FY2016–17.

> Material differences from OECD report template or format

Local File: As provided above, India has not formally adopted

the Action 13 Local File template; however, the Indian

transfer pricing regulations have specifically prescribed

contemporaneous documentation requirements since the

introduction of transfer pricing regime in India. The contents

are largely in line with the OECD Transfer Pricing Guidelines

but with certain modifications.

Master File: The Master File content as required under the

Indian Master File rule is largely in line with the contents as

prescribed under the Action 13 report barring a few additional

requirements provided as follows:

> Maintenance of a list of all the entities of the international

group along with their addresses — this information does

not form part of Action 13 report.

> A description of the functions performed, assets employed

and risks assumed by the constituent entities of the

international group that contribute at least 10% of the

revenues or assets or profits of the group — the Action

13 report requires a brief written functional analysis

describing the principal contributions to value creation by

individual entities within the group.

> A list of all the entities of the international group engaged

in development and management of intangibles along

with their addresses — the Action 13 report requires

a general description of location of principal research

and development (R&D) facilities and location of R&D

management.

> A detailed description of the financing arrangements

of the international group, including the names and

addresses of the top 10 unrelated lenders — the Action 13

report requires a general prescription of group financing

activities, including financing arrangements with unrelated

lenders.

> In a number of instances, Master File rule requires a

“detailed description,” instead of a “general description”

mentioned in the Action 13 report, particularly with

respect to transfer pricing policies relating to research

and development (R&D), intellectual property (IP) and

financing arrangements.

CbCR: There are no deviations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Rule 10D prescribes the contemporaneous transfer pricing

documentation rules. Accordingly, the expectation is to align

the documentation in line with the Rule 10D requirement to

mitigate penalty risk.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

India signed the MCAA on 12 May 2016 and notified the

same on 28 July 2017 to give effect to the MCAA. On 27

June 2018, India released Instruction No. 02/2018 (the

Guidance) to provide guidance on the appropriate use of

CbCR. The Guidance provided that India would separately

enter into bilateral competent authority agreements (BCAAs)

for the automatic exchange of CbCR either based on the

existing bilateral tax treaties or the Tax Information Exchange

Agreements where other jurisdictions have not signed or

ratified the CbCR MCAA. Based on the MCAA or the relevant

BCAAs, India will exchange CbCR filed by a parent entity of

an MNE group or an alternate reporting entity (ARE) resident

in India for financial years starting from 1 April 2016 and

will also receive CbCR of non resident MNE groups that have

constituent entities in India.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Contemporaneous local documentation needs to be maintained

by the taxpayer in respect of the international transactions if

the aggregate value of international transactions during the

year exceeds INR10 million (approx. USD155,000). However,

basic documents and information justifying the intercompany

transfer prices must be maintained in all cases.

Indian transfer pricing regulations provide that the

documentation should be prepared contemporaneously and

should exist no later than the due date for filing return of

the income for the relevant financial year. Accordingly, the

documentation should be maintained and finalized by the

taxpayer by 31 October2 of the following financial year in

which such international transactions or SDTs take place.

Further, please note that the taxpayer should obtain a

certificate from an accountant in the prescribed form (i.e.,

Form 3CEB) in respect of the international transactions

or SDTs and furnish such certificate on or before the said

due date. Therefore, maintaining the local transfer pricing

documentation by such due date is critical since it ensures that

taxpayers give appropriate consideration to transfer pricing

requirements in establishing prices and other conditions for

transactions between associated enterprises (AEs) and in

reporting the income derived from such transactions in their

tax returns.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Contemporaneous local documentation needs to be maintained

by the taxpayer in respect of the international transactions if

the aggregate value of international transactions during the

year exceeds INR10 million (approx. USD155,000). However,

basic documents and information justifying the intercompany

transfer prices must be maintained in all cases.

> Master File

2Finance Act 2020 advanced the due date for maintenance of transfer

pricing documentation by one month (i.e., 31 October in place of 30

November).

Master File requirements apply to every taxpayer being a

constituent entity of an international group if the following two

conditions are satisfied:

> The consolidated revenue as reflected in the consolidated

financial statement of the international group for the

accounting year exceeds INR5 billion (approx. USD66

million).

> Either of the below transactional thresholds is achieved for

the accounting year:

> The aggregate value of international transactions as per

the books of accounts maintained by the taxpayer exceeds

INR500 million (approx. USD7 million).

> The purchase, sale, transfer, lease or use of IP as per the

books of accounts maintained by the taxpayer exceeds

INR100 million (approx. USD1 million).

> Local File

As mentioned earlier, the Indian transfer pricing regulations

have specifically prescribed contemporaneous documentation

requirements since the introduction of the transfer pricing

regime in India. The contents are largely in line with the OECD

Transfer Pricing Guidelines but with certain modifications.

> CbCR

Applicable to an international group with consolidated group

revenues exceeding INR6,400 crores as on the last day of the

preceding accounting year.

CbCR provisions are applicable if the consolidated group

revenue as reflected in the consolidated financial statement

for the preceding accounting year exceeds INR55 billion

(approx. USD730 million). The OECD CbCR Peer Review Report

(Phase 2 issued in 2019) noted that the annual consolidated

group revenue threshold calculation rule applies in a manner

that is inconsistent with the OECD guidance on currency

fluctuations in respect of an MNE group whose ultimate parent

entity (UPE) is located in a jurisdiction other than India. This is

an exception to the OECD guidance.

> Economic analysis

Fresh economic analysis should be undertaken every year.

c) Specific requirements

> Treatment of domestic transactions

The Indian transfer pricing regulations apply to domestic

related-party transactions where one of the entities involved

enjoys tax holiday. However, the aggregate value of such

transactions should exceed INR200 million (approx. USD3

million).

> Local language documentation requirement

No, it should be maintained in English.

> Safe harbor availability, including financial transactions if

applicable

The income tax law already incorporates some administrative

safe harbors, such as alleviation of documentation

requirements and examination or scrutiny procedures for

small taxpayers. To further provide administrative simplicity

for small taxpayers and allocate more resources to the

examination of larger transactions and taxpayers, safe-harbor

rules were introduced to provide for circumstances under

which the income tax authorities will accept the transfer

pricing declared by the taxpayer.

The Central Board of Direct Taxes (CBDT) issued transfer

pricing safe-harbor rules on 18 September 2013, applicable

for five years beginning from FY2012–13 to FY2016–17.

The safe-harbor rules were amended with effect from 1 April

2017 and were made applicable for three fiscal years from

FY2016–17 through FY2018–19. Further, CBDT extended the

safe harbor rules for FY 2019–203 and FY 2020–21.4

The safe-harbor rules covered the following international

transactions:

> Provision of software development services other than

contract R&D services, information technology-enabled

services and knowledge process outsourcing services all

with insignificant risks

> Advancing of intragroup loan to a non resident wholly owned

subsidiary

> Provision of corporate guarantee to wholly owned subsidiary

> Provision of specified contract R&D services wholly or

partly relating to software development with insignificant

risks

> Provision of specified contract R&D services wholly or

partly relating to generic pharmaceutical drugs with

insignificant risks

> Manufacture and export of core auto components

3Notification No. 25/2020/ F. No. 370142/14/2020-TPL dated 20 May

2020

4Notification No. 117/2021/F. No. 370142/44/2021-TPL

> Receipt of low-value-adding intragroup services

The Finance Act 2020 has expanded the scope of safe harbor

rules to specifically cover determination of profit/income

attributable to a business connection (i.e. a concept under the

Indian domestic tax law, which is perceived to be much wider

than the permanent establishment (PE) rule under applicable

tax treaty) or a PE (under the tax treaty) of a non resident

company in India. Taxpayers that formally concede a business

connection or PE in India can opt for safe harbor rules for

obtaining certainty on profit attribution to PE in India. The

amended scope of safe harbor is effective from financial years

starting from 1 April 2019. However, no specific safe harbor

rate/margin is yet prescribed by the Indian Tax Administration

for profit attribution cases.

Any taxpayer that has entered into an eligible international

transaction and that wishes to exercise the option to be

governed by the safe-harbor rules is required to file a Form

3CEFA and furnish it before the due date for filing the tax

return for either:

> The relevant financial year (1 April to 31 March), in case

the option is exercised only for that financial year

> The first of the financial years, in case the option is

exercised for more than one financial year

The form is in the nature of a self-declaration and needs to be

signed by the person who is authorized to sign the tax return.

> Is aggregation or individual testing of transactions preferred

for an entity

Not applicable.

> Any other disclosure or compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers should obtain a certificate from an accountant

in the prescribed form (i.e., Form 3CEB) in respect of the

international transactions or SDTs. Form 3CEB contains list

of AEs, nature and value of international transactions, most

appropriate method, voluntary transfer pricing adjustment, if

any, etc. The form needs to be filed online.

Form 3CEFA is provided in the safe-harbor section, if the

taxpayer wishes to opt for safe harbor.

> Related-party disclosures along with corporate income tax

return

The contemporaneous local documentation contains all the

disclosures and transfer pricing-related appendices.

> Related-party disclosures in financial statement/annual

report

Disclosure as per the Indian GAAP.

> CbCR notification included in the statutory tax return

No, separate form prescribed for CbCR notification (Form

3CEAC).

> Other information/documents to be filed

The filing of the Master File is done in Form 3CEAA. Where

there is more than one designated entity resident in India,

the notification by a designated constituent entity of an

international group with respect to single filing of Master File

should be done in Form 3CEAB.

CbCR filing is to be done in Form 3CEAD where the parent

entity or ARE is resident in India or in case where a secondary

CbCR filing obligation is triggered in India. Designation of

a constituent entity for single filing of CbCR shall be done

through Form 3CEAE.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 30 November following the relevant financial

year for taxpayers where transfer pricing provisions are

applicable.

> Other transfer pricing disclosures and return

Taxpayers should obtain a certificate from an accountant

in the prescribed form (i.e., Form 3CEB) in respect of the

international transactions or SDTs and furnish such certificate

on or before 31 October5 of the following financial year in

which such international transactions or SDTs take place.

> Master File

Master File in Form 3CEAA should be filed on or before 30

November following the relevant financial year.

Notification for designation of constituent entity for single

filing of Master File in Form 3CEAB should be filed on or before

31 October following the relevant financial year.

> CbCR preparation and submission

Primary filing requirement:

> Where the UPE or the ARE is resident in India.

Secondary filing requirement or trigger for local filing (one or

more of the below):

> The UPE is not obligated to file a CbCR.

> India does not have an arrangement for the exchange of

CbCR.

> The jurisdiction or tax jurisdiction is not exchanging

information with India even though there is an agreement

for exchange and this fact has been communicated to

the constituent entity by the Indian Tax Administration

(systemic failure).

5Finance Act 2020 advanced the due date for maintenance of transfer

pricing documentation by one month (i.e., 31 October in place of 30

November).

> CbCR notification

CbCR notification in Form 3CEAC should be filed at least two

months prior to the due date for furnishing CbCR in the UPE or

ARE jurisdiction.

b) Transfer pricing documentation/Local File preparation

deadline

Please refer to the section below.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Contemporaneous local transfer pricing documentation should

be maintained and finalized by the taxpayer by 31 October7

of the following fiscal year in which such international

transactions or SDTs take place.

> Time period or deadline for submission upon tax authority

request

6Defined as period from 1 April to 31 March of next year in case of UPE

resident in India.

7Finance Act 2020 advanced the due date for maintenance of transfer

pricing documentation by one month (i.e., 31 October in place of 30

November).

Under the Act, the prescribed documentation or information

maintained by the taxpayer in respect of its transfer pricing

arrangements would have to be produced before the tax

authorities during the course of audit proceedings within 30

days after such request has been made. The period of 30 days

can be extended based on the discretion of the tax officer.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

The CBDT Circular No. 1/2022 dated 11 January 2022 has

extended the due dates for various compliances in India for

the year ending 31 March 2021. Accordingly, the deadline

for India transfer pricing compliances for the year ending 31

March 2021 now stands as follows:

> Filing of accountant’s report and maintenance of transfer

pricing documentation

Statutory due date: 31 October 2021.

Revised due date as per the circular: 15 February 2022.

> Filing of Master File

Statutory due date: 30 November 2021.

Revised due date as per the circular: 15 March 2022.

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

year6 (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

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: yes

> Domestic transactions: yes

b) Priority and preference of methods

In addition to five methods provided in the OECD Transfer

Pricing Guidelines, the Indian transfer pricing legislation

has prescribed the sixth method as “other method” in

determination of arm’s-length price. There is no hierarchy

for selection of methods. The most appropriate method for a

transaction will be adopted.

8. Benchmarking requirements

> Local vs. regional comparables

Where tested party is India, preference is given to Indian

comparables only. Also, it has been held in a few notable tax

court rulings that selecting an overseas entity as the tested

party may not be appropriate because it is difficult to obtain

all relevant facts and data required for undertaking a proper

analysis of functions, assets and risks, as well as to make the

requisite adjustments.

In case there are no local Indian comparables, foreign

comparables may be used. However, generally, acceptance of

foreign comparables are highly litigative in India.

Use of foreign comparables is generally not acceptable, unless

the tested party is located overseas. Based on experience,

tax authorities have a tendency to take Indian entity as tested

party and accordingly use Indian comparable companies.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year testing specifically, three years (including the

current year).

> Use of interquartile range

Where there is a minimum of six comparables, the range

concept, i.e., 35th percentile to 65th percentile is applied. In

other cases, arithmetic mean is applicable. Interquartile range

is not recognized under the existing regulations.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Requires fresh benchmarking every year.

> Simple, weighted or pooled results

Weighted average.

> Other specific benchmarking criteria, if any

It is not specifically provided in the law. However certain

qualitative and quantitative filters for selection of comparables

are followed at the time of preparation of transfer pricing

documentation as well as during transfer pricing audits.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Two percent of the value of the international transaction or

specified domestic transaction entered into.

> Consequences of failure to submit, late submission or

incorrect disclosures are as follows:

Default Nature of penalty

In case of a post-inquiry adjustment deemed to have

been underreporting or misreporting of income

> No penalty, where transfer pricing documentation maintained,

transactions declared and material facts disclosed

> 50% of tax on transfer pricing adjustment, where transfer pricing

documentation has not been maintained

> 200% of tax on transfer pricing adjustment, where the same is in

consequence of not reporting an international transaction

Failure to maintain transfer pricing documentation,

and failure to report the transaction, maintenance or

furnishing of incorrect information or document

2% of the value of each international transaction or SDT

Failure to furnish accountant’s report INR100,000

Failure to furnish documents or report transaction 2% of the value of the international transaction or SDT

Failure to furnish the Master File by prescribed date INR500,000

Furnishing inaccurate particulars in the CbCR

(subject to certain conditions)

INR500,000

Failure to submit CbCR by the reporting entity:

> Where period of failure is less than or equal to one

month

> Where the period of failure greater than one

month

> Continuing default after service of penalty order

> INR5,000 per day

> INR15,000 per day

> INR50,000 per day

Failure to respond within 30 days to CbCR-related

queries (extendable by maximum 30 days)

> INR5,000 per day up to service of penalty order

> INR50,000 per day for default beyond date of service of penalty order

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes; however, penalty proceedings are separate from regular

audit and assessment proceedings. Accordingly, the taxpayer

has a separate right to appeal for penalty cases.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not applicable.

> Is interest charged on penalties or payable on a refund?

No, interest is not charged on penalties. Further interest is

payable on refunds.

b) Penalty relief

In the case of underreporting or misreporting of income, the

taxpayer may make an application to the assessing officer to

grant immunity from imposition of penalty upon satisfaction of

certain conditions and within specified time limit.

10. Statute of limitations on transfer pricing

assessments

Period Time limit for

completion of

assessment by

TPO

Time limit for

completion of

assessment by

Assessing Officer

Up to FY2016–17 43 months from

the close of

relevant financial

year

45 months from the

close of relevant

financial year

For FY2017–18 40 months from

the close of

relevant financial

year

42 months from the

close of relevant

financial year

From FY2018–19

onward

34 months from

the close of

relevant financial

year

36 months from the

close of relevant

financial year

In view of the challenges faced by taxpayers in meeting the

statutory and regulatory compliance requirements due to

the outbreak of COVID-19, where the completion of any

proceedings or passing of any order or issuance of any notice/

intimation/notification/sanction/approval or such other action

by any authority or commission or tribunal under the ITL

falls due between 20 March 2020 and 31 December 2020,

in such cases the date for completion of such compliances is

extended to 31 March 2021 (Notification No.35 /2020/ F. No.

370142/23/2020-TPL dated 24 June 2020).

Further, the tax authorities may reopen the case if they

determine that the income has escaped assessment. Such

assessment may be reopened within the following time limit.

Situations Time limit for reopening

the case

If the escaped income is less

than INR0.1 million

Five years from the end

relevant financial year

If the escaped is or likely to

exceed INR0.1 million

Seven years from the end

of relevant financial year

If the income in relation to

any asset (including financial

interest in any entity) located

outside India, chargeable to

tax, has escaped assessment

17 years from the end of

relevant financial year

With effect from 1 April 2021, a new period of limitation for

reassessment proceedings has been introduced in the Income-

tax Act, 1961 which provides a time limit of four years or

11 years from the relevant financial year for the purpose of

issuing the reassessment notice to the taxpayer. To apply the

extended time limit of 11 years, the following conditions need

to be satisfied:

> The assessing officer should have evidence or a document

to reveal that the income chargeable to tax, which is

represented in the form of asset, has escaped assessment.

> The value of escapement amounts or is likely to amount to

INR50 lakhs (~$67k) or more for that year.

Where both the above conditions are satisfied, an extended

period of 11 years is applicable for issuing the reassessment

notice. Also, the new limitation provisions restrict the issue of

notice in case a relevant financial year is time-barred as per

the old limitation provisions (i.e., seven years from the end of

relevant financial year).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

The Indian tax authorities have introduced a scheme to provide

dispute resolution for pending income tax litigation that

includes transfer pricing litigation as well. The deadline for

availing relief under the scheme has been extended from 30

June 2020 to 31 December 2020.

With respect to routine transfer pricing audits, the time limit

for completing the audit for the year ending 31 March 2017

has been extended from 31 October 2020 to 31 January

2021. (Support publication “The Taxation And Other Laws

(Relaxation and Amendment of Certain Provisions) Act, 2020”

dated 29 September 2020).

With respect to the transfer pricing audit for financial year

2017-18, the time limit for completion of assessment has

been extended to 30 January 2022.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood is generally high. The CBDT provides internal

instructions on selection of cases for transfer pricing audits.

Earlier, the selection criteria was based on monetary threshold

of the value of the international transactions entered into

during a particular fiscal year. Currently, the selection is based

on “transfer pricing risk parameters” under the computer-

assisted scrutiny selection (CASS) system. It also indicates

circumstances under which cases can be selected for audits

manually.

While the “risk parameters” are not defined, the same is

available internally with the tax authority. The primary

responsibility for undertaking transfer pricing audits lies with

specialized TPOs. The current selection of cases for transfer

pricing audits can be expected to result in more targeted

and more cost-effective use of limited resources from a tax

administration’s perspective.

Accordingly, disclosures or reporting in Form 3CEB would not

only be relevant from a penalty perspective, but also from

an audit risk perspective, in light of the current process for

selection of cases.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of transfer pricing methodology being

challenged by the tax authorities may be considered to be

high. Among other things, the BEPS principles are being

applied during the course of transfer pricing audits by the

Indian tax authorities. Detailed information on the functional

aspects of the Indian entity, the ability of Indian affiliate to

exercise control over operational and other risks, etc., are

being asked for thorough evaluation. Therefore, deciding

on appropriate characterization and accurate delineation

of transaction for transfer pricing purpose is of paramount

importance. Further, it is often noticed that the tax authorities,

while undertaking a comparability analysis, apply varying

quantitative criteria to re-determine the arm’s-length price.

Moreover, issues, such as location savings or location-specific

advantages, credit period, treatment of foreign exchange gain

or loss, appropriateness of cost base and allocation of common

costs, are triggering specific attention of the tax authorities.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high, for the reasons

specified above.

> Specific transactions, industries and situations, if any,

more likely to be audited

Royalty and management fee:

> Payment for the use of intangible property, such as

trademarks, know-how and brand names, by Indian

taxpayers is being scrutinized in great detail by the TPOs.

The underlying assumption is that these payments are

base-eroding in nature. TPOs often issue detailed notices

to taxpayers requiring them to demonstrate the benefit

received from the intangible property in order to justify

the payment of royalties.

> 

Detailed information is sought on the type of intangible,

similar arrangements within the multinational group and

the methodology adopted by the taxpayer to arrive at the

arm’s-length price. TPOs typically expect the intercompany

agreements and transfer pricing documentation to provide

a detailed description of the intangible.

> 

In most cases, the TPOs reject the taxpayer’s analysis

and disallow the payment of royalties on the grounds that

the taxpayer has not substantiated the benefit received

from the intangible. Another reason for disallowance of

the royalty payments is the unavailability of organized

information on intangible property arrangements in India.

In the absence of good-quality comparables and due to

the reluctance of TPOs to rely on foreign databases, TPOs

tend to disallow the payments.

> Taxpayers 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.

> Therefore, 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.

> Taxpayers are typically asked to describe the activities

undertaken by the foreign affiliates and are also asked

to quantify the time spent in India. In most cases, TPOs

reject the taxpayer’s analysis and disallow the deduction

for payment of management fees on the grounds that the

taxpayer has not substantiated the benefit received or

that the services are duplicative in nature.

Marketing intangibles:

> Transfer pricing aspects of marketing intangibles

have been a focus area for the Indian transfer pricing

administration. The issue is particularly relevant to India

due to its unique market-specific characteristics such as

location advantages, market accessibility, large customer

base, market premium and spending power of Indian

customers.

> The 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.

> The present approach of the Indian tax administration

for carrying out transfer pricing reviews is in line with the

judicial rulings as well as the recommendations contained

in the BEPS Action Plans 8–10.

> The 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.

> The 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.

> While 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.

> Further, CBDT has issued Circular (6/2013) which lays

down the guidelines for identifying a development center

as a contract R&D service provider with insignificant risk.

Other key areas:

> 

Others key areas of focus include treatment of excess

outstanding receivables as a loan to AE, treatment

of notional cost and pass-through cost (free of cost

assets or services), transfer pricing concerning financial

transactions, remuneration model in case of procurement

structures, aggregation vs. transaction by transaction

approach, etc.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The Finance Act 2012 introduced provisions to enable

APAs in the income tax law with effect from 1 July 2012. It

empowered the board to enter into an APA with any person,

determining the arm’s-length price or specifying the manner in

which the arm’s-length price is to be determined, in relation to

an international transaction to be entered into by that person.

Indian APA program provides an option to seek a unilateral,

bilateral or multilateral APA.

The Finance Act 2020 has expanded the scope of APA

provisions to specifically cover determination of profit/income

attributable to a business connection (i.e., a concept under the

Indian domestic tax law, which is perceived to be much wider

than the PE rule under applicable tax treaty) or a PE (under

the tax treaty) of a non resident company in India. Taxpayers

that formally concede a business connection or PE in India can

opt for an APA (unilateral/bilateral) for obtaining certainty on

profit attribution to PE in India. The manner of determination

may include any methods as provided under the Indian

domestic tax law including transfer pricing methods. The

amendment is effective from the financial year starting from

1 April 2020. Formal APA application needs to be filed before

the beginning of the financial year (i.e., on or before 31 March)

for which the taxpayer intends to cover the profit attribution

issue or before undertaking any transactions due to which

there would exist a PE.

> Tenure

The APA can be opted for up to five years along with a

rollback up to four consecutive years prior to the APA period,

effectively covering nine years.

> Rollback provisions

A rollback would be available to taxpayers who have opted for

an APA up to four consecutive years prior to the APA period.

The income tax law also contains rules on rollback of APAs.

> MAP opportunities

It is available. The MAP Article contained in India’s Double

Taxation Avoidance Agreement (DTAA) — largely based on

Article 25 of the OECD Model Tax Convention — provides a

mechanism independent from the ordinary legal remedies

available under the domestic tax law. While MAP is of

fundamental importance to the proper application or

interpretation of DTAAs, it has particularly emerged as a

widely used mechanism for resolving transfer pricing disputes.

The procedures for invoking MAP and giving effect to the MAP

resolution for granting of relief in respect of double taxation or

for avoidance of double taxation are contained in Rule 44G.

Most of the Indian DTAAs provide for invoking MAP within a

period of three years from taxation not in accordance with the

DTAA. Further, MAP may be invoked even in case where the

DTAA does not contain a provision similar to Article 9(2) of the

OECD Model Tax Convention providing for corelative relief.

The recent OECD Peer Review report relation to

implementation of BEPS Action 14 noted that India met

half of the elements of Action 14 minimum standard. To be

fully compliant with all four key areas of an effective dispute

resolution mechanism under the Action 14 minimum standard,

India needs to amend and update a certain number of its tax

treaties. This is expected to take place either through the

multilateral instrument (MLI) or via bilateral negotiations.

Recently, the CBDT amended MAP rules, which provided

additional guidance to taxpayers on MAP. Also, it provided that

the Indian competent authorities will attempt to resolve the tax

disputes arising from the actions of the tax authorities, within

an average time of 24 months.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

With respect to the APAs concluded between 20 March 2020

to 02 October 2020, the deadline for annual compliance has

been extended to 31 March 2021.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There is no prescribed debt-to-equity ratio or thin-

capitalization rule under the income tax law. While, historically,

determination of arm’s-length interest rate with respect to

intercompany financing arrangement was the only challenge.

The focus of current transfer pricing scrutiny has shifted to

determination of “arm’s-length” quantum, i.e., whether the

extent of debt or capital structure of the borrower is itself

“arm’s length.” Hence the benchmarking of intercompany

financing transactions involves two aspects (i) determination

of arm’s-length capital structure and (ii) determination of

arm’s-length interest rate. This also finds support from

the recent OECD Transfer Pricing Guidelines on financial

transactions as well as the UN discussion.

Further, the need to assess the arm’s-length debt level also

arises on account of General Anti-Avoidance Rules (GAAR) in

India which is applicable with effect from 1 April 2017. GAAR

has introduced a concept of “arm’s-length dealing test” (ALDT)

as distinguished from determination of arm’s-length price

under the transfer pricing provisions. Where an arrangement

creates rights or obligations which are not ordinarily created

between people dealing at arm’s length, the same would

be regarded as an “impermissible avoidance arrangement

(IAA)” and may be recharacterized as equity in case of a loan

arrangement.

Also, in line with the recommendations of the BEPS Action

4 Final Report, the Finance Act 2017 introduced an interest

limitation rule in the ITA, even though Action 4, dealing with

limiting base erosion through interest and other financial

payments, does not constitute a minimum standard. The

said provisions are applicable to an Indian company or a

PE of a foreign company in India (collectively referred to as

“borrower”) if the following conditions are met:

> The borrower is engaged in any business or profession

other than banking or insurance

> The borrower incurs expenditure in the nature of

interest or similar consideration exceeding INR10 million

(approximately USD150,000) in a financial year

Such interest expense or similar consideration is deductible in

computing the taxable income of the business or profession.

The debt is issued by a non-resident AE of the borrower or by

a third-party lender but an AE either provides an implicit or

explicit guarantee to such lender or deposits corresponding to

and matching amount of funds with the lender.

The term “debt” has been defined to mean any loan, financial

instrument, finance lease, financial derivative or any

arrangement that gives rise to interest, discounts or other

finance charges.

If the above conditions are satisfied, the “excess interest”

shall not be deductible in computing the taxable income of

the taxpayer. The “excess interest” is computed as the excess

of 30% of the earnings before interest, tax, depreciation

and amortization (EBITDA) of the borrower for the relevant

financial year, or interest paid or payable to the AE, whichever

is less. In other words, the interest deduction is limited to the

lower of the borrower’s 30% of EBITDA, or interest actually

paid or payable to the AE. For any financial year, if the interest

expenditure is disallowed for being in excess of the limitation

prescribed, the provisions allow for carry forward of such

excess interest expense. Accordingly, such portion of the

interest expense can be carried forward up to the following

eight FYs immediately succeeding the financial year for which

such disallowance was first made. Further, the deduction for

such carried forward excess interest would be allowed against

the future taxable income as long as the interest expenditure is

within the prescribed ceiling.

Relaxations in due dates for specific compliances under the ITL

due to the outbreak of novel COVID-198

8CBDT Circular No. 1/2022 dated 11 January 2022

Compliances Existing due date as per the ITL Is there an extension of timeline?

Filing of tax return for FY 2020-21 for

cases involving transfer pricing

> 30 November 2021 > Yes, 15 March 2022

Filing of Form 3CEB for FY 2020-21 > 31 October 2021 > Yes, 15 February 2022

Maintenance of transfer pricing

documentation for FY 2020-21

> 31 October 2021 > Yes, 15 February 2022

Filing of Form 3CEAA (Master File) for FY

2020-21

> 30 November 2021 > Yes, 15 March 2022

Filing of Form 3CEAB (Master File

designation form) for FY 2020-21

> 31 October 2021 > Yes, 14 February 2022

Filing of Form 3CEAC (CbC report

notification)

> At least 2 months prior to the due date for

furnishing CbCR in UPE/ARE jurisdiction

> It depends on the due date for

filing CbC report in respective

local jurisdiction. It is suggested

to file the India notification at the

earliest.

Filing of Form 3CEAD (CbC report)

> UPE is resident in India > 12 months from end of reporting

accounting year9 (31 March 2022 for

accounting year ending 31 March 2021)

> No

> ARE is resident in India > 12 months from the end of the reporting

accounting year followed by the MNE.

> No

> Secondary filing trigger where the UPE

is not obligated to file a CbC report or

India does not have an arrangement

for the exchange of CbC report

> 12 months from the end of the reporting

accounting year followed by the MNE.

> No

> Secondary filing trigger due to

systemic failure

> Within six months from the end of the

month in which constituent entity is

intimated of such systemic failure by the

Income Tax Department.

> No

Time limit to opt for safe harbor for FY

2020-21

> 30 November 2021 > Yes, 15 March 2022

9Defined as period from 1 April to 31 March of next year

Vijay Iyer

Vijay.Iyer@in.ey.com

+ 91 9810495203

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Directorate General of Taxes (DGT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Law Number 7 Year 1983 regarding Income Tax (as lastly

amended by Law Number 7 Year 2021) (PPh Law)

> Law Number 6 Year 1983 regarding General Taxation

Provisions and Procedures (as lastly amended by Law

Number 7 Year 2021) (KUP Law)

> Law Number 8 Year 1983 regarding Value-Added Tax of

Goods and Services and Sales Tax on Luxury Goods (as

lastly amended by Law Number 7 Year 2021) (PPN Law)

> Minister of Finance Regulation Number PMK 213/

PMK.03/2016 dated 30 December 2016 (PMK-213),

regarding guidance on types of additional documents

or information that is required to be kept by taxpayers

who conduct transactions with related parties, and its

procedures

Indonesia’s primary transfer pricing provisions are contained in

Article 18 of the PPh Law and PMK-213.

Article 18(3) authorizes the DGT to redetermine the amount of

taxable income and deductible expenditures for transactions

between taxpayers where a “special relation” exists. Article

18(3) also allows a redetermination of debt as equity. The

redetermination should be made in accordance with equity

and the common practice of business for independent parties

(i.e., in accordance with the arm’s-length principle). Based on

Article 18(4) of the PPh Law, a special relation is deemed to

exist where:

> A taxpayer has direct or indirect ownership of 25% or

more of another taxpayer or two or more other taxpayers.

> A taxpayer controls another taxpayer or two or more

other taxpayers.

> There is a family relation, biologically or by marriage, in

the first degree.

PMK-213 is a regulation issued by the Minister of Finance

1https://www.pajak.go.id/en

in response to the implementation of BEPS Action 13 in

Indonesia. PMK-213 provides guidance that stipulates the

type of additional documents or information that is required

to be kept by taxpayers who conduct transactions with related

parties, and its procedures.

Under PMK-213, taxpayers are required to prepare a three-

tiered structure to transfer pricing documentation:

> Master File

> Local File

> CbC report

The issuance of PMK-213 marked the beginning of a new

era for transparency in related-party transaction disclosures

and contemporaneous transfer pricing documentation

requirements in Indonesia. However, PMK-213 neither revoked

nor replaced the current transfer pricing regulation issued

by the DGT under PER 43/PJ/2010 (PER-43) as amended by

PER-32/PJ/2011 (PER-32).

Regulation PER-43 is an implementation regulation of

Article 18(3) as a basis for the DGT to assess the taxpayer’s

application of the arm’s-length principle. In 2011, this

regulation was amended by Regulation PER-32.

DGT Regulation PER-22/PJ/2013 (PER-22) and Circular Letter

SE-50-PJ/2013 (SE-50) provide detailed guidance on transfer

pricing audit processes and technical transfer pricing positions

to be adopted by tax auditors.

DGT Regulation PER-29 provides further details on the

implementation of the CbCR requirements.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Indonesia is not a member of the OECD, although it has been

granted “enhanced participation” status.

The DGT broadly endorses the principles of the OECD

Guidelines in its regulations. However, the DGT’s practical

application of the arm’s-length principle in an audit context

regularly diverges from the principles endorsed by the OECD

Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Indonesia has adopted BEPS Action 13 for transfer pricing

documentation by the issuance of PMK-213.

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

This covers both the Master File and Local File.

> Effective or expected commencement date

The commencement date was 30 December 2016.

> Material differences from OECD report template or format

Yes, there are material differences between the OECD

format and the Indonesian jurisdiction format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No penalty protection is applied for the BEPS Action 13 report.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 26 January 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The transfer pricing documentation guidelines and rules for

Indonesia fall under PMK-213.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local transfer

pricing rules if it has related-party transactions.

> Does transfer pricing documentation have to be prepared

annually?

The documentation needs to be prepared annually under

Indonesia’s local jurisdiction regulations. At a minimum,

the contents of the transfer pricing documentation must be

contemporaneous for each year.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

transfer pricing reports if it has related-party transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

Based on PMK-213, there is a materiality limit for preparing

transfer pricing documentation. If the taxpayer conducts a

related-party transaction and:

> Has gross revenues of more than IDR50 billion (approx.

USD3.7 million) in the prior fiscal year

> Conducts related-party transactions in the prior fiscal year

with a value of:

> More than IDR20 billion (approx. USD1.4 million) for

tangible goods transactions

> More than IDR5 billion (approx. USD372,000) for each

service, interest payment, utilization of intangible

properties or other affiliated transactions

> Conducts transactions with related parties that are

located in countries or jurisdictions with income tax rates

lower than the Indonesian corporate income tax rate, as

specified in Article 17 of Income Tax Law No. 7 of 1983 as

last amended by Law No. 36 of year 2008

> Master File

There is no threshold applied for preparation of Master File

once the taxpayer has met the requirements to prepare

transfer pricing documentation.

> Local File

There is no threshold applied for preparation of Local File once

the taxpayer has met the requirements to prepare transfer

pricing documentation.

> CbCR

Foreign-parented groups would follow the turnover threshold

in their jurisdiction or in the absence of CbCR rules in the

parent jurisdiction, i.e., EUR750 million. The threshold for

Indonesian-parented groups is IDR11 trillion.

> Economic analysis

There is no materiality limit for preparing economic analysis

once the taxpayer has met the requirements to prepare

transfer pricing documentation.

c) Specific requirements

> Treatment of domestic transactions

PMK-213 requirements are applicable for both domestic and

overseas transactions.

> Local language documentation requirement

There is a requirement for the transfer pricing documentation

to be in the local language. Article 11 paragraph 1 of PMK-

213 states that the documentation as stipulated in Article 2

paragraph (1) should be prepared by the taxpayer in Bahasa

Indonesia (Indonesian).

> Safe harbor availability, including financial transactions if

applicable

There are no specific requirements for safe harbor availability.

> Is aggregation or individual testing of transactions preferred

for an entity

Not specifically regulated.

> Any other disclosure/compliance requirement

None.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no transfer pricing-specific returns required in

Indonesia.

> Related-party disclosures along with corporate income tax

return

The disclosure of domestic and international related-

party transactions with the corporate income tax return is

required in Form 3A/3B. The information required includes

the counterparty, the type of transaction, the value of the

transaction, the transfer pricing method applied and the

reason for the application of the method. Additionally,

taxpayers are required to disclose whether they have

transfer pricing documentation prepared. Taxpayers are also

required to submit a summary form in a given format with the

corporate income tax return (CITR) for the relevant fiscal year,

which requires the taxpayer to indicate that the content of the

Master File and Local File has conformed to the regulations as

well as the exact date the files have been made available.

> Related-party disclosures in financial statement/annual

report

Related-party disclosures are required to be disclosed in the

financial statement as part of Indonesia GAAP requirements

only.

> CbCR notification included in the statutory tax return

Notification is required to be included in income tax return.

> Other information/documents to be filed

None.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The corporate income tax return filing deadline is four months

after the fiscal year-end.

> Other transfer pricing disclosures and return

Disclosures related to transfer pricing must be attached with

the CITR (Form 3A/3B and Summary Form).

> Master File

This is not applicable.

> CbCR preparation and submission

The deadline is 12 months after the year-end.

The receipt from the CbCR filing must be attached to the CITR

for the subsequent fiscal year.

> CbCR notification

The deadline is 12 months after the year-end.

The receipt from the notification filing must be attached to the

CITR for the subsequent fiscal year.

b) Transfer pricing documentation/Local File preparation

deadline

The Master and Local Files must be available no later than four

months after the taxpayer’s fiscal year-end. The CbCR report

must be available within 12 months after the year-end.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for submitting transfer pricing

documentation.

> Time period or deadline for submission on tax authority

request

The taxpayer has 7 days upon request by the tax office or 30

days if it is in the tax audit process.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions: yes

> Domestic transactions: yes

b) Priority and preference of methods

PER-32 states that the most appropriate transfer pricing

method should be selected. The decision for the most

appropriate method should regard:

> The advantages and disadvantages of each method

> The suitability of the method based on the functional

analysis

> The availability of reliable information to apply the method

> The level of comparability between the tested transaction

and potential comparable data, including the reliability of

potential adjustments

8. Benchmarking requirements

Local vs. regional comparables

Local and ASEAN region comparables are preferred; however,

if not available, Asia-Pacific regional comparables may be

accepted.

> Single-year vs. multiyear analysis of benchmarking

Single-year or three-year analyses are most commonly applied.

> Use of interquartile range

Interquartile range calculation spreadsheet using quartile

formulas is acceptable and commonly used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is a need to perform fresh benchmarking every year.

According to Article 3 paragraph 1 of PMK-213, transfer

pricing documentation as stipulated in Article 2 paragraph

(1) letters “a” and “b” must be organized based on data and

information available at the time the related-party transaction

is conducted.

> Simple, weighted or pooled results

A weighted average is preferred while testing an arm’s-length

analysis.

> Other specific benchmarking criteria, if any

Less than 25% equity ownership independence criteria is

required; other criteria are also applied based on common

practice.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

If the incorrect information results in incorrect calculation

of taxable income, it will subject the taxpayer to tax penalty

based on interest rate per month according to referenced

interest rate plus uplift factor of 20% (maximum 24 months) of

the tax liability.

> Consequences of failure to submit, late submission or

incorrect disclosures

If the incorrect information results in incorrect calculation

of taxable income, it will subject the taxpayer to tax penalty

based on interest rate per month according to referenced

interest rate plus uplift factor of 20% (maximum 24 months) of

the tax liability.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

There will be penalties based on interest rate per month

according to referenced interest rate plus uplift factor of 20%

(maximum 24 months) on any tax underpayment arising from

adjustments to income and costs corresponding to related-

party transactions as a result of the tax audit process as well

as the abovementioned documentation-related penalties.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not specified.

> Is interest charged on penalties or payable on a refund?

As mentioned above, interest penalty will be applied on any tax

underpayment arising from adjustment.

b) Penalty relief

There are no provisions for penalty relief in Indonesia.

10. Statute of limitations on transfer pricing

assessments

There is no separate statute of limitations for transfer pricing.

The statute of limitations for transfer pricing assessments

will follow the statute of limitations for tax. Under Indonesian

tax law, the DGT is permitted to conduct a tax audit, which

includes assessments of the arm’s-length nature of related-

party transactions, within five years of the relevant fiscal year.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

In general, the likelihood of an annual tax audit may be

considered to be high. In addition, a taxpayer’s application for

a tax refund will trigger an automatic tax audit, which must be

finished within one year after the submission of the tax return.

The likelihood that transfer pricing will be reviewed as part of a

regular and special tax audit may be considered to be high.

Tax audit cases are typically commenced in the taxpayer’s

relevant tax office, with the exception of the special audit

cases. A transfer pricing audit, unless it is a special audit, will

occur as a part of an all-taxes audit. The DGT has a central

transfer pricing team or a valuations team that is assigned

to cases as needed. The central transfer pricing team or

valuations team might also be involved in assisting a tax

auditor team in their respective tax office in performing

transfer pricing audits.

In practice, in addition to taxpayers that are subject to an

automatic tax audit as a part of the tax overpayment process,

taxpayers that exhibit the following characteristics are at a

higher risk of a transfer pricing audit:

> A large number of related-party transactions with offshore

entities

> A multinational company that has continuous operating

losses or significant related-party transactions

> Lower net profit in comparison with other similar

enterprises or with the industry average

> Increasing gross revenue and receipts but no change or

decrease in net profit

> Related parties in tax havens

Each taxpayer is assigned an account representative (AR) to

assist with its tax matters. The AR’s role has increased this

year with regard to confirming transfer pricing compliance.

ARs have been actively risk-profiling taxpayers’ transfer pricing

audits by audit teams.

In undertaking transfer pricing audits, tax auditors will follow

guidance contained in PER-22 and SE-50.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the tax authority will challenge the transfer

pricing methodology is also high, as Indonesia takes a firm

stand on transfer pricing audits. This audit environment is

partially driven by the Indonesian Government’s desire to

increase Indonesia’s tax collection as a percentage of the GDP.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high (on account of the

reasons mentioned in prior sections).

> Specific transactions, industries and situations, if any, more

likely to be audited

There are no specific transactions, industries and situations.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Under PER-43, APAs are available. The specific DGT guidance

covering APAs is PER-69/PJ/2010 (PER-69), which states

that APAs may be unilateral or bilateral. Subsequently, the

Government issued Ministry of Finance Regulation No. 7/

PMK.03/2015 (PMK-7) on 12 January 2015 regarding the

formation and implementation of an APA. On 18 March

2020, PMK-7 was replaced by the issuance of Ministry of

Finance Regulation No. 22/PMK.03/2020 (PMK-22) regarding

implementation procedures in APA. This regulation came into

force on the date of promulgation (i.e., 18 March 2020) and is

applicable for all outstanding and future APA applications.

Under PER-43, MAPs are also available, in accordance with

the provisions of an applicable tax treaty. The specific DGT

guidance covering MAPs is PER-48/PJ/2010. Subsequently,

the Government issued Ministry of Finance Regulation No.

240/PMK.03/2014 (PMK-240), regarding the implementation

of the MAP, which provides a refinement to the guidelines

that had been stipulated in previous regulations. On 26 April

2019, the PMK-240 was revoked by the issuance of Minister of

Finance Regulation No. 49/PMK.03/2019 (PMK-49) regarding

guidelines for implementation of MAP. This new regulation is

effective from 26 April 2019 and applicable for all outstanding

and future MAP implementations under tax treaties that are

effective prior to, on or after this date.

> Tenure

The term could be as long as five years for both unilateral APA

and bilateral APA.

> Rollback provisions

Based on PMK-22, rollback is allowed as long as 1) the facts

and conditions of the related-party transaction does not differ

materially; 2) the year is not yet expired for assessment ( i.e.,

five years); 3) the Tax Assessment Letter of Corporate Income

Tax has not been issued; and 4) there is no investigation of a

criminal act or crime in the context of taxation.

> MAP opportunities

Yes, an MAP request must be within the scope of a double

taxation treaty of which Indonesia is signatory, and can only

cover the following:

> Transfer pricing issues

> PE issues

> Other income tax issues

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not specified.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under the tax law, the Minister of Finance may determine

an acceptable debt-to-equity ratio. In September 2015, the

Minister prescribed a maximum debt-to-equity ratio of 4:1,

effective from the tax year 2016. This rule applies only to

Indonesian-resident companies, which are companies that

are established or incorporated in Indonesia or domiciled in

Indonesia and that have their equity made up of shares. It does

not apply to permanent establishments. Certain taxpayers are

exempted from the rule.

Under the Minister of Finance Regulation regarding the debt-

to-equity ratio, if a taxpayer breaches the ratio limit, the DGT

is entitled to adjust the taxpayer’s borrowing costs based on

the debt-to-equity ratio limit. For a taxpayer that has nil or

negative equity, all costs related to the borrowing are treated

as non deductible for corporate tax purposes. Foreign loans

must be reported to the DGT. Non-reporting of foreign loans

results in the forfeiting of the deductibility of the interest.

Interest rates on related-party loans must be at arm’s length.

Jonathon McCarthy

Jonathon.McCarthy@id.ey.com

+ 86 15921440665

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Irish Revenue Commissioners (IRC)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Reference to transfer pricing can be found in the following:

> Irish transfer pricing rules are contained in Part 35A,

Section 835 of the Irish Taxes and Consolidation Act

1997. Section 835C sets out the primary transfer pricing

regulations in Ireland.

> For accounting periods commencing on or after 1 January

2020, the relevant transfer pricing guidelines applicable

under Irish law is the 2017 version of the OECD Transfer

Pricing Guidelines.

> Section reference from local regulation

Part 35A

> 835A Interpretation

> 835B Meaning of associated

> 835C Basic rules on transfer pricing

> 835D Principles for construing rules in accordance with

OECD Guidelines

> 835E Modification of basic rules on transfer pricing for

arrangements between qualifying persons

> 835EA Small or medium-sized enterprise

> 835F Small or medium-sized enterprises

> 835G Documentation and enquiries

> 835H Elimination of double counting

> 835HA Interaction with capital allowances provisions

> 835HB Interaction with provisions dealing with chargeable

gains

1https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capi-

tal-gains-tax-corporation-tax/part-35a/35a-01-01.pdf

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Ireland is a member of the OECD. Irish regulations follow the

arm’s-length principle and adopts the 2017 OECD Guidelines

into the domestic legislation for accounting periods beginning

on or after 1 January 2020.

Additional guidance specific to financial transactions was

released by the OECD on 11 February 2020, namely the

“Transfer Pricing Guidance on Financial Transactions, Inclusive

Framework on BEPS: Action 4, 8-10” (OECD FTTP Guidance or

Chapter X).

Ireland’s Minister for Finance on 8 December 2021 (S.I. No.

686 of 2021) singed a Ministerial order to formally adopt the

Chapter X guidance into Irish legislation. Therefore, one should

be mindful of this guidance when considering the transfer

pricing specific considerations of a financial transaction.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

Master File and Local File

Section 835G of Taxes Consolidation Act (TCA) 1997, Part

35A, sets out the documentation requirements in Ireland.

For accounting periods beginning on or after 1 January 2020,

Master File and Local File requirements are in scope.

> The requirement to prepare a Master File (in accordance

with the 2017 OECD Transfer Pricing Guidelines) is for

groups with annual consolidated revenues in excess of

EUR250 million.

> The requirement to prepare a Local File (in accordance

with the 2017 OECD Transfer Pricing Guidelines) is for

groups with annual consolidated revenues in excess of

EUR50 million.

Please note that both Master File and Local File thresholds are

based on the annual consolidated group revenue figure, and

not the local Irish entity(s) financial results.

The statutory deadline for preparing the Master File and Local

file reports are in line with the corporation tax return filing

deadline (i.e. nine months after a companies accounting

year-end). As an example, a company with an accounting year

ending 31 December 2021, it is expected that transfer pricing

documentation would be in place by 23 September 2022.

CbCR

An Irish resident ultimate parent entity of an MNE group

(one with annual consolidated revenue in excess of EUR750

million in the immediately preceding accounting period) will

be required to file a group CbC report with Irish Revenue. For

foreign parented groups, Irish domestic constituent entities

can file the CbCR notification.

The filing deadline for the CbC report or equivalent CbC report

is 12 months after the last day of the accounting period (full-

year estimate plus one year on 31 December).

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

Refer to the response above.

> Effective or expected commencement date

BEPS Action 13 Master File or Local File requirements

have been legislated with effect for accounting periods

beginning on or after 1 January 2020.

> Material differences from OECD report template or format

Master File and Local File must be prepared in accordance

with the 2017 OECD Guidelines, Annex I and II.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

BEPS Action 13 format will provide penalty protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The 2017 OECD Transfer Pricing Guidelines have been adopted

into Irish legislation for accounting periods beginning on or

after 1 January 2020.

Guidance on the Irish rules are contained in the Tax and Duty

Manual, Transfer Pricing, Part 35A-01-01.

The transfer pricing rules contained in Section 835C are to

also follow additional guidance published by the OECD after

the date of publication of the 2017 OECD Guidelines:

> Guidance for Tax Administrations on the Application of the

Approach to Hard-to-Value Intangibles: BEPS Action 8–10

> Revised Guidance on the Application of the Transactional

Profit Split Method: Inclusive Framework on BEPS: Action

8–10

> Any additional guidance published by the OECD on or after

the date of the passing of the Finance Act 2019

Documentation is to be prepared at the time the terms of the

transaction are agreed upon. That documentation should exist

no later than the time the tax return for the period is due to be

made for the taxpayer to be in a position to make a correct and

complete tax return.

In addition, the following has been introduced into Irish law:

> Introduction of a requirement to prepare Master File and

Local File documentation, subject to an EUR250 million

and EUR50 million annual group consolidated revenue

threshold respectively

> Introduction of a deadline for preparing transfer pricing

documentation in line with the Irish corporation tax return

filing deadline

> A penalty protection regime has been established in

the case of timely documentation and demonstration of

reasonable efforts to comply with those regulations

> An important exemption for domestic non-trading

transactions, subject to certain anti-avoidance rules.

Please refer to the domestic transaction question in

Section C

> Extension of transfer pricing rules to capital transactions;

the application of transfer pricing rules to capital

transactions and capital allowances to be on a prospective

basis, applying to capital expenditure incurred on or after

1 January 2020:

> For assets where capital allowances are being claimed,

transfer pricing is applicable where the amount of

expenditure on acquisition exceeds EUR25 million,

specifically including intangible assets

> Transfer pricing also to be applicable on disposal of assets

where the value of the asset on disposal is more than

EUR25 million

> Removal of the exemption for transactions that are

grandfathered under existing legislation (i.e., outside the

scope of Irish transfer pricing rules if entered into before

1 July 2010); it should be noted, however, that the new

Master File and Local File documentation requirements not

applicable to grandfathered arrangements

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

The Authorised OECD Approach (AOA), will extend transfer

pricing principles to the taxation of branches in Ireland. The

AOA will apply to tax years beginning on or after 1 January

2022.

The AOA seeks to attribute profits to a branch that would

have been earned at arm’s length as if it were a separate and

independent legal enterprise performing the same or similar

functions under the same or similar conditions (separate entity

approach).

There are however, relieving provisions for companies that are

small or medium enterprises where the income attributable to

their Irish branch is less than EUR250,000. No documentation

requirements are required in such cases.

> Should transfer pricing documentation be prepared

annually?

Yes. The Master File and/or Local File should be prepared no

later than the due date for the tax return for the taxable period

in question.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

A taxpayer can either prepare individual Irish Local File reports

or opt to prepare one consolidated “Irish jurisdiction file

report.”

b) Materiality limit or thresholds

> Transfer pricing documentation

Transaction thresholds

Technically there is no de minimis transaction threshold in

Ireland. Therefore all intercompany transactions would be

considered in scope to Irish transfer pricing rules and as such

documentation.

Small to medium-sized enterprises

Section 835EA outlines the rules with respect to SMEs.

SMEs are currently excluded from the scope of transfer pricing

rules. Provision was made in Finance Act 2019 to bring SMEs

within the scope of transfer pricing rules however this is

subject to a commencement order by the Minister for Finance.

> Master File

There is a requirement to prepare Master File documentation

subject to an EUR250 million annual group consolidated

revenue threshold.

> Local File

There is a requirement to prepare Local File documentation

subject to an EUR50 million annual group consolidated

revenue threshold.

> CbCR

This applies if MNE annual consolidated revenues are equal to

or exceed EUR750 million in the previous year.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions

subject to a certain exclusion provision.

Finance Act 2019 extended Ireland’s transfer pricing rules

to non-trading transactions. It was intended that the rules

should not create deemed income taxable at 25% for which

deductions were only available at the 12.5% rate, a risk for

wholly domestic transactions. However, the relief was open to

a wide range of interpretations as to its scope.

Finance Bill 2021 repeals the 2020 amendments and for

chargeable periods commencing on or after 1 January 2022

rewrites the relief to deal with the unintended consequences of

applying transfer pricing rules to certain domestic to domestic

non-trading transactions. It excludes certain transactions

between associated persons that are both chargeable to Irish

tax on profits, gains or losses arising from the transaction, or

who would be chargeable if there were any such profits. In the

context of loans, relief will also be available to the extent that a

borrower is chargeable to tax on profits, gains or losses arising

directly or indirectly from its relevant activities or would be

but for any Irish dividends being outside the scope of charge,

provided the borrower is Irish tax resident.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language, meaning English or Irish.

> Safe harbor availability, including financial transactions if

applicable

As the 2017 OECD Transfer Pricing Guidelines is adopted

into Irish legislation. The pricing of low value-adding services

is included therein (Section 7.43). The IRC released a Tax

and Duty Manual (Revenue eBrief No. 37/18) in March 2018

providing guidance to taxpayers regarding the IRC’s simplified

approach to low-value intragroup services.

There are currently no safe harbors for financial transactions.

> Is aggregation or individual testing of transactions preferred

for an entity

None specified.

> Any other disclosure or compliance requirement

See above.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

No transfer pricing-specific forms are required to be filed in

Ireland.

> Related-party disclosures along with corporate income tax

return

Tax returns in Ireland are generally due to be filed within nine

months after the end of the taxpayer’s accounting period.

The tax return contains the following three transfer pricing-

related questions:

> Does the company qualify for the SME exemption under

835EA? Yes/No

> Is the company required to prepare a Local File? Yes/No

> Is the company required to prepare a Master File? Yes/No

> Related-party disclosures in financial statement/annual

report

Yes, related-party disclosures are set out in financial

statements outlining the related parties and intercompany

transactions.

> CbCR notification included in the statutory tax return

No.

> Other information or documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

A company generally must file its return and pay any tax

due nine months after the end of the accounting period. The

company must make this payment on or before the 23rd of the

ninth month. Companies that fail to pay and file electronically

must submit their return and pay any associated tax. These

companies must pay this tax on or before the 23rd of the

month.

> Other transfer pricing disclosures and return

The tax return contains the following three transfer pricing-

related questions:

> Does the company qualify for the SME exemption under

835EA? Yes/No

> Is the company required to prepare a Local File? Yes/No

> Is the company required to prepare a Master File? Yes/No

> Master File

There is no requirement to submit the Master File to Irish

Revenue unless such documentation is requested by them.

Master File documentation requested by Irish Revenue must be

delivered to them within 30 days of such request.

Where a Master File is requested by Irish Revenue and not

provided within the 30-day statutory timeline, a penalty of

EUR25,000 will apply, along with a further penalty of EUR100

per day until the documentation is provided.

> CbCR preparation and submission

The filing deadline for the CbC report or equivalent CbC report

is 12 months after the last day of the accounting period (full-

year estimate plus one year on 31 December).

As an example, for the report relating to the fiscal year ended

31 December 2021 report, this will be submitted on or before

31 December 2022.

> CbCR notification

All notifications must be made no later than the last day of the

fiscal year to which the CbC report or equivalent CbC report

relates. The notification deadline follows that of the ultimate

parent entity year-end, and not the domestic constituent

entity.

For example, for CbC reports or equivalent CbC reports

relating to the fiscal year ended 31 December 2022,

notifications must be made to Irish Revenue no later than 31

December 2022.

b) Transfer pricing documentation/Local File preparation

deadline

The statutory deadline for preparing the Local File is in line

with the corporation tax return filing deadline (i.e., nine

months after the companies accounting year-end. As an

example, a company with a fiscal year ending 31 December

2021, it is expected that transfer pricing documentation would

be in place by 23 September 2022.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no requirement to submit the Local File to Irish

Revenue unless such documentation is requested by them.

> Time period or deadline for submission on tax authority

request

Master File and local File documentation must be made

available upon request by Irish Revenue within 30 days.

Where a Master File and/or Local File is requested by Irish

Revenue and not provided within the 30-day statutory

timeline, a penalty of EUR25,000 will apply, along with a

further penalty of EUR100 per day until the documentation is

provided.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

Nothing specific on TP issued in Ireland but Ireland will be

guided by the OECD paper that was published in relation to the

impact of Covid on TP.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The Irish transfer pricing rules apply to both cross-border and

domestic transactions.

To establish an arm’s-length price, the 2017 OECD Guidelines

will be referenced. The arm’s-length principle asserts that

intra-group transfer prices should be equivalent to those that

would be charged between independent persons dealing at

arm’s length in otherwise similar circumstances.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local jurisdiction

comparables; pan-European comparables are accepted.

> Single-year vs. multiyear analysis

Three-year testing is a common practice in Ireland for

benchmarking purposes; however, the tested party will be

tested upon single-year results.

> Use of interquartile range

The full range may be potentially acceptable under specific

circumstances.

There is no expressed preference on the part of the IRC;

however, the use of the interquartile range is commonly used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

For a TNMM benchmarking, in general, Revenue will expect

a full benchmarking study every three years and for the

financials of the accepted comparables to be updated or

refreshed on an annual basis.

> Simple, weighted or pooled results

Based on experience, there is a preference for the weighted

average for arm’s-length analysis.

> Other specific benchmarking criteria, if any

The usual pan-European criteria are accepted; companies with

unknown ownership are generally not accepted.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

Where a Master File and/or Local File is requested by Irish

Revenue and not provided within the 30-day statutory

timeline, a penalty of EUR25,000 will apply, along with a

further penalty of EUR100 per day until the documentation is

provided.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Where a transfer pricing adjustment results in additional tax

due, a relevant person will be protected from a tax-geared

penalty that may otherwise apply under Section 1077E(5):

“Penalty for deliberately or carelessly making incorrect

returns, etc.,” which relates to careless but not deliberate

behavior, where the relevant person:

> Has fulfilled the requirements of the section to prepare,

and provide upon request, transfer pricing documentation

within the specified time frame

And

> The records provided are accurate and demonstrate that

notwithstanding the transfer pricing adjustment, the

relevant person has made reasonable efforts to comply

with the requirements of Part 35A in setting the actual

consideration payable or receivable under an arrangement

> Protection from tax-geared penalties only applies to

transfer pricing adjustments that fall within the careless

behavior category of default. Where the additional tax

due relates to deliberate behavior category of default, the

relevant tax-geared penalty will apply even where transfer

pricing documentation is provided within 30 days of a

written request from a Revenue officer.

Where the conditions set out in Section 835G(7) are not

satisfied, then penalties provided for in Section 1077E will

apply in the normal manner.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Please refer to above.

> Is interest charged on penalties or payable on a refund?

Under the general corporate tax penalty provisions, (Section

1080, “Interest on overdue income tax, corporation tax and

capital gains tax”), interest arises on underpaid tax at a daily

rate of 0.0219%, which is 7.994% per year.

The interest is calculated by multiplying together the:

> Amount of tax a company has underpaid

> Number of days the tax is late

> Interest rate

b) Penalty relief

There is a penalty protection regime in place. Irish Revenue

Guidance notes that “… Chapter V, D.7 of the 2017 OECD

Guidelines recommends that where transfer pricing

documentation requirements are satisfied and submitted on

time, the relevant person may be exempt from penalties or

subject to a lower penalty where a transfer pricing adjustment

is made. In line with this approach, section 835G(7) provides

that a relevant person will be exempted or protected from a

tax-geared penalty in certain circumstances …”

10. Statute of limitations on transfer pricing

assessments

The statute of limitations is currently four years after the end

of the tax year or the accounting period in which the return is

made.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

None specified.

12. Lkelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium. There has

been a noted increase in IRC activity and staffing levels in

recent times.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium. There are a

number of transfer pricing audits ongoing in Ireland, and one

of the IRC lines of inquiry is methodology selection, including

whether a two-sided study was considered.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium. This will

ultimately depend on the merits and economic circumstances

of the transaction.

> Specific transactions, industries and situations, if any, more

likely to be audited

The IRC is interested in relatively low people substance and

principal company structures. Modifying a tax return or

requiring a tax refund may also trigger an IRC query. We are

also seeing an increase in audits in a range of industries and

sectors.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Ireland. The IRC has

formally introduced a bilateral APA program (unilateral APAs

are not available) with the publication of guidelines on 23 June

2016 — Revenue eBrief No. 60/16. Multilateral (or coordinated

series of bilateral) APAs are also available.

The guidelines are effective for new APAs requested from 1

July 2016. The IRC are generally only open to APAs where

there is a likelihood of double tax arising or where the

transactions are significantly complex enough.

> Tenure

An Irish bilateral APA agreed upon under the new program will

likely have a fixed term of three to five years.

> Rollback provisions

After the three to five years mentioned above, there is an

opportunity to roll back the agreement to open tax periods

in certain cases as well as to renew the agreement upon the

expiration of the initial term. Therefore, a bilateral APA can

provide in excess of five years of tax certainty and audit risk

mitigation in the two relevant jurisdictions.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double tax treaty (DTT) to which Ireland is a signatory. Most

of Ireland’s DTTs permit taxpayers to present a case to the

Irish Revenue within three years from the first notification

to the taxpayer of the actions giving rise to taxation not in

accordance with the DTT. However, time limits may vary, and

the relevant DTT should be consulted for the applicable time

limit. Taxpayers have three years to present a case to the Irish

Revenue under the EU Arbitration Convention (90/436/EEC).

The EU Arbitration Convention establishes a procedure to

resolve disputes where double taxation occurs between

enterprises of different Member States because of an upward

adjustment of profits of an enterprise of one Member State.

The Convention provides for the elimination of double taxation

by agreement between the contracting states including, if

necessary, by reference to the opinion of an independent

advisory body.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Following the introduction of new transfer pricing legislation

in Ireland (effective for accounting periods commencing on or

after 1 January 2020), there is additional requirement under

Irish transfer pricing rules to consider whether the legal form

of a transaction (including its capital structure) is aligned with

the substance of the transaction.

Where a taxpayer has obtained related party debt (and as a

result is claiming interest deductions), they need to be able to

demonstrate that those interest charges do not exceed those

which it would have claimed had it been funded entirely by

third party debt (at arm’s length). Where a company is very

highly leveraged, Irish Revenue may seek to disallow interest

deductions.

The debt capacity of a borrower in relation to a related party

loan arrangement should be considered at the time the

arrangement was entered into. Hence, this includes any loan

arrangements in place prior to 1 January 2020.

Dan McSwiney

Dan.McSwiney@ie.ey.com

+ 353 1 2212 094

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Israeli Tax Authority (ITA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Section 85a of the Israeli Tax Ordinance (ITO) and the

provisions thereunder include a description of the

documentation required; it applies to fiscal years starting

January 2007.

> Section reference from local regulation

Section 76d of the ITO and the provisions thereunder include a

description of the documentation.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Israel is an OECD member jurisdiction. The ITA considers

its TP rules and regulations to be consistent with the OECD

Guidelines.

However, usually, a local adaptation is necessary, mainly with

respect to the interquartile range when the CUP method is

used and the decision of whether to use local, European or US

comparables.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Sections 85b and 85c include local reference to the BEPS

Action Plan (but they were in draft form at the time this was

published).

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

The CbCR is expected to be in accordance with OECD TP

Guidelines. We note that at this time, the section relating

to CbCR is still in draft, and is not yet known when this

section will come into effect.

> Effective or expected commencement date

Section relating to CbCR is still in draft and is not yet

known when this section will come into effect.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 12 May 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, Section 85a of the ITO and the provisions thereunder

include a description of the documentation required.

Contemporaneous documentation is not prescribed.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

The TP documentation does not have to be prepared

annually under Israel’s local jurisdiction regulations. However,

the likelihood of an annual tax audit in general may be

considered to be high. Traditionally, taxpayers operating in the

international arena or subsidiaries of foreign companies have a

higher likelihood of being audited.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone TP reports for each entity?

It is not obligatory.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

There is no threshold limit (no formal requirement under local

regulations yet).

> Local File

There is no threshold limit (no formal requirement under local

regulations yet).

> CbCR

It is required to submit a country-by-country (CbC) report if

group revenue exceeds EUR750 million. The section relating to

CbCR is still in draft and is not yet known when this section will

come into effect.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There are no specific requirements for the treatment of

domestic transactions.

> Local language documentation requirement

There are no requirements for TP documentation to be

submitted in the local language.

> Safe harbor availability, including financial transactions if

applicable

On 5 September 2018, the ITA published a circular providing

safe harbor provisions for certain intercompany transactions:

> Low-level services (following the OECD Guidelines

definitions) with a markup on total costs of 5%

> Marketing services with a markup on total costs of

between 10% and 12% (assuming it has been clarified that

the activity is not classified as sales activity, as discussed

under a separate ITA circular)

> Distribution activity under a low-risk profile with an

operating margin between 3% and 4%

Taxpayers that exhibit these results are exempt from attaching

a benchmarking exercise attesting the arm’s-length range into

their TP documentation.

> Is aggregation or individual testing of transactions preferred

for an entity

Section 85A to the ITO does not specify the type of testing.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Commencing from the financial year 2007, taxpayers must

attach to the annual tax returns a specific TP form (1385

new version as of 2019), in which the following should be

disclosed:

> A short description of the intercompany transaction

details of the other party and its residency

> Transaction volume and residency of the other party

> Signatures on all declarations (forms) that the

international transactions were conducted at arm’s length

According to the taxing authority, such declarations must be

supported by documentation that meets the requirements.

Updated Form 1385

On 3 July 2019, the ITA published an updated 1385 Form,

taking effect for 2019 tax returns and onward. For tax year

2018, companies may choose to file the updated or the

original 1385 Form.

The updated form features additional details regarding

intercompany transactions. New elements indicated on the

form include:

> The pricing method — to be accurately defined, specifying

the PLI used and the amount of money transferred

> Information about the party with whom the transactions

were conducted, possibly to cross-check with the tax

authority in the jurisdiction of the related party

> Signature of an individual with a defined position in the

company, whereas in the past it was possible to sign on

behalf of the company

> Notification on whether “safe harbors” were used, as per

Income Tax Circular 12/2018.1

Form 1485

Form 1485 relates to intercompany capital notes that are

provided under certain specific terms, as discussed in Section

85 a (6) of the ITO, thereby qualifying as interest-free loans for

Israeli tax purposes. Taxpayers are required to provide details

on such capital notes, including the identity and location of the

related party, the denomination and amount of the loan, and

its duration.

> Related-party disclosures along with corporate income tax

return

Refer to the section below.

> Related-party disclosures in financial statement/annual

report

None.

> CbCR notification included in the statutory tax return

The section relating to CbCR is still in draft and is not yet

known when this section will come into effect.

> Other information or documents to be filed

None.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 31 May.

> Other transfer pricing disclosures and return

The deadline is 31 May as Form 1385 must be attached to the

corporate income tax return. TP documentation is not required

to be filed unless required under tax audit.

> Master File

This is not applicable.

> CbCR preparation and submission

The section relating to CbCR is still in draft and is not yet

known when this section will come into effect.

> CbCR notification

The section relating to CbCR is still in draft and is not yet

known when this section will come into effect.

b) Transfer pricing documentation/Local File preparation

deadline

The TP documentation only needs to be finalized by the time

of submitting upon request. It does not need to be finalized

by a specific time, and upon tax audit, it would be expected

to be submitted within 60 days. However, Form 1385 is to

be appended to the annual tax return, and the declaration of

operating at arm’s length included therein is required to be

based on an economically valid and timely analysis.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

There is no statutory deadline for the submission of TP

documentation.

> Time period or deadline for submission on tax authority

request

Taxpayers in Israel must provide the documentation within 60

days of a tax-assessing officer’s request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

Yes, the CIT return, which includes the TP declarations form, is

postponed by two months up to July.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

The Israeli TP regulations follow the OECD. Sections 85b and

85c include local reference to the BEPS Action Plan and are

currently in draft form.

> Domestic transactions

This is not applicable.

b) Priority and preference of methods

To determine whether an international transaction is at arm’s

length, the Israeli TP regulations require the taxpayer to apply

one of the following methods, in order of preference:

> CUP or comparable uncontrolled transaction (CUT)

> Comparable profitability

> Cost plus or resale price

> CPM or TNMM

> Profit split

> Other methods

An international transaction is at arm’s length if, through the

application of the selected method, the result falls within a

defined interquartile range.

As an exception, the entire range of values will apply when the

TP method applicable is CUP or CUT and no adjustments are

performed. If the international transaction’s result is outside

the range, the median should be applied as the arm’s-length

price for the transaction.

Additionally, the Israeli TP regulations stipulate the use

of several PLIs, depending on the particular industry and

environment.

On 5 September 2018, the ITA finalized two draft circulars.

One circular focuses on appropriate TP methods related to

distribution, marketing and sales by MNEs in the Israeli market,

while the other focuses on specific profitability ranges for

certain transactions. The circulars provide the ITA’s position

regarding the methodology and profitability of various types

of transactions, while facilitating documentation and reporting

requirements.

8. Benchmarking requirements

> Local vs. regional comparables

There is benchmarking requirement using local comparables,

tax authorities expect an effort to find local Israeli

comparables.

> Single-year vs. multiyear analysis for benchmarking

A single-year analysis is preferred.

> Use of interquartile range

Yes, interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking study vs. a financial update needs to be

performed every year. This requirement is implicit given that

an appendix to the annual tax return (Form 1385) needs to be

completed for each international intercompany transaction,

stating it has been performed at arm’s length.

> Simple, weighted or pooled results

The weighted average is preferred.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

No specific TP penalties are mentioned; the submission of

TP documentation is upon request only, and should be done

within 60 days of the request. Failure to submit in time may

cause civil and criminal implications (as per Sections 131, 271

and 224a of the ITO).

> Consequences of failure to submit, late submission or

incorrect disclosures

No specific TP penalties are mentioned; the submission of

TP documentation is upon request only, and should be done

within 60 days of the request. Failure to submit in time may

cause civil and criminal implications (as per Sections 131, 271

and 224a of the ITO).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

General tax-related penalties under Section 191 of the ITO

include a penalty of 15% (may be increased to 30% in certain

cases) of the deficit when the taxable income under audit is

higher by 50% or more than the reported taxable income.

We note that the tax inspector has the discretion to avoid a

penalty when reaching a settlement.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No.

> Is interest charged on penalties or payable on a refund?

Penalties are considered an addition to the taxpayer’s tax debt.

Therefore, they are linked to the index and carry 4% interest.

b) Penalty relief

There is no penalty relief regime applicable in Israel.

The company may dispute and begin the stage A process.

Based on stage A, the sides may reach an agreement. If not,

stage B will begin the same as under stage A. If the sides do

not reach an agreement, the assessment will be filed as a

dispute and the matter will move to court.

10. Statute of limitations on transfer pricing

assessments

The Israeli Income Tax Ordinance has general rules for auditing

a tax return. As such, the statute of limitations usually is three

years (or four if the commissionaire extends the time period),

beginning at the end of the fiscal year in which the tax return

was filed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

As of the COVID-19, the ITA has increased its audits

on companies. ITA may be more pragmatic in making

compromises where this is applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit in general may be

considered to be high. Traditionally, taxpayers operating in the

international arena or subsidiaries of foreign companies have a

higher likelihood of being audited.

The likelihood that TP will be reviewed as part of that audit

may be considered to be high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

In the past, the likelihood that the TP methodology would be

challenged in a TP review had been moderate, if supported

by robust TP documentation. Recently, a growing trend of

challenged TP methodology has been seen as well. When no

documentation exists, the methodology is even more likely to

be challenged.

Following the recent circulars on restructuring, stock option

expenses and the digital economy, these issues are more likely

to be challenged, as well as financial transactions. In addition,

considering Israel’s start-up ecosystem, another focus point

of tax audits is intellectual property migrations and business

restructurings. There are currently several such cases being

debated in court.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high (refer to the

section above).

> Specific transactions, industries and situations, if any, more

likely to be audited

There are no specifications; the ITA challenges all TP

transactions, industries and situations.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Section 85A of the Israeli Income Tax Ordinance, which

governs the Israeli TP regulations, stipulates in Article 85A(d)

the conditions under which an APA may be concluded and

delineates the scope of an APA.

The process starts with a detailed application that includes

all of the relevant details. Under the APA process, the ITA

must respond to the taxpayer’s application within 120 days

(though the time can be extended up to 180 days); otherwise,

the application will be approved automatically and the

intercompany policy will be deemed as providing reasonable

arm’s-length prices. In practice, a complete APA procedure

may take 12 months.

> Tenure

There is none specified.

> Rollback provisions

This is not applicable.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty (DTT) to which Israel is a signatory. Most

of Israel’s DTTs permit taxpayers to present a case to the ITA

within three years from the first notification to the taxpayer

of the actions giving rise to taxation not in accordance with

the DTT. However, time limits may vary, and the relevant DTT

should be consulted for the applicable time limit.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

None.

Eyal Gonen

Eyal.gonen@il.ey.com

+ 97235639806

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Italian Revenue Agency (Agenzia delle Entrate — AdE).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 110(7) of the Italian Income Tax Code (IITC) is the

historical Italian reference for the definition of the arm’s-length

principle for transfer pricing purposes. On 14 May 2018, the

Italian Ministry of Economy and Finance (MEF) released the

final version of a decree setting out the general guidance for

the correct applica¬tion of the arm’s-length principle (the

Decree). Indeed, paragraph 7 of Article 110 of the IITC (Article

110(7)) was amended by Law Decree of 24 April 2017, No.

50 (the Law Decree) in order to explicitly incorporate into

the law the arm’s-length principle set forth by both the OECD

Model Tax Convention (OECD Model) and the OECD Transfer

Pricing Guidelines for Multinational Enterprises and Tax

Administrations (OECD Transfer Pricing Guidelines) in their

most updated version. While the previous version of Article

110(7) established that the prices for intercompany cross-

border transactions should be determined on the basis of the

so-called “normal value,” the new rule now generally refers to

the “conditions and prices that would have been agreed upon

between independent parties acting on an arm’s-length basis

and in comparable circumstances.”

On 23 November 2020, the Italian Revenue Agency issued

the Decision of the Commissioner of the Italian Revenue

Agency prot. n. 0360494 (New Instructions) regarding the

content and validity of the elective transfer pricing (TP)

documentation available to Italian resident enterprises and

Italian permanent establishments (PE) of foreign entities to

provide administrative penalty protection in the case of a

transfer pricing assessment.

The New Instructions introduce significant changes to the

mandatory contents of the transfer pricing documentation as

defined under the previous instructions (2010 Instructions),

in order to adopt the Base Erosion and Profit Shifting (BEPS)

Action 13 deliverable and the associated revisions to the

OECD transfer pricing Guidelines on documentation. On 26

November 2021, the Italian Revenue Agency issued a Circular

Letter (Circular Letter) providing clarifications to increase the

level of certainty in the interpretation of the New Instructions.

1https://www.agenziaentrate.gov.it/portale/

> Section reference from local regulation

In Italy, there are several definitions of related parties. For

transfer pricing, reference can be made to Circular Letter No.

32 (prot. 9/2267), dated 22 September 1980 (1980 Circular

Letter), that defines the concept of “control” as “all instances

of potential or effective economic influence.” Therefore, it

emerges from the above that the notion of “control” should be

extended to cover all hypotheses of economic influence.

Following the Decree, the concept of “control” appears to be

restricted now to the majority shareholding and the existence

of contractual relationship although no definite guidance

exists.

The Decree provides for the following notions:

> “Associated enterprises” means an enterprise resident

in the Italian territory as well as non resident companies

where either:

> One of them participates directly or indirectly in the

management, control or capital of the other

> The same person participates directly or indirectly in the

management, control or capital of both enterprises

> “Participation in the management, control or capital”

means either:

> A participation of more than 50% in the capital, voting

rights or profits of another enterprise

> The dominant influence over the management of another

enterprise, based on equity or contractual constraints

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Italy is an OECD member. Italian transfer pricing rules are

largely consistent with the OECD Transfer Pricing Guidelines.

After the amendments by the Law Decree, Article 110(7) of

the IITC and the related implementing regulations found in

the Ministerial Decree of 14 May 2018 now make reference

to the arm’s-length principle, with the declared purpose of

aligning the domestic provision to the OECD Transfer Pricing

Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Refer to the section below for details.

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

Italian laws follow the three-tiered approach

recommended by BEPS Action 13 and the OECD Transfer

Pricing Guidelines (i.e., Master File, Local File and country-

by-country report).

> Effective or expected commencement date

The new measures are applicable from fiscal year 2020

onwards.

> Material differences from OECD report template or format

Yes, Italy requires a specific format in terms of chapters,

paragraphs and subparagraphs for both the master

file and Local File for penalty protection purposes. The

structure, in terms of format and contents, is mandatory.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No; for specific requirements, refer to the details

mentioned above.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes, Italy is a part of the OECD/G20 Inclusive Framework on

BEPS.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The New Instructions, which repealed the 2010 regulation,

requires transfer pricing documentation that consists of

a Master File and a Local File. Therefore, Italian taxpayers

(including permanent establishments of non-Italian resident

entities) wishing to benefit from the penalty protection regime

are obligated to prepare on a yearly basis both the Master File

and the Local File.

With regard to the Local File, the New Instructions provide that

this file has to contain information regarding the local entity

and its intragroup transactions and must be drafted following

the structure set out in paragraph 2.3, which substantially

mirrors BEPS Action 13 and the OECD Transfer Pricing

Guidelines.

A simplification is provided for small and medium-sized

enterprises (taxpayers with an annual turnover not exceeding

EUR50 million for the fiscal year covered by the transfer

pricing documentation that are not, directly or indirectly

controlled by, or in control of, entities exceeding the

mentioned annual turnover):

[T]hey are not required to update the benchmark analysis

regarding the intercompany transactions in the Local File during

the following two fiscal years, provided that the comparability

factors do not undergo significant changes in such two fiscal

years and the comparability analysis is based on publicly

available sources.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, branches are considered as individual entities and are

subject to transfer pricing obligations and local transfer pricing

rules.

The issue of attribution of profit to a local branch of a foreign

company is explicitly addressed under domestic law effective

from tax year 2016. Article 7 of Legislative Decree 147 of

14 September 2015 (Decreto Internazionalizzazione) in fact

amended Articles 151–154 of the IITC and introduced a clear

reference to OECD criteria.

> Should transfer pricing documentation be prepared

annually?

If a taxpayer opts for the mentioned penalty protection

regime, the complete transfer pricing documentation needs to

be drafted annually under Italy’s local jurisdiction regulations.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

All entities within a group are required to file transfer pricing

documentation (both Master File and Local File) separately.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit or threshold for transfer pricing

documentation.

> Master File

The New Instructions, which repealed the 2010 regulation,

require transfer pricing documentation that consists of a

Master File and a Local File.

Master File must also include a detailed recap of the amounts

relating to the top five products and/or services in terms of the

group’s overall turnover.

> Local File

The New Instructions, which repealed the 2010 regulation,

require transfer pricing documentation that consists of a

Master File and a Local File.

All intercompany transactions need to be disclosed (but not

necessarily documented) and reconciled with the data to

be provided in the annual tax return. The New Instructions

explicitly introduce the possibility of limiting the operations

covered by the documentation to be prepared to achieve

administrative penalty protection in the case of a transfer

pricing assessment. In such case, the penalty protection will

be granted exclusively with reference to the transactions

described and for which the information provided is considered

compliant with the requirements.

Marginal transactions are those for which the amount does not

exceed 5% of the total in absolute value of the intercompany

transactions indicated in the income tax return. These

marginal transactions must be analyzed thoroughly to benefit

from the penalty protection.

> CbCR

Tax year 2016 was the first year subject to CbCR

requirements. According to qualification or situation, Italian

taxpayers are required either to file the CbCR in Italy or to

make the proper notification in the yearly tax return. Non-

compliance with such requirements is subject to the payment

of penalties from EUR10,000 to EUR50,000.

> Economic analysis

All intercompany transactions need to be disclosed (but not

necessarily documented) and reconciled with the data to

be provided in the annual tax return. The New Instructions

explicitly introduce the possibility of limiting the operations

covered by the documentation to be prepared to achieve

administrative penalty protection in the case of a transfer

pricing assessment. In such case, the penalty protection will

be granted exclusively with reference to the transactions

described and for which the information provided is considered

compliant with the requirements. Marginal transactions are

those for which the amount does not exceed 5% of the total in

absolute value of the intercompany transactions indicated in

the income tax return. These marginal transactions must be

analyzed thoroughly to benefit from the penalty protection.

Any “omissions or partial inaccuracies” that are not likely to

compromise the analysis of the tax auditors do not jeopardize

the application of the penalty protection.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

According to the New Instructions, the transfer pricing

documentation, for penalty protection purposes, needs to be

submitted in the local language; however, the Master File may

still be drafted in English.

> Safe harbor availability including financial transactions if

applicable

The Decree and the New Instructions embody the recent

updates brought by BEPS Actions 8–10 (as reflected in the

2017 version of the OECD Transfer Pricing Guidelines) with

reference to low value-adding inter¬company services. In

particular, the Decree and the New Instructions provide

that taxpayers, subject to the preparation of specific

documentation, may evaluate such services by aggregating

all the direct and indirect costs related to the provision of the

same, adding a profit markup equal to 5%. Article 7 defines

the “low value-adding services” as those that (i) are of a

supportive nature, (ii) are not part of the core business of the

multinational group, (iii) do not require the use of unique and

valuable intangibles and do not contribute to the creation of

the same, and (iv) do not involve the assumption or control of

any significant risks by the service provider. The description

of such services can also be included in the same Local File and

described in line with the provisions of the New Instructions.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

With the implementation of Directive 2018/822 of 25 May

2018 (DAC6), cross-border arrangements within the EU,

as well as between Member States and third countries (as

of 1 July 2020), involving the use of unilateral safe harbor

rules will be reportable and subject to automatic exchange

of information. Italy has implemented the DAC6 rules

through Legislative Decree 30 July 2020 no. 100, which was

integrated with the publication of the Decree of the Ministry of

Economy and Finance of 20 November 2020 and Ruling No.

364425 of 26 November 2020, containing guidelines on the

procedures for the communication of reportable cross-border

arrangements.

The domestic regulatory framework was completed by Circular

Letter No. 2/E of 10 February 2021 issued by the Italian

Revenue Agency.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

In Italy, there are no specific transfer pricing returns. As

already mentioned, for the purposes of the optional penalty

protection regime, taxpayers that intend to adhere to

such regime shall communicate the availability of proper

documentation on the annual income tax return (i.e., in a

dedicated box, Section RS106 corporate income tax).

In details, Section RS106 corporate income tax also contains

other sections related to cross-border transactions that must

be completed:

> The kind of control relationship existing with non-resident

related parties

> The amount of costs and revenues from cross-border

intragroup transactions

Both the Master File and the Local File and relevant attachments

must be signed by the Italian entity’s legal representative or

a delegated person by means of an electronic signature and a

time stamp (marca temporale) no later than the date of filing

of the relevant tax return.

> Related-party disclosures along with corporate income tax

return

Italian companies must officially communicate (in documents,

correspondence and register of companies) whether they are

managed and controlled by another company, as well as the

name of the related company (Article 2497-bis of the Italian

Civil Code). Financial statements should include essential

data from the managing or controlling company’s financial

statements and relations with related parties (Articles 2424,

2427, 2428 and 2497-bis of the Italian Civil Code). Disclosure

is also applicable for taxpayers with reference to intercompany

flows that are to be grouped in costs vs. revenues. This

disclosure is required in the yearly tax return and applies

irrespective of the fact that a taxpayer decides to opt for the

transfer pricing penalty protection regime or not.

> Related-party disclosures in financial statement/annual

report

Refer to the previous reply.

> CbCR notification included in the statutory tax return

Yes, the information is provided in Section RS268 of the

annual income tax return.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The tax return is due by the end of the 11th month after the

closing of the fiscal year (FY).

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

Submitted in an electronic format and delivered within 20

days from the tax auditors’ request. Any additional documents

required by the tax authorities should generally be provided by

seven days after the relevant request.

Both the Master File and the Local File and relevant attachments

must be signed by the Italian entity’s legal representative or

a delegated person by means of an electronic signature and a

time stamp (marca temporale) no later than the date of filing

of the relevant tax return.

> CbCR preparation and submission

For FY2016, the deadline for submitting the CbCR for

companies with the calendar year was set as 9 February 2018.

For the following FYs, the deadline is in principle at the end of

the following FY.

> CbCR notification

A notification disclosing the company name and general details

of the reporting entity has to be made in the tax return.

b) Transfer pricing documentation/Local File preparation

deadline

In the yearly tax return, taxpayers that want to apply for the

optional penalty protection regime are expected to flag a

dedicated box stating that transfer pricing documentation is

already available, but it does not have to be submitted until a

formal request comes from the tax inspector.

Both the Master File and the Local File and relevant attachments

must be signed by the Italian entity’s legal representative or

a delegated person by means of an electronic signature and a

time stamp (marca temporale) no later than the date of filing

of the relevant tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

Submitted in an electronic format and delivered within 20 days

from the tax auditors’ request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

Refer to sections above.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

Reference is generally made to the transfer pricing methods as

provided by the OECD Transfer Pricing Guidelines. Traditional

methods, such as CUP, resale price and cost plus, are preferred

over profits-based methods.

The selection of the transfer pricing method entails an

explanation of the reasons for using a particular method that

produces results consistent with the arm’s-length standard.

Should a profit method be selected, when a traditional

transactional method could be applied in an equally reliable

manner, the taxpayer should explain why the latter had been

excluded. The same explanation applies when a method other

than the CUP method is selected, in the event that it could

have been applied to achieve equally reliable results.

An accurate description of the taxpayer’s procedure for

selecting comparable transactions will have to be provided

(including a detailed comparability analysis), as well as a clear

description of the underlying steps in arriving at an arm’s-

length range, if needed.

Article 4 of the Decree refers to the transfer pricing methods

to be used to evaluate a controlled transaction on the basis

of the arm’s-length principle. The five methods identified

by Article 4, which correspond to those listed by the OECD

Guidelines, are the comparable uncontrolled price method

(CUP), the resale price method (RPM), the cost-plus method

(CPM), the transactional net margin method (TNMM) and the

transactional profit-split method (PSM).

8. Benchmarking requirements

> Local vs. regional comparables

There are no benchmarking requirements for local

comparables.

> Single-year vs. multiyear analysis

The use of multiple-year data for testing a single year of the

taxpayer is the common standard used when testing an arm’s-

length analysis.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The Italian transfer pricing rules do not clarify whether the

update of benchmark studies needs to be a new search or a

simple financial update. Financial updates for a limited number

of years (e.g., two) are generally accepted. For companies

with an annual turnover lower than EUR50 million and are

not, directly or indirectly, controlled by or in control of entities

exceeding the mentioned annual turnover, the law provides

for the possibility to update benchmarks on a three-year basis

(rather than annually) if there are no changes in the relevant

comparability factors.

> Simple, weighted or pooled results

The weighted average is preferred for testing arm’s-length

analysis.

> Other specific benchmarking criteria, if any

The independence criterion is generally set at 50%.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

If and when the above-mentioned optional transfer pricing

documentation regime for penalty protection purposes is

deemed inapplicable (with various degrees of judgment),

general penalties for underpayment apply.

In particular, standard administrative penalties apply in an

amount equal to 90% to 180% of the additional taxes or the

minor tax credit assessed by Italian tax authorities, both for

Corporate Income Tax (Imposta sul Reddito Sulle Società —

IRES) and Regional Production Tax (Imposta Regionale sulle

Attività Produttive — IRAP) purposes. According to Circular

Letter 58/E, higher penalties may be applicable, in principle,

when the documentation is not deemed complete and

appropriate

The New Instructions and the Circular Letter clarified that a

late signature and/or time stamp is considered equivalent to

the lack of signature/time stamp, with the consequence being

the loss of the penalty protection regime.

Furthermore, in the event of a late return (i.e., filed within 90

days from the original deadline) or an amending return (i.e.,

filed within 90 days from the original deadline by replacing

the previously filed one), penalty protection can be achieved

provided that the Master File and the Local File are signed by an

electronic signature with a time stamp prior to the date of the

actual filing.

If the transfer pricing documentation has been timely prepared

(i.e., with the electronic signature and time stamp affixed not

later than 90 days from the ordinary filing deadline) but the

taxpayer has failed to make the required flag in the return,

an amending return may be filed before the deadline for the

submission of the following year’s tax return.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the section above.

> Is interest charged on penalties or payable on a refund?

Interest on penalties is not applicable. Interest for late

payment (in case of additional taxes claimed) is due and

amounts to 4%.

b) Penalty relief

As mentioned, in the case of a transfer pricing adjustment

and non-applicability of the optional penalty protection

regime, standard penalties apply. There are cases in which

penalties can be reduced by the law (e.g., through a settlement

procedure in case an agreement is reached, they are reduced

to one-third of the minimum amount).

10. Statute of limitations on transfer pricing

assessments

There is no specific statute of limitations on an assessment

for transfer pricing. The general statute-of-limitations period

for tax purposes applies. Up to FY2015 included, taxpayers

must receive a notice of tax assessments by 31 December of

the fourth year following the year for which the tax return has

been filed. If the tax return has been omitted or is treated as

null and void, the assessment period for the relevant year is

extended by an additional year.

In the case of criminal ramifications, terms for assessments

can be doubled, but only if the criminal offense has been

communicated by the tax authorities to the criminal

authorities within the standard statute of limitations.

From FY2016 onwards, taxpayers may be subject to a tax

assessment up to the end of the fifth year following the year

of filing of the relevant tax return. In addition, the statute of

limitations is extended to seven years for a failure to file any

tax.

The 2016 Budget Law repealed the doubling of the statute of

limitations in the case of criminal tax investigations. The 2015

ordinary deadline expired on 31 December 2020; however,

due to COVID-19, 2015 tax assessments can be served until

28 February 2022.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The risk of a general tax audit may be considered to be high, as

is the risk of being audited specifically for transfer pricing. Italy

is also particularly active in challenging taxpayers on deemed

permanent establishments; following the Italian Supreme

Court’s Philip Morris case, additional case law is available in

this respect.

In addition, the Italian tax authorities generally pay

particular attention and direct greater tax audit activity to

large taxpayers, and they are devoting greater resources to

intelligence and monitoring the activities of multinationals.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of the transfer pricing methodology being

challenged is also high, as tax officers often try to challenge

all the various aspects of transfer pricing, i.e., not only the

methodology, but also the functional analysis and comparable.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium to high. For

details, refer to the reasons mentioned above.

> Specific transactions, industries and situations, if any, more

likely to be audited

Generally, all intercompany relationships are deeply

scrutinized. Recently, specific areas of attention can be

identified in management fees, intellectual property-related

transactions, financial transactions and service provider

structures (especially in the IT industry and web companies).

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

Although formally introduced in the Italian law in 2003, the

Italian APA discipline has been recently updated by Legislative

Decree No. 147 of 2015, dated 22 September 2015

(Internationalization Decree).

The Internationalization Decree revises and expands the scope

of a specific type of tax agreement available for companies

with international operations. The International Ruling was

already available to reach agreements with the tax authorities

on:

> Transfer pricing issues by concluding APAs

> Cross-border flow matters

> Attribution of profits to domestic and foreign permanent

establishments

> Existence of permanent establishments

Under the revised version, the procedure is renamed advance

agreements for enterprises with international activities

(Advance Tax Agreement), and its scope is extended to the

following:

> Agreements on asset bases in the case of inbound and

outbound migrations

> For companies that participate in the Cooperative

Compliance Program (CCP), agreements on the fair

market value of costs incurred with prohibited list entities

(blacklist costs) for deduction purposes

The advance pricing agreement is, in principle, valid for five

years (i.e., for the year in which it is signed and the following

four), to the extent that the underlying factual and legal

circumstances remain unchanged.

Through the validity of the agreement, the tax authorities may

exercise their power of scrutiny only in relation to matters

other than those agreed upon in the Advance Tax Agreement.

The Italian Budget Law for 2021 introduces an extension of

the rollback of APAs available to international enterprises for

managing in advance selected tax risks.

An APA may cover all the previous fiscal years for which the

statute of limitations has not yet expired. However, the law

requires that the circumstances under which the APA was

reached are likewise applicable to the previous fiscal years and

that no investigations were started, or tax assessments were

noticed for the same fiscal years with respect to the issues

subject to the APA.

In addition, in the context of a bilateral or multilateral APA,

this “extended rollback” is allowed, provided that the foreign

competent authorities agree to extend the APA to the previous

fiscal years.

Moreover, for filing a bilateral and multilateral APA ruling

request before the Italian tax authorities the enterprise shall

pay a fee equal to:

> EUR10,000 where the overall turnover of the group is

lower than EUR100 million

> EUR30,000 where the overall turnover of the group is

higher than EUR100 million and lower than EUR750

million

> EUR 50,000 where the overall turnover of the group is

higher than EUR750 million

The fees above are reduced by half if the agreement is

renewed.

> Tenure

For details, refer to the section above.

> Rollback provisions

For details, refer to the section above.

> MAP opportunities

There are no specific provisions for the MAP procedure in

domestic law. Taxpayers must rely on the MAP provisions

under double taxation treaties or under the European

Arbitration Convention (EAC) (90/436/EEC). In addition,

a new procedure allows Italian taxpayers to obtain within

180 days a unilateral downward adjustment on their taxable

income as a result of a transfer pricing adjustment (made by

foreign tax authorities) after a negotiation phase with the

Italian tax authorities. If the outcome of the procedure denies

the corresponding unilateral adjustment, relief from double

taxation may be in any case possible under MAP and EAC (in

case the timing allows the filing of the request).

EU Directive 2017/1852 lays down innovative resolution

mechanisms with the goal of tackling international double

taxation issues between EU Member States. The EU Directive

has been implemented in Italy through Legislative Decree

No. 49 of 10 June 2020 (the Decree), which provides for the

domestic rules to apply the new procedures. The provisions of

the Decree apply to procedures submitted starting from 1 July

2019 on questions in dispute relating to fiscal year starting on

or after 1 January 2018.

Further, the Italian Revenue Agency published the Act

No. 381176 dated 16 December 2020 setting forth the

operational rules to start, conduct and settle the international

disputes governed by the Decree.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No, impacts (if any) on APAs negotiation need to be discussed

on a case-by-case basis with the APA Office.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Italy does not have any specific regulations or rulings with

respect to thin capitalization or debt capacity. It follows an

arm’s-length approach.

Legislative Decree No. 142 of 29 November 2018 replaced

Article 96 of the IITC, bringing the already existing interest

limitation rule in line with the Anti-Tax Avoidance Directive

(ATAD).

Davide Bergami

davide.bergami@it.ey.com

+ 39 3351229309

Contact

Giusy Bochicchio

giusy.bochicchio@it.ey.com

+ 39 3356022681

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

National Tax Agency (Kokuzei-chō — NTA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Special Taxation Measures Law (STML) Article 66-4/66-4-

2/66-4-3/66-4-4/66-4-5: Special provisions for taxation

of transactions with foreign related persons and profits

attributable to a permanent establishment (PE). Effective for

the taxable year starting on 1 April 1986 and thereafter and

as amended

STML Article 68-88/68-88-2: Special taxation measures of

transactions between consolidated corporations and foreign

related persons. Effective for the taxable year starting on 1

April 2002 and thereafter and as amended.

Special Taxation Measures Law Enforcement Order (STML

Enforcement Order) Article 39-12, 39-12-2, 39-12-3, 39-

12-4/39-112, 39-112-2: Special provisions for transaction

with foreign related persons and profit attributable to a PE.

Effective for the taxable year starting on 1 April 1986 and

thereafter and as amended.

Special Taxation Measures Law Ministerial Order (STML

Ministerial Order) Article 22-10, 22-10-2, 22-10-3, 22-10-

4, 22-10-5/22-74, 22-75: Special provisions for transaction

with foreign related persons and profit attributable to a PE.

Effective for the taxable year starting on 1 April 1986 and

thereafter and as amended.

STML Circulars 66-4 (1)-1 to 66-4 (12)-1, 66-4-3 (1)-1

to 66-4-3 (10)-2, 66-4-4-1 to 66-4-4-4, 67-18-1 to 67-

18-3: Commissioner’s Directive on the establishment of

instructions for the administration of transfer pricing matters

(Administrative Guidelines). Effective for the taxable year

starting on 1 April 1986 and thereafter and as amended.

Commissioner’s Directive on the administration of transfer

pricing matters for consolidated corporations (administrative

guidelines for consolidated corporations) and Commissioner’s

Directive on the mutual agreement procedure. Effective on 1

June 2001 and thereafter and as amended.

In March 2019, Japanese legislation on transfer pricing was

1https://www.nta.go.jp/english/index.htm

amended. In June 2019, the administrative guidance on

transfer pricing was also updated, and these revisions bring

Japan’s transfer pricing legislation further into alignment with

the OECD Guidelines.

> Section reference from local regulation

Refer to above section.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Japan is an OECD member jurisdiction, and Japanese TP rules

are generally consistent with the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Japan has adopted BEPS Action 13 for TP documentation in

the local laws and regulations.

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

It covers the Master File, Local File and CbCR.

> Effective or expected commencement date

CbCR and Master File requirements are effective for

fiscal years commencing on or after 1 April 2016.

Contemporaneous Local File requirements are effective

for fiscal years commencing on or after 1 April 2017. For

fiscal years beginning prior to 1 April 2017, companies

are still required to maintain documents considered

necessary to calculate arm’s-length prices for controlled

transactions (i.e., TP documentation).

> Material differences from OECD report template or format

There are some differences between the OECD report

template or format and Japan’s Local File regulations.

Article 22-10-5(1) of STML Ministerial Order contains

the documentation requirements. Key additional points

are the requirement for segmented profit and loss

information for the tested party and the counterparty to

the transaction (including the counterparty’s profit and

loss segmented for its transactions with Japan).

CbCR and Master File requirements are materially the

same.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

In Japan, there is no penalty protection by preparing a

contemporaneous Local File. Instead, being able to submit the

Local File by the requested deadline during an audit may po

reduce the likelihood of presumptive taxation (see Section -9a

below).

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Japan has TP documentation rules. Yes, TP reports are

required to be prepared.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local TP rules if

it has related-party transactions.

> Does transfer pricing documentation have to be prepared

annually?

For fiscal years beginning on or after 1 April 2017, companies

are required to prepare a contemporaneous Local File by the

time of filing the corporate income tax return (i.e., annually).

Please find the materiality limit or thresholds to prepare a

contemporaneous Local File below. Companies that are not

subject to a contemporaneous Local File are encouraged to

prepare a Local File annually, but not required by the local laws

and regulations. For fiscal years beginning prior to 1 April

2017, Japan has a de facto documentation requirement, as

taxpayers are expected to maintain documents in support of

any tax return (i.e., the results of the tested transactions need

to be arm’s length).

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

TP reports if it has related-party transactions and to file a

stand-alone corporate tax return.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is none specified.

> Master File

Companies with global consolidated sales of less than JPY100

billion in the most recent financial year are exempt from the

requirement to submit a Master File.

> Local File

Companies with transactions with a single overseas entity of

less than JPY5 billion (all transactions including intangible

transactions) and intangible transactions less than JPY300

million (again with a single overseas counterparty) in the most

recent financial year are exempt from the contemporaneous

Local File requirement.

Companies exempt from the contemporaneous rule are still

required to submit, upon request by an examiner, documents

considered necessary to calculate arm’s-length prices for

controlled transactions (which are usually contained in a local

file).

> CbCR

MNE groups with a consolidated total revenue for the ultimate

parent entity’s preceding fiscal year of less than JPY100 billion

are exempt from the CbCR filing requirement.

> Economic analysis

There is none specified.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The Local File need not be submitted in the local language.

CbCR must be prepared in English, and the Master File can be

prepared in English or Japanese. However, for the Master File

and Local File, the tax examiner may request translation of all

or part of the documentation when not in Japanese.

> Safe harbor availability including financial transactions if

applicable

No specific safe harbor is available in Japan.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Refer to the section below.

> Related-party disclosures along with corporate income tax

return

Schedule 17-4 must be attached to the regular annual

tax return when the taxpayer has foreign related-party

transactions during the fiscal year.

This contains the following:

> The name and address of the foreign related party

> The description of the main business of the foreign related

party

> The number of employees of the foreign related party

> The amount of capital of the foreign related party

> The legal ownership relationship

> The fiscal year of the foreign related party

> The revenue; cost of sales; selling, general and

administrative expenses; operating profit; earnings before

tax; and retained earnings of the foreign related party for

the preceding year

> The amount of intercompany transactions by type (the

inventory transaction, the provision of services, tangible

fixed asset transaction, intangible transaction and

interest, etc.) and the TP methodology applied to each

type of intercompany transaction

> Whether an APA exists covering the transactions between

the taxpayer and its foreign related party or parties

> Related-party disclosures in financial statement/annual

report

Japan Accounting Standard Paragraph 6 provides that in

the consolidated financial statements, transactions between

consolidated companies and related parties are subject to

disclosure, and transactions between consolidated subsidiaries

and related parties are also subject to disclosure.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

This should be filed within three months after year-end

including an extension if the taxpayer files a stand-

alone corporate income tax return. If the taxpayer files a

consolidated corporate income tax return, this should be filed

within four months after year-end, including an extension.

> Other transfer pricing disclosures and return

This is the same as above.

> Master File

The Master File should be submitted within one year of the day

following the one when the ultimate parent’s fiscal year ends.

> CbCR preparation and submission

The CbCR must be submitted within one year of the day

following the one when the ultimate parent entity’s

fiscal year ends.

> CbCR notification

Notification must be submitted by the end of the ultimate

parent’s fiscal year-end.

b) Transfer pricing documentation/Local File preparation

deadline

The contemporaneous Local File must be prepared by

the time of lodging the tax return (e.g., where there is a

contemporaneous requirement).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

There is no statutory deadline for submission of TP

documentation (other than the Master File, which is required to

be submitted within one year of the year-end of the ultimate

parent as mentioned above). The deadline for submission

of a Local File depends on whether transactions covered

require contemporaneous documentation. If transactions

require a contemporaneous Local File, it should be submitted

by the date designated by the tax examiner, which can be

a maximum of 45 days from the date of the request during

a corporate or TP examination. If transactions are exempt

from the contemporaneous Local File requirement, documents

considered as important to calculate arm’s-length prices

(documents equivalent to the Local File) should be submitted to

an examiner by the day designated by the tax examiner, which

can be a maximum of 60 days from the date of the request in

the course of a corporate or TP examination.

> Time period or deadline for submission upon tax authority

request

The time period or deadline is same as above.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

Historically, the Japanese tax authorities have required that

the CUP, resale-price and cost-plus methods be used whenever

possible, allowing the use of other methods (e.g., profit-split

method and TNMM) only after the first three have been

discounted.

STML Articles 66-4 and 66-4-2 were amended to eliminate the

hierarchy of methods in favor of the most-appropriate-method

approach for tax years beginning on or after 1 October 2011.

8. Benchmarking requirements

> Local vs. regional comparables

There is a requirement for local jurisdiction comparables in

practice for Japan benchmarks (unless the tested party is

outside Japan). In practice, non-Japanese comparables are

rejected by the Japanese tax authorities because of market

differences when the examiner assesses a TP adjustment.

> Single-year vs. multiyear analysis for benchmarking

For a TP assessment, a single-year analysis is applied. For a

Local File or APAs, multiple-year analyses are common.

> Use of interquartile range

The Administrative Guidelines provide that a TP assessment

using the median of an interquartile range can be made

in instances where comparability adjustments are made,

differences that are difficult to quantify remain, and it is

recognized that the effect of the said differences in the

adjusted ratio is insignificant. The Administrative Guidelines

provide that an interquartile range can be used under the

profit-split method, the residual profit-split method and the

transactional net margin method.

The interquartile range is recognized in practice and commonly

used in Local Files and APAs.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

TP examiners would match the year of the taxpayer to the

same fiscal year of the comparable companies selected for the

purpose of a TP assessment. Pragmatically, many taxpayers

use the most up-to-date information, as it may not be possible

to match years when preparing the Local File because up-to-

date financial data of comparable companies is not available

by the time of filing a corporate tax return (i.e., the due date to

prepare a Local File).

> Simple, weighted or pooled results

For a Local File or APAs, there is a preference for the weighted

average for arm’s-length analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is none specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

A fine of up to JPY300,000 will be imposed if corporations fail

to submit a CbCR or a Master File to the District Director by the

deadline without good reason.

There is no separate penalty for failure to prepare and

maintain a Local File. However, preparation of sufficient

documentation does not lead to penalty relief in the case of

an assessment. The Japanese tax authority has the right to

impose presumptive taxation if the taxpayer does not provide

documents considered as necessary to calculate arm’s-length

prices or a Local File in a timely manner. For the taxable year

starting on 1 April 2017 or thereafter, a 45-day or 60-day due

applies as described previously.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The underpayment penalty tax is computed as 10% of the

additionally assessed tax (or 15% on the amount of additionally

assessed tax that exceeds the larger of the tax originally paid

or JPY500,000).

The first part of delinquency tax accrues for one year following

the due date of the original tax return at a rate of 4% per

year, plus the official discount rate as of 30 November of the

prior fiscal year. However, for the time period commencing

1 January 2014, the rate is determined by adding 1% to the

special reference ratio.

The second part of delinquency tax accrues from the date

following the date of the assessment notice until the date the

additional tax is paid. For the first three months following the

date of the assessment notice (including the one-month period

from the date of the notice until the payment deadline and two

months following the deadline), the rate of delinquency tax

is the special reference ratio plus 7.3% for the period after 1

January 2014. Specifically, these translate to delinquency tax

rates as follows.

Term First part Second part

1 Jan 2014 through 31 Dec 2014 2.9% 9.2%

1 Jan 2015 through 31 Dec 2015 2.8% 9.1%

1 Jan 2016 through 31 Dec 2016 2.8% 9.1%

1 Jan 2017 through 31 Dec 2017 2.7% 9.0%

1 Jan 2018 through 31 Dec 2018 2.6% 8.9%

1 Jan 2019 through 31 Dec 2019 2.6% 8.9%

1 Jan 2020 through 31 Dec 2020 2.6% 8.9%

1 Jan 2021 through 31 Dec 2021 2.5% 8.8%

1 Jan 2022 through 31 Dec 2022 2.4% 8.7%

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is none specified.

> Is interest charged on penalties or payable on a refund?

In general, no interest is accrued on a refund as a result of a

correlative adjustment.

b) Penalty relief

As mentioned in (a) above, there are no specific penalties

for failure to prepare and submit TP documentation on time

(only the possibility of presumptive taxation if a taxpayer

fails to submit the Local File by the requested deadline in an

audit; see Section 9a). TP assessments by the tax authority

are subject to the same penalties as any other corporate tax

assessment, and there are no specific provisions for reductions

of underpayment penalties.

Grace period of the payment of tax and penalty

The 2007 tax reforms allowed for the provision of a grace

period for the payment of assessed taxes — including penalty

taxes — for taxpayers submitting an application for an MAP.

The taxpayer must submit a separate application to be entitled

to the grace period. The grace period is the period starting

on the initial payment due date of assessed taxes (if the

application submission date is later than the initial payment

due date, the submission date is applicable) and ending one

month after the day on which the “correction,” based on

the mutual agreement, has been made (or the day on which

a notification was issued that an agreement could not be

reached). Any delinquency taxes accrued during the grace

period will be exempted. However, under STML Article 66-4-2

(2), which grants a postponement of tax payment, the tax

authority requires the taxpayer to provide security equivalent

to the amount of the tax payment (i.e., collateral). This new TP

rule applies to applications for a grace period made on or after

1 April 2007:

> After receiving an assessment notice, the taxpayer can

take domestic measures to be relieved from economic

double taxation.

> After receiving assessment notices, the taxpayer can

file a request for reinvestigation with the Regional

Commissioner or District Director within three months.

> After the decision by the Regional Commissioner, the

taxpayer can file a request for a reconsideration with the

President of the National Tax Tribunal within one month,

or no decision is made within three months.

> After receiving assessment notices, blue tax return

taxpayers can directly file a request for reconsideration

with the President of the National Tax Tribunal within

three months.

> After the decision or when no decision is made by the

National Tax Tribunal, the taxpayer can file a litigation.

There are three court instances for litigation against tax

assessments in Japan:

> District court

> Courts of appeal

> Supreme court

10. Statute of limitations on transfer pricing

assessments

The statute of limitations in Japan on TP assessments is six

years from the deadline for filing tax returns for a fiscal year

(STML Article 66-4(21)) until 31 March 2020. As a result

of the tax reform effective from 1 April 2020, the statute of

limitations in Japan on TP assessment is seven years from the

deadline for filing tax returns for a fiscal year (STML Article

66-4(26)).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium to high, as

tax examinations usually include a review of TP issues, even

if the examination team lacks specialized TP expertise. A tax

examiner may challenge TP directly or may refer the file to a

specialized TP team for follow-up.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high, if the taxpayer

appears unprepared to defend its TP policies and methods and

if any of the factors listed below are present.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high (same reason as

above).

> Specific transactions, industries and situations, if any, more

likely to be audited

Scrutiny may be increased for taxpayers that meet any of the

following criteria:

> The local entity has incurred losses or posts low profit

levels.

> The 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.

> Tax planning is conducted with the objective of shifting

income to foreign related parties.

> There may be compliance issues such as the lack of

any change in profit levels despite the fact that TP

adjustments were imposed in the past.

> 

Multilevel transactions are being conducted between the

local entity and multiple foreign related parties, and the

profit allocation and foreign related-party functions, etc.,

are not able to be clarified in the tax return or verification

is required.

> 

Inappropriate TP having caused the local entity’s higher

profit than arm’s length was corrected to reflect the arm’s-

length principle without sufficient TP analysis.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Japan. Unilateral,

bilateral and multilateral APAs are available and very common;

however, the NTA prefers bilateral APAs.

> Tenure

In general, the tenure could be up to five years.

> Rollback provisions

A rollback of up to six years is possible in the case of a bilateral

APA, but a rollback for three years is common; however, a

rollback is not permitted in unilateral cases.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty (DTT) to which Japan is signatory. Most

of Japan’s DTTs permit taxpayers to present a case to the

tax authorities within three years from the first notification

to the taxpayer of the actions giving rise to taxation not in

accordance with the DTT. However, time limits may vary, and

the relevant DTT should be consulted for the applicable time

limit.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Japanese thin-capitalization rules restrict the deductibility of

interest expense on foreign related loans exceeding the 3:1

foreign related loans-to-equity ratio. Interest disallowed under

thin-capitalization rules cannot be carried forward.

Japanese earnings stripping rules also restrict the deductibility

of interest expense on foreign related loans if net foreign

interest expense exceeds 20% of adjusted taxable income

(EBITDA with adjustments). Interest disallowed under earnings

stripping rules can be carried forward for seven years.

The Japanese taxpayer must apply both sets of rules outlined

above. The taxpayer must to disallow the higher amount in the

corporate tax return. More details can be found in:

> STML Article 66-5(1) and related provisions stipulate the

thin-capitalization rules.

> STML Article 66-5(2) and related provisions stipulate the

earnings stripping rules.

Ichiro Suto

Ichiro.Suto@jp.ey.com

+ 81 90 2142 5190

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Income and Sales Tax Department (ISTD).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Regulation No. (40) of 2021 (the Regulations) published in the

Official Gazette on 7 June 2021 and its Executive Instructions

No. (3) of 2021 (the Executive Instructions) published in the

Official Gazette on 16 September 2021.

The Regulations and Executive Instructions apply to any

reporting period ending after 7 July 2021.

> Section reference from local regulation

Income Tax Law No. (34) of 2014 (as amended)

Article 20(d) defines arm’s-length principle (language similar

to Article (9)(1) of the Organisation for Economic Co-operation

and Development (OECD)).

Regulations No. (40) of 2021

Articles 5, 6 and 11(b) provide definitions for related party and

permanent establishment for TP purposes.

Articles 8, 9, 10, and 11 adopt the three-tiered TP

documentations and introduce additional local TP compliance

requirements.

Articles 3 and 4 emphasize the burden of proof (taxpayer vs.

ISTD).

Article 17 levies non-compliance penalties in line with the

Income Tax Law No. (34) of 2014 (as amended).

Executive Instructions No. (3) of 2021

Articles 3, 4, 5, 6, 7, and 8 detail the components of the

transfer pricing documentations and filing deadlines and

prescribes the forms (where applicable).

Article 10 provides the approved transfer pricing methods

(apply one of the five prescribed OECD transfer pricing

methods or an alternative approach if it provides a satisfactory

outcome) and requires affected taxpayers to submit a

1www.istd.gov.jo/

disclosure from a chartered accountant explaining the

taxpayer’s compliance with the group’s transfer pricing policy

and its impact on the final financial statements. However,

the Regulations and Executive Instructions remain unclear

on the specific nature of the disclosure from the chartered

accountant and the applicable statutory deadline.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Jordan is not a member of the OECD. As of October 2019,

Jordan is a member of the OECD/G20 Inclusive Framework.

Jordan’s Regulations and Executive Instructions are based

on the OECD’s BEPS Action 13. However, there are some

inconsistencies in the Regulations and Executive Instructions.

In general, the inconsistencies do not raise significant

concerns, and applying international transfer pricing principles

will help address Jordanian requirements.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Master File, Local File and CbCR requirements are covered

under Jordan’s Regulations and Executive Instructions.

> Effective or expected commencement date

The Regulations and Executive Instructions apply to any

reporting period ending after 7 July 2021.

> Material differences from OECD report template or format

No.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The BEPS Action 13 format should be sufficient.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or prepared contemporaneously?

Yes, on 7 June 2021, Jordan introduced transfer pricing

rules that adopt the arm’s-length principle reflected in the

Associated Enterprise Article of Jordan’s tax treaties and in

the OECD TP Guidelines for multinational enterprises (MNEs).

The rules also introduce new compliance requirements for

Jordanian entities that engage in related-party transactions

with an annual value exceeding JOD500,000 (approximately

USD705,000) for any reporting period ending after 7 July

2021. The specific requirements are:

> A transfer pricing disclosure form to be submitted with the

annual income tax return (i.e., within four months after

the end of the fiscal year of the taxpayer)

> A Master File on the global business operations and

transfer pricing policies of the taxpayer’s MNE group to

be submitted within a period not exceeding 12 months

following the tax period

> A Local File containing information on all transactions

with related parties to be submitted within a period not

exceeding 12 months following the tax period

The taxpayer would also need to present a signed disclosure

from the taxpayer’s appointed chartered accountant

confirming the taxpayer’s compliance with the group’s transfer

pricing policy and detailing the impact of said policy on its

financial statements.

Members of an MNE group also need to submit a country-

by-country (CbC) report and notification within 12 months

following the end of the group’s tax period if the total

consolidated revenue in the group financial statements

exceeds JOD600 million (approximately USD846 million).

> Does a local branch of a foreign company need to comply with

the local transfer pricing rules?

Yes (subject to meeting the thresholds specified under Section

4a above).

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes (subject to meeting the thresholds specified under Section

4a above).

b) Materiality limit or thresholds

> Transfer pricing documentation

Refer to Section 4a above.

> Master File

Refer to Section 4a above.

> Local File

Refer to Section 4a above.

> CbCR

Refer to Section 4a above.

> Economic analysis

Not specified; however, we understand that the economic

analysis is a required component of the Local File in Jordan.

c) Specific requirements

> Treatment of domestic transactions

Not specified.

> Local language documentation requirement

Not specified. Clarification is being sought from the ISTD on

the accepted language of the TP documents.

> Safe harbor availability including financial transactions if

applicable

Not specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Not specified.

> Any other disclosure or compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Jordan entities that engage in related-party transactions

(including notional transactions between a branch and its head

office) for 2021 with an annual value exceeding JOD500,000

(approximately USD705,000) must submit a TP disclosure

form together with the annual income tax return due within

four months from the end of the taxpayer’s year-end.

> Related-party disclosures along with corporate income tax

return

Please refer to our response to the first bullet-point of Section

4c above.

> Related-party disclosures in financial statement/annual

report

Jordan follows International Financial Reporting Standards

(IFRS) for financial statement preparation. Under IFRS, related

parties’ disclosure is required. However, definition of related

parties varies between standard accounting principles and tax.

The final audited stand-alone financial statements also form

part of the corporate income tax filing package due within four

months after the end of the fiscal year of the taxpayer.

> CbCR notification included in the statutory tax return

A CbCR notification should be submitted along with the

corporate income tax return. The CbCR notification must

include the following information:

> Name of the ultimate parent entity (UPE) or surrogate

parent entity (SPE)

> Name of UPE’s/SPE’s authorized representative

> Jurisdiction where the original CbCR is filed

> Other information/documents to be filed

Refer to Section 4c above.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Four months after the end of the fiscal year of the taxpayer.

> Other transfer pricing disclosures and return

Prepare and submit the TP disclosure form along with the

corporate income tax return, i.e., within four months after the

end of the fiscal year of the taxpayer.

> Master File

Prepare and submit the TP Master File within 12 months

following the end of the tax reporting period.

> CbCR preparation and submission

The compliance requirements associated with CbCR require

the report and notifications to be submitted within 12 months

of the annual reporting period for the group.

> CbCR notification

The CbCR notification is to be submitted within 12 months of

the annual reporting period for the group. However, there is

a lack of clarity in the Regulations and Executive Instructions

around whether local entities are required to file a report

or a notification in absence of an activated CbCR exchange

mechanism by Jordan.

Additionally, along with the corporate income tax return

submission date, affected taxpayers should provide the

information detailed under Section 4c above.

b) Transfer pricing documentation/Local File preparation

deadline

Prepare and submit TP Local File within 12 months following

the end of the tax reporting period.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Refer to above.

> Time period or deadline for submission upon tax authority

request

Refer to above.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There are no COVID-19-specific measures.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Taxpayers should perform a functional analysis and apply one

of the five prescribed OECD transfer pricing methods (or an

alternative approach if it provides a satisfactory outcome) to

assess whether the pricing of transactions with related parties

is at arm’s length.

> Domestic transactions

Taxpayers should perform a functional analysis and apply one

of the five prescribed OECD transfer pricing methods (or an

alternative approach if it provides a satisfactory outcome) to

assess whether the pricing of transactions with related parties

is at arm’s length.

b) Priority and preference of methods

Not specified.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are preferred over regional comparables.

The ISTD should accept regional comparables, provided no

local comparables are available and the burden of proof is

transferred from the ISTD to the taxpayer.

> Single-year vs. multiyear analysis for benchmarking

Single year.

> Use of interquartile range

Not specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Not specified.

> Simple, weighted or pooled results

Not specified.

> Other specific benchmarking criteria, if any

Not specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not specified. In practice, however, the ISTD would most likely

consider an incomplete documentation as a failure to submit,

therefore, attracting a penalty of JOD300 to JOD1,000

(approximately USD423–USD1,410).

> Consequences of failure to submit, late submission or

incorrect disclosures

Non-compliance with TP documentation submission may result

in a late filing penalty being imposed at JOD300 to JOD1,000

(approximately USD423–USD1,410).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The underpayment penalty tax is computed at 0.4% of the

additional assessed tax resulting from the TP assessment,

which is applied on each late week or part thereof.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes; same as the above.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

Not specified.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

> 12. Likelihood of transfer pricing scrutiny and related audit

by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Not specified.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Not specified.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Not specified.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Not specified.

> Tenure

Not specified.

> Rollback provisions

Not specified.

> MAP opportunities

Not specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The thin-capitalization rule in Jordan is 3:1 (debt-to-equity

ratio), which will apply to related-party debt. Interest paid on

related-party debt exceeding this ratio will not be deductible

for tax purposes.

Patrick Oparah

patrick.oparah@bh.ey.com

+ 97317135194

Contact

Jacob Rabie

jacob.rabie@jo.ey.com

+ 962779904150

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority 1

State Revenue Committee of the Ministry of Finance.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Law of the Republic of Kazakhstan No. 67-IV on Transfer

Pricing, dated 5 July 2008 (the Transfer Pricing Law).

Additionally, transfer pricing matters are regulated by the

following subordinate legal acts:

> Rules for monitoring transactions (No. 176 of 16 March

2015)

> Rules for concluding agreements on the application of

transfer pricing (No. 1197 of 24 October 2011)

> List of officially recognized sources of information on

market prices (No. 292 of 12 March 2009)

> List of exchange-quoted goods (No. 638 of 6 May 2009)

> List of international business transactions involving goods

(works, services) subject to transaction monitoring (No.

194 of 19 March 2015)

> Rules on the procedure of the authorized bodies’

interaction in exercising control of transfer pricing matters

(No. 129 of 26 March 2009)

> Forms of Local File, Master File and country-by-country

reporting on transfer pricing and rules for their completion

(No. 1104 of 24 December 2018)

> Forms of country-by-country reporting and notification on

participation in a multinational group and rules for their

completion (No. 178 of 14 February 2018)

> Section reference from local regulation

Per the Transfer Pricing Law, individuals and legal entities

having specific relations affecting economic results of

transactions between them shall be recognized as related

parties. Criteria for defining related parties are provided in

Article 11 of the Transfer Pricing Law.

1http://kgd.gov.kz/en

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Kazakhstan is not a member of the OECD. However, the

Transfer Pricing Law has some features in common with OECD

Guidelines. At the same time, there are also many differences:

the key one of them is that the Transfer Pricing Law applies

to all international transactions, regardless of whether the

parties are related or not.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The following three-tier reporting is implemented in

Kazakhstan: CbCR, Master File and Local File. In addition,

subject to certain conditions, Kazakhstan taxpayers are also

obliged to submit a notification on participation in an MNE

group.

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

Master File, Local File and CbCR are covered.

> Effective or expected commencement date

1 January 2016 for CbCR and 1 January 2019 for master

file and Local File (2019 is the first reporting period).

> Material differences from OECD report template or format

No significant differences from the OECD report template

or format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Availability of BEPS format reports does not protect from

penalties.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, signed on 12 June 2018.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Subject to certain conditions, Kazakhstan taxpayers may be

obligated to submit the following documents:

> Notification on participation in an MNE group: to be

submitted on annual basis

> CbCR: to be submitted on an annual basis or upon request

> Master File: to be submitted on an annual basis or upon

request

> Local File: to be submitted on annual basis

> Transfer pricing monitoring reporting: to be submitted on

annual basis

> Transfer pricing documentation (including information

and documents supporting applied prices and economic

justification supporting price differential and transfer

pricing method): to be submitted upon request

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

No materiality limit.

> Master File

Consolidated group revenue for the year preceding the

reporting financial year for which the Master File is filed is

EUR750 million or more (or the threshold established for

Master File filing in the jurisdiction of a non resident parent

company or surrogate parent).

> Local File

Company’s revenue for the fiscal year preceding the reporting

year is greater than EUR5 million monthly calculation index

(approximately USD30 million).

> CbCR

Consolidated group revenue for the year preceding the

reporting financial year for which CbCR is filed is EUR750

million or more (or the threshold established for CbCR filing for

the jurisdiction of a non resident parent company or surrogate

parent).

> Economic analysis

Not applicable.

c) Specific requirements

> Treatment of domestic transactions

If a domestic transaction falls under transfer pricing control,

general transfer pricing documentation requirements apply.

> Local language documentation requirement

Documentation should be submitted in either Kazakh or

Russian language.

> Safe harbor availability including financial transactions if

applicable

There are no safe harbors, except for transactions with

agricultural goods to which a 10% price deviation safe harbor

applies.

> Is aggregation or individual testing of transactions preferred

for an entity

Testing of individual transactions is preferred.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporate income tax return should be filed by 31 March of

the year following the reporting period (may be extended to 30

April).

> Other transfer pricing disclosures and return

Transfer pricing monitoring reporting has to be filed annually

by 15 May of the year following the reporting period.

> Master File

Master File has to be filed within 12 months following the

reporting period or within 12 months upon request of the tax

authorities.

> CbCR preparation and submission

CbCR has to be filed annually within 12 months following the

reporting period or within 12 months upon request of the tax

authorities (depending on the type of taxpayer), if applicable.

> CbCR notification

Notification on participation in an MNE group should be

submitted annually by 1 September of the year following the

reporting period. If there are multiple constituent entities in

Kazakhstan, the CbCR notification applies to all the countries.

b) Transfer pricing documentation/Local File preparation

deadline

Local File has to be prepared annually within 12 months

following the reporting period.

Transfer pricing documentation has to be prepared upon

request of the tax authorities within 90 calendar days (or

within 30 business days in case it was requested during a tax

audit).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Local File has to be filed annually within 12 months following

the reporting period. The deadline is 31 December of the year

following the reporting year.

Transfer pricing documentation has to be provided upon

request of the tax authorities within 90 calendar days (or

within 30 business days in case it was requested during a tax

audit).

> Time period or deadline for submission on tax authority

request

Transfer pricing documentation has to be filed within 90

calendar days upon request of the tax authorities (or within 30

business days in case it was requested during a tax audit).

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

Not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The Transfer Pricing Law provides for five transfer pricing

methods that should be applied in the following order: (1)

comparable uncontrolled price method, (2) cost plus method,

(3) resale price method, (4) profit split method and (5)

transactional net margin method.

8. Benchmarking requirements

> Local vs. regional comparables

No specific provisions.

> Single-year vs. multiyear analysis for benchmarking

Single-year analysis is preferable.

> Use of interquartile range

The full range from maximum to minimum is allowed.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

No specific provisions.

> Simple, weighted or pooled results

No specific provisions.

> Other specific benchmarking criteria, if any

A 10% independence threshold.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

Special penalties are in place for failure to comply with the

transfer pricing monitoring reporting requirements and

failure to provide documents required to perform transfer

pricing control. The maximum penalty is set at KZT1,020,950

(approximately USD2,330).

Non-submission of CbCR, a Master File or a Local File is subject

to penalties with a maximum penalty of KZT1,458,500

(approximately USD3,320).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The penalty resulting from a transfer pricing adjustment is up

to 80% of unpaid tax amount.

In case of understatement of taxes as a result of a tax audit,

Kazakhstan state authorities automatically initiate a criminal

investigation in case the amount of assessed and unpaid

taxes or other obligatory payments exceeds KZT50,000

(large harm cases) or KZT75,000 (extra-large harm cases)

monthly calculated index (approximately USD332,000 and

USD498,000, respectively).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No specific information available for penalty. Refer to the

above section.

> Is interest charged on penalties or payable on a refund?

Interest for late payment of tax resulting from a transfer

pricing adjustment is calculated as 1.25 times the Kazakhstan

National Bank refinancing rate (approximately 9.5%).

b) Penalty relief

The legislation in Kazakhstan considers cases for penalty relief

when an entity may be exempt from administrative liability.

These cases, among others, include expiration of the statute

of limitations, exemption on the basis of an act of amnesty and

reconciliation of the parties. Despite legal provisions allowing

for exemption, implementation is quite rare in practice.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitation period for tax purposes is

three years after the end of a respective tax period (but it

may be extended to seven years in certain cases for transfer

pricing).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

It depends on the industry (high for export of commodities).

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high based on practice.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high based on

prevailing audit practice.

> Specific transactions, industries and situations, if any, more

likely to be audited

Export of commodities is under higher scrutiny.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Bilateral and unilateral APAs are available for all types of

transactions

Transaction participants have the right to conclude a unilateral

APA. The procedure for requesting such an agreement is

included in the rules for concluding agreements on the

application of transfer pricing.

> Tenure

An APA may be concluded for a three-year period.

> Rollback provisions

This is not available.

> MAP opportunities

MAP opportunities are available under double tax treaties.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The deduction of interest is generally limited by a specific

debt-to-equity formula set by the tax legislation (the thin-

capitalization rule).

Anuar Mukanov

Anuar.Mukanov@kz.ey.com

+ 7 701 959 0579

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Kenya Revenue Authority (KRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Section 18 (3) of the Income Tax Act (ITA).

> Section 18A of the ITA, effective from 3 April 2017.

> Section 18B of the ITA effective 1 January 2022.

> Income Tax (Transfer Pricing) Rules, 2006.

> Section reference from local regulation

Section 18 (3) and 18A of the ITA and the Income Tax

(Transfer Pricing) Rules, 2006, (amended rules 2012)

articulate the arm’s-length principle. Section 18(6) of the ITA

provides guidance on the definition of related persons.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Kenya is not a member of the OECD. In practice, the OECD

Guidelines are referred to by the KRA for guidance as best

practice.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, CbCR was introduced under Section 18B of the Income

Tax Act with 1 January 2022 as the effective date. However,

regulations to operationalize CbCR are yet to be enacted. The

regulations have been issued in draft for public participation.

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

This is not applicable. However, a taxpayer is required to

prepare a transfer pricing documentation where related-

party transactions are entered.

> Effective or expected commencement date

1 January 2022.

> Material differences from OECD report template or format

From the draft guidelines, the CbCR requirement seems to

be consistent with OECD CbCR guidance.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No; however, in February 2016, Kenya signed the Multilateral

Convention on Mutual Administrative Assistance in Tax

Matters, which aims at facilitating exchange of information,

assistance in tax recovery, service of documents and joint tax

audits by parties to the convention.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes; however, there is no contemporaneous documentation

requirements. Submission is upon request by the tax authority.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

No.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

There’s no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

We expect CbCR guidelines to be issued by the government to

stipulate the threshold.

> Economic analysis

There’s no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There are documentation obligations for specific domestic

transactions. This is required when an entity operating in a

preferential tax regime (such as special economic zones or

export processing zone) enters into transactions with a related

party under the normal tax regime.

> Local language documentation requirement

Transfer pricing documentation needs to be prepared in the

English language.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is preferred.

> Any other disclosure or compliance requirement

There are no additional disclosure or compliance requirements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no transfer pricing-specific returns for taxpayers in

Kenya.

> Related-party disclosures along with corporate income tax

return

According to the corporate tax return format, the taxpayer is

required to declare the names and addresses of related parties

outside of Kenya.

> Related-party disclosures in financial statement/annual

report

A taxpayer is required to declare all related-party transactions

in the audited financial statements, which then feed into the

corporate income tax return.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

There is no other transfer pricing information to be filed.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The return should be filed at the end of the sixth month

following the company’s financial year-end.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

Twelve months from fiscal year-end.

> CbCR notification

We expect CbCR guidelines to be issued by the government to

stipulate the threshold.

b) Transfer pricing documentation/Local File preparation

deadline

There are no deadlines, but a transfer pricing policy document

must be prepared and submitted upon request by the tax

authority.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

There is no prescribed duration by law. This is at the discretion

of the tax authorities upon application. However, tax

authorities normally give between two and four weeks.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

Rule 4 of the transfer pricing rules states that a taxpayer

may choose the most appropriate from among six methods

when determining the arm’s-length price: CUP, resale price,

cost plus, profit split, TNMM and any other method that the

Commissioner for Domestic Taxes may prescribe.

In 2012, the transfer pricing rules were amended to give

the Commissioner for Domestic Taxes power to prescribe

the application of the above-mentioned methods. However,

the KRA has yet to issue any practice notes regarding the

application of the methods. In practice, the most appropriate

method, based on the facts and circumstances of the

transaction, is applied.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local jurisdiction comparable.

In practice, there is a preference for the Asia-Pacific and Pan-

European regions.

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis: three years.

> Use of interquartile range

Interquartile range is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no legal requirement to conduct a fresh benchmarking

search every year. However, in practice, an update is

considered after a three-year period.

> Simple, weighted or pooled results

There is a preference for the weighted average for arm’s-

length analysis.

> Other specific benchmarking criteria, if any

When searching for comparables, 75% independence is

applied.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

The Commissioner for Domestic Taxes may adjust the taxable

profits and demand additional corporate tax and the resultant

penalties and interest.

Additional taxable income or reduced assessed loss because of

adjustments relating to transaction with shareholder or related

person is deemed as dividend distribution. This could have

withholding tax (WHT) implications.

Failure to keep a document attracts penalty equal to 10% of tax

payable under the tax law to which the document relates for

the reporting period to which the failure relates to a minimum

of KES100,000 (USD1,000).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Transfer pricing adjustments resulting to additional taxable

corporate income attracts late payment penalty at the rate of

5% of the tax due and interest at the rate of 1% per month for

the period under default.

Transfer pricing adjustments resulting in an increase in

customs value of goods will have an impact on customs duty

payable.

Tax avoidance penalty applies at an amount equal to double

the amount of tax that would have been avoided, save for the

application of the tax avoidance provision.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No specific information available for penalty. Refer to the

above section.

> Is interest charged on penalties or payable on a refund?

No, interest is charged on the principal tax liability due, subject

to in duplum rule.

b) Penalty relief

Taxpayer may apply in writing to the Commissioner for

Domestic Taxes for remission of penalty (excluding tax

avoidance penalty) and interest payable citing relevant

grounds.

The Commissioner for Domestic Taxes may remit in whole

or part penalty and interest not exceeding KES1.5 million

(USD15,000) and seek approval from the Cabinet Secretary of

National Treasury & Planning Ministry, where the penalty and

interest exceed KES1.5 million (USD15,000).

If an adjustment is proposed by the tax authority, the following

are the available dispute resolution options:

> Alternative Dispute Resolution (ADR)

> Tax Appeals Tribunal

> The High Court, if the ruling from the Tax Appeals Tribunal is

dissatisfactory

> The Court of Appeal, if the ruling from the High Court is

dissatisfactory

10. Statute of limitations on transfer pricing

assessments

It is five years. However, there is no time limit in case of fraud,

evasion, or gross or willful neglect by taxpayer.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Government has issued a social distancing order that limits

meetings.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of tax audits may be considered to be high

because the KRA has taken a firm stand toward audits

and is now selecting multiple taxpayers across all sectors.

Consequently, the likelihood of a transfer pricing review as

part of a general tax audit is also high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high, given the recent

trend mentioned above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If a transfer pricing methodology is challenged, then the

likelihood of an adjustment may be considered to be high.

This is based on our experience in handling transfer pricing

controversy issues. In most cases, when the tax authorities are

not in agreement with the methodology adopted by a taxpayer,

this results in an additional assessment. The taxpayer has the

option to challenge this.

> Specific transactions, industries and situations, if any, more

likely to be audited

Generally, all related-party transactions are viable for auditing;

however, intragroup services and intangibles have a higher

likelihood.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No specific APA rules are applicable.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Available through double taxation treaty agreements in force

in Kenya.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Section 16 (j) of the ITA prescribes restriction on interest

expenses in cases where a company is thinly capitalized.

However, the Income Tax Act was amended by the Finance

Act, 2021 to repeal the thin-capitalization provisions effective

1 January 2022. In its place, interest deductibility will be

capped at 30% of a company’s earnings before interest, taxes,

depreciation and amortization (EBITDA).

Francis N Kamau

Francis.kamau@ke.ey.com

+ 254 736 701851

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Tax Administration of Kosovo (Administrata Tatimore e

Kosovës — TAK).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and effective

date of applicability

Law No. 06/L-105, on corporate income tax (CIT), dated 27

June 2019:

> Section VI, Article 28: transfer pricing

> Section VI, Article 29: avoidance of double taxation

The Ministry of Finance issued Administrative Instruction No.

02/2017, dated 27 July 2017, for the implementation of

transfer pricing, providing further guidance on the application

of the arm’s-length principle and the preparation of the

transfer pricing documentation.

> Section reference from local regulation

> Law No. 03/222, dated 12 July 2010, on tax procedures

— Article 1, Paragraph 1.27 — definition of related persons.

> Law No. 06/L-105, dated 27 June 2019, on CIT — Article

3, Paragraph 1.18 — definition of related persons for CIT

purposes.

> Administrative Instruction No. 02/2017, dated 20 July

2017, on transfer pricing — Article 3, Paragraph 1.5 —

definition of related persons for transfer pricing purposes.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

1http://www.atk-ks.org/wp-content/uploads/2017/07/Udhëzimi-Ad-

ministrativ-MF-Nr.-02-2017-për-Transferimin-e-Çmimit.pdf

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Kosovo is not a member of the OECD; however, the Kosovar

legislation on transfer pricing makes reference to the OECD

Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The BEPS Action 13 format report is generally in line with the

local transfer pricing documentation requirements. However,

in order to ensure that it is considered as complete and to

achieve protection from the penalty on incorrect or incomplete

disclosure, it should contain also the local industry and market

analysis, an overview of the local entity including any local

strategies, and the organizational structure of the local entity.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, it has. There are no explicit requirements to prepare the

transfer pricing documentation contemporaneously. However,

it is advisable to have it prepared by the CIT return date, i.e.,

31 March of the following year.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch of a foreign company needs to comply with

the local transfer pricing rules.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation has to be prepared annually.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

one of the official languages of Kosovo (Albanian or Serbian).

Paragraph 29.11 of Administrative Instruction No. 02/2017

on transfer pricing mandates the use of local language in

transfer pricing documentation. In consultation with the

Kosovo tax authorities, the documentation may be submitted

in English, as well; however, such cases are not specifically

defined in the legislation.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no preference between aggregation or individual

testing and allows both.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers are required to report all controlled transactions

annually by filing an Annual Controlled Transaction Notice if

the aggregate value of their controlled transactions, including

loan balances, exceeds EUR300,000. The Annual Controlled

Transaction Notice should be submitted by 31 March of the

following year. When determining the annual aggregate

transaction value, taxpayers should take into account all

intercompany transaction amounts (i.e., without offsetting

credit and debit values).

> Related-party disclosures along with corporate income tax

returns

This is not applicable.

> Related-party disclosures in financial statement/annual

report

Related-party disclosures are included in the financial

statements of the taxpayer pursuant to International Financial

Reporting Standards (IFRS) requirements.

There are no other related-party disclosures or additional

forms required by the legislation.

> CbCR notification included in the statutory tax return

This is not applicable

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The CIT return should be submitted by 31 March of the

following year.

> Other transfer pricing disclosures and return

The Annual Controlled Transaction Notice should be submitted

by 31 March of the following year. However, this deadline

was extended to 30 April 2020 for the Annual Controlled

Transaction Notice for 2019 exceptionally due to COVID-19.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

There is no statutory deadline for the preparation of

the transfer pricing documentation. However, since the

documentation must be submitted within 30 days upon tax

authorities’ request, it is recommended that it should be

prepared by the CIT return deadline, i.e., 31 March of the

following year.

> c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no specific deadline for the submission of transfer

pricing documentation.

> Time period or deadline for submission on tax authority

request

Transfer pricing documentation must be submitted within

30 days once requested by the tax authorities in an audit or

inquiry.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

The CUP method must be firstly attempted pursuant to

Kosovo’s legislation, and if CUP cannot be applied, the other

traditional methods of resale price and cost plus are favored.

In certain circumstances, the taxpayer may apply traditional

profit methods as follows: TNMM and profit-split method.

The taxpayer has the right to mix or support the

implementation of the most appropriate method by

implementing one or more of the other transfer pricing

methods.

8. Benchmarking requirements

> Local vs. regional comparables

Article 15, Paragraph 5 of Administrative Instruction No.

02/2017 states that in the absence of domestic comparable

uncontrolled transactions, Kosovo’s tax authorities recognize

the use of foreign comparable uncontrolled transactions,

provided that the geographical and other influencing factors

are analyzed and appropriate comparable adjustments are

carried out, if necessary.

In practice, local comparables should be first attempted, and

if not available, the search can be extended in the following

order: Balkans, Eastern Europe and the EU.

> Single-year vs. multiyear analysis for benchmarking

Preference is given to uncontrolled comparables belonging

to the same year as the controlled transaction. However, the

taxpayer can rely on immediate previous-year comparables,

provided that the comparability criteria is met. It is an EY

jurisdiction practice to use a multiyear analysis for testing

arm’s length.

> Use of interquartile range

Transfer pricing rules define the market range as a range

that includes all the values of the financial indicators,

such as price, markup or any other indicator used for the

application of the most suitable transfer pricing method for a

number of uncontrolled transactions in which each is almost

equally comparable with the controlled transaction based

on a comparability analysis. Transfer pricing rules do not

specifically provide for the interquartile range. However, they

stipulate that in the case of adjustments by the tax authorities,

the financial indicator is adjusted to the median unless the tax

authorities or the taxpayer proves that the circumstances of

the case ensure adjustment to a different point in the market

range. It is an EY jurisdiction practice to use the interquartile

range (from Q1 to Q3) as the acceptable range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no requirement to conduct a fresh benchmarking

search every year. Provided that business operating conditions

remain the same, database searches for comparable external

transactions should be updated every three years.

Financial updates of the comparable searches should be

performed annually.

> Simple, weighted or pooled results

Transfer pricing rules do not provide any specific provision

regarding the use of a simple or a weighted average. In the

examples provided in Administrative Instruction No. 02/2017,

the simple average is used. However, it is an EY jurisdiction

practice to use both the weighted average and the simple

average.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to prepare and timely submit transfer pricing

documentation or to fulfill the requirements provided in

Administrative Instruction No. 02/2017 is subject to a penalty

of EUR125 up to a maximum of EUR2,500. Failure to file the

Annual Controlled Transaction Notice is subject to a penalty of

EUR125, up to a maximum of EUR2,500.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The legislation does not provide for specific penalties in case

of transfer pricing adjustments. Therefore, in case of an

adjustment, the general tax penalties would apply as follows:

> Understatement of tax is subject to a penalty of 15% of the

undeclared tax liability if such understatement is 10% or

less of such tax or to a 25% penalty if the understatement

is more than 10% of such tax.

> In case the adjustment is made by the taxpayer voluntarily

before such taxpayer receives a tax audit notification,

such penalty is capped at 25% of the penalty that would

otherwise apply.

> In case the adjustment is made by the taxpayer after such

taxpayer receives a tax audit notification but before the

tax audit commences, such penalty is capped at 50% of

the penalty that would otherwise apply.

Moreover, a penalty for late payment of the tax liability will

apply at 1% thereof for each month of delay, capped at 12%.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There are no requirements for contemporaneous

documentation.

> Is interest charged on penalties or payable on a refund?

There is no interest charged on penalties for erroneous

completion of a tax filing.

b) Penalty relief

Currently, no penalty relief is applicable.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on transfer pricing assessments is six

years from the CIT return filing due date, i.e., 31 March of the

following year.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a transfer pricing audit in Kosovo may be

considered to be high.

In light of the transfer pricing rules entered into force on

July 2017, the Kosovo tax authorities have initiated several

transfer pricing audits, and transfer pricing is expected to

continue to attract significant attention.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The tax administration is unlikely to challenge the

methodology applied. In principle, in examining the arm’s-

length character of a transaction, the tax administration

should use the same transfer pricing method applied by the

taxpayer, to the extent that it is the most appropriate one for

that transaction.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

The likelihood may be considered to be medium; refer to the

section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There are no differences among transactions, industries and

situations.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Kosovo’s current transfer pricing legislation does not express

or have provisions for APA. However, this might be subject to

change.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

MAPs are generally available under the double tax treaties that

Kosovo has with its treaty partners.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no thin-capitalization rules in Kosovo.

Viktor I Mitev

viktor.mitev@bg.ey.com

+ 35928177343

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Department of Inspections and Tax Claims (DIT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Executive Bylaws of Law No. 2/2008 and Executive Rules and

Instructions of Kuwait Income Tax Decree No. 3 of 1955, as

amended by Law No. 2/2008.

> Section reference from local regulation

Executive Rule No. 49 of Law No. 2/2008 specifically refers to

the treatment of related companies.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Kuwait is not an OECD member and the domestic regulations

do not explicitly refer to the OECD Guidelines. On 7 June

2017, Kuwait signed the Multilateral Convention to Implement

Tax Treaty Related Measures to Prevent BEPS although it is yet

to be ratified.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Although not currently applicable, a BEPS Action 13

format report might be sufficient to achieve penalty

protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Kuwait does not have specific transfer pricing documentation

rules.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

A local branch of a foreign company is required to comply with

Executive Rule No. 49 of Law No. 2/2008, which specifically

refers to the treatment of related companies.

> Should transfer pricing documentation be prepared

annually?

Transfer pricing documentation should be prepared and

updated annually to reduce the risk of controversy.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

There are no prescribed rules for preparing transfer pricing

documentation in Kuwait. MNEs may prepare or maintain

documentation in line with their wider group’s policies and

standards.

b) Materiality limit or thresholds

> Transfer pricing documentation

There are no materiality limits.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There are no materiality limits.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The transfer pricing documentation need not be submitted in

the local language.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Any other disclosure or compliance requirement

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no specific transfer pricing returns in Kuwait.

A specific template covering selected related and non-related-

party transactions must be disclosed, together with the annual

tax return.

> Related-party disclosures along with corporate income tax return

General disclosure obligations apply to the taxpayer’s

transactions, including related party transactions, and this

relates to their tax retention obligations. Taxpayers are obliged

to disclose certain related-party transactions as part of the

annual corporate income tax return. These transactions

include material costs, design and consultancy fees incurred,

related-party leases, intragroup financing, intellectual property

and other items.

> Related-party disclosures in financial statement/annual

report

Related-party disclosures are included in the taxpayer’s

financial statements.

> CbCR notification included in the statutory tax return

This is not applicable

> Other information/documents to be filed

There is none specified.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

A specific template covering selected related and non-related-

party transactions must be disclosed, together with the annual

tax return. A tax declaration must be filed on or before the

15th day of the fourth month following the end of the tax

period.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

There is no statutory deadline or recommendation for

preparing transfer pricing documentation.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No, but in practice it is advisable to prepare and update the

documentation before the annual inspection. This allows for

the documentation to be submitted as evidence in proceedings

in a timely manner.

> Time period or deadline for submission on tax authority

request

Once transfer pricing documentation is requested by the tax

authorities, taxpayers have approximately one to two weeks to

submit it.

> Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Not Applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

This is not applicable.

> Domestic transactions

This is not applicable.

b) Priority and preference of methods

In practice, it may be useful for the taxpayer to explain the

transfer pricing policy as it applies to their related party

transactions when in discussions with the DIT, especially if

the transfer pricing method used is based on internationally

accepted principles and standards.

8. Benchmarking requirements

> Local vs. regional comparables

Even though they are not specifically mentioned in the

regulations, local comparables are preferred over regional

comparables. A regional search covering countries in the Gulf

Cooperation Council or the Middle East and North Africa region

could be accepted.

> Single-year vs. multiyear analysis

There is none specified.

> Use of interquartile range

There is none specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement to conduct a fresh

benchmarking search every year. However, it is recommended

to conduct a fresh search once every three years and update

financial data for the years in between.

> Simple, weighted or pooled results

> There is none specified.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is none specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

There is none specified.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

There is none specified.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is none specified.

> Is interest charged on penalties or payable on a refund?

Penalty interest (1% per month) is imposed in the case of

transfer pricing adjustments resulting in an assessment of

additional income.

b) Penalty relief

Kuwaiti tax regulations do not offer any penalty relief

mechanisms.

10. Statute of limitations on transfer pricing

assessments

General regulations apply. Law No. 2 of 2008 provides a

statute-of-limitations period of five years. This is generally

calculated from the date the annual tax return is filed, unless a

tolling or discovery rule applies.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium, as the tax authority typically scrutinises

intercompany transactions relating to material supply costs,

design and consultancy fees incurred abroad, related-party

leases, intragroup financing, and intellectual property

transactions.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium; the tax authorities usually request substantial

documentation to satisfy themselves that the related-party

transactions were entered into at arm’s length.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

See the above section.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There are no specific APA provisions in Kuwait’s domestic

regulations.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not Applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no such formal rules in Kuwait.

Guy Taylor

guy.taylor@ae.ey.com

+ 971501812093

Contact

Adil Rao

adil.rao@ae.ey.com

+ 971565479922

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority1

State Revenue Service (Valsts Ieņēmumu Dienests — SRS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The arm’s-length principle is established in the Corporate

Income Tax (CIT) law. Article 4 of the CIT law determines that

the taxable income base shall be increased by the income

that the taxpayer would have obtained, or the expense

that the taxpayer would not have incurred while engaging

in transactions with its related parties, if the related-party

transactions were performed at arm’s length. Transfer pricing

documentation requirements are laid down in Article 15.2 of

the Law on Taxes and Duties.

Cabinet Regulation No. 677, promulgated on 14 November

2017, set the transfer pricing methods applicable for

determining arm’s-length prices in related-party transactions.

Additionally, Cabinet Regulation No. 802, promulgated on 18

December 2018, set requirements regarding the content of

transfer pricing documentation and conclusion of APAs.

> Section reference from local regulation

“Related-party” is defined in Section 1, paragraph 18 of the

Law on Taxes and Duties.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD transfer pricing guidelines/UN

tax manual/EU Joint Transfer Pricing Forum

Latvia has been a member jurisdiction of the OECD since 1

July 2016.

1 https://www.vid.gov.lv/en

Latvian transfer pricing legislative acts contain a reference to

the OECD Guidelines in applying the transfer pricing methods,

as long as they do not contradict the local transfer pricing

laws. In most cases, the State Revenue Service accepts the

principles stipulated in the OECD Guidelines regarding the

structure of transfer pricing documentation.

The principle of supremacy of law does not provide application

of the OECD Guidelines directly; however, the State Revenue

Service is following the recommendations of the Council of the

OECD (C(95)126/Final), which was a base in the drafting of

current legislation.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Both the Master File and Local File are covered.

> Effective or expected commencement date

It’s in force for transactions carried out in financial years

starting from 1 January 2018.

> Material differences from OECD report template or format

There are no significant material differences.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The BEPS Action 13 format report will typically be

sufficient to achieve penalty protection with regard

to penalty for non-compliance of the transfer pricing

documentation (effective for related-party transactions

carried out in 2018 and beyond). Penalty protection with

regard to non-compliance of transfer prices applied with

the arm’s-length principle is not available.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, signed on 21 October 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

In accordance with part two of Article 15.2 of the Law

on Taxes and Duties, the transfer pricing documentation

requirements are applicable to local tax residents, as well

as branches and permanent establishments (PEs) of foreign

companies. However, it should be noted that, in accordance

with the above-mentioned provisions, profit attribution

between the foreign head office and its branch or PE in Latvia

is not under the scope of transfer pricing documentation

requirements. This is because branches and PEs are not

considered separate legal entities from their head offices.

Thus, only the transactions between a foreign company’s

branch or PE in Latvia and a foreign related party (separate

legal entity, not the head office) are in the scope of transfer

pricing documentation requirements.

Furthermore, regarding profit attribution to PEs and branches,

it should be noted that Latvia applies the force of the

attraction principle instead of the OECD 2010 authorized

approach (the separate entity principle). Notwithstanding the

above, even though it is not required by the head office to

include profit attribution to its PEs and branches in the local

file transfer pricing documentation, the profit attribution must

be carried out at arm’s length.

> Does transfer pricing documentation have to be prepared

annually?

Yes, annual documentation preparation requirement for

cross-border related-party transactions exceeding a certain

threshold in a financial year (a detailed description of the

thresholds is indicated in “Materiality limit or thresholds”

below) is set in local tax laws.

The minimum requirement for annual update of transfer

pricing documentation entails reviewing the fact pattern and

relevant conditions of the transactions indicated in the transfer

pricing documentation. If the fact pattern of the transactions

and other relevant conditions have remained unchanged,

updating the relevant financial data of the local company and

the comparable data used for verifying the arm’s-length nature

of transfer prices applied is sufficient.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

transfer pricing reports if it has engaged in cross-border

related-party transactions and meets the transfer pricing

documentation preparation thresholds indicated below.

b) Materiality limit or thresholds

> Transfer pricing documentation

According to the Latvian statutory transfer pricing

requirements applicable to transactions carried out in 2018

and beyond, the thresholds for Master File and Local File

requirements are applicable. The Master File and Local File

requirements effective for transactions carried out in financial

years starting from 1 January 2018 and onward are indicated

below.

> Master File

Preparation and submission to the tax authority within 12

months after the end of the financial year (without request):

> 

If the annual controlled transaction amount of the local

entity with its related parties exceeds EUR15 million

Or

> 

If the annual turnover of the local entity exceeds EUR50

million and the annual controlled transaction amount

of the local entity with its related parties exceeds EUR5

million

Preparation within 12 months after the end of the financial

year and submission to the tax authority within one month

after request:

> If the annual controlled transaction amount of the local

entity with its related parties exceeds EUR5 million, but

does not exceed EUR15 million

> Local File

Preparation and submission to the tax authority within 12

months after the end of the financial year (without request):

> If the annual controlled transaction amount of the local

entity with its related parties exceeds EUR5 million

Preparation within 12 months after the end of the financial

year and submission to the tax authority within one month

after request:

> If the annual controlled transaction amount of the local

entity with its related parties exceeds EUR250,000, but

does not exceed EUR5 million

> CbCR

Notification applies to all resident entities that are part of a

qualifying group (the threshold is EUR750 million).

> Economic analysis

There is no materiality for economic analysis. If the threshold

for preparing transfer pricing documentation is reached,

economic analysis should be prepared for related-party

transactions exceeding EUR20,000.

c) Specific requirements

> Treatment of domestic transactions

The arm’s-length nature of domestic transactions has to be

verified; however, the Master File and Local File documentation

requirements apply only to domestic transactions closely

linked to cross-border transactions in the supply chain.

> Local language documentation requirement

Section 8, paragraph 4 of the Official Language Law states

that statistical summaries, annual accounts, accounting

documents and other documents that are to be submitted to

state or local government institutions on the basis of laws or

other regulatory enactments shall be prepared in the official

language, i.e., Latvian.

For related-party transactions carried out in 2018 and beyond,

the Master File can be submitted in English. However, the State

Revenue Service has the right to require translation of the

entire Master File or relevant sections of the Master File into

Latvian. The translation has to be provided within 30 days

following the request. Local File transfer pricing documentation

has to be submitted to the tax authority in Latvian language.

> Safe harbor availability including financial transactions if

applicable

It is available regarding low-value-adding intragroup services.

The OECD-based approach for determining the arm’s-length

nature of transfer prices (applied for low-value-adding

intragroup services) is established in Cabinet Regulation No.

677, paragraphs 18.1 to 18.9.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred.

> Any other disclosure or compliance requirement

There are no other specific local disclosure or compliance

requirements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no transfer pricing-specific returns in Latvia;

however, information regarding related-party transactions

(specified above) must be disclosed in the annual CIT return.

> Related-party disclosures along with corporate income tax

return

The taxpayer must identify all related-party transactions by

disclosing the total sum of all related-party transactions (both

cross-border and domestic) in the annual CIT return of the

respective reporting year (Row 6.5.1 of CIT declaration).

In case the taxpayer has made transfer pricing adjustments,

the taxpayer must disclose the income it would have received

or the expenditure a taxpayer would have not incurred if

commercial and financial relationships were created or

established under valid conditions between two independent

persons. It should also indicate the applied transfer pricing

method in the annual CIT return of the respective reporting

year (row 6.5 of CIT declaration).

> Related-party disclosures in financial statement/annual

report

In accordance with the Law on the Annual Financial

Statements and Consolidated Financial Statements, Section

53, a company must disclose its parent entity and its legal

address, as well as the transaction amounts with related

parties if such transactions are significant and do not conform

to normal market conditions. This is for companies whose

financials on the balance sheet date exceed at least two of the

three values indicated below:

> Balance sheet total: EUR4 million

> Net turnover: EUR8 million

> Average number of employees during the reporting

year: 50

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Transfer pricing adjustments must be disclosed in the last

month’s CIT return of the financial year, which should be filed

within 20 days following the end of the financial year. CIT

return may be adjusted without late interest penalties until the

filing of the annual accounts for the respective financial year.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

It should be prepared within 12 months after the end of the

financial year if the annual net turnover of the local entity does

not exceed EUR50 million and the annual controlled cross-

border transaction amount of the local entity exceeds EUR5

million, but does not exceed EUR15 million. Such taxpayer

must submit the Master File to the tax authority within one

month after request.

It should be prepared and submitted to the tax authority

(without a request) within 12 months after the end of the

financial year if the annual controlled cross-border transaction

amount exceeds EUR15 million or the annual net turnover

exceeds EUR50 million and the controlled cross-border

transaction amount of the local entity exceeds EUR5 million.

> CbCR preparation and submission

The CbCR should be prepared and submitted within 12 months

after the last date of the respective financial year.

> CbCR notification

There is a CbCR notification requirement in Latvia. The date

for the first notification period was 31 August 2017; for future

years, it is the last date of the financial year. The notification

requirement applies to any resident entity that is part of a

qualifying group (the threshold is EUR750 million). It should

inform the tax authority that it is a UPE or SPE or that the

report will be filed by the UPE or SPE in another jurisdiction

that will exchange the CbCR with Latvia. In the notification,

that entity and its residence should be identified.

b) Transfer pricing documentation/Local File preparation

deadline

For transactions carried out until 31 December 2017, the

transfer pricing documentation has to be prepared upon

request and submitted within one month after the request by

the tax authority.

For transactions carried out starting 1 January 2018, transfer

pricing documentation preparation deadlines indicated in the

“Materiality limit or thresholds” subsection apply.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation for transactions carried out until 31

December 2017.

For transactions carried out from 1 January 2018 onward,

transfer pricing documentation submission deadlines indicated

in the “Materiality limit or thresholds” subsection apply.

> Time period or deadline for submission on tax authority

request

For transactions carried out until 31 December 2017, the

taxpayer has to submit the transfer pricing documentation

within one month, once requested by the tax authorities in an

audit or inquiry.

For transactions carried out from 1 January 2018 onward,

transfer pricing documentation submission deadlines on

tax authority request indicated in the “Materiality limit or

thresholds” subsection apply.

Additionally, transfer pricing documentation for domestic

transactions closely linked to cross-border transactions in

the supply chain must be prepared and submitted to the

tax authority within 90 days after request. The submission

deadline can be extended for an additional 30 days, if a

deadline extension is requested to the tax authority.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

Yes.

b) Priority and preference of methods

Five methods are accepted: CUP, resale price, cost plus, profit

split and TNMM.

Domestic legislation indicates that the most appropriate

method which provides the most reliable results should be

used.

8. Benchmarking requirements

> Local vs. regional comparables

Domestic comparables, if appropriate to controlled

transactions, more closely reflect the comparability factors and

are more reliable. However, in practice, foreign comparables

are used in combination with domestic comparables.

> Single-year vs. multiyear analysis for benchmarking

Though both acceptable, the choice of either single- or

multiple-year analysis should be justified.

> Use of interquartile range

There is no specific legal requirement on the use of the

interquartile range. The Latvian tax authority accepts

application of the interquartile range; thus, the EY member

firm in Latvia uses the interquartile range as a threshold for

acceptable results.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A new benchmarking study has to be prepared every year if

the total amount of cross-border controlled transactions in the

fiscal year total over EUR 5 million.

Rollforward of financials is accepted if the total amount of

cross-border controlled transactions in the fiscal year is

between EUR 250,000 and EUR 5 million. The category of

taxpayers eligible for this relief have to update the financial

data of the comparable companies identified earlier, with a

new benchmarking study required every three years.

> Simple, weighted or pooled results

The simple average is preferred.

> Other specific benchmarking criteria, if any

Regarding independence criteria, Latvian statutory rules

stipulate that companies are considered to be related parties

if the ownership share is equal to or greater than 20%, such

companies should be excluded from the comparables search.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Submission of incomplete transfer pricing documentation

or substantial breaches on preparation of transfer

pricing documentation or the content of transfer pricing

documentation may result in a fine of up to 1% of the total

amount of controlled related-party transactions, capped at

EUR100,000 per year.

> Consequences of failure to submit, late submission or

incorrect disclosures

For transactions carried out until 31 December 2017,

there is no specific penalty for not having transfer pricing

documentation. When the prices applied in transactions

between related parties are not at arm’s length, the taxable

income of the taxpayer may be adjusted upward, and a penalty

of 20% to 30% plus a late-payment penalty (annual rate of 18%)

on the additionally payable CIT may be applied. For recurring

transfer pricing adjustments, the penalty rates are doubled

(i.e., 40%–60%). The penalties indicated herein are applicable

to taxable income adjustments done by the tax authority both

before and after 31 December 2017.

For transactions carried out from 1 January 2018 onward,

non-submission of transfer pricing documentation or

substantial breaches on preparation of transfer pricing

documentation or the content of transfer pricing

documentation may result in a fine of up to 1% of the total

amount of controlled related-party transactions, capped at

EUR100,000 per year.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not applicable.

b) Penalty relief

There is no specific penalty relief with respect to transfer

pricing adjustments. Per ordinary procedure, a penalty

imposed as the result of a tax audit may be reduced by 50%.

In practice, having proper transfer pricing documentation

reduces the risk of transfer pricing adjustments.

10. Statute of limitations on transfer pricing

assessments

The State Revenue Service has the right to assess the tax

of local transactions, within three years, and cross-border

transactions, within five years, after the tax becomes due.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Small taxpayers in Latvia have a medium risk that they will be

subject to a general tax audit, while medium-sized and large

multinational taxpayers have a high risk of audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

On the basis of tax audit practice, there is a medium risk for all

taxpayers that if the transfer pricing is reviewed as a part of

the audit, the transfer pricing methodology will be challenged.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

On the basis of tax audit practice, there is a medium to high

risk for all taxpayers of an adjustment if the transfer pricing

methodology is challenged.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

A taxpayer has an opportunity to conclude an APA with the

State Revenue Service for cross-border transactions with

a related foreign company when the transactions exceed

EUR1.43 million during a period of 12 months.

There are specific Cabinet Regulations regarding an APA that

specify the information to be included in an APA application,

describe the procedure and time frame for concluding an APA,

and set the fee for filing an APA.

The regulation provides the option of unilateral and bilateral

APA only.

> Tenure

As of 21 December 2018, the regulation states that an APA

may be concluded for a term that does not exceed five years

from the date of conclusion.

> Rollback provisions

Five-year period rollback is available.

> MAP opportunities

Tax administration must engage in conducting MAP in

accordance with international treaties that are binding to

the Republic of Latvia, i.e., 90/436/EEC: Convention on

the elimination of double taxation in connection with the

adjustment of profits of associated enterprises.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

For CIT purposes, companies must include the following

amounts in the taxable base:

> The amount of interest payments in proportion to the

excess of the average liability over an amount equal to

four times the shareholders’ equity at the beginning of the

tax year, minus any revaluation reserve

> If interest payments exceed EUR3 million in the accounting

year, the amount of interest payments in excess of 30% of

the profit stated in the income or loss statement prior to

the calculation of the CIT, increased by interest payments

and calculated depreciation

Further, there are restrictions on thin-capitalization rules for

loans obtained from a specified set of institutions.

Ilona Butane

Ilona.Butane@lv.ey.com

+ 37129279077

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Ministry of Finance.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Lebanese tax regulation regarding TP is still neither

elaborated nor clear.

Article 15 of the Income Tax Law states that if it appears that

establishments belonging to establishments located outside

Lebanon transfer part of their profits abroad, either by

increasing or decreasing purchase or sale prices, or otherwise,

the profits so transferred shall, for taxation purposes, be

added to the profits shown in the accounts. Without sufficient

evidence to enable the real profits to be determined, the

profits of a similar establishment shall be taken as a basis

for comparing and determining the profit, in addition to

the apparent indications and particulars gathered by the

competent financial authorities.

> Section reference from local regulation

Article 10 of Tax Procedure Law No.44/2008 states that the

tax authority has the right to reclassify certain transactions in

the following instances:

> Virtual transaction for the purpose of tax evasion

> Legal transaction in form but for the purpose of tax evasion

> Transactions between related parties if these transactions

are not at arm’s length

According to Article 12 of the Decree No. 2488, dated 3

July 2009, which determines the application of Article 10,

mentioned above, a transaction is considered virtual when

its value differs by 20% from the arm’s-length value of similar

transaction occurring between two non-related parties with

the same competing conditions.

Arm’s-length value is defined by the tax authorities under

Decision No. 453/1, dated 22 April 2009, as the value of a

similar transaction that occurs between independent persons

and under complete competitive conditions that took place on

the day of the transaction.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Lebanon is not a member of the OECD. Lebanon follows the

OECD Guidelines when it comes to double tax treaties and

interpretations of certain concepts, but there is nothing formal

in this regard.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> 

Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

No.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

This is not applicable. However, a local branch should comply

with local tax regulations.

> Does transfer pricing documentation have to be prepared

annually?

No.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

This is not applicable.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

There is none specified.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The return should be submitted five months following the

end of the fiscal year. (In exceptional cases, the delay could

be granted by raising a letter to the tax authorities for their

approval.)

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

There is none specified.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

There is none specified.

> Domestic transactions

There is none specified.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

> Local vs. regional comparables

Even though it is not specifically mentioned in the regulations,

local comparables are preferred over regional comparables.

> Single-year vs. multiyear analysis for benchmarking

There is none specified.

> Use of interquartile range

There is none specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is none specified.

> Simple, weighted and pooled results

There is none specified.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is none specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

There is none specified.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

There is none specified.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is none specified.

> Is interest charged on penalties or payable on a refund?

There is none specified.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

There is none specified.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits

(high/medium/low)

The likelihood of being audited by the tax authority is

considered medium. There is no clear definition or standards

for the likelihood of audits. However, this is done on a random

basis when the tax authorities choose certain clients for audit.

The method for choosing clients for audit is not disclosed.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Refer to the section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

None.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is none specified.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There is no thin-capitalization rule in Lebanon .

Guy Taylor

guy.taylor@ae.ey.com

+ 971501812093

Contact

Adil Rao

adil.rao@ae.ey.com

+ 971565479922

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Ministry of Finance, State Tax Inspectorate (Valstybinė

Mokesčių Inspekcija — VMI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The arm’s-length principle is established in the Law on

Corporate Income Tax of Lithuania and its implementation

rules, introduced in 2004, the details of which are mentioned

below:

> Article 40 of the Law on Corporate Income Tax of

Lithuania

> Order of the Minister of Finance No. 1K-123 as of 9 April

2004 (1 January 2021 version) regarding rules for the

implementation of Article 40 (2) of the law on corporate

income tax (CIT) and Article 15 (2) of the law on personal

income tax (PIT)

> Order of the Head of the State Tax Inspectorate No. VA-27

as of 22 March 2005 on the associated-party transaction

disclosure in the annual CIT return

> Section reference from local regulation

Article 2, parts 8 and 33 of the Law on Corporate Income Tax

of Lithuania define “associated persons" and "related persons"

respectively.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No, local TP rules follow OECD recommendations.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

1 http://finmin.lrv.lt/; http://vmi.lt

Lithuania is a member of the OECD.

Lithuanian TP rules are generally consistent with the OECD

Guidelines. In local legislation, there is direct reference to

OECD Guidelines. Moreover, Lithuania is closely following BEPS

developments.

Other OECD papers, such as those regarding business

restructurings and profit allocation to permanent

establishments, are not explicitly implemented in the

Lithuanian legislation.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Lithuania has adopted or implemented BEPS Action 13 for TP

documentation in the local regulations.

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

All three, i.e., Master File, Local File and CbCR, are covered.

> Effective or expected commencement date

Based on local regulations, the BEPS master and Local Files

are required to document the transactions in fiscal years

starting on or after 1 January 2019.

> Material differences from OECD report template or format

There are material differences between the OECD report

template and Lithuania’s regulations.

Master File: It is a description of the supply chain for the

group’s five largest products and service offerings by

turnover plus any other products and services amounting

to more than 5% of group turnover. The required

description could take the form of a chart or a diagram.

Local File: Additionally, in the Local File, companies have to

provide TP documentation preparation and update dates.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There are no provisions related to penalty protection with

respect to compliance with the BEPS Action 13 format

report.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 25 October 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, TP rules are in place. TP documentation must be

submitted upon request. There is no contemporaneous

requirement; however, annually, TP documentation should be

updated regarding actual applied pricing in the respective year.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Based on local legislation, the information related to the

transaction under review (transaction values and the

transfer price actually applied) has to be updated in the

TP documentation for each tax period. In addition, the

benchmarking study has to be updated at least every three

years.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No, the local legislation has no such obligation.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is a materiality limit for TP documentation:

> If sales revenues of a certain company exceeded EUR3

million in a previous year, then the company has to

prepare a TP documentation Local File.

> If the sales revenue of a company that belongs to

an international group exceeded EUR15 million in a

previous year, then the company has to prepare a TP

documentation Master File.

However, regardless of sales revenues, the following

companies have to prepare TP documentation Local File:

> 

Financial companies and credit institutions, the activities

of which are regulated by the Law on Financial Institutions

of the Republic of Lithuania.

> Insurance companies, the activities of which are regulated

by the Law on Insurance of the Republic of Lithuania. But

it is not necessary to prepare a Local File when controlled

transactions are carried out between Lithuanian taxpayers

and are related activities carried out in Lithuania.

> Companies with foreign units operating in Lithuania

through a permanent establishment where sales revenue

exceeded EUR3 million in a previous year.

> Master File

A company has to prepare a Master File for the following year

if its turnover exceeded EUR15 million.

> Local File

A company has to prepare a Local File for the following year if

its turnover exceeded EUR3 million.

> CbCR

CbCR is mandatory for the following companies if:

> The company belongs to an international group of

companies

> Consolidated income of such a group of companies

exceeds EUR750 million

> Economic analysis

If the materiality of a single transaction (or several closely

related ones) with the same associated party during the tax

period exceeded EUR90,000, then economic analysis should

be carried out for this transaction.

c) Specific requirements

> Treatment of domestic transactions

From 1 January 2020, the domestic transactions are exempt

from documenting. However, the tax authorities could ask for

justification of arm’s-length transfer pricing in the domestic

transactions.

> Local language documentation requirement

If the TP documentation is prepared in English language

version, the Lithuanian tax authorities may request that

translation be provided.

> Safe harbor availability including financial transactions if

applicable

The safe harbor rules apply only for low-value-adding services

as that term is described in the OECD Transfer Pricing

Guidelines.

> Is aggregation or individual testing of transactions preferred

for an entity

The individual testing is preferred for an entity. Otherwise, the

reasoning for aggregation should be documented.

> Any other disclosure/compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The rules for completing Form FR0528, Report on

Transactions or Economic operations Between Associated

Parties, are set forth in the Order of the Head of the State Tax

Inspectorate No. VA-27 as of 22 March 2005. Form FR0528

must be submitted within six months at the end of each tax

period. No other specific TP returns shall be provided to the

Lithuanian tax authorities.

> Related-party disclosures along with corporate income tax

return

An associated-party disclosure annex (Form FR0528) to the

annual CIT return has to be submitted when the taxpayer’s

associated-party transactions exceed an annual value of

approximately EUR90,000. On Form FR0528, taxpayers

are required to provide information about the transactions

between associated parties related to fixed tangible and

intangible assets, stocks and goods, financial and other

services, securities and derivatives, and rent of property

and loans. The taxpayers are also required to inform the tax

authorities whether any TP method prescribed in the TP rules

has been used in the transactions disclosed.

> Related-party disclosures in financial statement/annual

report

Names, activities and controlled part of the parent company or

companies that may have a significant impact on the company

must be disclosed in the company’s annual financial statement

explanatory notes. Irrespective of whether the entity has

any transactions with related parties, it shall provide general

information about subsidiaries, associates, joint ventures,

and its shareholders or partners that may have a significant

influence over the entity.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

Disclosures related to TP (Form FR0528 for declaring

transactions with related parties) must be submitted to the

tax authorities with the annual CIT return. The rules for

completing this form are set forth in the Order of the Head of

the State Tax Inspectorate No. V-27 as of 22 March 2005.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

CIT return must be submitted within six months and fifteen

days after the end of each tax period.

> Other transfer pricing disclosures and return

Other FR0528 forms (transaction with associated entities)

must be submitted within 6 months and 15 days after the end

of each tax period.

> Master File

This applies for fiscal years beginning on or after 1 January

2019. It must be prepared within six months and 15 days

after the end of each tax period if not advised otherwise. If

the tax authorities require it, the Master File would need to be

submitted in 30 days.

> CbCR preparation and submission

The CbCR must be submitted within 12 months from the end

of the reporting fiscal year of the MNE group.

> CbCR notification

CbCR notification should be submitted by the end of the

reporting financial year of the MNE group.

b) Transfer pricing documentation/Local File preparation

deadline

Based on new legislation for transactions carried out on

1 January 2019, the following deadlines to prepare the

documentation apply:

> TP documentation should be prepared within six months

and 15 days after the end of each tax period. However,

taxpayers have to submit the TP documentation within 30

days from the corresponding notice by the tax authorities

in an audit or an inquiry.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

There is no statutory deadline for the submission of TP

documentation.

> Time period or deadline for submission upon tax authority

request

The taxpayer has to submit the TP documentation within 30

days from the corresponding notice by the tax authorities in an

audit or an inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

Based on local legislation, preference is given to traditional

TP methods (specifically the CUP method). However, the

taxpayer must choose the most appropriate TP method,

taking into account transaction characteristics, reliability of

available data, etc. Taxpayers are encouraged to use profit-

based methods only if transaction-based methods are not

sufficient. Taxpayers are not required to use more than one

method; however, a combination of methods may be used in all

cases, provided the decision to apply any particular method is

adequately supported.

8. Benchmarking requirements

> Local vs. regional comparables

Local requirements follow the OECD Guidelines. There

is a preference for domestic comparables over foreign

comparables (if no local comparables are found, foreign may

be used).

> Single-year vs. multiyear analysis for benchmarking

The preference is given to the multiyear analysis (based on

jurisdiction practice).

> Use of interquartile range

The use of the interquartile range is preferred (based on

jurisdiction practice).

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The benchmarking results have to be updated once every

three years. Financial updates are performed annually.

> Simple, weighted or pooled results

There is a preference for a simple average (based on

jurisdiction practice).

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Non-compliance with TP documentation regulations exposes

a taxpayer to a penalty that may vary from EUR1,820 up to

EUR5,590.

If the company fails to comply with the TP documentation

regulations repeatedly, the penalty increases and may vary

from EUR3,770 to EUR6,000.

> Consequences of failure to submit, late submission or

incorrect disclosures

Non-compliance with TP documentation regulations exposes

a taxpayer to a penalty that may vary from EUR1,820 up to

EUR5,590.

If the company fails to comply with the TP documentation

regulations repeatedly, a penalty increases and may vary from

EUR3,770 to EUR6,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

General tax penalties of 10% to 50% of the additional tax apply

in the case of taxable income adjustments.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

General tax penalties of 10% to 50% of the additional tax apply

in the case of taxable income adjustments.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

TP penalties are subject to general penalty relief rules. The

penalties can be reduced by up to 10% of the outstanding CIT

if the taxpayer properly communicates with the tax authorities

and presents all requested documents and explanations.

10. Statute of limitations on transfer pricing

assessments

TP assessments may apply to the five years prior to the year in

which the assessment takes place.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium: The TP audit is part of the general tax audit, which

is subject to internal risk identification procedures set by the

tax authorities. Cross-border transactions with related parties

should be treated as having increasing potential risk.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

High: The tax authorities make an independent analysis of a

taxpayer’s tax position and analyze both documentation and

factual results.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

High: The tax authorities are qualified enough to assess and

apply the correct TP methodology in case an incorrect one was

applied by the taxpayer.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

As of 1 January 2012, taxpayers may conclude unilateral

APAs with the Lithuanian tax authorities on prospective

transactions. Bilateral or multilateral APAs may be concluded

on the basis of existing tax treaties for avoiding double

taxation.

> Tenure

Five years with rollover possibility.

> Rollback provisions

There is none specified.

> MAP opportunities

Lithuanian tax authorities do enter into MAPs.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19 situation?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization restrictions apply to interest paid to

controlling entities. A creditor qualifies as a controlling entity

if it owns more than 50% of the shares in the company paying

the interest (or more than 50% of the shares are owned

together with associated persons and the creditor’s “own”

holding is 10% or more). A group company also qualifies as a

controlling entity. A debt-to-equity ratio of 4:1 applies, and any

interest attributable to the debt in excess of this ratio is non

deductible.

In addition to the debt-to-equity ratio of 4:1, additional interest

deduction limitation rules apply. These rules are not limited to

interest expenses incurred due to loans received from related

parties and, therefore, will be applied in respect of interest

expenses incurred due to the acquisition of bank loans as well.

Entities are allowed to fully deduct interest expenses that do

not exceed interest income and to deduct any excess amount

of interest expense that does not exceed 30% of earnings

before interest, tax, depreciation and amortization (EBITDA)

or up to EUR3 million. Entities also are allowed to fully deduct

interest expenses if they are members of a consolidated group

for financial accounting purposes and if they can demonstrate

that the ratio of their equity over their total assets is not more

than two percentage points lower than the equivalent ratio

of the group and all assets and liabilities are valued using the

same method as in the consolidated financial statements.

EBITDA and the deductible amount of interest expenses

are calculated on a group level. A group of entities includes

entities in respect of which the controlling person holds

directly or indirectly more than 25% of the shares (interests,

member shares), voting rights or other rights to a portion of

the distributable profits or exclusive rights to the acquisition

thereof. Interest expenses that are non deductible in a year

under the interest deduction limitation rules may be carried

forward for an unlimited period of time.

Donatas Kapitanovas

donatas.kapitanovas@lt.ey.com

+ 370 620 74071

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Luxembourg Tax Authority (Administration des Contributions

Directes — ACD).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Luxembourg Income Tax Law (ITL) contains three articles

related to transfer pricing: Articles 56 and 56bis are dedicated

to the arm’s-length principle and Article 164(3) is dedicated

on hidden profit distribution. These articles provide for the

application of the arm’s-length standard for transactions

between related parties.

Applicable from 1 January 2015, Article 56 of the ITL

provides that profits of associated enterprises entering into

transactions that do not meet the arm’s-length principle

will be determined according to normal market conditions

and taxed accordingly. Based on this wording, both upward

and downward adjustments are possible. Furthermore, this

provision applies to domestic and cross-border transactions.

Article 56 of the ITL covers any “enterprise,” which means

any person carrying out a commercial activity. As such, under

this article, company types, such as S.A.s, S.à.r.l.s and risk

capital investment companies (sociétés d’investissement

en capital à risque — SICARs), and individuals that have a

commercial business are considered to be included in the

definition of “enterprise.” However, non-Luxembourg residents

(unless they have a permanent establishment in Luxembourg)

or transparent entities (such as FCP, SCS and SCSp, unless

they exercise a commercial activity) would likely not be

included under the scope of Article 56 of the ITL. Investment

companies with variable capital (sociétés d'investissement à

capital variable — SICAVs) in corporate form have a commercial

business and are considered to be enterprises; however, they

benefit from a subjective tax exemption.

The commentaries of the law specify that the arm’s-length

principle is applicable to any taxpayer, regardless of the legal

form under which it exercises its activities in Luxembourg.

Therefore, this provision will cover not only tax-opaque

collective undertakings and tax-transparent partnerships but

1 http://www.impotsdirects.public.lu/content /dam/acd/fr/legisla-

tion/LIR/LIR2017.pdf

also individual and collective undertakings without legal form.

Since Article 56 of the ITL grants the possibility to adjust the

profits declared by a taxpayer, it is necessary to determine

whether the conditions of a controlled transaction (i.e., a

transaction between associated enterprises) are consistent

with the arm’s-length principle and what quantum of

adjustment has to be made to achieve the arm’s-length

principle. To assess this, a comprehensive economic

comparability analysis or benchmark, which consists

of comparing controlled transactions with uncontrolled

transactions (i.e., transactions between independent parties),

should in principle be realized in order to sustain the arm’s-

length character of the intragroup transaction.

Article 56bis of the ITL, applicable from 1 January 2017,

contains the basic principles that must be respected in the

context of a transfer pricing analysis, including the tool to be

used and the methodology to be selected for implementing the

arm’s-length principle.

Article 56bis of the ITL first provides for definitions aiming to

clarify some fundamental terms in the area of transfer pricing.

The article then states that companies have to apply the arm’s-

length principle to all controlled transactions and specifies that

the mere fact that a transaction may not be found between

independent parties does not itself mean that it is not at arm’s

length.

As per the mechanism to be applied, this article particularly

focuses on the comparability analysis, which is at the heart of

the application of the arm’s-length principle. This comparability

analysis is based on the following two aspects:

> The identification of the commercial or financial relations

between related entities and the determination of the

conditions and economically relevant circumstances linked

to those relations in order to accurately delineate the

controlled transaction

> The comparison of the conditions and economically

relevant circumstances of the accurately delineated

controlled transaction with those of comparable

transactions on the free market

Article 56bis of the ITL further states that the economically

relevant conditions and circumstances or comparability factors

that have to be identified broadly include the following:

> The contractual terms of the transaction

> The functions performed by each of the parties to the

transaction, taking into account the assets used and the

risks assumed and managed

> The characteristics of the asset transferred, the service

rendered or the engagement concluded

> The economic circumstances of the parties and the market

on which the parties exercise their activities

> The business strategies pursued by the parties

Article 56bis of the ITL also specifies that the methods to

be used for determining the appropriate arm’s-length price

must take into account the factors of comparability identified

and be coherent with the nature of the accurately delineated

transaction. The most suitable method for the transaction

has to be used. The Luxembourg Tax Authority issued an

administrative circular on 27 December 2016 (Circular LIR

No. 56/1-56bis/1) regarding the tax treatment applicable to

companies carrying out intragroup financing activities. This

new circular replaces the administrative circulars No. 164/2

of 28 January 2011 and No. 164/2bis of 8 April 2011 and is

effective as of 1 January 2017.

The circular provides substantial guidance on the comparability

analysis, the functional analysis and the substance

requirements. In line with Article 56bis of the ITL, the circular

mentions that the comparability analysis should contain:

> An identification of the commercial or financial relations

existing between related parties and determination of

the conditions and significant economic circumstances

attached to the controlled transaction in order to precisely

delineate the controlled transaction

> A comparison of the conditions and significant economic

circumstances of the controlled transaction, accurately

delineated, with comparable transactions between

independent parties

The circular provides substantial details on the approach to be

taken in order to conduct a functional analysis, stressing the

importance of identifying functions performed and assets used

to determine the risk related to a financing transaction.

Furthermore, the circular requires the performance of

a comprehensive risk analysis in order to determine the

adequate level of equity. In that respect, it refers to the need

to estimate — based on the facts and circumstances of each

situation — the economically significant specific risks in relation

to a financing transaction. The circular also explains the

substance requirements to be met by a group financing entity.

The Law of 23 December 2016 in relation to CbCR rules was

adopted by Luxembourg’s Parliament on 27 December 2016.

This law aims at transposing Directive 2016/881/EU of 25

May 2016, which amends Directive 2011/16/EU as it regards

the mandatory automatic exchange of information in the field

of taxation to include the CbCR rules for global MNEs.

> Section reference from local regulation

Related parties are defined by Article 56 of the ITL as follows:

“When an enterprise participates, directly or indirectly, in

the management, control or capital of another enterprise, or

where the same persons participate, directly or indirectly, in

the management, control or capital of two enterprises.”

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No; since Luxembourg generally follows the OECD guidance, it

can be anticipated that transfer pricing framework suggested

by the OECD in relation to COVID-19 would be followed, i.e.,

guidance on the transfer pricing implications of the COVID-19

pandemic published in December 2020.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Luxembourg has been a member of the OECD since 7

December 1961.

The OECD Guidelines are not officially incorporated into

Luxembourgian tax law. Nevertheless, the commentaries to

the 2015 Budget Law modifying Article 56 of the ITL refer

to the OECD Guidelines as being designed to be observed by

multinationals. More importantly, Article 56bis, introduced

into Luxembourgian law by the 2016 Budget Law, clearly aims

to incorporate the concept of the arm’s-length principle, based

on the OECD principles as revised by Actions 8 to 10 of the

OECD BEPS Action Plan, which is now also reflected in the last

version of the OECD Transfer Pricing Guidelines released in

July 2017. The commentaries to Article 56bis refer directly to

chapters 1 to 3 of the OECD Guidelines.

Furthermore, Circular No. 56/1-56bis/1, issued by the

tax authorities on 27 December 2016 and effective from

1 January 2017, provides substantial guidance on the

comparability analysis and, more specifically, on how to

conduct it consistently with OECD principles. It also states

that economic reality should prevail over the contractual

terms of an agreement, thus reinforcing the application of

the substance-over-form concept in the application of OECD

Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Luxembourg has adopted BEPS Action 13 for transfer pricing

documentation in the local regulations only in terms of CbCR.

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

CbCR is covered. The Law of 23 December 2016 states that

if the ultimate parent entity (UPE) of an MNE group that is

required to prepare consolidated financial statements, or

that would be required to do so if equity interests in any of

its enterprises were listed, with a consolidated annual group

turnover of at least EUR750 million is a Luxembourg tax

resident, the entity must submit a CbCR to the Luxembourg

tax authorities. Alternatively, a Luxembourg group entity that

is not the UPE of the MNE group (the surrogate parent entity)

should file a CbCR with the Luxembourg tax authorities in one

of the following cases:

> The UPE is not obligated to file a CbCR in its jurisdiction of

residence.

> The UPE is obligated to submit a CbCR, but there is no

automatic exchange of CbC reports between Luxembourg

and the jurisdiction of residence of the UPE.

> The UPE is obligated to submit a CbCR, and there is

an automatic exchange of CbC reports, but because of

systematic failure, no effective exchange of information

takes place.

A Luxembourg group entity will need to notify the Luxembourg

tax authorities by the end of the financial year as to whether

it is the UPE or surrogate parent entity. If it is not, it will have

to inform the Luxembourg tax authorities of the identity of the

UPE or surrogate parent entity (including the identification of

its tax residency). The CbCR should be filed annually, within 12

months of the last day of the financial year.

> Effective or expected commencement date

The date is financial year 2016 for CbCR.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Since Luxembourg legislation does not include specific

documentation requirements, BEPS Action 13 format would

be acceptable for local purposes.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Luxembourgian tax law includes general documentation

requirements but does not provide specific transfer pricing

documentation regulations. The General Tax Law has been

amended to extend the existing general obligation of taxpayers

so they can justify the data contained in their tax returns

with appropriate information and documentation (codified

in Section 171 of the General Tax Law) for transfer pricing

matters. This provision is reinforced by a third paragraph

clarifying that the general documentation requirements set

forth by this provision also apply to transactions between

associated enterprises.

In the absence of further guidance, one could rely on the

2017 edition of the OECD Transfer Pricing Guidelines and

the Practical Manual on Transfer Pricing for Developing

Countries issued by the United Nations to get additional

information on what types of documentation a taxpayer may

be required to provide. Reference is also made to the European

Council’s Code of Conduct on transfer pricing documentation

for associated enterprises in the EU, dated 2006, aimed

at harmonizing the transfer pricing documentation that

multinationals have to provide to tax authorities.

As a general rule, contemporaneous documentation should

exist when transactions are carried out. The Luxembourg tax

authorities may request such documentation upon review of

the tax return.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

As a general rule, contemporaneous documentation should

exist when transactions are carried out.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

There is no specific requirement in this respect; however,

stand-alone transfer pricing report is preferred in practice.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The threshold is set at EUR750 million (consolidated annual

group turnover).

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The transfer pricing documentation need not be submitted in

the local language (English is acceptable).

> Safe harbor availability including financial transactions if

applicable

For group companies exercising a purely intermediary

financing activity and meeting substance requirements listed

in Circular LIR No. 56/1-56bis/1, the transactions entered

into by such group financing companies will be considered as

compliant with the arm’s-length principle if a minimum return

on the assets financed of at least 2% after tax is achieved.

The percentage of 2% after tax could not be used for controlled

transactions to be entered into by group financing companies

exercising a purely intermediary financing activity and having

limited functional profile. A specific transfer pricing analysis

documenting the remuneration to be applied on those

controlled transactions should be performed in such a case.

Reliance on the simplified measure needs to be disclosed

(when applied) in the tax return of the company and could be

subject to exchange of information. A deviation to the above

2% minimum return is acceptable on an exceptional basis when

duly justified in a transfer pricing analysis.

Simplified measures are also introduced to determine

the arm’s-length return on equity for a company having a

functional profile comparable to the one of certain regulated

entities (reference is made to financial institutions). In such

a case, a return on equity of 10% would be considered as

compliant with the arm’s-length principle.

> Is aggregation or individual testing of transactions preferred

for an entity

The preferred approach is individual transaction testing.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Currently, there are no transfer pricing-specific returns to be

filed separately or with the corporate income tax return.

> Related-party disclosures along with corporate income tax

return

It is a common practice that transactions with related parties

are detailed by nature and by related party in a schedule

attached to the tax returns.

Moreover, a taxpayer is requested to disclose in the tax return,

inter alia, whether it has engaged into any transactions with

related parties during the year and whether it has opted for

the simplification measure provided in the Circular LIR No

56/1 56bis/1 on intragroup financing.

> Related-party disclosures in financial statement/annual

report

Yes, it is in line with local accounting requirements.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

No specific submission requirement, but the transfer

pricing documentation should be available upon tax return

submission, i.e., 31 May.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The deadline is 12 months after the last day of the reporting

fiscal year of the MNE group.

> CbCR notification

The deadline is by the end of the reporting fiscal year.

b) Transfer pricing documentation/Local File preparation

deadline

There is no statutory deadline for the preparation of transfer

pricing documentation, but transfer pricing documentation

should be available to support the information in the tax

return. As a general rule, contemporaneous documentation

should exist when transactions are carried out.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Luxembourg’s tax law does not include a deadline to produce

transfer pricing documentation. However, taxpayers must

be able to justify the data contained in their tax returns with

appropriate information and transfer pricing documentation.

> Time period or deadline for submission on tax authority

request

Luxembourg’s tax law contains neither specific transfer

pricing documentation regulations nor a deadline to produce

transfer pricing documentation. Taxpayers must be able to

justify the data contained in their tax returns with appropriate

information and documentation. The tax authority may

request, in the context of assessing the tax return or in the

context of a tax audit, that transfer pricing documentation be

provided within a certain time frame. This time frame may be

as short as 14 days but may be extended upon request.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

In case of request in a tax audit, the transfer pricing

documentation has to be provided two weeks after the

request, but may be extended to additional two weeks.

In addition, the deadline for the submission of the corporate

income tax returns has been extended for FY 2019 and FY

2020.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

Although there are no specific pricing methods mentioned

in the ITL, the draft law introduced on 12 October 2016

reinforces that the methods to be used in determining the

appropriate arm’s-length compensation must take into account

the OECD comparability factors and be coherent with the

nature of the accurately delineated transactions. All methods

advocated by the OECD are acceptable under the current

administrative practice, such as the CUP, resale price, cost-

plus, TNMM and profit-split methods. There are no priorities

established among the different methods.

8. Benchmarking requirements

> Local vs. regional comparables

OECD guidance should be followed.

> Single-year vs. multiyear analysis

OECD guidance should be followed.

> Use of interquartile range

OECD guidance should be followed.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

OECD guidance should be followed.

> Simple, weighted or pooled results

OECD guidance should be followed.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

As a general rule (not specific but also applicable to transfer

pricing matters), any tax return that is intentionally incomplete

or has inexact information, or any non-declaration, can result

in a fine. Furthermore, administrative penalties may be applied

to enforce a taxpayer’s delivery of general documentation

within the assessment.

Finally, to the extent that the arm’s-length standard is not

respected, the tax authority may reassess or adjust the taxable

result.

> Consequences of failure to submit, late submission or

incorrect disclosures

See above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

A tax return that is intentionally incomplete or has inexact

information, or any non-declaration, can result in a fine not

exceeding 25% of the taxes avoided or unduly reimbursed but

not less than 5% of the taxes avoided or unduly reimbursed.

With regard to the CbCR rules, in the cases of failure on filing,

late filing, inclusion of incomplete or inexact information, or

in the case of not respecting any of the obligations included in

the mentioned draft law, a penalty of up to EUR250,000 can

be imposed on the declaring entity. This penalty is imposed at

the discretion of the competent tax authority. The declaring

entity can appeal the decision to the Administrative Court.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not specified.

> Is interest charged on penalties and payable on a refund?

There is none specified.

b) Penalty relief

An appeal before the Director of Direct Tax Administration can

be lodged against penalties within three months.

The adjustment will be materialized within the tax assessment.

Again, an appeal can be filed against this tax assessment (see

below).

10. Statute of limitations on transfer pricing

assessments

There are no specific limitations on transfer pricing

adjustments; rather, the general rules apply. The statute of

limitations is, in principle, five years starting from 1 January

of the calendar year following the relevant tax year. In cases

where no tax return or an incomplete tax return is filed, as

well as in cases of fraud, the statute of limitations is extended

to 10 years. Moreover, once a Luxembourgian company has

been assessed for income and net wealth tax purposes for

a particular year, the tax authorities may not reassess the

relevant tax year unless they have obtained new information

and the statute of limitations has not yet expired. As long as

the tax authorities have issued a provisional tax assessment,

the taxable base may still be adjusted after the provisional

assessment is issued, until the statute of limitations has

expired.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No specific impact has been observed.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

There are no specific rules regarding transfer pricing audits in

Luxembourg. Transfer pricing normally should be reviewed as

part of a regular tax audit, when assessing the tax return for a

specific year. The risk of transfer pricing being reviewed under

a tax audit is characterized as medium.

The tax authority has the right to carry out an audit during the

statute-of-limitations period until final income tax assessments

are issued.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium for the same

reason stated above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium for the same

reason stated above.

> Specific transactions, industries and situations, if any, more

likely to be audited

Financing activities transactions, attribution of profits to

permanent establishments and management-related fees

(within asset management structures) are more likely to be

audited.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The General Tax Law (Abgabenordnung) includes a provision

(Paragraph 29a) dedicated to the tax ruling practice

(procedure des décisions anticipées). This provision, which has

been further completed by a grand-ducal regulation, reflects

and formalizes the administrative practice applied in the past,

enabling taxpayers to obtain up-front legal certainty. The aim

is also to provide a harmonized and uniform application of

the tax laws across the various taxation offices and increased

transparency toward foreign tax authorities. This provision

also applies to APAs. Circular Letter LIR No. 164/2, dated 28

January 2011, further formalizes the issuance of APAs for

intragroup financing transactions (i.e., activities consisting of

granting loans or advances to associated enterprises funded

through the issuance of public or private loans, advances or

bank loans).

To further enhance tax transparency, the law on automatic

exchange of information on tax rulings and APAs (transposing

EU Council Directive 2015/2376 of 8 December 2015) was

introduced into Luxembourgian legislation on 23 July 2016.

The law foresees the mandatory and automatic exchange

of information on cross-border tax rulings and APAs with all

other EU members. The law is applicable from 1 January

2017. However, retroactive effect of up to 1 January 2012 is

provided for certain rulings issued before 1 January 2017.

Furthermore, based on the final recommendations of the OECD

in relation to Action 5 of the BEPS project, Luxembourg may

also exchange information on certain types of tax rulings and

APAs that were issued on or after 1 January 2010 and that

were still in effect from 1 January 2014.

The transfer pricing rules provide for three types of APAs:

unilateral, bilateral and multilateral agreements.

> Tenure

The tenure is five years.

> Rollback provisions

Rollback to prior years available on a case-by-case basis.

> MAP opportunities

On 11 March 2021, the Luxembourg Tax Authorities (LTA)

issued the circular L.G. – conv. D. I. n° 60 (Circular) regarding

the mutual agreement procedure provided by double tax

treaties signed by Luxembourg. This Circular replaces the

circular L.G. – conv. D. I. n°60 issued on 28 August 2017. The

Circular details the mechanism of the MAP from the request

to initiate the procedure to the termination of the MAP and

explains the interaction with other procedures and legal

remedies.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No specific changes have been observed for APAs or other

transfer pricing-related certainty measures.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no specific local transfer pricing regulations at this

stage, but further developments after the issuance of the

OECD transfer pricing guidance on financial transactions are

to be monitored. Certain changes in the approach are already

observed, e.g., the debt-to-equity ratio and commercial

rationale need to be supported by appropriate documentation.

Nicolas Gillet

nicolas.gillet@lu.ey.com

+ 352 691 104 524

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Directorate General for Taxes (Direction Générale des Impôts —

DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

General Tax Code (GTC): The provision regarding the arm’s-

length principle is applicable since 2014, and the provision

regarding TP requirement has been introduced by the

Amending Finance Law N° 2020-010 dated 14 July 2020.

Executive decision No. 4 — MFB/SG/DGI, dated 24 January

2014, on TP rules (TP tax audit, pricing methods and tax

haven details).

Note No. 012-2021/MEF/SG/DGI/DLFC/SFI dated 1 June 2021

on TP reporting and documentation requirement in application

of the article 01.01.13 IV of the GTC.

> Section reference from local regulation

Section reference from GTC: Articles 01.01.13–IV (arm’s-

length principle and TP documentation requirement),

01.01.10-1° (no deduction on abnormal or unreasonable

expenses), 20.01.52 and 20.01.56.8.2° (penalties),

20.06.23 (on-site tax audit regime and deadlines).

Executive decision No. 4 — MFB/SG/DGI, dated 24 January

2014 and the Note No. 012-2021/MEF/SG/DGI/DLFC/SFI

dated 1 June 2021 are specifically dedicated to TP.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

There is no change specific due to COVID-19. However,

precision regarding the TP documentation form is expected.

In fact, please note that the deadline for filing the TP

documentation (Master File and Local File) related to FY20

(the first financial year concerned by the TP documentation

requirement) was postponed to 31 March 2022 and is still

awaiting for the issuance of the Master File and Local File forms

from the tax authorities.

1 www.impots.mg

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Madagascar is not a member of the OECD, but Note No. 012-

2021/MEF/SG/DGI/DLFC/ SFI refers to the OECD Guidelines.

It provides that the content of the Master File and Local File

is based on the OECD Guidelines in order to comply with the

minimum requirements for transfer pricing documentation.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Partially; as Madagascar is not member of OECD, the local

regulations have neither adopted nor implemented all of

BEPS Action 13. It has not implemented country-by-country

reporting but only implemented the Master File and Local File

requirement.

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

TP documentation requirements in Madagascar only

include Master File about the multinational group as a

whole and Local File concerning the local entity and its

controlled transactions.

CbCR is not yet referred to the TP documentation

requirements.

> Effective or expected commencement date

2020 financial year (FY20) is the first financial year

concerned by the TP documentation. The reporting of this

FY20 TP documentation was postponed to no later than

31 March 2022.

> Material differences from OECD report template or format

The local TP documentation (Master File and Local File)

report format has not been issued yet. However, based

on the minimum content of Master File and Local File listed

in the Note No. 012-2021/MEF/SG/DGI/DLFC/SFI, the

minimum content of the local TP documentation is quite

similar to the OECD content. The local regulations include

in its list of information required for Local File an additional

specific bullet point related to (i) the obligation to list

transactions with associates and (ii) to insert in Local File

information on transactions with companies located in

privileged tax regime states.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The TP documentation (MF and LF) should comply with the

local regulations’ format template that will be issued by the

DGI (which we assume will be based on OECD Template as

Note No. 012-2021/MEF/SG/DGI/DLFC/SFI refers to OECD

guidelines on mandatory information required). However, the

DGI has the right to assess its content, and there is still a risk

of penalty in the case where some mandatory information

is missing or not provided on time upon request of tax

authorities in case of tax audit.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, Madagascar has its TP documentation guidelines.

TP documentation should be prepared at the time of the

transaction or at the time of reporting and submitted online at

the same time as the tax returns.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

The local branch of a foreign company is considered as a

permanent establishment.

The local branch must comply with the local TP rules if it is

subject to local corporate income tax (CIT), i.e., its turnover

is greater than or equal to MGA200 million (approximately

USD50,000) or in the event of option for CIT whatever the

amount of the turnover.

> Does transfer pricing documentation have to be prepared

annually?

Yes, TP documentation is prepared annually and must be

available/kept for at least 10 years in case of a tax audit.

Therefore, TP documentation must be updated on a regular

basis to reflect changes in the conditions of the transactions

and the nature of the operations.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, the information and documents requested by the tax

authorities relate to each specific company.

b) Materiality limit or thresholds

> Transfer pricing documentation

There are no limits or thresholds for intragroup transactions to

be supported by TP documentation.

> Master File

No.

> Local File

No.

> CbCR

This is not applicable.

> Economic analysis

Yes, a detailed comparability and functional analysis of the

taxpayer and relevant associated enterprises is made for each

category of controlled transaction.

c) Specific requirements

> Treatment of domestic transactions

There are no specific TP requirements or provisions on

domestic transactions.

> Local language documentation requirement

TP documentation reporting must be completed in a French

version. However, in case of a tax audit, if the taxpayer submits

TP documentation in another language, a certified translation

of the documents along with the original documents must be

submitted at the request of the tax authority within the time

limit indicated in the request.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

As it is a recent obligation, no specific preference method has

been notified by the DGI.

> Any other disclosure/compliance requirement

Yes, when the conditions of the controlled transactions with

an associated company located outside the territory or in a

jurisdiction with a privileged tax regime do not comply with the

arm’s-length principle, the taxpayer must make an adjustment

to the taxable base for corporate income tax purposes.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

TP regulations provide that there is a format to be respected.

However, this format is not yet available from the tax

authority. The TP documentation is reported online or in

physical version.

> Related-party disclosures along with corporate income tax

return

The transaction and the information about the entities are

detailed in those files.

Identification of associated enterprises should be included in

the Master File and the Local File.

The texts do not provide appendices, so it is variable

depending on the transaction and the situation of the

company.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

Information on transactions with companies located in

countries or territories with privileged tax regimes and on

transactions with related companies without consideration or

with a monetary consideration.

There is no other document to be filed.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

TP documentation is reported as a separate return but at

the same time as the corporate income tax return as follows:

Companies using the standard tax year must file financial

statements and the corporate income tax return by 15 May of

the year following the tax year.

For companies choosing a tax year-end other than the

standard tax year-end, the filing must be made by the 15th

day of the fourth month following the year-end.

For companies whose fiscal year ends on a date other than

that defined in the above, must file financial statement and

corporate income tax return no later than the 15th day of May

of the following year.

> Other transfer pricing disclosures and return

Except for this first year of implementation for FY 2020, the

timeline to report was extend to 31 March 2022 instead of the

normal date of CIT return.

In case of tax audit, the timeline to provide TP documentation

or additional information is one month with the possibility

to apply for the extension of this to two months. In case the

responses provided are not sufficient, the DGI can grant 30

additional days.

> Master File

TP documentation should be prepared at the time of the

transaction or at the time of reporting and submitted online at

the same time as the tax returns.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

TP documentation should be prepared at the time of the

transaction or at the time of reporting and submitted online at

the same time as the tax returns.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

TP documentation is reported at the same time as the

corporate income tax return. Please refer to 6.a) for CIT

returns.

> Time period or deadline for submission on tax authority

request

In case of tax audit, the timeline to provide TP documentation

or additional information is one month, with the possibility

to apply for the extension of this to two months. In case the

responses provided are not sufficient, the DGI can grant 30

additional days.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The aforementioned executive decision No. 4 — MFB/SG/DGI

accepts the following methods:

> CUP

> Resale price

> Cost plus

> TNMM

> Transactional profit split method

It is up to the taxpayer to select and justify the most suitable

approach.

8. Benchmarking requirements

> Local vs. regional comparables

Malagasy TP law and practice are still recent, and the tax

authorities have not yet required or recommended specific

benchmarking methods.

> Single-year vs. multiyear analysis for benchmarking

Malagasy TP law and practice are still recent and do not have a

preference. However, in case of use of multiyear analysis, the

taxpayer must explain the reason of this choice.

> Use of interquartile range

Malagasy TP law and practice are still recent, and the tax

authorities have not yet required or recommended specific

practical guidelines.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Malagasy TP law and practice are still recent, and the tax

authorities have not yet required or recommended specific

practical guidelines.

> Simple, weighted or pooled results

Malagasy TP law and practice are still recent, and the tax

authorities have not yet required or recommended specific

practical guidelines.

> Other specific benchmarking criteria, if any

Malagasy TP law and practice are still recent, and the tax

authorities have not yet required or recommended specific

practical guidelines.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

Penalty of MGA10 million (approximately USD2,500) if a

company does not provide any documentation or provides

insufficient information by the aforementioned deadlines (at

the same time as CIT return or the first month of request,

within the granted extension or by the 30-day additional-

information period for additional documentation requested by

the Tax authorities during a tax audit ) In case of tax audit, an

automatic adjustment would be added to this penalty.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, in the case of an adjustment, the tax authorities would

reclaim the benefits that should have been achieved if the

transaction was made at arm’s length and apply penalties of:

> 40% as standard penalties

> 80% in the case of fraudulent tactics

> 150% in the case of resistance during the tax audit

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

The same as the above.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

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

10. Statute of limitations on transfer pricing

assessments

There is no specific statute of limitations on TP assessments.

It is the same as for all corporate tax assessments, i.e., three

years following the year for which the tax is due.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be low. Tax audits and tax

reassessments related to TP are not frequent yet. Malagasy

TP law and practice are still recent; therefore, tax auditors are

not quite familiar with transfer pricing principles or pricing

methods.

> Likelihood of transfer pricing methodology being

challenged (high/medium/low)

The likelihood may be considered to be medium. It

is up to the taxpayer to select and justify the most

suitable method. However, the DGI can challenge the

appropriateness of the method used by the taxpayer

depending on the type of transaction concerned.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. The tax

authorities tend to reassess as soon as they disagree with

the taxpayer.

> Specific transactions, industries and situations, if any,

more likely to be audited

None.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Malagasy tax law does not provide a specific APA procedure.

Rescripts, individual binding tax rulings or any kind of prior

agreement with the tax authority are not common practices in

Madagascar.

> Tenure

This is not applicable. Malagasy tax law does not provide a

specific provision.

> Rollback provisions

This is not applicable. Malagasy tax law does not provide a

specific provision.

> MAP opportunities

This is not applicable. Malagasy tax law does not provide a

specific provision.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

> Thin capitalization

The General Tax Code provides for the deduction of interest

generated from loans and is treated as follows:

> The interest on sums due to third parties is fully

deductible.

> The interest of loans paid to shareholders is partially

deductible. The deductible interest is limited to the interest

calculated on twice the equity, at a rate that must not be

higher than the rate at the Central Bank of Madagascar

(Banky Foiben’i Madagasikara) plus 2%. Currently, the rate

at the Central Bank of Madagascar is 7.2% (designed as

“Interest rate corridor system”). Therefore, the deductible

interest rate plus 2% at the Central Bank of Madagascar

rate is 9.2%.

> Debt capacity

In the case of losses implying that the equity is less than

the half of the share capital, shareholders should decide the

anticipated closure of the company or to continue its activities

but must reconstitute its equity to an amount equal to half the

share capital within the period of two years.

Yann Rasamoely

yann.rasamoely@mu.ey.com

+ 261 33 110 0374

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority1

Malawi Revenue Authority (MRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Effective from 1 July 2017, Malawi repealed the Taxation

(Transfer Pricing) Regulations 2009 and enacted the Taxation

(Transfer Pricing Documentation) Regulations, 2017, and the

Taxation (Transfer Pricing) Regulations 2017. Section 127A

of the Taxation Act dealing with transfer pricing, which was

enacted in 2009, was amended with effect from 1 July 2017.

> Section reference from local regulation

Section 127A of the Taxation Act is the primary legislation,

and the Taxation (Transfer Pricing) Regulations 2017 and

Taxation (Transfer Pricing Documentation) Regulations 2017

are secondary legislations.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Malawi is not a member of the OECD.

The primary legislation does not refer to the OECD Guidelines.

However, the Taxation (Transfer Pricing) Guidelines 2017

refer to the OECD Guidelines as applicable for the purposes of

interpretation only.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

1 https://www.mra.mw/

regulations?

No, Malawi has not adopted BEPS Action 13 for transfer

pricing documentation in local regulations.

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

The Master File is not applicable in Malawi. However, the

coverage for Local File is the same as the coverage under

OECD Guidelines, and the scope is provided under Taxation

(Transfer Pricing Documentation) Regulations 2017.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

There is no material difference with OECD report template.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not yet adopted or applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes we do have the Transfer Pricing Documentation Guidelines

in place. However, taxpayers are not required to prepare the

contemporaneous Transfer Pricing Documentation, but, they

are not required to submit unless the Commissioner General of

Malawi Revenue Authority requests for submission.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Under the 2017 Regulations, the documentation to support

transfer pricing transactions in the financial statements has to

be maintained contemporaneously. While there is no explicit

obligation to submit the transfer pricing document with the

annual income tax return, it is advisable for the taxpayer to

do so. The Commissioner General of the MRA may demand

transfer pricing-related information to be submitted within 45

days.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

The limit applies to domestic transactions with a value of more

than USD135,000.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is applicable.

c) Specific requirements

> Treatment of domestic transactions

Transfer pricing analysis and documentation for transactions

between resident related parties are not required when

the annual value of the concerned transactions is less than

USD135,000.

> Local language documentation requirement

All transfer pricing documents should be maintained in English.

> Safe harbor availability including financial transactions if

applicable

There is no safe harbor in Malawi.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

Effective from 1 July 2017, all related-party transactions need

to be tested to show that they are at arm’s length. Maintaining

a transfer pricing document is a requirement.

> Related-party disclosures in financial statement/annual

report

This is required.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The documentation should be filed within 180 days after the

end of the financial year.

> Other transfer pricing disclosures and return

There is none specified.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Documentation deadlines are not stipulated, but the

Commissioner General may require a taxpayer to provide the

necessary documentation within a period of 45 days of written

request from the Commissioner General.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for submission of transfer

pricing documentation.

> Time period or deadline for submission on tax authority

request

Taxpayers are obliged to submit the documentation within 45

days of the request by the tax authority, i.e., the Commissioner

General.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The following methods are applicable: CUP, resale price, cost

plus, profit split, TNMM and any other such method as may

be prescribed by the Commissioner General from time to

time. However for transactions involving anything exported

or imported source from the soil, the mandatory preferred

method is commodity method.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are preferred, but comparables from

different geographic markets with similar economic

circumstances with the tested party could be accepted if

information on uncontrolled transactions is not available

locally (Transfer Pricing Regulation 9).

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis is preferred, but not required under the

rules.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The regulations indicate that the taxpayer should have

documentation in place that verifies that the conditions in

related-party transactions for the year of assessment (YA)

are consistent with the arm’s-length principle. The regulation

does not explicitly suggest a fresh benchmarking search

every year, but because of the multiple-year analysis, a fresh

benchmarking is preferred.

> Simple, weighted or pooled results

Weighted average is preferred.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

Penalty for failure to submit transfer pricing documentation

as demanded by the Commissioner General of the MRA is

USD1,400 plus a further penalty of USD2,100 for each

additional month the documents remain un-submitted. If the

taxpayer fails to comply after initial penalty and subsequent

penalties, the taxpayer shall be liable to additional penalties

in an unlimited amount as determined by the Commissioner

General.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

As for adjustments to income tax payable, including tax

adjustments relating to transfer pricing, normally, 100% of the

taxes is involved.If an adjustment is sustained, can penalties be

assessed if documentation is deemed non-contemporaneous?

As for adjustments to income tax payable, including tax

adjustments relating to transfer pricing, normally, 100% of the

taxes is involved.Is interest charged on penalties or payable on

a refund?

Interest is due on overdue taxes, including additional taxes

assessed in terms of transfer pricing at the prevailing bank-

lending rate plus 5%.

b) Penalty relief

Penalty relief is available at the Commissioner General’s

discretion. The taxpayer may appeal to the Commissioner

General of the MRA and then to the special arbitrator. The final

appeal can be made to the High Court.

10. Statute of limitations on transfer pricing

assessments

The assessments can be raised going back six years, but in

cases of fraud, the MRA can raise assessments going back

indefinitely.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high; currently, there

are frequent transfer pricing audits by the MRA.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium; if the

methodology adopted by the taxpayer is well substantiated,

there is a better likelihood that the MRA might agree with it.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high; from experience,

when a methodology is challenged, then a adjustment is likely.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Under the Taxation Act, APA is only applicable to Mining

Sector and there is no APA in the other sectors,, but a

taxpayer may apply for APA.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not yet adopted, but it might be included in all double

tax agreements (DTAs) to be entered post-BEPS report.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Malawi has enacted thin-capitalization rules, which are

effective from 1 July 2015 for mining. The debt-to-equity ratio

has been stipulated for the mining industry, for which the debt-

to-equity ratio is set at 3:1 for the first five years, in which a

mining permit applies to the project, and 1.5:1 thereafter.

The Malawi Government enacted thin-capitalization rules for

other sectors other than mining with effect from 1 July 2018

and introduced 3:1 as the debt-to-equity ratio.

Chiwemi C Chihana

chiwemi.chihana@mw.ey.com

+ 265 999 836 396

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Inland Revenue Board (IRB) of Malaysia (Lembaga Hasil Dalam

Negeri Malaysia — IRBM).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer pricing is legislated under Section 140A of the

Income Tax Act (ITA), 1967 (effective from 1 January 2009)

and under Section 17D of the Labuan Business Activity

Act 1990 (LABATA) (effective from the year of assessment

2020). The Malaysian Transfer Pricing Rules and Guidelines

were introduced in 2012 (effective from 1 January 2009)

and updated Malaysian Transfer Pricing Guidelines were

released on 15 July 2017 (applicable where transfer pricing

documentation is prepared after 15 July 2017 for any

financial year (FY)).

> Section reference from local regulation

> Section 140A of the ITA and Section 17D of the LABATA:

Power to substitute the price and disallowance of interest

on certain transactions.

> Section 138C of the ITA: Advance pricing arrangement

> Income Tax (Transfer Pricing) Rules 2012 (P.U. [A] 132).

> Income Tax (Advance Pricing Arrangement) Rules 2012

(P.U. [A] 133).

> Income Tax CbCR Rules 2016 [P.U. (A) 357] (CbCR Rules).

> Income Tax (country-by-country Reporting) (Amendment)

Rules 2017 (P.U. [A] 416).

> Labuan Business Activity Tax (country-by-country

Reporting) Regulations 2017 (P.U. [A] 409).

> Income Tax (Multilateral Competent Authority Agreement

on the Exchange of country-by-country Reports Order

2016) (P.U. [A] 358) (Malaysian MCAA).

1 http://www.hasil.gov.my/index1.php?bt\_lgv=2

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The 2012 Malaysian Transfer Pricing Guidelines are largely

based on the governing standard for transfer pricing, which

is the arm’s-length principle as established in the OECD

Guidelines. The IRB respects the general principles of the

OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Malaysia adopted and implemented BEPS Action 13 effective

from 1 January 2017 for transfer pricing documentation in its

local regulations.

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

It covers the Master File.

> Effective or expected commencement date

The effective commencement date is 1 January 2017.

> Material differences from OECD report template or format

There are no material differences among the OECD report

templates or formats in relation to CbCR, Master File

and Local File, compared with Malaysia’s transfer pricing

documentation requirements.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Taxpayers should prepare Master File and Local File transfer

pricing documentation that fulfills the requirements of the

Malaysian Transfer Pricing Rules and Guidelines to achieve

penalty protection. If a taxpayer fails to comply with the

Malaysian CbCR Rules, penalties under ITA Sections 112A,

113A and 119B would be applied.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, Malaysia is a signatory to the MCAA as of 27 January

2016.

4. Transfer pricing documentation

requirements

Contemporaneous documentation pertaining to transfer

pricing need not be submitted with the tax return, but it should

be made available to the IRB upon request.

> Transfer pricing documentation is deemed

contemporaneous if it is prepared under the following

conditions:

> At the point when the taxpayer is developing or

implementing any arrangement or transfer pricing policy

with its associated person

> If there are material changes, when reviewing these

arrangements prior to, or at the time of, preparing the

relevant tax return of the taxpayer’s income for the basis

year for a year of assessment (YA)

> In preparing the documentation, the arm’s-length transfer

price must be determined before pricing is established

based upon the most current reliable data that is reasonably

available at the time of determination. However, taxpayers

should review the price based on data available at the

end of the relevant year of assessment and update the

documentation accordingly.

Based on the updated IRB guidelines, the IRB has given further

guidance on defining material changes as below:

> Material changes are significant changes that would impact

the functional analysis or transfer pricing analysis of the

tested party.

> Material changes include changes to the operational and

economic conditions that will significantly affect the

controlled transactions under consideration.

Examples of changes in operational conditions include the

following:

> Changes in shareholding

> Changes in business model and structure

> Changes in business activities (e.g., changes in group

business activities that give impact to local business

activities)

> Changes in financial or financing structure

> Changes in transfer pricing policy

> Mergers and acquisitions

Examples of changes in economic conditions include foreign

exchange, economic downturn or natural disasters.

A contemporaneous transfer pricing documentation should

include records and documents providing a description of:

> Organizational structure, including an organization chart

covering persons involved in a controlled transaction

> Nature of the business or industry and market conditions

> The controlled transaction

> Strategies, assumptions and information regarding factors

that influenced the setting of any pricing policies

> Comparability, functional and risk analysis

> Selection of the transfer pricing method

> Application of the transfer pricing method

> Documents that provide the foundation for, or otherwise

support or were referred to in, developing the transfer

pricing analysis

> Index to documents

> Any other information, data or document considered

relevant by the person to determine an arm’s-length price

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, Malaysia has transfer pricing documentation guidelines

and rules. Taxpayers are required to prepare contemporaneous

transfer pricing documentation and submit within 14 days

upon request by the tax authorities.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch of a foreign company is required to comply

with the Malaysian transfer pricing regulatory requirements.

> Should transfer pricing documentation be prepared

annually?

Malaysia requires preparation of transfer pricing

documentation annually under its local jurisdiction

regulations. Preparation of contemporaneous transfer pricing

documentation should be based on the most current reliable

data that is reasonably available at the time of determination.

However, taxpayers should review the price based on data

available at the end of the relevant year of assessment and

update the documentation accordingly.

As long as the operational conditions remain unchanged,

the comparable searches in databases supporting part of

the transfer pricing documentation should be updated every

three years rather than annually. However, financial data and

suitability of the existing comparable should be reviewed and

updated every year in order to apply the arm’s-length principle

reliably.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare a stand-alone

transfer pricing report if it has related-party transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

The Malaysian Transfer Pricing Guidelines provides for de

minimis rules and exceptions whereby taxpayers with the

following threshold may opt for minimal transfer pricing

documentation or maintain complete transfer pricing

documentation as applicable to other taxpayers:

> Gross income (less than MYR25 million)

> Related-party transactions (less than MYR15 million)

Where a person provides financial assistance, the guidelines

on financial assistance are only applicable if that financial

assistance exceeds RM50 million. The IRB guidelines do not

apply to transactions involving financial institutions.

The IRB guidelines state that any person who falls within the

above threshold criteria may opt to fully apply all relevant

guidance as well as fulfill all transfer pricing documentation

requirements in the IRB guidelines. Alternatively, the person

may opt to comply with maintaining the minimum transfer

pricing documentation, which consists of the following three

components:

> Organizational structure

> Controlled transactions

> Pricing policies

In this regard, the person is allowed to apply any method other

than the five methods described in the IRB guidelines provided

it results in, or best approximates, arm’s-length outcomes.

The de minimis rules do not apply to transactions between

permanent establishment and its head office or other related

branches.

> Master File

Master File: The revenue threshold for preparation of master

file is that the consolidated revenue of the MNE group is at

least MYR3 billion in the financial year preceding the reporting

financial year. Further, the taxpayers that are obligated under

the income tax (CbCR) rules 2016 to prepare the CbCR shall

prepare the Master File and submit it together with the transfer

pricing documentation upon request by the IRB. The master

file is focused on providing a broader overview of the business

group’s operations and is very similar to the contents as

prescribed by the OECD.

> Local File

Local File refers to the transfer pricing documentation

prepared in accordance with the Malaysian Transfer Pricing

Rules and Guidelines issued by the IRBM. Further, there is no

revenue threshold applicable for preparation of Local File apart

from the de minimis rules.

> CbCR

Malaysia introduced CbCR rules effective from 1 January

2017. The CbCR applies to MNEs for which:

> The consolidated revenue of the MNE group is at least

MYR3 billion in the fiscal year preceding the reporting

fiscal year.

> Any of its CEs:

> Is an ultimate holding entity that is incorporated,

registered or established, or deemed to be incorporated,

registered or established, under the Companies Act

2016 (Act 777) or under any written law and resident in

Malaysia

> Is incorporated, registered or established, or deemed

to be incorporated, registered or established, under

the Companies Act 2016 or under written law or under

the laws of a territory outside Malaysia and resident in

Malaysia

> Is a surrogate holding entity that is incorporated,

registered or established, or deemed to be incorporated,

registered or established, under the Companies Act 2016

or under any written law and resident in Malaysia

> Is a permanent establishment in Malaysia

> Economic analysis

Under the de minimis rules, there is no materiality threshold

for economic analysis. The person is allowed to apply any

method other than the five methods described in the IRB

guidelines provided it results in, or best approximates, arm’s-

length outcomes.

c) Specific requirements

> Treatment of domestic transactions

The Malaysian contemporaneous transfer pricing

documentation obligation for domestic transactions where

the arm’s-length principle would apply and be covered in the

transfer pricing documentation.

> Local language documentation requirement

The transfer pricing documentation can be submitted in either

English or Bahasa Malaysia.

> Safe harbor availability including financial transactions if

applicable

There are no safe harbor provisions in Malaysia.

> Is aggregation or individual testing of transactions preferred

for an entity

No. Ideally, in arriving at the most precise approximation

of fair market value, the arm’s-length principle should be

applied on a transaction-by-transaction basis. However, the

Malaysian Transfer Pricing Rules recognize that a combination

of controlled transactions are sometimes so closely linked

or continuous that they cannot be evaluated adequately

on a separate basis and that there may be instances for

normal industry practices to set one transfer price for those

transactions.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The IRB requires selected MNC taxpayers to complete a

specific form (Form MNE (PIN 1/2017), Information on Cross

Border Transactions) related to information on cross-border

transactions. Taxpayers are required to disclose the following

information in the Form MNE for a given year:

> Names of ultimate holding company; holding companies;

subsidiaries, both local and foreign; and affiliates in Malaysia

> A chart of the global corporate structure to which the

taxpayer belongs, including ultimate holding companies,

direct and indirect subsidiaries, associated companies and

other related parties, indicating the companies with which

the taxpayer conducts related-party transactions

> Information about cross-border intercompany transactions,

such as:

> Sales and purchases of stock in trade, raw materials and

other tangible assets

> Royalties and license fees and other payments for the use

of intangible assets

> Management fees, including fees and charges for financial,

administrative, marketing and training services

> R&D

> Rent and lease of assets

> Interest

> Guarantee fees

> Other services not falling under any of the above

categories

> Particulars of financial assistance (showing balances during

the year and the ending balance) with related companies

outside Malaysia, such as:

> Interest-bearing loans

> Interest-bearing trade credit

> Interest-free loans

> Description of the taxpayer’s business activity:

> Manufacturing (toll, contract and full fledged)

> Distributor (commissionaire, limited risk and full fledged)

> Service provider

> Others (taxpayer to specify)

> Specification of the industry in which taxpayer operates

and associated industry code

> Details on transactions with countries having lower tax

rates than Malaysia

> Confirmation of whether taxpayer has prepared transfer

pricing documentation for the relevant year

The issuance of Form MNE is an indication of the IRB’s

increasing attention to transfer pricing. The purpose of the

form is to assess taxpayers’ risk profiles as well as their level of

compliance with the transfer pricing provisions. The taxpayers

will be given 30 days to complete and return the form to the

IRB.

> Related-party disclosures along with corporate income tax

return

Taxpayers are required to disclose in a tax return if transfer

pricing documentation has been prepared for the relevant year

of assessment. This compliance requirement is effective from

the year of assessment in 2014.

> Related-party disclosures in financial statement/annual

report

Taxpayers are required to disclose all related-party

transactions in their financial statements.

> CbCR notification included in the statutory tax return

Starting YA 2021, constituent entities can now furnish the

CbCR notification using the Form-C. Constituent entities filing

other forms should continue furnishing the notification using

the existing method. Notification (except for constituent

entities submitting other than Form C, Company Return Form)

should be made on or before the due date to file the Form C.

> Other information/documents to be filed

CbCR notification filed as a reporting entity or non-reporting

entity.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

It has to be filed within seven months from the end of the

relevant fiscal year, e.g., 31 December 2021 year-ending

companies would file the corporate tax return by 31 July

2022.

> Other transfer pricing disclosures and return

In 2014, the IRBM introduced a section in Form C asking

taxpayers to declare if they have maintained a transfer pricing

report for the year of assessment they are filing the tax

returns. Therefore, for the year of assessment for which they

are filing the tax returns, the taxpayer can select “Yes” if it has

maintained a transfer pricing report. For taxpayers that do not

have a transfer pricing report, they must select “No” and make

a disclosure in the Form C.

Effective from year of assessment 2019, the taxpayers

are required to disclose the details of their related-party

transactions in the Form C.

> Master File

There is no statutory deadline for the submission of master

file; however, it must be submitted within 14 days upon

request of the tax authorities.

> CbCR preparation and submission

The CbCR must be filed no later than 12 months after the last

day of the reporting fiscal year of the MNE group (e.g., MNE

groups with fiscal year ending on 31 December 2021 will be

required to file the CbCR by 31 December 2022 at the latest).

> CbCR notification

Starting YA 2021, constituent entities can now furnish the

CbCR notification using the Form C. Constituent entities filing

other forms should continue furnishing the notification using

the existing method. Notification (except for constituent

entities submitting other than Form C) should be made on or

before the due date to file the Form C.

b) Transfer pricing documentation/Local File preparation

deadline

Taxpayers are required to prepare contemporaneous transfer

pricing documentation. Contemporaneous transfer pricing

documentation means transfer pricing documentation that

is brought into existence when a person is developing or

implementing any controlled transaction. Furthermore,

wherever in the basis period for a year of assessment the

controlled transaction is reviewed and there are material

changes, the documentation shall be updated prior to the due

date for furnishing the tax return for that basis period for that

year of assessment.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation.

> Time period or deadline for submission on tax authority

request

Taxpayers are required to submit transfer pricing

documentation within 14 days upon request of the tax

authorities.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The IRB accepts CUP, resale price, cost plus, profit split and

TNMM. However, the Malaysian Transfer Pricing Rules state

that the traditional methods are preferred over the profit

methods. The rules advise that the profit methods should be

used only when the traditional methods cannot be reliably

applied or be applied at all.

8. Benchmarking requirements

> Local vs. regional comparables

The IRB gives priority to the available sufficient and verifiable

information on both tested party and comparables (paragraph

7.4 of the Malaysian Transfer Pricing Guidelines). The IRB has

a preference for using a local benchmarking study (i.e., local

Malaysian comparable companies).

If a foreign-tested party is used, it must be of simpler functions

compared with the local entity and verifiable documents

provided to IRB to include:

> Transfer pricing documentation of the foreign-tested party

> Financial statements and detailed accounts of the tested

party

> Financial statements of comparables used in the transfer

pricing documentation or screenshot of the financial and

background information extracted from the database used

> Foreign comparables that can be similarly considered

if annual reports, financial statements and background

information of the comparables can be provided for

verification by the IRB

> Single-year vs. multiyear analysis

The arm’s-length price should be determined by comparing

the results of a controlled transaction with the results of

uncontrolled transactions that were undertaken or carried out

during the same year as the year of the taxpayer’s controlled

transaction. Therefore, the IRB reviews the transfer price

on a year-by-year basis and relies on the information of the

comparable companies reasonably available at the time of

preparation of the transfer pricing study.

> Use of interquartile range

The Malaysian Transfer Pricing Guidelines provides that

the arm’s-length range refers to a range of figures that

are acceptable in establishing the arm’s-length nature of a

controlled transaction. In practice, the IRB uses the median as

a reference point to ascertain the arm’s-length price.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

As long as operational conditions remain unchanged, the

comparable searches in databases supporting part of the

transfer pricing documentation should be updated every

three years rather than annually. However, financial data and

suitability of the existing comparable should be reviewed and

updated every year in order to apply the arm’s-length principle

reliably.

> Simple, weighted or pooled results

The Malaysian Transfer Pricing Guidelines do not advocate

using simple or weighted average to ascertain the arm’s-length

price of the intercompany transactions.

> Other specific benchmarking criteria, if any

The IRB has a preference for using a local benchmarking study

(i.e., local Malaysian comparable companies) and has not

provided any specific criteria for selection of the comparable

companies.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There are no specific penalties for transfer pricing. However,

the existing legislation and penalty structure under Section

113(2) of the ITA (on penalty for incorrect return and incorrect

information) are applied with penalties that are 100% of the

undercharged tax.

In the event of a transfer pricing adjustment arising from

audits, the following penalties will be applicable:

> No contemporaneous documentation prepared — 50% of the

undercharged tax

> Transfer pricing documentation prepared but not according

to the requirement of the IRB Transfer Pricing Guidelines —

30% of the undercharged tax

With reference to Section 113B of the ITA, failure to furnish

contemporaneous transfer pricing documentation by the

taxpayer within 14 days upon request by the MIRB in respect

of any year of assessment shall be guilty of an offense and

shall, on conviction, be liable to a fine ranging from RM20,000

to RM100,000 and/or imprisonment for a term not exceeding

six months.

Surcharge up to 5% on TP adjustments: With reference to

amended Section 140A (3C) of the ITA, the Director General

of Inland Revenue may impose a surcharge of up to 5% of

the amount of increase of any income or reduction of any

deduction or loss arising from a transfer pricing adjustment.

Any surcharge imposed shall be collected as if it were tax

payable of the taxpayer.

> Consequences of failure to submit, late submission or

incorrect disclosures

There are no specific penalties for transfer pricing. However,

the existing legislation and penalty structure under Section

113(2) of the ITA (on penalty for incorrect return and incorrect

information) are applied with penalties that are 100% of the

undercharged tax.

In the event of a transfer pricing adjustment arising from

audits, the following penalties will be applicable:

> No contemporaneous documentation prepared — 50% of the

undercharged tax

> Transfer pricing documentation prepared but not according

to the requirement of the IRB Transfer Pricing Guidelines —

30% of the undercharged tax

With reference to Section 113B of the ITA, failure to furnish

contemporaneous transfer pricing documentation by the

taxpayer within 14 days upon request by the MIRB in respect

of any year of assessment shall be guilty of an offense and

shall, on conviction, be liable to a fine ranging from RM20,000

to RM100,000 and/or imprisonment for a term not exceeding

six months.

Surcharge up to 5% on TP adjustments: With reference to

amended Section 140A (3C) of the ITA, the Director General

of Inland Revenue may impose a surcharge of up to 5% of

the amount of increase of any income or reduction of any

deduction or loss arising from a transfer pricing adjustment.

Any surcharge imposed shall be collected as if it were tax

payable of the taxpayer.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Same as above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above.

> Is interest charged on penalties or payable on a refund?

None.

b) Penalty relief

If the tax authorities make an adjustment, the taxpayer would

need to appeal against the tax assessment by lodging a Form

Q, Notice of Appeal to the Special Commissioners of Income

Tax, to seek any relief.

10. Statute of limitations on transfer pricing

assessments

There is a seven-year statute of limitations for additional

assessments issued pursuant to transfer pricing adjustments,

and documentation must be kept for seven years. There is no

statute of limitations in instances of fraud, willful default or

negligence.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

For companies with significant related-party transactions, the

likelihood is that transfer pricing audits will be characterized

as high. Every MNE that was audited during the last 12 months

had its transfer pricing policy scrutinized.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

As mentioned above, the IRB indicated via the transfer pricing

rules and guidelines that the traditional methods are preferred

over the profit methods. It advised that the profit methods

should be used only when the traditional methods cannot be

reliably applied or be applied at all. Accordingly, if a profits-

based method is applied without substantiation, the risk of the

methodology being challenged may be considered to be high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high (refer to

“Likelihood of transfer pricing methodology being challenged”

section above for details).

> Specific transactions, industries and situations, if any, more

likely to be audited

The IRB during a transfer pricing audit would focus on the

following:

> Companies with high value of related-party transactions

> Companies that are having significant intragroup

transactions, e.g., royalties paid, management fee paid,

technical services fee paid and commission paid

> Companies having related-party transactions and

reporting losses

> Related-party transactions between two Malaysian

entities, where one of the Malaysian entities is availing a

tax incentive or is reporting losses

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APA: The introduction of Section 138C of the ITA effectively

formalizes the availability of unilateral and bilateral APAs in

Malaysia. Additionally, formal APA rules and guidelines in

relation to APAs have been issued, and a specific unit has been

established in the IRB to oversee the APA applications and

negotiations.

MAP: As per Malaysian MAP guidelines, the purpose of the

guidelines is to provide guidance on obtaining assistance

from the Malaysian competent authority (CA) to persons

that fall within the scope of an effective tax treaty that

Malaysia has with its treaty partners. The assistance is

provided to taxpayers in order to resolve international tax

disputes involving double taxation and inconsistencies in the

interpretation and application of a tax treaty.

> Tenure

APA: The Malaysian APA rules allow the APA for a minimum of

three years and a maximum of five years. This comes with an

option to roll back the outcome of the APA if it is demonstrated

that the transfer pricing methodology applied is appropriate,

provided that the facts and circumstances surrounding those

years are substantially the same as that of the covered period

under the APA.

MAP: The Malaysian MAP guidelines state that the time limit

for presenting a case for CA assistance depends upon the

specific terms of the particular tax treaty under which the MAP

is invoked. Therefore, in every case, the relevant tax treaty

should be consulted. Where the time limit for presenting a

case to invoke MAP is not specified in the relevant tax treaty,

the Malaysian CA will follow the time limit specified under

the Article 25 (MAP) of the OECD Model Tax Convention

on income and on capital (i.e., within three years from the

first notification of the action resulting in taxation not in

accordance with the provisions of the convention).

> Rollback provisions

APA: Refer to “Tenure” section above.

MAP: This is not applicable.

> Fee

APA: The fee is MYR5,000 (nonrefundable application fee) and

any other expenses incurred by the authorities. For renewal

fees, the same applies.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

The Inland Revenue Board of Malaysia is currently not

accepting any new APA applications from businesses affected

by the COVID-19 pandemic until further notice since the

outlook of the COVID-19 pandemic is still highly uncertain.

For businesses that are not impacted by COVID-19, taxpayers

may still proceed with APA applications. With respect to

existing ongoing cases, the review process of an ongoing APA

application request is based on the information previously

submitted to the IRB of Malaysia. The proposed arm’s-length

range will be based on the benchmarking analysis of normal

economic and market conditions, i.e., pre-COVID-19 period.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

With effect from 1 January 2019, Malaysia introduced earning

stripping rules (ESR) to restrict the deductibility of interest

expenses incurred in connection with or on any financial

assistance in a controlled transaction in relation to cross-

border transactions. The relevant regulations and guidelines

are outlined as follows:

> Section 140C of the ITA: Restriction on the deductibility of

interest (effective from 1 January 2019)

> Income tax (restriction on deductibility of interest) rules

2019 (effective from 1 July 2019)

> Restriction on deductibility of interest guidelines (effective

from 1 July 2019)

Sockalingam Murugesan

sockalingam.murugesan@my.ey.com

+ 6 0374958224

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Maldives Inland Revenue Authority (MIRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Maldives Income Tax Act (Law No. 25/2019) contains transfer

pricing provisions under its “Tax Avoidance” section.

In addition to the Income Tax Act, MIRA has published Transfer

Pricing Regulations 2020/R-43, country-by-country Reporting

Regulation 2021/R-9, transfer pricing documentation

guidelines and a transfer pricing guide on application of the

arm’s-length principle.

> Section reference from local regulation

As per Section 68 of the Income Tax Act, every person liable

to income tax under this act shall prepare and maintain

documentation (transfer pricing documentation) in respect

of transactions and arrangements entered into between

associates subject to exemptions as per the Transfer Pricing

Regulations 2020/R-43.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The Maldives is not a member of the OECD. However, transfer

pricing regulations and transfer pricing guides are largely

based on the governing standard for transfer pricing, which is

the arm’s-length principle as set out under the Organisation

for Economic Co-operation and Development (OECD) Transfer

Pricing Guidelines for Multinational Enterprises and Tax

1 https://www.mira.gov.mv/

Administrations (2017).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The Maldives has adopted BEPS Action 13 for transfer pricing

documentation

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

Yes.

> Effective or expected commencement date

TPD takes effect from tax year 2020.

> Material differences from OECD report template or format

There are no material differences in terms of format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

The Maldives became party to the Convention on Mutual

Administrative Assistance in Tax Matters (MAAC), and the

MCAA was signed on 11 August 2021.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the transfer pricing documentation (TPD) has to be

prepared and finalized by the due date for the submission

of tax returns (30 June of the following year to which the

transaction relates) for the accounting period to which the

transaction or arrangement relates.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation be prepared annually?

Yes.

> For an MNE with multiple entities in the jurisdiction,

is it required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity based in the Maldives is required to prepare

stand-alone transfer pricing reports if it has related-party

transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

Transfer pricing documentation need not be prepared for a

transaction or arrangement undertaken by an applicable entity

with its associated party in the circumstances disclosed in the

Section 7 of Transfer Pricing Regulations.

> Master File

The MIRA has not adopted the application of the BEPS master

file and Local File concepts as separate documents.

> Local File

The MIRA has not adopted the application of the BEPS master

file and Local File concepts as separate documents.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

Other than loan transactions, domestic transactions are

excluded from the TPD if both associate parties are taxed at

the same rate.

> Local language documentation requirement

TPD must be in English or Dhivehi.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

Taxpayers are required to complete the Schedule-04,

Reporting of International Transactions with Associates, if

their total annual income is more than MVR20 million (USD1.2

million).

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Currently, there is no requirement to prepare a separate tax

return for related-party transactions.

> Related-party disclosures along with corporate income tax

return

Yes , Schedule-04 is a part of corporate income tax return.

> Related-party disclosures in financial statement/annual

report

In addition to the above, related-party disclosures must be

made in the notes to the audited financial statements, which

are filed with the MIRA in support of the tax declaration.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

CIT return is required to be submitted to MIRA on 30 June of

the immediately following tax year.

> Other transfer pricing disclosures and return

Taxpayers are required to complete Schedule-04, which is part

of the income tax return.

> Master File

The Master File shall be prepared and finalized by the due date

for the submission of the tax return for the accounting period

to which the transaction or arrangement relates and submitted

to the MIRA upon a request from MIRA within 30 days.

> CbCR preparation and submission

The CbCR shall be filed with MIRA no later than 12 months

after the last day of the reporting fiscal year of the MNE group.

> CbCR notification

Any constituent entity of an MNE group that is resident for

tax purposes in the Maldives shall notify MIRA whether it is

the ultimate parent entity or the surrogate parent entity, no

later than the last day of the reporting fiscal year of such MNE

group.

b) Transfer pricing documentation/Local File preparation

deadline

TPD shall be prepared and finalized by the due date for the

submission of the tax return for the accounting period to which

the transaction or arrangement relates and submitted to the

MIRA upon a request from MIRA within 30 days.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, per the Section 68 (C) of the Income Tax Act, TPD shall be

prepared and finalized by the due date for the submission of

the tax return.

> Time period or deadline for submission on tax

authority request

Within 30 days.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is not any specific new submission deadline; however,

the deadline for filing the income tax return (MIRA 604, MIRA

605 and MIRA 606) and making payment for the year 2020

under the Income Tax Act has been extended to 31 August

2021 due to the spread of COVID-19 and the challenges that

may be faced by taxpayers.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

This is applicable for both domestic and international

transactions.

> Domestic transactions

This is applicable for both domestic and international

transactions.

b) Priority and preference of methods

The transfer pricing techniques do not have any priority.

However, the taxpayer must determine the most appropriate

transfer pricing. MNEs and tax authorities can use five basic

transfer pricing methods, according to the OECD method.

8. Benchmarking requirements

> Local vs. regional comparables

Benchmarking analysis is required only to determine the arm’s-

length interest rate. Otherwise, benchmarking analysis is not

specified in the transfer pricing guides or regulations.

> Single-year vs. multiyear analysis

This not specified.

> Use of interquartile range

This not specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

This not specified.

> Simple, weighted or pooled results

This not specified.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

There is not any transfer pricing-specific fine or penalty in the

Maldives. However, the MIRA shall impose general fines and

penalties.

Noncommission of information:

> A fine of 0.5% (zero point five per cent) of the amount of

tax payable for the taxable period

> A fine not exceeding MVR50 for each day of delay from

the date required to file

The offense of non-payment of tax by deadline: A fine of

0.05% per day of the outstanding amount from the due date of

payment.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

As specified above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

As specified above.

> Is interest charged on penalties or payable on refund?

As specified above.

b) Penalty relief

As specified above.

10. Statute of limitations on transfer pricing

assessments

A tax audit notice by the MIRA can be initiated at any time

during the year. The MIRA may serve the notice within two

years from either:

> Return filing deadline (in case return is filed ahead of

deadline)

> Actual filing date (in case return is filed or amended after

the deadline

In case where a return is not filed, the MIRA may initiate an

audit at any time.

Where an offense involving fraud in the payment of tax or

involving tax evasion is committed, an investigation may be

instigated within three years from the date on which that

offense is believed to have been committed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high; the MIRA

conducts a tax audit of tax returns as part of a regular audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be low to medium

provided sufficient documentation is available.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

The likelihood may be considered to be high; the MIRA shall tax

the relevant transaction on the basis of the OECD Guidelines.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is none specified.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

None has been specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin capitalization was introduced to the Maldives on 26 April

2018 and was further amended on 27 December 2018. The

ruling shall be applicable from 2018 and thereafter. This

tax ruling introduces thin-capitalization rules in relation to

deduction of interest and payments economically equivalent

to interest in the computation of taxable profits. Accordingly,

interest deductible is limited to 30% of earnings before

interest, tax and capital allowances.

The total amount of interest paid or payable must not exceed

30% of the sum of the profit or (loss) before loss relief, before

interest deducted and before capital allowance claimed. A

person shall carry forward the amount of interest disallowed

to be deducted in subsequent periods up to a maximum

of 10 years from the last day of the accounting period in

which such amount was initially disallowed. Furthermore

thin capitalization is not applicable to interest/finance cost

paid/payable for the following organizations licensed by the

Maldives Monetary Authority (MMA):

> Banks

> Housing finance businesses

> Leasing finance businesses

> Insurance businesse

Sulakshan Ramanan

sulakshan.ramanan@lk.ey.com

+ 960 3320742

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Directorate General of Taxes (Direction Général des Impôts —

DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Procedure tax book: Articles 57-A to 57-E (the 2017 Finance

Act).

Decree n°2017-266, decree n°2017-450: Articles 7 and 8.

> Section reference from local regulation

Subsection 3, Determination of taxable profit, and Subsection

4, RPIC and corporate tax, of Section 2, Reporting obligations,

of Chapter 2, Tax returns, in the procedure tax book.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Mali is not a member of the OECD nor a member of the BEPS

Inclusive Framework.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the TP documentation must be submitted and prepared

annually.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, the documentation obligation concerns legal entities

established in Mali regardless of their nationality.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Legal entities established in Mali that fulfill the following

conditions need to prepare the TP documentation and a TP

return:

> Achieve a turnover greater than or equal to XOF3 billion

> Be placed under the dependence or control companies

located outside Mali

Related parties are defined to include where one party has

direct or indirect capital ownership of 50% or more or has

effective decision-making power in the other or where multiple

parties are controlled by a third party meeting the same

conditions.

The TP rules apply regardless of two parties being related for

transactions undertaken with a non resident party located in a

low-tax jurisdiction (lower than Mali’s rate by 10% or more) or a

non-cooperative jurisdiction (lack of transparency or exchange

of information with Mali).

> Master File

This is not applicable.

> Local File

TP documentation includes:

> Group-level information, including general description of

legal structure, business activity, functions performed,

risks assumed, intangible assets and TP policy

> Taxpayer-specific information, including details of

business activities, related-party transactions, the TP

methods used, the comparable analysis, and a list of

cost-sharing agreements and advance pricing agreements

(APAs) entered into

> CbCR

This is not applicable.

> Economic analysis

There are no materiality requirements regarding the amounts

of transactions to be documented.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. However, it is expected for domestic transactions

to follow arm’s-length principles as they may be under scrutiny

during tax audit.

TP documentation is required for transactions of any kind with

related legal entities established or incorporated outside Mali.

> Local language documentation requirement

French.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no specific requirement.

> Any other disclosure/compliance requirement

Taxpayers under tax audit are required to disclose the

following information within one month of request by the tax

authorities (possible extension up to three months):

> The nature of relationships with non resident companies

> A description of activities with non resident companies

> The TP method used to determine prices for transactions

with non resident companies

> The foreign tax treatment of operations undertaken with

non resident dependent companies

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

A TP return should be submitted along with the corporate tax

return.

> Related-party disclosures along with corporate income tax

return

The TP documentation must be submitted along with the

corporate tax return.

> Related-party disclosures in financial statement/annual

report

Taxpayers are required to furnish, at the same time as their

declaration, the detailed list by category of their overheads,

three copies of their financial statements bearing their

Tax Identification Number and the harmonized bundles in

accordance with the standards of the uniform act relating to

company accounting (SYSCOHADA).

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

Companies operating in Mali, as well as in one or more other

states, must declare to the DGI in Bamako, each year or for

each financial year within the time limits indicated above, the

amount of the overall profit made in the said states. To this

overall declaration shall be attached the declaration relating to

their activity in Mali.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline for the corporate income tax return is 30 April,

with an exception for insurance companies having a deadline

set at 31 May for each year.

> Other transfer pricing disclosures and return

The deadline for the TP return is 30 April, with an exception

for insurance companies having a deadline of 31 May for each

year.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The deadline for the TP documentation is 30 April, with an

exception for insurance companies having a deadline of 31

May for each year.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The deadline for the TP documentation is 30 April, with an

exception for insurance companies having a deadline of 31

May for each year.

> Time period or deadline for submission on tax authority

request

Taxpayers under audit are required to disclose the following

information within one month of request by the tax authorities

(possible extension up to three months).

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost plus,

profit split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

There is no guidance provided.

> Single-year vs. multiyear analysis for benchmarking

There is no guidance provided.

> Use of interquartile range

There is no guidance provided.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no guidance provided.

> Simple, weighted or pooled results

There is no guidance provided.

> Other specific benchmarking criteria, if any

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The penalty is stricto sensu applicable for lack of filing of the

TP documentation.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to submit this documentation on time shall result in

the imposition of a fine equal to 1% of the company’s declared

turnover for each month of delay, up to a maximum of 5%.

In the event of failure to reply to the written request made

by the tax administration for information concerning the

pricing arrangements for intercompany transactions or failure

to produce or partial production of the documentation, the

tax bases concerned by the request shall be assessed by the

administration on the basis of the information available to it.

In the absence of precise elements to make the adjustments

provided for above, the taxable income is determined by

comparison with that of similar enterprises operating normally.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

This is not applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There is no requirement.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

It is subject to further negotiations with tax authorities.

10. Statute of limitations on transfer pricing

assessments

The limitation period is set to three years (common tax

regime).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium.

> Specific transactions, industries and situations, if any, more

likely to be audited

Medium.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

TP legislation has introduced the possibility of an advance

pricing agreement (APA). However, the negotiation of APAs

is complex and requires significant expertise, which is not yet

available in Mali.

The tax administration is required to give a reasoned written

opinion within six months on any request for prior agreement.

In the absence of a reply within this time limit, the taxpayer’s

request shall be deemed to be accepted.

> Availability (unilateral, bilateral and multilateral)

No specific guidance.

> Tenure

The APA may cover the year in which the request was done as

well as the four subsequent years.

> Rollback provisions

No specific guidance.

> MAP opportunities

No specific guidance.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Mali has the following thin-capitalization rules regarding loans

by shareholders and related parties to local entities:

> The share capital of the local entity should be entirely paid

up.

> The sums made available by all shareholders should not

exceed the amount of the share capital.

> The interest rate should not exceed the rate of the Central

Bank of West African States advances, increased by three

percentage points, or for companies benefiting from

agreements of establishment governing their relationship

with the state, the rate is LIBOR plus two percentage

points.

Eric Nguessan

eric.nguessan@ci.ey.com

+ 2250708025038

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Commissioner for Revenue (CfR).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are no detailed TP rules or guidelines in Malta, but a

number of articles in the Income Tax Act (ITA) and Income Tax

Management Act (ITMA), namely Articles 2(1), 12(1)(u)(2) and

51(1) of the ITA and Article 5(6) of the ITMA, put forward a

concept analogous to the arm’s-length principle.

> Section reference from local regulation

These are not defined separately.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Yes, on 22 December 2021, the Office of the Commissioner

for Revenue published its draft Transfer Pricing Rules for

public consultation.

The CfR’s aim is to introduce these new rules with effect from

1 January 2024 or after, and if they are adopted in the current

form, it appears that it will apply for companies that are not

considered to be a micro, small or medium-size enterprise

and whose aggregate arm’s-length value of their cross-border

arrangements in the relevant year exceeds a value that is yet

to be determined. Companies falling within the purview of

these transfer pricing rules would be required to verify that

any cross-border arrangement entered into with an associate

enterprise be at arm’s length. Based on the draft rules, the

arm’s-length amount is to be determined on the basis of such

methodologies to be prescribed via guidelines to be published

by the CfR, and companies are expected to maintain transfer

pricing documentation on a timely basis. Finally, the draft rules

also provide for a formal framework pertaining to unilateral

transfer pricing rulings and advance pricing agreements.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Malta is not a member of the OECD.

Notwithstanding that Malta does not have detailed TP rules,

agreements between associated enterprises must still be in

adherence to arm’s length. In the absence of domestic detailed

TP guidelines, reference is generally made to the OECD

Transfer Pricing Guidelines.

In theory, however, these are not binding, but due

consideration should be given to the fact that all double tax

treaties entered into by Malta, except for the double tax treaty

with the United States of America, are based on the OECD

Model Tax Convention and hence (and with the exception of

the treaty entered into with Bulgaria) provide for the arm’s-

length principle addressed in transactions involving associated

enterprises. This is because, in applying the arm’s-length

principle for the purposes of any double tax treaty, reference is

to be made to the OECD Transfer Pricing Guidelines.

Being a member of the EU, Malta is also a member of

the EUJTPF (EU Joint Transfer Pricing Forum). In this

respect, Malta has affirmed that should TP documentation

requirements be adopted in the future, it will make reference

to the code of conduct on TP documentation for associated

enterprises in the EU.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, but only with respect to CbCR requirements

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

Only CbCR is covered.

> Effective or expected commencement date

CbCR requirements apply for fiscal years beginning on or

after 1 January 2016.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, signed on 26 January 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Maltese tax law does not contemplate detailed TP

documentation rules; it only applies high-level TP principles.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

This is not applicable.

> Does transfer pricing documentation have to be prepared

annually?

Although the annual preparation of TP documentation is

not statutory, the maintenance of such documentation is

recommended.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Although the maintenance of stand-alone TP reports is

not statutory, the maintenance of such documentation is

recommended.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is applicable for constituent entities forming part of an

MNE whose consolidated revenue is at least EUR750 million.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

This is not applicable.

> Local language documentation requirement

This is not applicable.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

This is not applicable.

> Any other disclosure/compliance requirement

Nothing in particular.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Malta does not require a separate return for related-party

transactions.

> Related-party disclosures along with corporate income tax

return

There are no specific statutory requirements. However:

> 

Any amounts due by or to a taxpayer to or by its

shareholders as of the end of the relevant financial year

are to be disclosed by the taxpayer separately in net

for each shareholder in its annual corporate income tax

return.

> Taxpayers are required to identify and specifically disclose

items comprising revenue, expenditure and year-end

balances due from or to, or arising from transactions

entered into with, associated enterprises in the Tax

Index of Financial Data, which basically reproduces the

taxpayer’s balance sheet and income statements in the

same annual corporate income tax return.

> Related-party disclosures in financial statement/annual

report

Related-party transactions are accounted for in accordance

with the requirements of the International Financial Reporting

Standard (IFRS) applicable to the transaction. On the other

hand, the majority of the disclosures relating to related parties

emanate from International Accounting Standard (IAS) 24,

Related Party Disclosures. The standard contains the following

main disclosures:

> Relationships between a parent and its subsidiaries shall

be disclosed irrespective of whether there have been

transactions between them. An entity shall disclose

the name of its parent and, if different, the ultimate

controlling party. If neither the entity’s parent nor the

ultimate controlling party produces consolidated financial

statements available for public use, the name of the next

most senior parent that does so shall also be disclosed

(IAS 24.13).

> An entity shall also disclose key management

personnel compensation in total and for each of the

following categories: short-term employee benefits,

post-employment benefits, other long-term benefits,

termination benefits and share-based payment (IAS

24.17).

> If there have been transactions between related parties

during the periods covered by the financial statements, it

shall disclose the nature of the related-party relationship

as well as information about those transactions and

outstanding balances, including commitments, necessary

for users to understand the potential effect of the

relationship on the financial statements. This disclosure

would have to be made separately for each category of

related parties and, as a minimum, would include:

> The amount of the transactions

> The amount of outstanding balances, including

commitments, their terms and conditions, details of

any guarantees given or received, and the nature of the

consideration to be provided in settlement

> Provisions for doubtful debts related to the amount of

outstanding balances

> The expense recognized during the period in respect

of bad or doubtful debts due from related parties (IAS

24.18)

> An entity shall also disclose that related-party transactions

were made on terms equivalent to those that prevail

in arm’s-length transactions if such terms can be

substantiated (IAS 24.23).

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The documentation should be filed within nine months from

the end of the constituent entity’s financial year or the

following 31 March, whichever is later. A two-month extension

generally applies where the corporate income tax return is

submitted electronically, which is generally the case.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The CbCR report is due to be submitted by 12 months

following the end of the relevant financial year of the MNE

group.

> CbCR notification

A CbCR notification form is due to be submitted by the

tax return date, which is nine months from the end of the

constituent entity’s financial year or the following 31 March,

whichever is later.

b) Transfer pricing documentation/Local File preparation

deadline

There is no statutory deadline or recommendation for

preparation of TP documentation.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

There are no specific provisions that relate to such instances,

and therefore, the general provisions will apply. Each case

must be examined separately, so the time provided to reply is

generally at the discretion of the Maltese tax authorities.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

This is not applicable.

> Domestic transactions

This is not applicable.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

> Local vs. regional comparables

This is not applicable.

> Single-year vs. multiyear analysis for benchmarking

This is not applicable.

> Use of interquartile range

This is not applicable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

This is not applicable.

> Simple, weighted or pooled results

This is not applicable.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

This is not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

The lack of detailed TP rules means that there are no penalties

that specifically relate to TP infringements. Generic penalties

may, however, apply to incorrect disclosures made in income

tax returns.

However, when a Maltese constituent entity fails to comply

with any of the obligations in relation to CbCR, it shall be liable

to the penalties for CbCR:

> When a Maltese constituent entity fails to retain the

documentation and information it collected in the course

of meeting its reporting obligations as provided in these

regulations for a minimum period of five years starting

from the end of the year in which the information relates,

it is subject to a penalty of EUR2,500.

> When a Maltese constituent entity fails to report the

information required to be reported within the time

stipulated, it is subject to a onetime penalty of EUR200

and EUR100 for every day during which the default

existed, provided that the total daily penalty shall not

exceed EUR20,000.

When a Maltese constituent entity fails to report the

information required to be reported in a complete and accurate

manner, it is subject to:

> In the case of minor error, a onetime penalty of EUR200

and EUR50 for every day during which the default existed,

provided that the total daily penalty shall not exceed

EUR5,000

> In the case of significant non-compliance, a penalty of

EUR50,000

When a Maltese constituent entity fails to comply with a

request for information by the CfR, it shall be subject to a

onetime penalty of EUR1,000 and EUR100 for every day

during which the default existed, provided that the total daily

penalty shall not exceed EUR30,000.

When a Maltese Constituent Entity that is neither the Ultimate

Parent Entity nor the Surrogate Parent Entity nor the

Constituent Entity subject to the secondary mechanism fails

to notify the Commissioner of the identity and tax residence of

the Reporting Entity obliged to file a country-by-country report

with respect to a Reporting Fiscal year by not later than the

last day for filing of a tax return of that Constituent Entity for

the preceding fiscal year, it shall be liable to a onetime penalty

of EUR200 and EUR50 for every day during which the default

existed, provided that the total daily penalty shall not exceed

EUR5,000.

When a Constituent Entity of a MNE Group that is resident

for tax purposes in Malta, fails to notify the Commissioner

of whether it is the Ultimate Parent Entity or the Surrogate

Parent Entity or the Constituent entity subject to the

secondary mechanism by not later than the last day for filing

of a tax return of that Constituent Entity for the preceding

fiscal year, it shall be liable to a onetime penalty of EUR200

and EUR50 for every day during which the default existed,

provided that the total daily penalty shall not exceed

EUR5,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

This is not applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

This is not applicable.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

Yes, the relevant provisions allow the CfR to remit the whole of

the said penalties or part thereof where the Commissioner is

satisfied that the default leading to the imposition of penalties

was not due to any fault or neglect on part of the relevant

person.

10. Statute of limitations on transfer pricing

assessments

This is not applicable. In general cases, however, the time limit

on when the tax authority can assess tax and any applicable

penalties for TP is six years. But in the cases of evasion or

fraud, the time limit for raising an assessment is open-ended.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Given that there are no detailed TP rules in Malta, the

likelihood of TP-related audits under the generic provisions

may be considered to be low.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be low, for the same

reason stated above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be low, for the same

reason stated above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified; each case is examined on its own

merits.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Maltese tax rules do not provide for a formal APA program.

That said, an APA may be applied for under the auspices of

Article 52 of the ITA, which provides companies that are party

to a transaction with the opportunity to apply for an advance

revenue ruling (ARR).

> Tenure

An ARR would remain binding on the CfR for a period of a

few years unless there is a change in the understanding of

statutory provisions, in which case it will continue to apply for

two years.

> Rollback provisions

There is none specified.

> MAP opportunities

Yes, the MAP is available in Malta. Indeed, guidelines

addressing in detail the manner in which the MAP entered into

in terms of a double tax treaty or the arbitration convention

would apply in Malta have been published by the competent

authority. Said guidelines provide a number of details pertinent

to the whole process, including the additional information

required in case of a TP MAP request.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Malta has transposed the provisions of the European Union

Anti-Tax Avoidance Directive into domestic tax law to the effect

that, starting from 1 January 2019, the amount of exceeding

borrowing costs which may be claimed as a deduction by

companies in Malta would be limited to the higher of:

> 30% of earnings before interest, tax, depreciation

and amortization (EBITDA) as adjusted for income tax

purposes, including the exclusion of tax-exempt income

> EUR3,000,000

Limitation above would not apply in certain instances,

including:

> Where the taxpayer is a stand-alone entity

> Where the borrowing costs are incurred on loans that were

concluded before 17 June 2016 and that have not been

modified since then

> Where the borrowing costs are incurred on loans used to

fund certain long-term public infrastructure projects

> Where the taxpayer is a member of a consolidated group

for financial accounting purposes and, subject to the

satisfaction of a number of conditions, it can demonstrate

that the ratio of its equity over its total assets is equal to

or higher than the equivalent ratio of the group

Robert Attard

robert.attard@mt.ey.com

+ 35699503581

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Directorate General of Taxes (Direction Générale des Impôts —

DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are the General Tax Code (GTC) Articles 40 (arm’s-length

principle), 65 (annual declaration of foreign related-party

transactions), 67 (CbCR), 66 (transfer pricing documentation

obligation), 22-2 (thin-capitalization legislation, applied in

the context of certain intragroup financing arrangements

only, e.g., intragroup interest payments on intragroup debt),

L.131-4 (annual transfer pricing return fines), L.131-5

(transfer pricing documentation fine) and L.131-6 (CbCR fine).

The effective date of applicability is 1 January 2019, which

corresponds to the entry into force of the newly adopted GTC.

> Section reference from local regulation

Direct taxes in the GTC.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Mauritania is neither a member of the OECD nor a member

of the Inclusive Framework. However, Mauritania signed the

Multilateral Convention on Mutual Administrative Assistance

in Tax Matters on 12 February 2019. In addition, the transfer

pricing regulations put in place in Mauritania are clearly

inspired from the OECD Guidelines. Hence, we can expect the

tax authorities to rely on OECD Transfer Pricing Guidelines to

some extent.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

No clear guidance has been provided to date regarding

the content of transfer pricing documentation. Although

BEPS Action 13 is not officially applicable, the law makes

reference to general information regarding the group and

specific information regarding the documented entity to

be provided within a transfer pricing documentation.

CbCR is applicable.

> Effective or expected commencement date

The effective date is 1 January 2019.

> Material differences from OECD report template or format

The report template or format should be determined by

a decree of the Minister of Finance. To the best of our

knowledge, such decree has not yet been published. Given

that the Mauritanian transfer pricing regulations are

clearly inspired from those of the OECD, we believe that

there should be no material differences from the OECD

report template or format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report should be sufficient to

achieve penalty protection, but financial data relating

to the Mauritanian entity itself (including amounts of

intragroup transactions) needs to be sourced from the

Mauritanian statutory accounts.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No, but Mauritania has signed the Multilateral Convention on

Mutual Administrative Assistance in Tax Matters.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, such documentation should be prepared and made

available to the tax authorities on the date on which the on-

site tax audit is initiated.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

The GTC does not provide any guidance on the applicability of

the transfer pricing rules to foreign branches. But, in practice,

transfer pricing rules are applied to foreign branches.

> Should transfer pricing documentation be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Taxpayers that fulfill at least one of the following conditions

need to prepare the transfer pricing documentation:

> Turnover, excluding taxes or gross assets, equal to MRU30

million at least

> Holding, at the end of the fiscal year, directly or indirectly

more than half of the share capital or voting rights of a

company located in Mauritania or abroad that generates

a turnover excluding taxes or holds gross assets equal to

MRU30 million at least

> Being directly or indirectly held at least for more than

half of the share capital or voting rights by a company

generating a turnover, excluding taxes, or holds gross

assets equal to MRU30 million

> Master File

This is not applicable.

> Local File

As from financial years opened after 1 January 2019, in the

absence of the decree of the Minister of Finance, the content

of the documentation should provide general information

regarding the group as well as specific information regarding

the documented entity.

> CbCR

CbCR filing applies in line with the OECD Guidelines. The

threshold for CbCR is MRU22 billion.

Taxpayers that fulfill at least one of the following conditions

need to file the CbCR:

> The Mauritanian tax-resident company has been elected

by the multinational group to file a CbCR and has informed

the DGI.

> The Mauritanian tax-resident company fails to give

evidence that another company of the multinational

group (either based in Mauritania or in a jurisdiction

that has implemented a similar CbCR requirement or in

a jurisdiction that has concluded a qualified exchange

of information instrument with Mauritania) has been

designated for purposes of filing the CbCR.

> Economic analysis

The GTC does not provide for any materiality limit with regard

to the intercompany transactions to be reported in the transfer

pricing documentation. Indeed, there is no applicable notion of

“important intercompany transactions,” which consequently

entails the reporting of all intercompany transactions to which

a local company is a party.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. However, domestic transactions are expected

to follow the arm’s-length principles as they may be under

scrutiny during tax audit.

> Local language documentation requirement

There is no guidance on the language for documentation.

However, tax auditors are entitled to request a translation of

the documentation if it is provided in English.

> Safe harbor availability including financial transactions if

applicable

There is no specific guidance.

> Any other disclosure/compliance requirement

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The transfer pricing return needs to be submitted in French

as part of the taxpayer’s annual corporate income tax (CIT)

return.

> Related-party disclosures along with corporate income tax

return

The transfer pricing documentation needs to be provided only

upon request during an on-site tax audit (15 days after an

official request).

> Related-party disclosures in financial statement/annual

report

Article L.10 of the GTC provides for a legal obligation for

Mauritanian companies to declare the sums effectively paid to

third parties, which are not part of their salaried staff, during

each ended fiscal year by January of the following fiscal year.

This report also includes remunerations paid to foreign entities

that can also be related entities.

> CbCR notification included in the statutory tax return

Yes, it should be included if the Mauritanian entity is not the

ultimate parent entity (UPE) or surrogate parent entity (SPE).

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 31 March, following each fiscal year-end.

> Other transfer pricing disclosures and return

The annual transfer pricing return due date is 31 March of

each year.

> Master File

There are no filing requirements.

> CbCR preparation and submission

CbCR submission is to be submitted within 12 months

following the fiscal year-end.

> CbCR notification

The deadline is by the last day of the MNE’s fiscal year (31

December).

b) Transfer pricing documentation/Local File preparation

deadline

It should be available by the time of a tax audit (accounts

examination on site).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No, there is no submission deadline.

> Time period or deadline for submission upon tax authority

request

The deadline is 15 days following the tax auditor’s request of

the transfer pricing documentation.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost plus,

profit split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific indication. However, local comparables

would be preferred.

> Single-year vs. multiyear analysis

There is no guidance provided.

> Use of interquartile range

There is no guidance provided.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no guidance provided.

> Simple, weighted or pooled results

There is no guidance provided.

> Other specific benchmarking criteria, if any

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Same as below.

> Consequences of failure to submit, late submission or

incorrect disclosures

A fine of MRU2.5 million applies for the failure or delay to

submit the transfer pricing return, and MRU4 million applies

for the failure or delay to submit the CbCR.

For missing or incomplete documentation, the fine applies at

the rate of 0.5% of the volume of transactions that were not

documented or are missing. The amount of the fine may not

be less than MRU500,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

After a transfer pricing reassessment is made, the profit

indirectly transferred should be qualified as a deemed

distribution of a benefit. Such “benefit” transfer should entail

CIT and withholding tax (WHT) on the amounts deemed

distributed, as well as the related penalties.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above.

> Is interest charged on penalties or payable on a refund?

No interest will apply on the penalties mentioned above.

b) Penalty relief

It is subject to further negotiations with tax authorities.

10. Statute of limitations on transfer pricing

assessments

Three years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium as it will allow

tax authorities to assess the effective profit that should be

taxed locally.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium if the DGI

assumes that the company chose this method to lower the

taxable base.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium as we assume

that challenging the transfer pricing method may entail for DGI

an increase of the taxable base.

> Specific transactions, industries and situations, if any, more

likely to be audited

The industries are large companies: telecommunication, oil

and gas, mining, and companies in the hospitality industry.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is no guidance provided.

> Tenure

There is no guidance provided.

> Rollback provisions

There is no guidance provided.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty to which Mauritania is signatory.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Mauritania does not have specific thin-capitalization rules, but

the following limitations are imposed on the interest paid to

foreign parties in respect of funds provided to local companies:

> The rate of interest paid to shareholders, partners or other

related third parties on loans may not exceed the advance

rate of the Central Bank of Mauritania (Banque Centrale de

Mauritanie) by more than two percentage points.

> The total amount of deductible annual interest in respect

of all debts incurred by members of a group cannot exceed

15% of the group’s consolidated profits from ordinary

activities, plus interest, depreciation and provisions taken

into account for the determination of those profits.

In addition, the interest paid by a branch to its head office in

return for sums that the head office has drawn from its own

funds and places at the disposal of the branch in any form

whatsoever shall not be deductible.

Eric Nguessan

eric.nguessan@ci.ey.com

+ 2250708025038

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Tax Administration Service (Servicio de Administración

Tributaria — SAT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Central Transfer Pricing Administration department of

the SAT’s Large Taxpayers Administration is responsible

for enforcing the transfer pricing rules that have been in

force in Mexico since 1997. The Central Transfer Pricing

Administration is in charge of transfer pricing audits as well

as of transfer pricing rulings, such as unilateral, bilateral and

multilateral transfer pricing procedures. Nevertheless, other

administrations within the Large Taxpayers Administration can

also review transfer pricing issues with the possibility to get

support of the Central Transfer Pricing Administration.

Income Tax Law (ITL):

> Transfer pricing regulations for corporations: Articles 76,

first paragraph; Sections IX, X and XII, 76-A; Sections I, II

and III, 179, 180, 181, 182, 183, 183-Bis and 184

> Transfer pricing regulations for individuals: Articles 90 and

110, Section X:

> ITL, Article 76 (Sections IX, X and XII): contemporaneous

transfer pricing documentation (cross-border), transfer

pricing disclosure (cross border), and taxpayer obligations

for arm’s-length pricing; (all transactions, i.e., local and

foreign)

> ITL, Article 76-A (Sections I, II and III): obligation for

certain taxpayers to file Master File, Local File and annual

transfer pricing CbCR informative returns, which has been

in force since fiscal year 2016

> ITL, Article 179: “related party” definition, comparability,

business cycle approach, permanent establishments and

transfer pricing, tax havens, and OECD Guidelines

> ITL, Article 180: transfer pricing methods, ranges and

selection of the most appropriate method

1http://www.diputados.gob.mx/LeyesBiblio/pdf/LISR\_091219.pdf

> ITL, Article 181: permanent establishment and

maquiladoras

> ITL, Article 182: transfer pricing options for maquiladoras

> ITL, Article 184: statement of the arm’s-length principle,

right of the tax authority to adjust to arm’s-length result

under International Tax Treaties on Income and Capital

(ITTIC), and definition of “related party” (OECD)

> ITL, Article 90, last two paragraphs: transfer pricing

obligations for individuals

> ITL, Article 110, Section X: transfer pricing disclosure

(cross-border)

Federal Fiscal Code (FFC):

Transfer pricing rulings: Article 34-A

Fines related to transfer pricing: certain sections of Articles

81, 82, 83 and 84:

> FFC, Article 34-A: transfer pricing ruling (unilateral);

bilateral or multilateral APA should be requested based on

the correspondent double tax treaty

> FFC, Articles 81 (XVII and XL) and 82 (XVII and

XXXVII): fines for failure to report foreign intercompany

transactions (ITL, Article 76, Section X) and to file transfer

pricing informative returns (ITL, Article 76-A)

> FFC, Articles 83 (XV) and 84 (XIII): fines for failure to

properly reflect intercompany transactions conducted with

foreign related parties as part of accounting records

> FFC, Articles 17-H BIS (IX) and 81 (XL): cancellation of

the relevant certificates issued by the SAT for purposes of

invoicing upon failure to file transfer pricing informative

returns (ITL, Article 76-A)

> General Foreign Trade Regulations (Rule 1.3.3):

suspension of the official importers’ and exporters’

registry upon failure to file transfer pricing informative

returns (ITL, Article 76-A)

> FFC, Article 32-D (IV): negative compliance opinion that

disqualifies taxpayers from entering contracts with the

Mexican public sector upon failure to file transfer pricing

informative returns (ITL, Article 76-A)

Miscellaneous Tax Resolution (Resolución Miscelánea Fiscal —

MTR) for 2021 was published in the official Mexican Gazette:

> MTR for 2022, Temporary Article Twenty Fourth: option

for taxpayers to omit to file the appendices of the

information of transactions with related parties of tax

situation informative return (Información Sobre Situación

Fiscal — ISSIF), as long as they file it by 30 September

of the following fiscal year and comply with specific

requirements

> MTR for 2022, Rule 2.9.8: functional analysis related to

transfer pricing rulings

> MTR for 2022, Temporary Articles Thirty Fourth and

Thirty Fifth: extension for taxpayers to comply with Article

76, Section X of ITL (transfer pricing disclosure) as of 15

July of the following fiscal year

> MTR for 2022, Rule 3.9.2: exception to obtain and keep

transfer pricing supporting documentation for certain

taxpayers (accruable income in the previous fiscal year

below MXN13 million 00/100 MN); does not exempt

taxpayers from conducting transactions at market value

> MTR for 2022, Rule 3.9.10: option to file one Master File

and CbCR for Mexican taxpayers of the same multinational

group

> MTR for 2022, Rule 3.9.8: requirements to file annual

transfer pricing CbCR, Master File and Local File

> MTR for 2022, Rule 3.9.9: information regarding transfer

pricing return for taxpayers with the obligation to file a

transfer pricing return but that do not have an active tax

identification number, due to suspension of activities

> MTR for 2022, Rule 3.9.10: information regarding how to

file Master File and CbCR for several Mexican members of

the multinational group

> MTR for 2022, Rule 3.9.11: timeline to file CbCR

> MTR for 2022, Rule 3.9.12 to 3.9.14: information that

must be included as part of the Master File, Local File and

CbCR

> MTR for 2022, Rule 3.9.1: rules related to transfer pricing

adjustments (3.9.1.1. to 3.9.1.5.)

> MTR for 2022, Rule 3.20.2: income related to maquila

nonbinding criteria:

> 4/ISR/NV: royalties paid to foreign related parties for

intangible assets originated in Mexico

> 39/ISR/NV: recognition of unique and valuable

contributions

> 40/ISR/NV: modification of transfer prices when the

results of the tested party are within the interquartile

range

In addition, as a result of Mexico’s energy reform, the

Hydrocarbons Revenue Law (HRL) was created in 2014

to regulate the revenues to be generated as a result of

hydrocarbon exploration and extraction activities. The

regulation included in the HRL examines the relevant transfer

pricing aspects that should be considered by every contractor

in addition to specific transfer pricing regulations included

in the contracts awarded by the National Hydrocarbons

Commission (CNH):

> HRL, Article 30: applicability of the OECD Guidelines to

analyze transactions performed with related parties

> HRL, Article 51: obligations for arm’s-length pricing and

method application

> Section reference from local regulation

The ITL, Article 179, states the “related party” definition

as follows: two or more entities are considered to be related

parties when one of them participates, directly or indirectly, in

the administration, control or equity of the other or when an

entity or group of entities participates, directly or indirectly, in

the administration, control or equity of said entities. Members

of partnerships are considered to be related, as are the

persons who are considered related parties of said members.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No, there are no changes expected.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Mexico is a member of the OECD. The ITL, Article 180, states

that the OECD Guidelines can be relied upon for interpretation

of the rules as long as they do not contradict the ITL or

international tax treaties.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes. Legislation was passed on 29 October 2015 and came

intoeffect from 1 January 2016.

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

Mexican regulations require the filing of both the master

file and Local File for certain taxpayers.

> Effective or expected commencement date

BEPS Action 13 implementation is effective from FY2016,

and the due date for compliance is 31 December of the

following fiscal year from the fiscal year under analysis.

Taxpayers required to submit the Master File and Local File

informative returns should do it through the technological

platform, as well as the digital formats for filing such

informative returns, available on the SAT website for

consultation and filing.

> Material differences from OECD report template or format

On 15 May 2017, the SAT published the final transfer

pricing regulations listing the specific requirements to

comply with Article 76-A of the ITL. There are differences

between the OECD report template or format and Mexico’s

regulations:

> Master File: specific differences in the description of the

requirements for the general description of the MNE’s

business activities, as well as on the information related

to financial activities of the MNE

> Local File: material differences with additional

requirements, compared with the OECD report template,

such as the requirement of a comprehensive description

and taxpayer’s participation on the MNE’s value

chain; detailed description of transfer pricing policies;

development, enhancement, maintenance, protection

and exploitation of intangibles (DEMPE) analysis and

functional analysis per evaluated transaction and

segmented financial information requirements; and,

importantly, financial statements for the taxpayer and

the tested parties as well as financial information of all

the foreign related parties that are counterparties in the

evaluated transactions

These transfer pricing informative returns are an

additional obligation to the contemporaneous transfer

pricing documentation that must be maintained by the

taxpayers in Mexico.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Not applicable.

Prior FY2021 contemporaneous documentation might

reduce tax penalties by 50%, if the taxpayer complies

with the formal requirements established in Article 76

(IX) of the ITL. However, from FY2021 going forward, this

reduction in penalties is no longer applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, Mexico has transfer pricing documentation rules.

Although transfer pricing report should not be filed on a yearly

basis, Article 76 of ITL, Sections IX and XII (it should be kept

at taxpayers’ office), the 

Exhibit 9 (transfer pricing informative

return) of Multiple Informative Return (Declaración Informativa

Múltiple — DIM), which disclose the information of the

transfer pricing report, should be filed before tax authorities.

Depending on the taxpayer, Master File, Local File and CbCR

(Article 76-A, Sections I, II and III, respectively) must also be

filed. Please note that even though some companies are not

obligated to prepare and file a Local File and Master File, they

are obligated to prepare and keep a transfer pricing report, as

well as to file the 

Exhibit 9 previously mentioned.

> Does a local branch of foreign company need to comply with

the local transfer pricing rules?

Local branches must comply with the same transfer pricing

obligations for local entities mentioned above.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation must be prepared annually

under Mexico’s local regulations. Documentation must include

the name, address and tax residency of the non resident

related parties with which transactions are carried out, as

well as evidence of direct and indirect participation between

related parties and correct application of a method as stated

in Article 180 of the ITL, following the hierarchy established

therein. It is necessary to include information regarding the

functions performed, assets used, and risks borne by the

taxpayer and its related parties involved in each transaction.

Information and documentation of comparable transactions

or companies by type of transaction must also be included.

Therefore, this information must be updated, usually through

a comprehensive annual update on the transfer pricing

documentation.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

It is mandatory for each taxpayer to prepare and keep transfer

pricing documentation, as well as for some taxpayers to

prepare and file Master File, Local File and CbCR. Transfer

pricing documentation is not an obligation as a multinational

group in Mexico but as an individual taxpayer. Therefore, a

stand-alone transfer pricing report and Local File should be

prepared. The Master File is the only report that could be filed

only by one member of the multinational group, specifying

which entities are covered under such Master File.

b) Materiality limit or thresholds

> Transfer pricing documentation

Mexican taxpayers conducting intercompany transactions

with prior-year income exceeding MXN13 million in regular

business activities or exceeding MXN3 million for the provision

of professional services are required to prepare and maintain

annual transfer pricing documentation. Taxpayers conducting

transactions with residents in low-tax jurisdictions are not

included in this exception, nor are the contractors or assignees

according to the HRL.

> Master File

Starting fiscal year 2016, Mexican taxpayers with entities that

conducted transactions with related parties that surpass a

certain threshold in the previous fiscal year or that conducted

transactions with related parties and were listed in a public

stock market in the previous fiscal year are required to file

the Master File and Local File. The threshold for FY2021’s

obligation is to have reported accruable income equal or

above MXN842,149,170 (approximately USD40 million) in

the previous fiscal year, i.e., FY 2020, while for FY2020’s

obligation was triggered with an accruable income equal or

above MXN815,009,360 (approximately USD39 million) in the

previous fiscal year, i.e., FY2019. In addition, public companies

in the previous fiscal year are obligated to file the master

and Local Files as well, even though they do not meet the

applicable threshold. Other entities obligated to file the master

and Local File informative returns include legal entities within

the optional tax regime (integration system), government-

controlled corporations and residents abroad with permanent

establishment in Mexico.

> Local File

The same thresholds as in the “Master File” section above

should be considered.

> CbCR

The CbCR has to be filed by Mexican MNE-controlling entities

with consolidated income equal to or greater than MXN12,000

million.

There are no specific CbCR notification requirements in Mexico

regarding the CbCR filing process of the MNE’s ultimate

parent entity. However, in the ISSIF (along with the annual

tax return) or in the Tax Report, it must be disclosed whether

the local entity is aware of if the ultimate parent holding is

obliged to file a CbCR. It is also relevant to consider that the

Mexican regulations establish that the SAT may require the

legal entities residing in Mexico to provide the CbCR filed by

the ultimate parent entity, when the SAT could not obtain

the information corresponding to such return through the

information exchange methods set forth in the international

treaties currently in force by Mexico. To such end, the

taxpayers shall have a maximum of 120 business days from

the date when the request is made to provide such CbCR.

> Economic analysis

The obligation to conduct transactions with related parties

(foreign and domestic) at arm’s-length values applies to all

intercompany transactions with no minimum thresholds

applicable.

c) Specific requirements

> Treatment of domestic transactions

There is a transfer pricing documentation obligation for

domestic transactions. Intercompany transactions with local

related parties must be documented (Article 76, Section XII, of

the ITL).

> Local language documentation requirement

As mentioned before, transfer pricing documentation is

prepared and kept in the taxpayers’ facilities; however,

if it is requested by tax authorities, the transfer pricing

documentation must be submitted in local language. That is,

in the case of a review, all information that is intended to be

presented to the tax authorities to clarify the tax position of

the company, including the transfer pricing documentation,

must be presented in Spanish. Taxpayers obligated to submit

the Master File informative return can file such information

prepared by a foreign entity of the MNE as long as it is aligned

with BEPS Action 13. This information (BEPS Master File)

can be filed by the taxpayer either in Spanish or English

(Temporary Rule 3.9.12 of MTR for 2021) through the specific

software tools provided by the SAT. BEPS Local File must be

filed in Spanish based on the Mexican regulations (Temporary

Rule 3.9.13 of MTR for 2021).

> Safe harbor availability including financial transactions if

applicable

Starting in 2014, the self-assessment option for maquiladoras

is no longer available. As such, Mexican contract

manufacturers with a maquiladora manufacturing and export

services industry (Industria Manufacturera, Maquiladora y de

Servicios de Exportación — IMMEX) program have to apply safe

harbor rules (with taxable profit being the greater of applying a

6.5% return over total costs or a 6.9% return over total assets,

including assets and inventories of consignment property of

foreign parties, but used in the manufacturing activity).

Safe harbor for financial transactions is not covered by the

Mexican regulations.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing should be performed. Since OECD Guidelines

are applicable for interpretation purposes, based on OECD

Guidelines, there might be some cases where an aggregated

analysis is appropriate.

> Any other disclosure/compliance requirement

Reportable transactions

In line with Action 12 of the BEPS action plan, Tax Reform

2020, Article 197 of the FFC, requires tax advisors to disclose

reportable transactions. Transactions are reportable to the

extent there is a tax benefit in Mexico, regardless of the

residence of the taxpayer receiving the benefit. The new FFC

articles further provide that, in certain instances, the taxpayer

is required to report the transaction. This requirement applies

from 1 January 2021; transactions that would have to be

disclosed are reportable transactions with effects in 2020,

beginning in 2021. The primary responsibility to disclose

a reportable transaction lies with the tax advisor and, at a

secondary level, the taxpayers.

Reportable transactions include among others:

> Those that prevent foreign authorities from exchanging

tax or financial information with Mexican tax authorities,

including Common Reporting Standard reports

> Those that avoid the application of low-tax jurisdiction

(régimen fiscal preferente — REFIPRE)

> Those that involve transactions with related parties,

where:

> Hard-to-value intangibles are transferred, in accordance

with OECD Transfer Pricing Guidelines.

> Involving entrepreneurial reorganizations where

no consideration has been paid for the transfer of

assets, functions and risks or where as a result of such

reorganization, the taxpayers experience a reduction in

operating profits of more than 20%.

> Goods and rights are transmitted, or the temporary use

and enjoyment thereof is granted for no consideration, or

unremunerated services are rendered, or functions are

performed.

> There are no reliable comparables as the transactions

involve unique and valuable functions or assets.

> A unilateral protection regime afforded by foreign

law is used, in accordance with OECD Transfer Pricing

Guidelines.

> The transfer of tax losses

> Those that prevent the application of the permanent

establishment provisions

> The use of hybrid mechanisms

> The grant or temporary enjoyment of goods and rights

without consideration or the rendering of services without

payment

The new reporting requirements include penalties for non-

compliance. These penalties may apply to taxpayers and

tax advisors. The penalties for not disclosing a reportable

transaction or disclosing it incompletely or with errors could be

as high as 50%–75% of the tax benefits that were obtained or

expected to be obtained in all tax years plus the loss of the tax

benefit itself, if the obligation remains on the taxpayer. On the

other hand, the SAT also could impose penalties up to MXN20

million (approximately USD$877,000) for advisors missing to

report.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Exhibit 9 of the Multiple Informative Return (DIM) (transfer

pricing informative return) for transactions carried out with

foreign related parties

> Related-party disclosures along with corporate income tax

return

In addition to the above, related-party disclosures of

information include the following:

> Manufacturing, Maquiladoras and Export Services’

Informative Return (Declaración Informativa de Empresas

Manufactureras, Maquiladoras y de Servicios de

Exportación — DIEMSE) for transactions carried out under

the maquiladora regime

> Transfer pricing exhibits and questionnaires as part of the

Tax Report or the ISSIF — as part of these exhibits, the tax

ID of the individual (not the firm tax ID) that prepared the

transfer pricing documentation or BEPS Local File to be

disclosed

> Relevant Operations Disclosure Return (Formato 76)

> BEPS transfer pricing informative returns: CbCR, master

file and Local File informative returns

> Related-party disclosures in financial statement/annual

report

Usually, information of type of intercompany transactions,

amount and name of the related party is included in the

audited financial statements. This information must be

consistent with the information disclosed in the rest of the TP

disclosures of information.

CbCR notification included in the statutory tax return

Yes, either in the tax situation informative return (ISSIF, due

date 31 March of the following fiscal year) that must be filed

along with the annual tax return or in the statutory tax audit

report (Tax Report, due date 15 July), taxpayers must disclose

whether the Mexican taxpayer has knowledge of the ultimate

parent entity to which the taxpayer belongs is obligated to file,

directly or through any surrogate entity, the Master File as well

as the CbCR.

> Other information/documents to be filed

As part of the ISSIF and the Tax Report, both of which are

filed before tax authorities on an annual basis, the tax ID of

the individual (not the firm tax ID) that prepared the transfer

pricing documentation or BEPS Local File must be disclosed.

Please also refer to Reportable Transactions section.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

31 March of the following year

> Other transfer pricing disclosures and return

Exhibit 9 of the DIM along with the corporate income tax

return, i.e., 31 March of the following year: if the taxpayer

files a Tax Report, Exhibit 9 could be filed along with the Tax

Report, i.e., by 15 July of the following year. If Tax Report

is not filed, Exhibit 9 of DIM could be filed by 15 July of the

following fiscal year, as long as it is consistent with the BEPS

Local File and this Local File is submitted in the same date

(Temporary Rule of MTR for 2021, Articles Thirty Fourth and

Thirty Fifth).

DIEMSE by 30 June of the following year.

Transfer pricing exhibits and questionnaires as part of the

ISSIF along with the corporate income tax return, i.e., 31

March of the following year. For FY2021 there is an option to

submit them by 30 September 2022.

Transfer pricing exhibits and questionnaires as part of the Tax

Report by 15 July of the following year.

Formato 76 within the following three months after the

relevant transaction took place.

Master File and Local File by 31 December of the following year.

For those companies that chose to have a Tax Report

(Dictamen Fiscal) based on their financial statements prepared

by an external auditor, the taxpayer’s external auditor is

required to disclose the company’s compliance with all tax

obligations, including those related to transfer pricing. This

disclosure is made through the Tax Report, which must be

completed by 15 July every year. As of 2014, taxpayers are

obligated to file the ISSIF or may choose to have a Tax Report

conducted by an external auditor if they do not want to file

the ISSIF themselves. According to the FFC, the Tax Report

is due no later than 15 July of the following year of the fiscal

year reported, while the ISSIF must be submitted together

with the annual tax return by 31 March of the following

year. These deadlines have a direct impact on the taxpayer’s

transfer pricing obligations because the contemporary transfer

pricing documentation must be prepared by no later than

the corresponding due date of the Tax Report or ISSIF as

applicable.

> Master File

Master File must be filed by 31 December of the following year.

> CbCR preparation and submission

The report has to be filed on 31 December of the following

year, except for certain cases in which the MNE has a fiscal

year closing date (up to May) different than 31 December (only

applicable to the CbCR and Master File deadline).

> CbCR notification

No later than 31 December of the following fiscal year after

the last day of the reporting fiscal year of the MNE group (for

surrogate Mexican parent entities whose holding company’s

or reporting entity’s fiscal year ends between June and

November).

Even though there is not a separate notification related to

the CbCR, in the Tax Report (Dictamen Fiscal) / ISSIF must

be disclosed whether the Ultimate Parent Entity is obliged to

prepare and file a CbCR.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation must be in place when the

company files its annual income tax return (by the end of

March of the following year) and must be kept, along with the

company’s accounting records, for at least five years after the

filing of the last tax return for each year. If the taxpayer opts

to file a Tax Report, transfer pricing documentation could be

prepared by 15 July of the following year. If the taxpayer does

not file a Tax Report, the obligation is to have prepared the

transfer pricing documentation by 31 March of the following

fiscal year. For FY2021, if an ISSIF is filed, deadline is also 31

March of the following fiscal year, with potential extension to

30 September 2022.

c) Transfer pricing documentation/local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no formal statutory deadline for the submission of

contemporaneous transfer pricing documentation, since it

is not filed before the tax authorities; however, either in the

ISSIF (31 March of the following fiscal year) or in the Tax

Report (15 July of the following fiscal year), the taxpayer must

disclose if transfer pricing contemporaneous documentation

was prepared, as well as if transfer pricing adjustments were

suggested in such documentation, among others. Moreover, in

the Exhibit 9 (formal deadline 31 March of the following fiscal

year), the information of the transfer pricing documentation

must be included.

In addition, taxpayers obligated to file a BEPS Local File

usually file the corresponding fiscal year’s transfer pricing

documentation as part of the BEPS Local File informative return

by 31 December of the following year (deadline to file local

file).

> Time period or deadline for submission on tax authority

request

Visita Domiciliaria: The time could vary from an immediate

request (for documents that are part of the taxpayer’s

accounting records) to six working days (other information that

is in possession of the taxpayer).

Gabinete: The time is 15 working days, plus an extension of 10

working days if requested in writing by the taxpayer.

In both cases (Visita Domiciliaria and Gabinete), if the company

filed a Tax Report, the audit would initiate through a first

request to the tax auditor. In this case, the auditor deadline

goes from 6 working days (when it is related to the workpapers

developed during the audit procedure) to 15 working days if

it is other documentation or information related to the annual

Tax Report, but it is in possession of the taxpayer.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No specific information available.

7. Transfer pricing methods

a) Applicability (for both international and domestic trans-

actions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The transfer pricing methods in Mexico, established in Article

180 of the ITL, are the CUP, resale price, cost plus, profit split,

residual profit split and TNMM. Effective since 2006, the ITL

specifically requires a hierarchical consideration of transfer

pricing methods, with a particular preference for the CUP

method, and then the traditional transactional methods over

the transactional profit methods.

8. Benchmarking requirements

> Local vs. regional comparables

In principle, there is a preference for regional comparables.

There is no legal requirement for local jurisdiction

comparables. Regional comparable companies (i.e., Canadian,

US and Latin-American companies) can be accepted in the

benchmarking analysis as long as the circumstances of the

comparable companies are similar to those of the tested party

or specific comparability adjustments are applied.

> Single-year vs. multiyear analysis for benchmarking

Although a common approach in Mexican practice is to

estimate the arm’s-length range based on the last three years

of available financial information of comparable companies

(i.e., multiyear analysis), based on audits performed by the

SAT, further arguments are required in order to support the

multiyear analysis. Hence, further support for the multiyear

analysis is recommended, and single-year analysis should also

be evaluated.

> Use of interquartile range

Interquartile range is calculated according to Article 302 of the

ITL.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

In practice, the SAT preference is for fresh benchmarking

searches to be conducted each year.

> Simple, weighted or pooled results

In practice, there is a preference for the weighted average for

transfer pricing analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

A penalty of MXN86,050 to MXN172,100 can be imposed if

the information return for foreign related-party transactions is

not filed or is incomplete or incorrect.

Also, failure to comply entirely with the CbCR, Master File and

Local File informative returns triggers penalties ranging from

MXN172,480 to MXN245,570, disqualification from entering

into contracts with the Mexican public sector, and cancellation

on the importers’ and exporters’ registry.

There are no penalties if the taxpayer self-corrects its tax

results before an audit, and reduced penalties apply if

self-correction is made during the audit but before the tax

assessment. Waivers and abatements are possible under

limited circumstances.

Effective from FY2017, specific definitions for transfer

pricing adjustments and rules to follow as to the effects

and deductibility of such adjustments when self-applied by

taxpayers were incorporated in temporary Rules 3.9.1.1,

3.9.1.2, 3.9.1.3, 3.9.1.4 and 3.9.1.5 of the MTR. In particular,

in case of ex-ante and ex-post transfer pricing adjustments that

lead to higher deductions for the taxpayer or lower accruable

income, several requirements must be met for deductibility

purposes. These requirements include several tax compliance

items such as filing the regular or amended returns to reflect

the adjustment in the corresponding fiscal year, securing an

invoice to support the adjustment, and verifying consistency

between accounting and tax records. Furthermore, detailed

transfer pricing support documentation must be prepared

to demonstrate the requirement to implement the transfer

pricing adjustment to facilitate arm’s-length compliance.

> Consequences of failure to submit, late submission or

incorrect disclosures

The same consequences stated above would be applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

If the SAT decides that a transfer pricing adjustment is

needed, and unpaid contributions are determined as a

consequence, penalties could vary from 55% to 75% of the

omitted taxes, plus surcharges and inflation adjustments.

Also, if a transfer pricing adjustment reduces the NOL, the

penalty ranges from 30% to 40% of the difference between

the determined NOL and the NOL in the tax return, plus

surcharges and inflation adjustments.

> Is interest charged on penalties or payable on a refund?

Penalties usually include a portion of the omitted taxes, plus

surcharges and inflation adjustments. Surcharge rates from

2004 to 2017 vary from 0.75% to 1.13%, while the surcharge

rates for 2018 going forward vary from 0.98% to 1.47%.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

The deduction of the adjustment could be totally denied if

supporting information is not contemporaneous or if it is

incomplete, based on transfer pricing adjustments rules priorly

mentioned.

b) Penalty relief

Not applicable.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for an assessment in Mexico is

five years from the date of filing the tax return. The term is

affected by amended returns with respect to items changed,

and it is suspended by an audit. The SAT has two years to

complete a transfer pricing audit.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high, considering a

broader transfer pricing team within the SAT and the transfer

pricing controversy trends derived from BEPS in Mexico.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high, because there is

usually a preliminary analysis already conducted by the SAT

before an audit is initiated.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

When a transfer pricing audit is initiated, there is usually a

preliminary analysis already conducted by the SAT. If the focus

of such audit is on the stage of challenging the overall transfer

pricing methodology, then the likelihood of an adjustment

tends to be high.

> Specific transactions, industries, and situations, if any, more

likely to be audited

There is a high audit risk focusing on business restructuring

(limited risk structures, migration of intangible property,

and centralization of functions and risks in favourable tax

jurisdictions), highly leveraged structures, client segregated

accounts (CSAs) and pro rata-based charges in general,

including management fees, as well as on foreign payments

such as royalties and interest expenses. Further scrutiny is

expected from the SAT in terms of transfer pricing derived

from the anti-BEPS environment moving toward transparency,

substance, and increased compliance disclosure. It is relevant

to note that Mexico signed the Multilateral Convention to

Implement Tax Treaty Related Measures to Prevent BEPS on 7

June 2017.

Industries, such as hydrocarbons, life science and automotive,

are currently under special attention of transfer pricing

authorities.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral and bilateral APAs are available under Article 34-A

of the FFC and Mexico’s tax treaties, respectively. Unilateral

APAs can cover the fiscal year of the application, the three

subsequent fiscal years and a one-year rollback.

Temporary Rule 2.9.8 of the MTR allowed the SAT to perform

a functional analysis as part of the study and evaluation

processes of the information, data and documentation for

purposes of identifying and specifying performed functions,

assets used and risks borne in transactions under consultation.

Specifically, in APA requests, there are measures aligned

to the BEPS action plan that have been incorporated into

domestic legislation. These include temporary Rule 2.9.8

of MTR, with a requirement of an extensive list of minimum

information that shall be included in transfer pricing inquiries

made by the taxpayers, including a description of the relevant

factors that generate profits for the MNE; transfer pricing

policies; the MNE’s consolidated financial statements; global

funding schemes; description, financial and accounting

information of intangibles; organizational chart; financial

information projected in the filing of the transfer pricing

methodology subject to analysis; and support transfer pricing

documentation for the fiscal year at issue and the previous

three fiscal years.

> Tenure

Unilateral APAs can cover the fiscal year of the application,

the three subsequent fiscal years and a one-year rollback. A

bilateral APA could include more than five years, depending on

competent authorities’ agreement.

> Rollback provisions

Unilateral APAs can cover the fiscal year of the application, the

three subsequent fiscal years and a one-year rollback.

> MAP opportunities

There is no specific guidance related to provision. However,

Mexico had a total of 22 active MAP applications as of 31

December 2019 related to transfer pricing. According to OECD

MAP statistics, the average time needed to close MAP cases is

21.07 months for transfer pricing cases and 11.44 months for

other cases.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin capitalization

Interest on a taxpayer’s debts that exceed the equivalent of

three times its shareholders’ equity and that comes from

debts entered with foreign-resident related parties, pursuant

to Article 179 of the Law, are considered as a non-deductible

expense.

Interest expense deduction limitation

Tax Reform 2020 applies to taxpayers with interest expense

over MXN20 million to a net interest expense deduction up

to 30% of “adjusted taxable income.” Non-deductible interest

expense for each year may be carried forward for 10 years.

The exceptions to the limitation for financial institutions,

as well as interest on debt used to finance, are (i) public

infrastructure projects; (ii) construction in Mexican territory;

and (iii) projects related to the exploration, extraction,

transport, storage or distribution of hydrocarbons, electricity,

or water.

Enrique Gonzalez Cruz

enrique.cruz@ey.com

+ 17137508107

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

General Department of National Taxation (GDNT).

b) Relevant transfer pricing section reference

Under new Mongolian transfer pricing laws, there is a single,

all-encompassing transfer pricing legislation that is governed

mainly by the General Taxation Law and its associated

guidelines. This replaces separate rules found in different tax

laws, such as the Corporate Income Tax and Personal Income

Tax Law. The new tax rules took effect on 1 January 2020.

> Section reference from local regulation

Articles 27 and 37-40 of General Taxation Law (GTL) and

article 27 of Corporate Income Tax (CIT) law.

The entities listed below shall be considered to be related

parties that are possible to influence each other on the

conditions or economic outcome of a transaction by a way of

direct or indirect participation, by a person in the other, or the

same person in two or more persons, of the assets, control or

managerial activities, including:

1. Taxpayer’s parents, blood sisters and brothers,

grandparents, children and grandchildren or taxpayer’s

spouse or partner (cohabitant), or their parents, or their

blood sisters and brothers.

2. Members of the same group. A group is further defined

in the law as the related persons that are related in

their ownership or management and consolidated for

financial reporting purposes.

3. If one person directly or indirectly holds 20% or more of

the share, participation or voting rights in other entity.

4. If one person has a right to directly or indirectly

participate 20% or more of the profits or liquidation

proceeds in other entity.

4. Entities that are controlled by third same person who

directly or indirectly holds 20% or more of the share,

participation or voting rights in such entities.

6. Entities that are controlled by third same person who

has a right to directly or indirectly participate 20%

1 http://en.mta.mn/

or more of the profits or liquidation proceeds in such

entities.

7. Entities stipulated in items 3–6 above if controlled

by individuals specified in item No.1, i.e., entities in

separate groups that are under common control by

same individuals.

8. Representatives, nominees or assignees of the parties

stipulated in this section.

9. Branch office or other forms of permanent

establishments of related parties.

10. An unrelated person with a main purpose of reducing

taxable income or increase tax losses of Mongolian tax

residents.

11. Other persons similar to preceding nature.

In addition, there may be circumstances for unrelated parties

to be treated as related parties in case they have entered into

an arrangement on which parties have agreed a common

position or common interest with their decision for a particular

transaction.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Mongolia is not a member of the OECD.

Under the transfer pricing regulations, taxpayers are required

to maintain contemporaneous documentation to comply with

the arm’s-length standard. Part of that documentation must

substantiate the most reliable measure of an arm’s-length

result, given the transfer pricing methods and data available.

Consistent with the OECD Transfer Pricing Guidelines,

Mongolia requires taxpayers with related-party transactions

to adopt the internationally standardized Master File, local

file and CbCR three-tiered approach to transfer pricing

documentation. The main objectives of the updated transfer

pricing documentation requirements are to confirm that

taxpayers give appropriate consideration to transfer pricing

requirements in establishing prices between related parties,

to provide tax administrations with the information necessary

to conduct an informed transfer pricing risk assessment and

to provide tax administrations with useful information to

conduct an appropriately thorough audit of the transfer pricing

practices of entities subject to tax in their jurisdiction. The

GDNT further introduced detailed transfer pricing reporting

forms on the above transfer pricing reports.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

> Coverage in terms of Master File, Local File and CbCR

It covers Master File, Local File and CbCR.

> Effective or expected commencement date

1 January 2020 onward.

> 

Material differences from OECD report template or format

No material differences.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is no penalty protection available. All transfer

pricing documentation is required to be submitted

by taxpayers to the tax authority within the specified

time frame by law. The new rules have imposed severe

administrative penalties for failure to comply with transfer

pricing documentation requirements, i.e., if transfer

pricing documentation is not filed with the tax authorities

within the specified deadline, there will be automatic

administrative penalties, which are equal to 2%–4% of

transaction value, apart from penalties and fines resulting

from transfer pricing adjustments (if any).

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, under the transfer pricing regulations, taxpayers are

required to maintain contemporaneous documentation

to comply with the arm’s-length standard. Part of that

documentation must substantiate the most reliable measure of

an arm’s-length result, given the transfer pricing methods and

data available.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Small and medium enterprise group companies under MNT6

billion annual turnover are exempt from certain transfer

pricing documentation requirements (i.e., Local File and master

file).

> Master File

A company or group with annual turnover of more than MNT6

billion for the preceding tax year, a foreign-invested company

irrespective of size, or the permanent establishment of a

foreign company is required to file Master File.

> Local File

A company or group with annual turnover of more than MNT6

billion for the preceding tax year, a foreign-invested company

irrespective of size, or the permanent establishment of a

foreign company is required to file Local File.

> CbCR

The CbCR threshold is set at MNT1.7 trillion or approximately

EUR630 million (while the OECD’s recommendation was

EUR750 million).

> Economic analysis

There is no materiality limit set out by law.

c) Specific requirements

> Treatment of domestic transactions

Transfer pricing documentation is required for domestic

transactions in the same manner as for a cross-border

transaction.

> Local language documentation requirement

The documentation should be submitted to tax authorities

in Mongolian language only. If it is translated from English,

then both versions are submitted for reference; however, the

Mongolian version prevails in case of inconsistency.

> Safe harbor availability including financial transactions if

applicable

There are no specific safe harbor rules in Mongolia.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

Taxpayers are required to provide a Transfer Pricing

Transactional Report (an annual report) by 10 February

following the year-end. This is an additional transfer pricing

disclosure report required by the local regulation.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no specific transfer pricing returns.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

Taxpayers may be required to disclose related-party

transactions in the financial statements if the applicable

accounting standards require to do so.

> CbCR notification included in the statutory tax return

CbCR notification is required to be filed by 10 February

following the year-end.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The annual corporate income tax return must be filed by 10

February following the year-end.

> Other transfer pricing disclosures and return

Taxpayers are required to provide Transfer Pricing

Transactional Report by 10 February following the year-end.

> Master File

By 10 February following the year-end.

> CbCR preparation and submission

Within the 12-month period after the last day of group

financial year closing.

> CbCR notification

By 10 February following the year-end.

b) Transfer pricing documentation/Local File preparation

deadline

There is no specific preparation deadline.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Deadline for the Local File is 10 February following the year-

end, i.e., Local File is to be submitted within only 40 days after

the year-end closing.

> Time period or deadline for submission upon tax authority

request

No specific time period stated in the new regulations if the tax

authority requests additional supporting documents or queries

related to transfer pricing files submitted to tax authority.

Therefore, it may vary on a case-by-case basis. In practice, it is

usually between 5 to 10 working days. .

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The CUP method should override all other methods in case the

CUP method is reliably applicable. In case the CUP method is

not applicable, then the best method rule applies.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are preferable in the first instance. In

absence of availability of local comparables, comparables of

Pan-Asia-Pacific may be applied.

> Single-year vs. multiyear analysis for benchmarking

Single year and multi-year analyses are both acceptable.

> Use of interquartile range

Calculation using spreadsheet quartile is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Yes, a fresh benchmarking is required every year.

> Simple, weighted or pooled results

Weighted average is preferred.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is a penalty of 2%–4% of related-party transaction value

depending on type of transfer pricing documentations.

> Consequences of failure to submit, late submission or

incorrect disclosures

The Transfer Pricing Transactional Report: A penalty of 2% of

respective related-party transaction value (per non-compliance

instance).

Master File: A penalty of 3% of respective related-party

transaction value (per non-compliance instance).

Local File: A penalty of 3% of respective related-party

transaction value (per non-compliance instance).

CbCR: A penalty of 4% of respective related-party transaction

value (per non-compliance instance).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Transfer pricing adjustments are subject to 30%–50% penalty

of due tax.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Transfer pricing adjustments are subject to 30%–50% penalty

of due tax.

> Is interest charged on penalties or payable on a refund?

Daily interest is charged on transfer pricing adjustments,

based on a predetermined interest rate that is an average of

commercial banking lending rates in Mongolia.

b) Penalty relief

There is no penalty relief available in Mongolia for transfer

pricing adjustments made by the GDNT.

10. Statute of limitations on transfer pricing

assessments

Statute of limitations is four years in Mongolia for tax purposes

including transfer pricing.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high because

comprehensive tax and transfer pricing audits occur depending

on the GDNT’s risk level profile of a taxpayer. Tax authorities

are increasingly focusing on transfer pricing investigations.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

None.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APA regime is not available.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin capitalization arises when investor’s debt-to-equity ratio

exceeds 3:1. Any interest attributable to the debt exceeding

the ratio debt is non deductible for tax purposes. Another

restriction is that related-party loan interest shall not exceed

30% of EBITDA for any given year.

Martin M Richter

martin.richter@hk.ey.com

+ 852 26293938

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Tax Administration of Montenegro.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 38 of the Corporate Income Tax (CIT) Law (latest

update effective as of 1 January 2017) is available on the

official website of the Tax Administration of Montenegro.

> Section reference from local regulation

Paragraph 2 of Article 38 of the CIT Law defines “related

party” and “associated enterprise” and Article 15 of the Law

on Tax Administration.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Montenegro is not a member of the OECD.

Montenegrin transfer pricing provisions are only loosely based

on the OECD Guidelines and do not refer to their application.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

> Coverage in terms of Master File, Local File and CbCR

1 http://www.poreskauprava.gov.me/

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Montenegrin transfer pricing legislation does not include

transfer pricing documentation guidelines or rules.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

The Montenegrin CIT Law does not prescribe any transfer

pricing documentation requirements.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

This is not applicable.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is none specified.

> Local language documentation requirement

This is not applicable.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no specific transfer pricing return in Montenegro.

> Related-party disclosures along with corporate income tax

return

According to Article 38 of the CIT Law, taxpayers are obligated

to disclose, in their annual CIT return, the revenues and

expenses resulting from transactions with related parties.

They must also present and compare these with the revenues

and expenses that would have been realized in the same

transactions if they were conducted with unrelated parties.

Any difference between the two should be included in the

taxable basis.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline for filing a CIT return in Montenegro is three

months after the ending date for which CIT is calculated (e.g.,

31 March 2019 for the fiscal year ending 31 December 2018).

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

This is not applicable. The Montenegrin CIT Law does not

prescribe deadlines for the submission of transfer pricing

documentation.

> Time period or deadline for submission on tax authority

request

This is not applicable.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

This is not applicable. Montenegrin legislation does not contain

detail provisions related to transfer pricing analysis.

> Domestic transactions

This is not applicable. Montenegrin legislation does not contain

detail provisions related to transfer pricing analysis.

b) Priority and preference of methods

The Montenegrin CIT Law prescribes possible application of

the CUP, resale price or cost plus methods for all related-party

transactions.

The CUP method has priority in the selection of the transfer

pricing method. If the CUP cannot be applied, the CIT Law

allows for two other traditional transaction methods: the cost

plus and resale price. Montenegrin transfer pricing regulations

do not recognize transactional profit-based methods (i.e., the

TNMM and profit split method).

8. Benchmarking requirements

> Local vs. regional comparables

This is not applicable. The Montenegrin CIT Law does not

prescribe any benchmarking requirements.

> Single-year vs. multiyear analysis

This is not applicable.

> Use of interquartile range

This is not applicable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

This is not applicable.

> Simple, weighted or pooled results

This is not applicable.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not provided.

> Consequences of failure to submit, late submission or

incorrect disclosures

There are no specific penalties if a taxpayer fails to disclose

related-party transactions in the annual CIT return or in the

transfer pricing documentation.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties ranging from EUR550 to EUR16,500 could be

imposed if the taxpayer does not calculate the tax base in

accordance with the CIT Law (i.e., the taxpayer does not

include transfer pricing adjustments in its tax base).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not provided.

> Is interest charged on penalties or payable on a refund?

Montenegrin legislation prescribes that the interest is charged

at a daily rate of 0.03%.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitations period of five years for

taxes in Montenegro would also apply to transfer pricing

assessments. The five-year period starts at the beginning of

the year following the year in which the respective tax liability

is to be assessed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

It’s low, as Montenegrin tax authorities conduct random audits.

Typically, audits take place not more often than once in three

to five years. Value-added tax (VAT) audits are more frequently

conducted.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

This is not applicable.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

This is not applicable.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Advance rulings and APAs are not available in Montenegro.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is applicable through double tax treaties; there is no

elaborate practice in Montenegro regarding MAP.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction.

There are no thin-capitalization provisions in place in

Montenegro.

Ivan Rakic

ivan.rakic@rs.ey.com

+ 38163635690

Contact

1. Tax authority and relevant transfer pricing

(TP) regulation or rulings

a) Name of tax authority

General Tax Administration (Direction Générale des Impôts).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

TP aspects are regulated by the Moroccan Tax Code (MTC).

> Section reference from local regulation

Article 213-II of MTC: shifting of profits abroad.

Article 214-III of MTC: TP documentation requirement.

Article 154 ter and 214 VII of MTC: country-by-country

reporting.

Articles 234 bis and 234 ter of the MTC: advance pricing

agreement (APA) program.

Administrative guidelines n°717 published in 2011: detailing

the application of TP regulations.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Morocco is not a member of the OECD.

However, the General Tax Administration generally accepts

references to the OECD Guidelines regarding TP.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

This is not applicable. Morocco has joined the OECD BEPS

Inclusive Framework and is thus committed to implement the

BEPS minimum standards.

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

The detailed content of the documentation will be

specified by a decree.

Morocco has joined the OECD BEPS Inclusive Framework,

which requires member countries to comply with certain

minimum standards on transparency and information

exchange, including BEPS Action 13, which covers

transfer pricing documentation and CbCR.

It is therefore likely that the content of the Moroccan

transfer pricing documentation will be aligned with that of

the documentation provided for in BEPS Action 13.

Morocco has implemented the CbCR obligation, applicable

for accounting years beginning on or after 1 January

2021.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it’s intended for first information exchange by September

2021.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the TP documentation should be prepared

contemporaneously. However, no annual update requirement

is provided by law.

The documentation must be provided on the first day of tax

audit.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

No.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Morocco’s Finance Law for 2021 introduced new transfer

pricing documentation requirements, including that the

documentation must be submitted during an audit (or within

30 days of request) by companies carrying out transactions

with related companies outside Morocco, where either:

> The company’s turnover is greater than or equal to MAD50

million

> The company’s total gross assets in the balance sheet at

the end of the financial year concerned are greater than or

equal to MAD50 million

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The CbCR obligation is applicable for accounting years

beginning on or after 1 January 2021.

The CbCR obligation will apply to Moroccan companies that:

> Directly or indirectly hold a participation in one or more

enterprises or establishments located outside Morocco

and that are required to prepare consolidated accounts,

in accordance with the applicable accounting standards.

The new Moroccan CbCR will also apply to companies

that would have been required to prepare consolidated

accounts if their participations were listed in Morocco.

> Have an annual consolidated turnover above MAD8.1

billion (excluding VAT) in the financial year preceding the

one during which the declaration is made.

> Are held neither directly nor indirectly by any other

enterprise located in Morocco or outside Morocco.

This obligation is also applicable to any enterprise that fulfills

any of the following conditions:

> It is directly or indirectly held by an enterprise located in

a jurisdiction that is not required to submit a CbCR and

that would have been subject to such obligation if it was

located in Morocco.

> It is directly or indirectly held by an enterprise located

in a jurisdiction with which Morocco has not signed an

exchange of information agreement for tax purposes.

> It has been appointed for this obligation by the group of

multinational companies it belongs to and has informed

the Moroccan tax authorities accordingly. Indeed,

where two or more enterprises subject to Moroccan CIT

belonging to the same multinational group are subject to

the Moroccan CbCR, one of them can be appointed by the

group to submit the declaration on behalf of the others to

the extent it informs the tax authorities beforehand.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions are covered by the local TP provisions.

> Local language documentation requirement

In practice, the tax administration accepts TP documentation

drafted in French.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

This is not applicable.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no TP-specific return to be filed before the tax

authorities.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Within three months following the closing date.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The form should be submitted electronically within 12 months

following the end of the reporting fiscal year. The first filing

obligation is due as from 1 January 2022.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for the submitting transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

According to Article 214-III of the MTC, companies are

required to electronically communicate within 30 days to the

tax authorities the TP documentation to support their price

policy in case of tax audit.

Such documentation should include:

> Information relating to their activities with the group

entities, global pricing policy practiced, as well as the

breakdown of the worldwide profit and activities

> Specific information relating to the transactions

performed by the Moroccan entities with group entities

Such provisions apply to tax audit open as from 1 January

2020. Practical modalities of these provisions are to be

detailed in a decree still to be published.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

International transactions

Yes.

Domestic transactions

Yes, in case of a different taxation regime.

b) Priority and preference of methods

In Article 213-II of the MTC, reference is made to profit shifting

done through an increase or decrease of purchase or sale

prices or by any other means. As such, no particular method

is provided by Moroccan tax law, but it should be relevant

from an economic standpoint. In addition, the General Tax

Administration favors profit-based methods.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are preferred. In the absence of existence

of local comparables, regional comparables can be accepted.

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis is acceptable.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Fresh benchmarking searches should be conducted regularly.

Financial data should be updated annually.

> Simple, weighted or pooled results

Each is acceptable.

> Other specific benchmarking criteria, if any

There are no other specific benchmarking criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

This is not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

A penalty for failing to submit documentation, which is equal

to 0.5% of the relevant controlled transactions for which

documentation has not been submitted, with a minimum

penalty of MAD200,000 per year.

Generally, penalties apply as a result of a TP reassessment

(regardless of compliance with any TP documentation

requirement), as follows:

> In terms of corporate income tax (CIT), the amounts

reassessed are reinstated in the taxable income of the

company and taxed at the applicable CIT rate. In addition,

the following penalties apply:

> 20% for reassessment of the taxable basis, and a 100%

penalty applies in cases where bad faith is demonstrated

> 10% for late payment

> 5% for the first month of late payment and 0.5% for each

month thereafter

> When reassessing TP, the General Tax Administration also

reassesses the corresponding value-added tax (VAT) and

withholding tax (WHT). In addition, penalties regarding

VAT and WHT apply as follows:

> 30% penalty for reassessment of the taxable basis,

and a 100% penalty applies in cases where bad faith is

demonstrated

> 20% penalty for late payment

> 5% penalty for the first month of late payment and 0.5%

penalty for each month thereafter

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes — as detailed above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes — as detailed above.

> Is interest charged on penalties or payable on a refund?

Yes — as detailed above.

b) Penalty relief

In case of a reassessment regarding penalties, a reduction

might be granted to taxpayers that introduce a tax claim

before the General Tax Administration.

Having TP documentation does not grant taxpayers any

penalty relief. However, it could help during a tax audit to

support the company’s pricing policy.

A penalty relief may be granted in the case of a settlement

between the General Tax Administration and the taxpayer in

the frame of a tax audit.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for TP adjustments is the same as

for all other tax assessments — generally, four years following

the year for which the tax is due (it might be longer when the

company has carryforward losses or VAT credit).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of TP issues being raised within a tax audit may

be considered to be high. In fact, in most MNE tax audits,

transfer prices are challenged.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It is the same as in the above section.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

It is the same as in the above section.

> Specific transactions, industries and situations, if any, more

likely to be audited

This is not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Morocco covering

unilateral, bilateral and multilateral agreements for countries

that have a double tax treaty with Morocco.

> Tenure

The APA application should be filed at least six months before

the beginning of the fiscal year of the period covered by the

APA.

The term is four years.

> Rollback provisions

The APA cannot be applied retroactively.

> MAP opportunities

Morocco is a signatory to tax treaties with many countries,

including Italy, the Netherlands and Spain, all of which contain

MAP provisions for the purposes of avoiding the double

taxation.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

No specific thin-capitalization rules are applicable in Morocco.

Nevertheless, concerning shareholder loans, the interest

to be deducted from the taxable basis is limited to interest

calculated on the share capital of the company (funds in excess

of the share capital loaned to the company do not generate

deductible interest). Interest rate should not exceed the one

published annually by the Ministry of Economy and Finance

(set at 2.19% in 2019 and 2.23% for 2020). In addition, the

capital stock should be fully paid in.

Kamal Himmich

kamal.himmich@ma.ey.com

212 6 60 40 08 47

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Tax Authority of Mozambique (Autoridade Tributária de

Moçambique).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer Pricing Regime (Regime de Preços de Transferência),

effective from 1 January 2018.

> Section reference from local regulation

Decree no. 70/2017, dated 6 December.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

None has been specified.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Mozambique is not a member of the OECD.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

This is not applicable.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the documentation needs to be prepared within six

months after year-end.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, all taxpayers established in Mozambique that undertake

related-party transactions with resident or non-resident

entities need to comply with the local transfer pricing rules.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Transfer pricing legislation is only applicable to taxpayers

whose annual net turnover and other income is equal to, or

exceeds, MZN2.5 million in the previous year of assessment.

> Master File

This is not applicable.

> Local File

Mozambique is not a member of the OECD; hence, it has no

Local File requirement as per 2017 OCED Guidance. However,

the requirement for Local File is as provided by the local

transfer pricing regulations.

> CbCR

This is not applicable.

> Economic analysis

There’s no threshold specified.

c) Specific requirements

> Treatment of domestic transactions

Yes, transfer pricing rules also apply to domestic transactions.

> Local language documentation requirement

Portuguese.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is preferred. Aggregation is allowed only if

certain conditions are met.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers will have to include the following with the return

on tax and accounting information (Privileged and Thin

Capitalization Regime) — Form M/20 Appendix I, related to

transactions with related parties:

> 

Identification of the parties

> Transaction value per product or service

> Transfer pricing method selected per transaction

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Tax return is due by the last day of the fifth month subsequent

to the respective year-end.

> Other transfer pricing disclosures and return

On the sixth month after year-end, along with the annual

return on the tax and accounting information.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Sixth months after year-end.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

This is not applicable.

> Time period or deadline for submission on tax authority

request

Generally 5 to 15 days, but nothing has been specified by law.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

CUP, resale price, CPM, profit split or TNMM applicable to both

international and domestic transactions.

> Domestic transactions

CUP, resale price, CPM, profit split or TNMM applicable to both

international and domestic transactions.

b) Priority and preference of methods

The best method rule applies.

8. Benchmarking requirements

> Local vs. regional comparables

This is not applicable.

> Single-year vs. multiyear analysis

Single-year.

> Use of interquartile range

Yes.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no clear requirement in the law; therefore, a financial

update may potentially fulfill.

> Simple, weighted or pooled results

Weighted.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

None has been specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

No specific penalties are provided in the regulations —

general from MZN6,000 to MZN600,000 (nonexistence of

documentation) or MZN13,000 to MZN700,000 (omissions or

inaccuracies).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes — penalties and interest.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Nothing has been specified.

> Is interest charged on penalties or payable on a refund?

It’s charged on penalties and, in theory, payable on refund.

b) Penalty relief

With voluntary disclosure only.

10. Statute of limitations on transfer pricing

assessments

Five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium.

> Specific transactions, industries and situations, if any, more

likely to be audited

Unknown.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

This is not applicable.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Only if available in the specific context of a convention to avoid

double taxation.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules are generally applicable to credits and

loans granted by a related non resident entity to a Mozambican

taxpayer.

Thin-capitalization rules are established by Article 52 of the

CIT code. Accordingly, thin capitalization occurs where there is

a special relationship between a resident entity that is subject

to CIT and a foreign entity to which it is excessively indebted,

i.e., exceeds the debt-to-equity ratio of 2:1. In such a case, the

interest charged on the excess portion is not allowed as a cost

for tax purposes. Special relations between a resident entity

and non resident entity exist when:

> The non resident entity has, directly or indirectly, a

shareholding of at least 25% of the share capital of the

resident entity.

> The non resident entity, without reaching that share level,

has, in fact, significant influence in the management.

> The non resident entity and the resident entity are under

the control of the same entity, namely by virtue of both

participating directly or indirectly.

The above ratio would not apply if the resident entity can

demonstrate that a high debt-to-equity ratio is normal in its

activity and the same level of debt in similar conditions could

have been obtained from non-related parties.

However, the resident entity must provide evidence that the

high debt-to-equity ratio is normal, based on current market

conditions (financial market in Mozambique). The evidence is

required to be provided to the Tax Authority of Mozambique

within 30 days after the end of the respective financial year.

Paulo Mendonca

paulo.mendonca@pt.ey.com

+ 351937912045

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Namibia Revenue Agency (NamRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Section 95A of the Income Tax Act 24 of 1981 (Income

Tax Act) authorizes NamRA to adjust the consideration for

goods or services to an arm’s-length price for the purpose of

calculating the Namibian taxable income of a person.

> Section reference from local regulation

While the Income Tax Act does not contain a definition of a

“connected person,” a definition is provided in Income Tax

Practice Note 2/2006 on the “determination of the taxable

income of certain persons from international transactions:

transfer pricing.”

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

This is not applicable.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Namibia is not a member of the OECD; however, NamRA

accepts the OECD Guidelines and has largely based its

practices on them.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Namibia joined the BEPS Inclusive Framework on 9 August

2019. BEPS Action 13 has, however, not been implemented in

1https://www.itas.mof.na/

local regulations.

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

There is no guidance available yet.

> Effective or expected commencement date

There is no guidance available yet.

> Material differences from OECD report template or format

There is no guidance available yet.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is no guidance available yet.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Namibia does not have guidelines or rules in terms of which

transfer pricing documentation is required to be submitted.

That being said, Income Tax Practice Note 2/2006 states

that it is in the taxpayers’ interests to prepare transfer pricing

documentation to demonstrate that they have developed

sound transfer pricing policies. By such policies, the taxpayer

should demonstrate that the transfer prices are determined

in accordance with the arm’s-length principle — policies and

procedures for determining those prices must be documented.

Please refer to transfer pricing-specific questions included in

the corporate income tax return below.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, Income Tax Practice Note 2/2006 specifically provides

that the contents of the practice note apply to branches, to

transactions between a person’s head office and branch, and

between branches in accordance with the provisions of Article

7 of the OECD Model Tax Convention.

> Does transfer pricing documentation have to be prepared

annually?

No.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

transfer pricing reports if it has related-party transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

Namibia joined the BEPS Inclusive Framework on 9 August

2019. No filing thresholds have been communicated to date.

> Local File

This is not applicable.

> CbCR

No filing thresholds have been communicated to date.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. Domestic transactions are not subject to transfer

pricing legislation.

> Local language documentation requirement

The transfer pricing documentation must be in English.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

No established practice exists in Namibia.

> Any other disclosure/compliance requirement

Disclosure requirement in the corporate income tax return is

as detailed below.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

The Integrated Tax Administration system (ITAS) launched the

corporate income tax return in the electronic filing system in

2019, for the first time, containing certain transfer pricing-

specific disclosures, particularly:

> • The identity of related parties with which the taxpayer

transacts

> • The nature of the transactions

> • The amounts involved

> • The transfer pricing method used to determine the arm’s-

length nature of the transactions

> Related-party disclosures in financial statement/annual

report

Disclosure in accordance with IAS 24, Related Party

Disclosures, of the International Financial Reporting Standards

to draw attention to the possibility that its financial position,

and profit or loss, may have been affected by the existence of

related parties and by transactions and outstanding balances,

including commitments, with such parties.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is due within seven months from the year-

end. The taxpayer may request an additional five months to

file the income tax return.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

There is no guidance available yet.

> CbCR preparation and submission

There is no guidance available yet.

> CbCR notification

There is no guidance available yet.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

Taxpayers must generally deliver the transfer pricing

documentation within 30 days if requested by NamRA.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes

> Domestic transactions

No

b) Priority and preference of methods

NamRA accepts the methods prescribed by the OECD (i.e.,

CUP, resale price, cost plus, TNMM and profit split).

According to Practice Note 2/2006:

“The suitability and reliability of a method will depend on

the facts and circumstances of each case. The most reliable

method will be the one that requires fewer and more reliable

adjustments.”

Method selection should be based on the characteristics of

the transaction under analysis. The selected method should

be the one that best reflects the economic reality of the

transaction, provides the best information and requires the

fewest adjustments.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local jurisdiction

comparables, and global and regional comparables will be

acceptable, subject to adjustments.

> Single-year vs. multiyear analysis for benchmarking

Generally, a three-year testing is applicable.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year; financial updates should be acceptable.

> Simple, weighted or pooled results

Regionally, there is a preference for the weighted average for

arm’s-length analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

This is not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

No specific transfer pricing penalties are imposed by the

Income Tax Act. With this said, taxpayers face the following

possible penalties upon a transfer pricing adjustment being

made:

> Additional tax of up to 100% of the provisional tax amount

underpaid

> In the event of default, omission, incorrect disclosure or

misrepresentation, 200% of the additional tax resulting

from an adjustment

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

There are no specific penalties imposed with respect to

documentation.

> Is interest charged on penalties or payable on refund?

An interest of 20% per year is charged on late payment of tax.

No interest is paid on tax refunds.

b) Penalty relief

When a taxpayer has made conscientious efforts to establish

transfer prices that comply with the arm’s-length principle

and has prepared documentation to provide evidence of such

compliance, NamRA will likely take the view that the taxpayer’s

transfer pricing practices represent a lower tax risk. Such

evidence may provide some mitigation against the 200%

penalty.

No relief is available for interest imposed on the late payment

of tax.

No formal dispute resolution mechanisms exist, but taxpayers

that disagree with additional assessments may object to such

assessments and, if unsuccessful, lodge an appeal in terms of

the Income Tax Act.

10. Statute of limitations on transfer pricing

assessments

Namibia does not have a statute of limitations. NamRA may

indefinitely conduct reviews and audits. However, in terms of

the Income Tax Act, records must be maintained for five years.

It is therefore unlikely that periods older than five years will be

reviewed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not covered in the COVID-19 tracker.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

This is not applicable. NamRA was not conducting transfer

pricing reviews or audits at the time of this publication and did

not have a dedicated transfer pricing team.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Refer to the above section.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the above section.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Namibia did not have an APA program at the time of this

publication.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No information available in the COVID-19 tracker.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The tax law includes measures that counter thin capitalization

by adjusting both the interest rate and the amount of the

loan on the basis of the arm’s-length principles. Although no

guidelines have been published in this area, a debt-to-equity

ratio of up to 3:1 is generally considered acceptable.

Friedel Janse Van Rensburg

Friedel.Janse.Van.Rensburg@na.ey.com

+ 264 81 149 0040

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Dutch Tax and Customs Administration (Belastingdienst).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

TP documentation requirements are codified in Article 8b

(3) of the Corporate Income Tax Act 1969. Pursuant to the

publication of the OECD Action 13 guidance, supplementary

TP documentation requirements have been introduced

in Articles 29b to 29h of the Corporate Income Tax Act

1969. The supplementary documentation requirements are

applicable for fiscal years (FYs) starting on or after 1 January

2016.

Further, the Dutch Secretary of Finance has published

a TP decree outlining how the Dutch Tax and Customs

Administration interprets the arm’s-length principle in certain

cases.

> Section reference from local regulation

The definitions of related party or associated party are codified

in Article 8b (1) and (2) of the Corporate Income Tax Act

1969. Parties can be considered related for the purposes of

Dutch transfer pricing rules through common management,

control and/or ownership of capital.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Due to COVID-19, certain interest, such as tax interest and

collection interest, and penalties have been temporarily

reduced. For example, the collection interest rate has

temporarily been reduced to 0.01% until July 1st, 2022 after

which it will gradually increase back to 4% per January 1st,

2024. Tax interest has been temporary reduced to 4% for

the period October 1, 2020 to December 31, 2021 but has

been increased again to (at minimum) 8% for the period as of

January 1st, 2022. Depending on the COVID-19 situation,

it is recommended to monitor any reductions to interest and

penalties still apply.

Refer to section 9 a) for a general outline of applicable

penalties and interest.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Netherlands is member of the OECD.

The Dutch Tax and Customs Administration generally follows

the OECD Guidelines.

The Dutch TP decree (as published by the Ministry of Finance

in April 2018, no. 2018-6865) provides further guidance

regarding how the arm’s-length principle is interpreted and

applied. According to this decree, the OECD Guidelines leave

room for interpretation or require clarification on several

issues. The goal of the decree is to provide insight into

the position of the Dutch Tax and Customs Administration

regarding these issues.

The TP decree provides specific guidance on transactions

involving intangible fixed assets, including hard-to-value

intangibles, purchase of shares in a non-related party

followed by a business restructuring, intragroup services

and shareholder activities, including low-value-add services,

contract research, cost contribution arrangements (CCAs),

financial transactions, captive insurance companies and

centralized purchasing companies. With respect to business

restructurings, no specific guidance has been issued to date

except for the guidance referred to above. However, the Dutch

Tax and Customs Administration generally follows the OECD

guidance on business restructurings.

Effective 1 January 2022, new TP legislation has been

introduced in the Netherlands that is intended to avoid double

non-taxation resulting from the unilateral application of the

arm’s-length principle in the Netherlands. The Netherlands’

transfer pricing rules require a unilateral upward or downward

correction of the commercially applied transfer prices between

related parties to ensure the recognition of an arm’s-length

profit for Dutch tax purposes. Under the new legislation, if a

transaction between a Dutch corporate taxpayer and a foreign

related party is not at arm’s length, a downward adjustment

of the taxable income of the Dutch taxpayer (either as a payor

or payee) is denied to the extent a corresponding upward

adjustment is not included in the taxable basis of a profit tax

in the jurisdiction of the foreign counterparty. The burden of

proof for such inclusion lies with the Dutch taxpayer.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, the Netherlands has adopted and implemented BEPS

Action 13 for TP documentation in Articles 29b to 29h of the

Corporate Income Tax Act 1969.

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

The BEPS Action 13 TP documentation regulations that were

implemented in the Netherlands cover Master File, Local File as

well as CbCR.

> Effective or expected commencement date

The law is applicable for FYs starting on or after 1 January

2016.

> Material differences from OECD report template or format

There are no material differences between the OECD report

template or format and the Netherlands’ regulations. As

a minor addition, the Dutch CbCR XML schema requires

inclusion of a Tax Identification Number for all constituent

entities included in the report.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is no specific penalty protection regime. However,

a BEPS Action 13 format report with adequate content is

sufficient to achieve penalty protection. No additional items

are needed to achieve protection against penalties for having

noncompliant TP documentation in place if the BEPS Action 13

or Article 8b (3) regulations are being complied with.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, EU Directive 2016/881/EU signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, TP documentation requirements are codified in Article

8b (3) of the Corporate Income Tax Act 1969. Pursuant to the

publication of the OECD Action 13 guidance, supplementary

TP documentation requirements have been introduced in

Articles 29b to 29h of the Corporate Income Tax Act 1969. TP

documentation has to be contemporaneous.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Article 8b (3) of the Corporate Income Tax Act 1969 is

also applicable to Dutch branches of foreign companies.

The supplementary TP documentation requirements are

also applicable if the legal entity of which the permanent

establishment (PE) is a part is preparing separate financial

statements for the PE with a view to financial reporting,

regulatory compliance, compliance with tax obligations or

internal management control.

> Does transfer pricing documentation have to be prepared

annually?

Yes, taxpayers are obligated to prepare documentation that

describes how the transfer prices have been established, and

this must be included in the accounting records. Furthermore,

the documentation needs to include sufficient information

that would enable the Dutch Tax and Customs Administration

to evaluate the arm’s-length nature of the transfer prices

applied between associated enterprises. The parliamentary

explanations to Article 8b do not provide an exhaustive list of

information that should be documented.

TP documentation could include:

> Information about the associated enterprises involved

> Information about the intercompany transactions between

these associated enterprises

> A comparability analysis describing the five comparability

factors as set forth in Chapter I of the OECD Guidelines

> A substantiation of the choice of the TP method applied

> A substantiation of the transfer price charged

> Other documents, such as management accounts, budgets

and minutes of shareholder and board meetings

In the event that the supplementary documentation

requirements are applicable (i.e., the taxpayer is part of an

MNE with a global consolidated turnover of EUR50 million

or more), specific content and format requirements have to

be met. These requirements are specified in the Ministerial

Regulations dated 30 December 2015, No. DB2015/462M,

and are largely in line with the BEPS Action 13 requirements.

With respect to benchmarks, common practice is to update

the financials yearly, whereas a new benchmark is conducted

every three years.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

It is not required, but taxpayers may consider to have stand-

alone or separate reports if activities of the various entities

located in the Netherlands are not interrelated.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

Dutch tax resident entities of a multinational companies

group having a consolidated group turnover equal to or

exceeding EUR50 million in the FY preceding the year for

which the tax return applies will have to prepare master and

Local Files. If a taxpayer does not meet the consolidated group

turnover threshold, then only the Dutch TP documentation

requirements under Article 8b (3) of the Corporate Income

Tax Act 1969 are applicable. Entities that comply with the

documentation requirements set out in Article 29g of the

Corporate Income Tax Act 1969 in terms of content also

comply with the obligation set out in Article 8b (3) in so far as

it concerns cross-border transactions.

> Local File

See Master File section above.

> CbCR

The requirement to prepare a CbCR is in line with BEPS Action

13. It is applicable to Dutch tax resident entities and PEs,

being members of a multinational companies group, with a

consolidated group turnover equal to or exceeding EUR750

million in the FY preceding the FY to which the CbCR applies.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

Domestic transactions are covered by the TP documentation

obligations that are codified in Article 8b (3) of the Corporate

Income Tax Act 1969. The supplementary TP documentation

obligations of Article 29g of the Corporate Income Tax Act

1969 only apply to cross-border transactions.

> Local language documentation requirement

The TP documentation does not need to be prepared in the

local language. In practice, a common language such as

English will be accepted. The Master File, Local File and CbCR

can be submitted in Dutch or in English.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

On the basis of the OECD guidelines, the arm’s-length

remuneration should in principle be determined on

transaction-by-transaction basis. If a transaction-by-

transaction assessment is not possible, for example

because there are a large number of similar transactions,

the transactions can be assessed jointly for the purpose of

determining the arm’s-length nature. In that situation, the

taxpayer is expected to be in a position to substantiate that the

transfer price taken into account in respect of the aggregated

transactions as a whole complies with the arm’s-length

principle.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Dutch corporate income taxpayers are not required to file a

specific TP return in addition to the regular corporate income

tax return.

> Related-party disclosures along with corporate income tax

return

Dutch corporate income taxpayers are required to confirm in

the corporate income tax return (by checking a separate box)

whether they have been involved in cross-border related-party

transactions involving tangible and intangible fixed assets

during the FY. Furthermore, Dutch corporate income taxpayers

are required to confirm in a separate appendix whether they

have conducted financial services on a group level without

having any substance in the Netherlands or without assuming

any risks during the FY. It also needs to be confirmed if any

downward adjustments have been applied.

In addition, entities need to file a report if one of the DAC6 TP

hallmarks are met.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The return should be filed within five months after the end of

the FY, but this can be extended. Taxpayers can request an

extension either themselves (for an additional five months) or

through their advisor (for an additional eleven months).

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

The Master File and Local File should be available in the records

of the taxpayer by the end of the period within which the

corporate income tax return for the FY has to be submitted.

> CbCR preparation and submission

The CbCR should be filed within 12 months after the end of

the FY.

> CbCR notification

By the last day of the FY.

b) Transfer pricing documentation/Local File preparation

deadline

TP documentation has to be contemporaneous. There is no

specific penalty protection regime. However, a BEPS Action 13

format report with adequate content is sufficient to achieve

penalty protection.

Documentation is generally expected to be complete when

the taxpayer enters into a transaction. Dutch tax resident

entities of a multinational companies group that will have to

prepare a Master File and a Local File should have included

these files in their records within the term set for submitting

their respective corporate income tax returns. Dutch tax

resident entities of a multinational companies group that do

not qualify for the documentation rules under Articles 29b to

29h of the Corporate Income Tax Act 1969 are granted four

weeks to prepare the TP documentation if such documentation

is not available upon the request of the tax authority. This

period may be extended up to three months, depending on the

complexity of the intercompany transactions.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

Documentation is generally expected to be complete when

the taxpayer enters into a transaction. Dutch tax resident

entities of a multinational companies group that will have to

prepare a Master File and a Local File should have included

these files in their records within the term set for submitting

their respective corporate income tax returns. As such,

documentation is expected to be available when an inquiry or

audit is undertaken, and no grace period is available.

Dutch tax resident entities of a multinational companies

group that do not qualify for the documentation rules under

Articles 29b to 29h of the Corporate Income Tax Act 1969

are granted four weeks to prepare the TP documentation

if such documentation is not available upon the request of

the tax authority. This period may be extended up to three

months, depending on the complexity of the intercompany

transactions.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

There is no best method rule. Taxpayers are, in principle, free

to choose any OECD TP method, as long as the method chosen

results in arm’s-length pricing for the transaction.

Since the 2010 revision of the OECD Guidelines, which

establishes the “most-appropriate method” rule for selecting

the TP method, there is no longer a hierarchy among the

methods. Nevertheless, the OECD Guidelines do state that

when the CUP method and another TP method can be applied

in an equally reliable manner, the CUP method is preferred.

Taxpayers are not obligated to test all of the methods, though

they must substantiate the method chosen.

8. Benchmarking requirements

> Local vs. regional comparables

Pan-European benchmarks are accepted.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year analysis is preferred, as per common practice.

> Use of interquartile range

Interquartile range is preferred, as per common practice.

Moreover, the Dutch TP decree describes full range can be

applied if all the comparables are highly comparable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

In line with the OECD TP Guidelines, a new benchmarking

search is to be conducted every three years, with a financial

update in the other two years. This is not specifically codified

in Dutch regulations but, instead, follows from the general

principle to substantiate the arm’s-length nature of the

intercompany transaction. Further, the benchmarking practice

is prescribed in the OECD Transfer Pricing Guidelines, which

are generally followed in practice by the Dutch Tax and

Customs Administration as well as taxpayers.

> Simple, weighted or pooled results

The weighted average is preferred, as per common practice.

> Other specific benchmarking criteria, if any

Independence\* (not mandated but best practice).

Industry classification.

Financial data:

> Turnover criterion

> Availability operating profit or loss

> Rejection of company if consolidated data is available

> Active or inactive

\* Companies with at least one shareholder that owns 25%

or more of the company’s shares and companies owning

subsidiaries with a share of 25% or more are excluded.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

> Consequences of failure to submit, late submission or

incorrect disclosures

The Dutch general penalty regime is also applicable for TP.

Non-compliance with the Master File / Local File requirements

cannot result in imposing tax penalties. However, non-

compliance is a criminal offense, and those penalties can

go up to detention for a maximum of six months or a fine

up to currently EUR 9,000. The lack of or incomplete TP

documentation will shift the burden of proof regarding the

arm’s-length nature of the transfer price used by the taxpayer.

Within scope of country by country Reporting the tax

inspector, in case of intention or gross negligence, can

impose an offense penalty for not, not timely, incorrectly or

incompletely fulfilling the obligation to prepare and submit

a country by country Report, or if the required notification

is not filed in time. This penalty amounts to a maximum of

currently EUR 900,000. In accordance with § 28h, paragraph

2, Dutch Tax Penalty Decree, the amount of the penalty will be

determined in consultation with the technical coordinator of

formal law.

In case of deliberate non-compliance criminal prosecution

is also provided for. In that case more severe penalties can

be either (1) imprisonment for a maximum of four years or

(2) a fine of maximum EUR 22,500. In case of a felony (e.g.,

making documentation available in a false or falsified form),

the sanctions can be either (1) imprisonment for maximum six

years or (2) a fine of EUR 90,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

During Parliament’s discussions regarding the introduction of

the arm’s-length principle and TP documentation requirements

(i.e., Article 8b) into the Dutch Corporate Income Tax Act

1969, a question was raised regarding the Dutch policy in

connection with the levy of administrative penalties in the case

of a transfer price adjustment. The Dutch Ministry of Finance

declared that penalties in such instances should be limited to

cases in which it is plausible that the agreed-upon transfer

price is not regarded as arm’s length as a result of a purely

intentional act. Therefore, an administrative penalty will not be

imposed, even in the event of gross negligence or a conditional

intentional act.

In the case of a purely intentional act, as set forth above, the

tax may be increased with a maximum penalty of 100% of the

(additional) tax due, plus interest.

In addition to the above-described penalties, so-called

administrative fines might be applicable (e.g., for not filing

within the deadline).

The lack of TP documentation will shift the burden of proof

regarding the arm’s-length nature of the transfer price used by

the taxpayer.

The same general penalty regime would be applicable on

BEPS Action 13-based requirements (master and Local Files

and CbCR). Non-compliance with the CbCR requirements

in principle will be regarded as a criminal offense for which

a criminal penalty can be imposed. However, under certain

circumstances, as an alternative, an administrative penalty

can be imposed. During Parliament’s discussion related to

this proposal, it was mentioned that criminal charges will be

reserved for the most severe cases.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

The same may apply as described for incomplete

documentation under the previous bullet.

> Is interest charged on penalties or payable on a refund?

Collection interest may be due in case penalties are not

paid in time.. Tax interest is typically due on the extra tax

due resulting from TP adjustments. Tax interest has been

temporary reduced to 4% for the period October 1, 2020

to December 31, 2021 but has been increased again to (at

minimum) 8% for the period as of January 1st, 2022

In case of a refund, in principle, no tax interest is paid. If the

refund by the tax administration is paid too late, collection

interest will be paid. The collection interest rate in such case

is 0.01% until July 1st, 2022 after which it will gradually

increase back to 4% per January 1st, 2024.

b) Penalty relief

TP penalties are unlikely if the taxpayer prepares proper

TP documentation that adequately substantiates the arm’s-

length nature of the taxpayer’s intercompany transactions. If

an adjustment is proposed by the tax authority, the following

dispute resolution options are available:

> Domestic litigation

> MAP, under applicable bilateral tax treaty

> MAP with binding arbitration, under EU Arbitration

Convention and applicable bilateral tax treaties

> 

MAP with binding arbitration under the Tax Arbitration

Act (wet op fiscale arbitrage, implementation in Dutch

legislation of EU Directive on tax dispute resolution

mechanisms in the EU (PbEU 2017, L 265))

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on TP assessments is the same as

the statute of limitations on tax assessments (as covered by

the General Tax Act). The statute of limitations for imposing an

assessment is three years from the end of the taxpayer’s FY.

If the tax inspector has granted an extension for filing the tax

return, the assessment period is extended to the end of the

extension period. Once a final assessment for a financial year

is imposed, additional assessments relating to that financial

year can still be issued for up to five years after the end of the

financial year (12 years in the case of foreign-source income).

Similarly, this period is extended with the extension of the

filing period granted to file the Dutch corporate income tax

return. However, an additional assessment can be imposed

only if either:

> The Dutch tax authority discovers a new fact that it

reasonably should not have known at the moment the final

assessment was issued.

> The taxpayer acted in bad faith.

In addition, an additional assessment is possible only up to

two years after the tax assessment has been issued in the

case of a mistake, which is recognized if no tax assessment

has been issued at all or the tax assessment is too low, while

the taxpayer reasonably should have known that the final tax

assessment was incorrect (if the difference amounts to at least

30% of the total taxes due, the taxpayer is deemed to have

been aware of the mistake).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Potentially, the lead/response time from the Dutch tax

authority team might increase due to COVID-19. However, no

significant impact on tax audit discussions, as the Dutch Tax

and Customs Administration is open to having calls, rather

than in-person meetings (when needed).

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of being audited by the Dutch Tax and Customs

Administration is considered medium. However, during an

audit, the likelihood of TP issues being scrutinized may be

considered to be high; consequently, the controversy risk may

be considered to be high, as well.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It is highly likely that the TP methodology will be assessed

relative to the specific facts and circumstances. TP is a key

issue in any tax audit, and many companies are subject to

separate TP audits. A functional analysis is incorporated

into many of these audits and forms the basis of the TP risk

analysis of taxpayers.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

In the event that the compensation falls outside the annual

range, it is verified whether the average compensation

would fall within a multiple-year range. In the event that the

compensation would fall outside the annual range and the

multiple-year range, an adjustment will be made.

> Specific transactions, industries and situations, if any, more

likely to be audited

The Dutch Tax and Customs Administration, among others,

has shown interest in performing head-office audits (which

include intragroup services and other activities performed

by the head office) and in analyzing the economic substance

of transactions, in terms of alignment of functions and risks.

Next to head-office activities, intangible transactions are often

evaluated, as well as business reorganizations, centralized

purchasing companies, captive insurance companies

and financial services transactions (including loans and

guarantees). During these TP audits, the tax administration

appears to have a particular interest in potential internal CUPs

and the economic substance of a transaction.

The tax administration has also focused, as a natural result

of the risk analysis, on transactions with entities in countries

with low effective tax rates and on taxpayers with a routine TP

characterization reporting recurring losses.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APAs are available.

The APA process works very efficiently in the Netherlands.

Specific features enable an efficient and transparent

process, including the option to hold pre-filing meetings, the

opportunity to develop a case management plan with the APA

team to agree upon timing and key steps, and even specific

support regarding economic analysis that is available to small

taxpayers.

There are specific (unilateral) APA options for Dutch financial

services entities. Financial services entities consist of both

financing (mere receipt and payment of intercompany interest)

and licensing (mere receipt and payment of intercompany

royalties) companies.

The Dutch Tax and Customs Authorities process many

unilateral and bi- and multilateral APAs annually. The Dutch

competent authority has bi-multilateral APA experience across

all continents.

In 19 June 2019, a decree was published regarding certainty

in advance for activities with an international character. This

decree describes the new policy applicable per 1 July 2019.

Main changes relate to:

I. Transparency:

> A short anonymous summary of each tax ruling with an

international character granted will be published.

> A short anonymous summary will be published for each

case discussed that, in the end, did not lead to a tax ruling.

II. Process of granting tax rulings:

> A new body, the International Fiscal Security Board

(College Internationale Fiscale Zekerheid), is introduced to

verify operational consistency and quality. Every tax ruling

with an international character will have to be approved by

this body.

III. Content of the tax rulings:

> In order to obtain certainty in advance, the Dutch taxpayer

must have sufficient relevant operational activities taking

place in the Netherlands (at group level), which are

performed for its own risk and account. The activities

must match the function of the Dutch taxpayer within the

group.

> Taxpayers will not be able to obtain a tax ruling for

activities with an international character in case:

> The sole or decisive reason for the structure or

transactions is to avoid Dutch or foreign taxes (tax

savings).

> The transaction involves a non-cooperative or low-tax

jurisdiction.

> Tenure

In general, the maximum term for an APA is five years. If

facts and circumstances justify an exception (e.g., long-term

contracts), the maximum term may be 10 years; in such a

case, an evaluation will be made when 50% of the term has

elapsed.

> Rollback provisions

Rollback features are available for unilateral, bilateral and

multilateral APAs.

> MAP opportunities

Specific guidance on the Dutch interpretation and approach

to MAPs has been outlined in a MAP Decree (decree of 11

June 2020, nr. 2020-0000101607). The Netherlands has

concluded bilateral tax treaties with many countries to protect

private individuals and enterprises from double taxation. If

double taxation nonetheless occurs, countries can resolve the

issue by means of an MAP.

If the MAP procedure is initiated under the EU Arbitration

Convention, this may lead to mandatory binding arbitration.

Furthermore, the Netherlands has made the commitment

under BEPS Action 14 that it will adopt and implement

mandatory binding arbitration.

The EU Directive on tax dispute resolution mechanisms in the

EU (PbEU 2017, L 265) is implemented in the Dutch legislation

(wet fiscale arbitrage) effective from 1 July 2019.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No specific changes to existing APAs, and existing APAs will

in principle be retained. In cases where it can be explicitly

demonstrated that the underlying fact pattern no longer

applies, the APA team should be contacted, and with some

caution, the extent to which customization is possible will be

examined on a case-by-case basis. The tax authorities indicate

that rulings can be discussed on individual cases within the

current frameworks. Furthermore, it is possible to conclude

new APAs taking into account the impact of COVID-19 (e.g., on

margins, permanent establishments).

The lead/response time from the DTA/APA/MAP teams might

increase due to COVID-19. However, there has been no

significant impact on APAs or tax audit discussions, as the DTA

is open to having calls, rather than in-person meeting (when

needed).

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The Dutch TP decree (as published by the Ministry of Finance

in April 2018, no. 2018-6865) provides further guidance

regarding how the arm’s-length principle is interpreted and

applied. According to this decree, the OECD Guidelines leave

room for interpretation or require clarification on several

issues. The goal of the decree is to provide insight into

the position of the Dutch Tax and Customs Administration

regarding these issues.

Section 9 (guarantees in loan agreements) and Section

11 (loan transactions) focus more specifically on financial

transactions. No further guidance has been published (yet) on

the new Chapter X of the OECD Guidelines.

Jeroen Geevers

jeroen.geevers@nl.ey.com

+ 31 6 29084485

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Inland Revenue Department (Te Tari Taake — IRD).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Relevant guidance includes:

> Sections YD 5, GB 2 and GC 6 to GC 19 of the Income Tax

Act 2007 (ITA)

> The Tax Administration Act 1994 (TAA)

> New Zealand’s double tax agreements

New Zealand introduced new legislation addressing OECD’s

BEPS initiative, which is effective for the income years

commencing on or after 1 July 2018.

> Section reference from local regulation

Subpart YB of the ITA.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

New Zealand is a member of the OECD.

New Zealand’s transfer pricing rules are to be applied

consistently with the OECD’s Transfer Pricing Guidelines for

multinational enterprises and tax administrations (July 2017),

including the guidance on documentation contained in

Chapter V.

However, the local transfer pricing legislation includes novel

sections assessing the deductibility of expenses connected to

inbound loans from associated parties, which can lead to non-

arm’s-length outcomes. These specific rules are unique to New

Zealand.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

IRD endorses OECD’s recommendations and believes that

the Master File and Local File approach provides a platform

through which taxpayers, subject to the local transfer pricing

regime, can meaningfully describe their compliance with the

arm’s-length standard. IRD expects New Zealand taxpayers to

maintain contemporaneous transfer pricing documentation in

two forms:

> A Master File, providing an overview of the multinational’s

global business operations and transfer pricing policies

> A Local File, providing detailed information regarding the

operations of the New Zealand taxpayers and main cross-

border associated-party transactions, as well as transfer

pricing analysis supporting the arm’s-length nature of these

transactions from a New Zealand perspective

Only New Zealand-based groups with revenues higher than

EUR750 million are required to lodge CbCR.

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

These are expected to comply with OECD

recommendations.

> Effective or expected commencement date

It is expected for income years commencing on or after 1

January 2016.

> Material differences from OECD report template or format

There is no material difference.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No explicit protection is given simply because a master

file or Local File prepared meets the requirements of

BEPS Action 13. However, a BEPS Action 13 Local File

prepared with specific and appropriate application to the

New Zealand business is more likely to afford penalty

protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes, it is, as of 12 May 2016.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it is, as of 12 May 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the IRD provides transfer pricing documentation

guidelines. Transfer pricing documentation is expected to be

prepared annually to support the annual income tax position.

While there is no statutory obligation to maintain

documentation, New Zealand’s tax system operates on a

self-assessment basis, where the taxpayer is expected to

keep sufficient contemporaneous records to support its tax

position. Accurate and contemporaneous transfer pricing

documentation supporting that the taxpayer’s transfer prices

are consistent with the arm’s-length principle, in light of

the relevant facts and circumstances, is a key element for

addressing this requirement.

The IRD provides guidelines detailing the expectations while

producing local transfer pricing documentation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

In practice, the same transfer pricing rules apply to a local

branch of a foreign company in conjunction with the branch

attribution rules.

> Does transfer pricing documentation have to be prepared

annually?

Yes, transfer pricing documentation should be prepared

annually, as local taxpayers should be able to support their

tax positions, which are lodged annually in their income tax

returns.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

The transfer pricing reports should cover all the cross-border

transactions that the MNE entities enter into. There are

no hard-and-fast rules on having separate transfer pricing

documents. Normally, MNEs prepare individual transfer pricing

reports for each entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality for transfer pricing documentation.

However, a cost-risk assessment when producing transfer

pricing documentation is endorsed by the IRD and, hence, the

level of requirements will be directly linked to the nature, value

and complexity of the covered transactions.

> Master File

There is no materiality limit; the Master File is expected to be

made available to the IRD on request.

> Local File

There is no materiality limit; the Local File is expected to be

made available to the IRD on request.

> CbCR

Only New Zealand-based groups with revenues higher than

EUR750 million (approximately NZD1.3 billion) are required to

lodge CbCR in New Zealand.

> Economic analysis

There is no materiality limit in connection to economic

analysis. Having said that, a cost-risk perspective should also

be considered.

c) Specific requirements

> Treatment of domestic transactions

There is no local documentation obligation for domestic

transactions.

> Local language documentation requirement

It is expected that local transfer pricing documentation is

prepared in local language (English). The IRD could require

that documents in other languages are translated.

> Safe harbor availability including financial transactions if

applicable

According to IRD guidance, New Zealand taxpayers can apply

administrative practices in connection to:

> Low value services (de minimis — total value below NZD1

million); note that the de minimis of NZD1 million no

longer applies for income tax years beginning on/after 1

April 2021

> Small-value loans (i.e., cross-border associated-party loans

by groups of companies for up to NZD10 million principal

in total)

> Is aggregation or individual testing of transactions preferred

for an entity

No preference; each case should be considered on its own

merits for aggregated vs. individual testing. The IRD will

typically perform a corroborative whole-of-entity test where

transactions have been individually tested.

> Any other disclosure/compliance requirement

Taxpayers are required to complete a BEPS disclosure form

when filing tax returns. There are three distinct parts to the

BEPS disclosure:

> Hybrid and branch mismatches

> Thin-capitalization group information

> Restricted transfer pricing rules

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no separate transfer pricing return required to be

filed in New Zealand (notwithstanding the disclosures outlined

above). However, the IRD regularly requires that multinational

companies and branches complete detailed transfer pricing

questionnaires as part of their routine transfer pricing risk

assessment activities (targeted questionnaires are typically

sent quarterly).

> Related-party disclosures along with corporate income tax

return

A company’s income tax return requires disclosure of:

> Whether the taxpayer made payments to non-residents

(such as dividends, interest, management fees, “know-

how” payments, royalties or contract payments)

> Whether the taxpayer holds an interest in a CFC

More detailed disclosures of various financial information and

other data are required for interests held in CFCs.

If a taxpayer is granted a tax return filing extension (which

is being granted on request for COVID-19-related delays),

this should also extend the due date for the BEPS disclosure.

Taxpayers impacted by the “restricted transfer pricing rules”

(New Zealand-specific measures targeting inbound debt) or

hybrid mismatch rules are required to file a “BEPS disclosure.”

> Related-party disclosures in financial statement/annual

report

It is in accordance with the financial reporting disclosure

standards.

> CbCR notification included in the statutory tax return

This is not applicable. No CbCR notification is required in New

Zealand.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

For balance dates ending between 1 October to 31 March, the

filing deadline is 7 July. For balance dates ending between 1

April to 30 September, the deadline is the seventh day of the

fourth month following the balance date. Where the company

is on a tax agency list, an extension to the following 31 March

is granted.

> Other transfer pricing disclosures and return

The lodging of transfer pricing documentation and specific

transfer pricing forms is not required in New Zealand.

> Master File

The Master File is to be submitted upon request.

> CbCR preparation and submission

A CbCR, if required, must be filed within 12 months after

the relevant balance date. This applies to New Zealand

headquartered groups only.

> CbCR notification

There are no notification requirements.

b) Transfer pricing documentation/Local File preparation

deadline

Although there is no explicit legislative requirement for

a taxpayer to document its transfer pricing policies and

practices, transfer pricing documentation supporting the

tax position should be prepared before the date the relevant

income tax return is filed. Local taxpayers that prepare and

maintain accurate and contemporaneous transfer pricing

documentation are less likely to be exposed to penalties.

The IRD will generally request a copy of a taxpayer’s transfer

pricing documentation as part of an income tax audit or

transfer pricing risk assessment.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

This is not applicable. The Local File is only submitted at the

request of the IRD.

> Time period or deadline for submission on tax authority

request

While each case is different, based on our experience, a

taxpayer generally is given 20 working days to submit the

documentation upon request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

This is not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

It is applicable only for international transactions.

b) Priority and preference of methods

New Zealand legislation presents five available transfer pricing

methods to determine an arm’s-length consideration for those

cross-border associated-party transactions undertaken by

a New Zealand taxpayer. The IRD accepts the most reliable

method (or combination of methods) chosen from among

these methods: comparable uncontrolled price, resale price,

cost plus, profit split and transactional net margin method.

8. Benchmarking requirements

> Local vs. regional comparables

Local benchmarking is preferred (Australian comparables

are generally the best option if New Zealand benchmarks are

not available); however, reliable benchmarks based on other

jurisdictions are also acceptable.

> Single-year vs. multiyear analysis for benchmarking

Multiyear testing is acceptable and generally preferred.

> Use of interquartile range

Rather than requiring the use of an arm’s-length range and

statistical measure, the IRD focuses on the reliability of the

benchmarks. When a range comprises results of relatively

equal and highly reliable benchmarks, then any point in the

range can be regarded as arm’s length.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh search every year;

however, the contemporaneousness of the financial

information and comparability of the benchmarks should be

assessed periodically.

> Simple, weighted or pooled results

Generally, weighted average results are used for constructing

an arm’s length range. Pooled results are typically not

accepted by the IRD.

> Other specific benchmarking criteria, if any

Benchmarks should be independent. That said, there is no

guidance related to specific independence criteria when

completing benchmarking analysis. Comparability is a key

aspect when completing benchmarking analysis, and the IRD

endorses OECD guidance related to this.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Incomplete or inadequate documentation could result in

shortfall penalties being applied if an adjustment is sustained.

> Consequences of failure to submit, late submission or

incorrect disclosures

Even though there are no specific submission requirements,

any failure to provide information or documentation when

requested can constitute an offense.

If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Under Sections 141A-141K of the TAA, the following penalties

could potentially be imposed depending on the culpability of

the taxpayer:

> 20% penalty for not taking reasonable care

> 20% penalty for an unacceptable tax position

> 40% penalty for gross carelessness

> 100% penalty for an inappropriate tax position

> 150% penalty for evasion or a similar act

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, penalties are more likely to be assessed if documentation

has not been prepared for the tax year under assessment.

> Is interest charged on penalties or payable on a refund?

Yes, use of money interest would be applicable for both

penalties and refunds based on the IRD’s interest rates for the

applicable tax period.

b) Penalty relief

Tax disputes are usually initiated by the IRD following a lengthy

period of review and audit activity by the IRD. In some cases,

a taxpayer can initiate a dispute. The local tax dispute process

is formal and complex, involving seven distinct steps. If, during

this process, the IRD and taxpayers cannot resolve the dispute,

they will likely resort to litigation.

Shortfall penalties may be reduced upon voluntary disclosure

to the Commissioner of the details of the shortfall, as follows:

> If disclosure occurs before the notification of an

investigation, the penalty may be reduced by 100% (only

for lack of reasonable care or unacceptable tax position

categories) or 75% for other shortfall penalties.

> If disclosure occurs after the notification of an

investigation, but before the investigation commences, the

penalty may be reduced by 40%.

Shortfall penalties may be reduced by a further 50% if a

taxpayer has good compliance records.

10. Statute of limitations on transfer pricing

assessments

The IRD generally has four years from the end of the tax year

in which a taxpayer files an income tax return to investigate

and amend the tax position taken by the taxpayer. However,

the four-year time bar is extended to seven years for the

purposes of the transfer pricing rules. This extension applies

only in cases where an audit or investigation has commenced

by the IRD within the standard four-year period.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

The IRD has informally stated that it will continue to apply

the arm’s-length principle to COVID-19-related impacts on

multinational taxpayers in New Zealand. There will be a strong

focus on risk allocation, particularly for purported limited risk

structures.

Neither the IRD nor the government has made any official

statement regarding the impact of COVID-19 on current tax

audits. Meetings typically take place via video conferencing

rather than in person in the current COVID-19 environment.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium to high: Tax reviews and audits are undertaken at

the IRD’s discretion. The IRD selects audit targets based on

certain criteria, such as low profitability or losses, industry

performance, transaction types (e.g., large, intercompany

finance arrangements) and media reports. However, most

large companies can typically expect to be audited every five

years. The risk of transfer pricing scrutiny for multinationals

during a tax audit is characterized as high.

In addition to this, New Zealand taxpayers with annual

revenues exceeding NZD30 million are subject to an annual

basic compliance package review under which the taxpayer

will be required to provide various tax-related information to

the IRD, and this information usually covers transfer pricing

matters. A review can lead to an audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of the transfer pricing methodology being

challenged depends on the complexity of the cross-border

associated-party transaction. Transactions involving provision

of intangibles, financing and intragroup services tend to

receive higher scrutiny during a transfer pricing risk review.

New Zealand subsidiaries that provide sales and marketing

services to an offshore principal or carry on various marketing-

related activities can expect a more detailed transfer pricing

review. Once a review has been completed and an audit has

commenced, there is usually a high risk that the methodology

will be challenged. Financing transactions are also subject to a

high level of challenge.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If a methodology has been challenged, there is a high risk

that an adjustment will be proposed and a dispute process

will commence. Disputes have typically been resolved through

settlement before litigation.

> Specific transactions, industries and situations, if any, more

likely to be audited

The IRD states that it will maintain a special focus on:

> Unexplained tax losses returned by foreign-owned groups

> Loans in excess of NZD10 million principal and guarantee

fees

> Cash-pooling arrangements

> Payment of unsustainable levels of royalties and service

charges

> Material associated-party transactions with no- or low-

tax jurisdictions, including the use of offshore hubs for

marketing, logistics and procurement services

> Appropriate booking of income arising from e-commerce

transactions

> Supply chain restructures involving the shifting of any

major functions, assets or risks away from New Zealand

> Any unusual arrangements or outcomes that may be

identified in controlled foreign company disclosures

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Section 91E of the TAA allows a unilateral APA to be issued

in the form of a binding ruling. Bilateral or multilateral APAs

may be entered into, pursuant to New Zealand’s double tax

agreements under the MAP provisions. The IRD has not

established any formal process for APAs, as each case is

considered to be different, depending on a taxpayer’s specific

facts and circumstances. The IRD encourages pre-application

conferences to make the APA application process less time-

consuming.

> Tenure

APAs are typically agreed upon for five-year periods.

> Rollback provisions

There are no rollback provisions in New Zealand for unilateral

APAs, although it is possible for bilateral APAs. A unilateral

APA can apply to a tax year in which a tax return has not yet

been assessed.

> MAP opportunities

Yes, the taxpayers in New Zealand are allowed to request MAP

assistance and at the same time seek to resolve the same

dispute via domestically available judicial and administrative

remedies. This is applicable only when the dispute involves a

treaty partner.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Taxpayers are typically required to notify the IRD at the time

they expect to breach the terms of an APA; this would apply

to COVID-19-related breaches. The IRD is open to proactive

engagement with impacted taxpayers that have APAs and

those that don’t. Immaterial breaches of APAs can be disclosed

in the APA annual compliance report.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

New Zealand’s thin-capitalization rules limit the amount of

deductible debt a company can have, rather than directly

limiting the amount of interest. The general thin-capitalization

rules provide that an entity subject to the thin-capitalization

regime has income equal to, broadly speaking, that portion

of its interest deductions equal to the extent to which its New

Zealand debt or assets percentage exceeds the greater of

60% and 110% of its worldwide debt or assets percentage

for inbound investment (the respective percentages are 75%

and 110% for outbound investment). New Zealand also has

“restricted transfer pricing rules,” which apply to intercompany

financing transactions that meet certain conditions, and

acts to restrict interest deductions to taxpayers where the

restricted transfer pricing rules apply. These rules do not align

with the current OECD Transfer Pricing Guidelines.

Kim Atwill

kim.atwill@nz.ey.com

+ 64 21 221 9717

Contact

1. Tax authority and relevant transfer pricing

(TP) regulations or rulings

a) Name of tax authority

Directorate General of Revenue (Dirección General de Ingresos

— DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

From Article 93 to Article 106 of Law No. 822, effective 30

June 2017.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Not specified.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

As it is not a member of the OECD, Nicaragua neither refers to

nor follows OECD Guidelines in practice.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

1http://www.dgi.gob.ni/

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

TP documentation needs to be prepared annually by updating

all the information that allows a correct TP analysis, including

the use of the most recently available financial information for

the comparables and the tested party.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each taxpayer must comply with TP obligations on

documentation.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions under regular tax regimes. However,

documentation obligation exists for related-party transactions

between a tax resident under a regular tax regime and an

entity operating under a free zone tax regime in Nicaragua.

> Local language documentation requirement

TP documentation needs to be submitted in the local language

as per the Political Constitution and Civil Code of Nicaragua. If

the documentation is prepared in a different language, it must

be translated to Spanish in public deed.

> Safe harbor availability including financial transactions if

applicable

There is no specific safe harbor available in Nicaragua.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred, if possible.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

To date, there are no TP-specific returns.

> Related-party disclosures along with corporate income tax

return

To date, there are no related appendices or additional forms to

disclose related-party transactions.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The tax return should be filed on or before 28 February for

fiscal years that end in December; for special periods, two

months after the fiscal year-ends.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The TP documentation report must be readily available by the

time the tax return is filed.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

It should be submitted only upon request by the tax

authorities.

> Time period or deadline for submission on tax authority

request

The documentation should be filed within 10 days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

Not specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes, for transactions conducted by an entity resident in

Honduras with an entity under a free trade zone regime.

b) Priority and preference of methods

The provisions require the application of the most appropriate

TP method. The specified methods are the CUP, resale price,

cost plus, profit split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

Considering the lack of financial information available on local

comparables, international comparables are accepted by the

tax authorities.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year testing is applicable for the comparables only; in

practice, the number of years is three.

> Use of interquartile range

There is no specific guidance on the use of interquartile range.

However, the use of the spreadsheet interquartile range is

common practice.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search vs. a financial update needs

to be conducted every year. The TP report and return must

be prepared annually, updating all the information that

enables a correct TP analysis. Additionally, in practice, local

tax authorities expect to see the most recent comparable

information and to use the most recent available financial

information for the comparables and the tested party.

> Simple, weighted or pooled results

Weighted average is common practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

Article 124 of the Nicaraguan Tax Code (NTC) states that

failure to comply with the obligations described in the NTC

could result in penalties that range from 70 to 90 fine units,

closure of business and loss of tax benefits, among others.

Article 8 of the NTC defines each fine unit as equivalent to

NIO25.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, penalties include 25% of the omitted taxable income.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not specified.

> Is interest charged on penalties or payable on a refund?

Interest charges are applied to omitted taxable income.

b) Penalty relief

There is currently no penalty relief regime in place.

Administrative procedures are available if an adjustment is

proposed by the tax authority.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations is currently four years. In the case of

omitted information, the tax authority could extend it for two

additional years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The DGI has recently initiated tax audits regarding TP because

the regulations came into force as of tax year 2017. Thus, the

frequency of TP-related audits may be considered to be low.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the TP methodology will be challenged is

not yet known.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Nicaragua; however, the

corresponding regulations have not yet been enacted.

> Tenure

The term of the program is four years.

> Rollback provisions

There is none specified.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no thin-capitalization provisions in place in

Nicaragua.

Paul De Haan

Paul.DeHaan@cr.ey.com

+ 506-2208-9955

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Federal Inland Revenue Service (FIRS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and effective

date of applicability

The Income Tax (Transfer Pricing) Regulations, 2018 (new

Regulations), are effective from 12 March 2018 and will

apply to financial years beginning after that date. The new

Regulations repealed the Income Tax (Transfer Pricing)

Regulations, 2012, which took effect on 2 August 2012.

> Section reference from local regulation

Regulation 12 of the Nigerian TP Regulations contains the

definition of “connected persons,” which is used to determine

whether a Nigerian company or permanent establishment can

be within the scope of the TP Regulations.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Nigeria is not a member of the OECD; however, the Nigerian TP

regulations are to be applied in a manner consistent with the

OECD Guidelines and the arm’s-length principle in Article 9 of

the UN and OECD model tax conventions. Although the OECD

Guidelines do not have a force of law, they are persuasive.

Based on the Nigerian TP Regulations, the provisions of the

relevant domestic laws prevail if there are any inconsistencies

with the OECD Guidelines or UN TP manual.

1https://www.firs.gov.ng/sites/Authoring/contentLibrary/a7b75064-

cd91-4135-ae14 b3b4b8662409Income%20Tax%20(Transfer%20

Pricing)%20Regulations%202018.pdf

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes. The new regulations incorporate the Master File and

Local File as recommended under BEPS Action 13 on TP

documentation. Also, there is CbCR Regulations enacted in

2018.

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

Yes, please see response above.

> Effective or expected commencement date

The TP Regulations and CbCR Regulations are effective as

of 12 March 2018 and 1 January 2018 respectively.

> Material differences from OECD report template or format

The TP documentation requirements follow the OECD TP

Guidelines. However, there are some notable deviations as

reflected below:

1. Royalties/Use of intangibles

The tax deductibility of royalties/fees for rights to use

intangibles is limited to 5% of the Nigerian company's Earnings

Before Interest Tax, Depreciation and Amortisation (EBITDA),

as per the Nigerian TP Regulations, and not necessarily in line

with the arm's length principle as recommended by the OECD

Guidelines.

2. Commodity Transactions

For commodity transactions, the Nigerian TP Regulations does

not solely rely on the quoted price as recommended by the

OECD TP Guidelines. In the case of export, the TP Regulations

provides that where commodities are exported from Nigeria to

a related party for resale to a third party, the transfer price will

be deemed to be the price agreed with the third party if the

price is higher than the quoted price.

3. Application of UN Documents

The local TP Regulations reference the application of

UN documents (in addition to OECD documents) in the

interpretation of arm's length principle. Accordingly, in certain

circumstances where the UN approach preserves more profit

for developing nations, the tax authorities show preference

for the application of UN Model. As such, the approach

in preparing the Local File should not only consider the

recommendation of the OECD but also UN particularly where

there are differences.

4. Local TP practices

Based on TP audit experience in Nigeria, the Local File is

tailored to manage the TP risks of transactions documented

in the report rather than just reflecting information as

recommended in the OECD Guidelines in order to avoid huge

additional assessments and applicable penalties.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A TP report that is compliant with the BEPS Action13 format

and includes the points reflected in the paragraph above

should meet the requirement of the FIRS.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, Nigeria became a signatory on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, Nigeria has a TP documentation guideline, and taxpayers

need to prepare the TP documentation contemporaneously.

The TP documentation is required to be put in place prior to

the due date for filing the income tax return for the year in

which the documented transactions occurred.

Nonetheless, the TP documentation is only submitted upon

request by the FIRS. In addition, taxpayers with total amount

of transactions below NGN300 million are exempted from

maintaining contemporaneous documentation, provided that,

when demanded by the FIRS, the relevant documentation shall

be prepared and submitted to the FIRS not later than 90 days

from the date of receipt of the notice.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a subsidiary and local branch or permanent establishment

of a foreign company are required to comply with the local TP

rules. Regulation 3(2) of the TP Regulations addresses this.

> Does transfer pricing documentation have to be prepared

annually?

TP documentation must be prepared annually. The

documentation should be prepared considering the volume

and complexity of the transactions.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

The TP Regulations do not expressly state that an MNE

with multiple entities in Nigeria should prepare stand-alone

reports for each entity in cases such as this. In practice, some

taxpayers with multiple entities operating in Nigeria prepare a

consolidated TP Local File for all entities and there are no issues

raised by the FIRS on this yet as long as the consolidated TP

Local File addresses all relevant requirements. However, the

FIRS may challenge this practice in the future.

b) Materiality limit or thresholds

> Transfer pricing documentation

Connected persons with total intercompany transactions of

less than NGN300 million may choose not to maintain the

contemporaneous TP documentation. However, they must

prepare and submit the TP documentation within 90 days from

the date of receipt of a notice from the FIRS.

> Master File

A Master File is currently required. The TP Regulations

introduced the obligation for connected persons to prepare

a Master File as part of their annual TP documentation. The

TP Regulations also include a detailed list of information and

analyses to be included in TP documentation. This is mostly

consistent with the guidance provided in the OECD’s 2017

Transfer Pricing Guidelines.

> Local File

A local File is currently required. The TP Regulations

introduced the obligation for connected persons to prepare

a Local File as part of their annual TP documentation. The TP

Regulations also include a detailed list of information and

analyses to be included in TP documentation. This is mostly

consistent with the guidance provided in the OECD’s 2017

Transfer Pricing Guidelines.

> CbCR

The federal government of Nigeria released CbCR regulations

with an effective date of 1 January 2018, which set out

several key obligations for multinational enterprises (MNEs).

MNEs headquartered in Nigeria with consolidated revenues of

NGN160 billion or more in the previous reporting period have

an obligation to:2

> File a notification of their filing obligation with the FIRS

no later than the last day of the MNE group’s accounting

year-end

> Prepare and file the annual CbCR based on the prescribed

template, within 12 months after the last date of the

group’s accounting year-end

Subsidiaries of an MNE group resident in Nigeria for tax

purposes and permanent establishments with financial

statements will be required to notify the FIRS of the identity

and tax residence of the entity within the group that has the

responsibility to file the CbCR on behalf of the group.

Where there is more than one constituent entity (i.e., a

subsidiary or permanent establishment) of the same MNE

group that is resident for tax purposes in Nigeria, the MNE

group may designate one of the constituent entities to file the

CbCR 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.

> Economic analysis

There is no materiality threshold.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

The Nigerian TP Regulations cover both domestic and cross-

border transactions.

> Local language documentation requirement

Regulation 24 provides that English is the official language for

submission of the TP documentation.

> Safe harbor availability including financial transactions if

applicable

The FIRS may publish specific guidelines on safe harbors from

2https://www.ey.com/Publication/vwLUAssets/Nige-

ria\_releases\_country-by-country\_Reporting\_regulations/$-

FILE/2018G\_010021-18Gbl\_TP\_Nigeria%20releases%20CbCR%20

regulations.pdf

time to time, and only prices of controlled transactions in line

with such published guidelines will qualify as a safe harbor.

> Is aggregation or individual testing of transactions preferred

for an entity

There are no specific provisions in this regard. However,

preference depends on facts and circumstances surrounding

the transactions.

> Any other disclosure/compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers are required to complete the TP declaration and

TP disclosure form, which are to be submitted as part of an

annual TP return, due at the same time the income tax return

is filed. The TP returns will be deemed incomplete without the

income tax return. The TP specific returns should consist of

the TP disclosure form and the TP declaration form (for the

first annual filing only, unless there are material changes to

the information disclosed on the first form submitted).

> Related-party disclosures along with corporate income tax

return

Taxpayers are required to submit their related-party

disclosures alongside their corporate income tax return

prepared in a manner consistent with the audited financial

statements for the related financial period.

> Related-party disclosures in financial statement/annual

report

Taxpayers are required to complete and submit their related-

party disclosures using annual financial statements prepared

in accordance with the IFRS IAS 24, Related Party Disclosures,

which requires the disclosure of all related-party transactions

within the related financial period.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

Apart from the TP Disclosure form and TP Declaration form,

the other document required is the corporate income tax

return (which should consist of a copy of the audited financial

statements, a copy of the income tax computation, a copy of

the E-self-assessment form and evidence of payment of income

tax liability (Companies Income Tax and Tertiary Education Tax

liabilities) for the related financial period.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The return should be filed no later than six months after

the company’s year-end (e.g., 30 June for companies with

a year-end of 31 December) or 18 months after the date of

incorporation, whichever is earlier.

> Other transfer pricing disclosures and return

Same as above.

> Master File

All taxpayers with related-party transactions are now required

to maintain a Master File and submit it within 21 days upon

request. However, taxpayers with total amount of transactions

below NGN300 million are exempted from contemporaneous

documentation requirements and are given 90 days to provide

the Master File upon request.

> CbCR preparation and submission

The CbCR is required to be filed no later than 12 months after

the last day of the MNE group’s accounting year-end.

> CbCR notification

The notification should be made to the FIRS no later than the

last day of the MNE’s accounting year-end.

b) Transfer pricing documentation/Local File preparation

deadline

The TP documentation is required to be prepared

contemporaneously. It is required to be in place prior to the

due date of filing the TP returns.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

The TP documentation should be in place prior to the due date

of filing the TP returns for the year in which the documented

transactions occurred.

> Time period or deadline for submission upon tax authority

request

The TP documentation is required to be submitted to the

FIRS within 21 days upon request. Companies with total

intercompany transactions of less than NGN300 million must

prepare and submit the TP documentation within 90 days from

the date of receipt of a notice of request from FIRS.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

The Nigerian TP Regulations do not differentiate between

domestic and international transactions in their treatment of

verifying compliance with the arm’s-length principle. Thus,

the five recommended TP methods by the OECD Transfer

Pricing Guidelines apply to related-party transactions

conducted by a Nigerian company. Also, the regulations

provide for the application of any other method, provided that

the taxpayer can prove that none of the recommended TP

methods are appropriate for testing the arm’s-length nature

of the transaction and that the chosen method gives results

consistent with what is obtained for comparable uncontrolled

transactions.

> Domestic transactions

Refer to the paragraph above.

b) Priority and preference of methods

The Nigerian TP Regulations do not give preference to a

method above others. However, the traditional methods

are preferred to the transactional profit methods, as

recommended by the OECD Transfer Pricing Guidelines, if

there is reliable information to apply the methods.

8. Benchmarking requirements

> Local vs. regional comparables

The FIRS prefers comparables from comparable economies

to Nigeria, i.e., developing countries of Africa, the Middle

East, Asia (excluding Japan, Hong Kong, China Mainland and

Singapore) and Eastern Europe, as Nigeria is faced with a lack

of data.

> Single-year vs. multiyear analysis for benchmarking

There is no specific requirement in the law. However, single-

year analysis for the tested party and multiple-year analysis

for comparables are common in practice.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable. As provided in the new TP Regulations,

the interquartile range will be considered the arm’s-length

range on a going-forward basis.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The common approach to benchmarking is to roll over

the result of a study with financial updates for a period of

two subsequent years, after which a fresh benchmarking

analysis is done. Also, updates in the company, industry and

functional analyses are expected to be documented annually, if

applicable.

> Simple, weighted or pooled results

The weighted average is acceptable.

> Other specific benchmarking criteria, if any

The comparables are required to be independent entities, with

no shareholder owning more than 25% of the share capital of

the comparable companies.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for not submitting the TP Documentation on

request by the FIRS

Failure to submit TP documentation within 21 days of receiving

a request from the FIRS shall attract an administrative penalty

of NGN10 million or 1% of the total value of all controlled

transaction, whichever is higher, and NGN10,000 for every

day in which the failure continues, except where there is an

extension date granted by the FIRS.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to submit TP declaration or notification to the FIRS

shall attract an administrative penalty of NGN10 million in

addition to NGN10,000 for every day in which the failure

continues, except where there is an extension date granted by

the FIRS.

Failure to make or submit an updated TP declaration form

to the FIRS about a change in structure or appointment or

retirement of directors shall attract an administrative penalty

of NGN25,000 for each day in which the failure continues,

except where there is an extension date granted by the FIRS.

Failure to make a TP disclosure of transactions subject to the

Income Tax (Transfer Pricing) Regulations 2018, later than 6

months after the end of each accounting year or 18 months

after the date of incorporation, whichever is earlier, shall

attract an administrative penalty of NGN10 million or 1% of

the value of controlled transactions not disclosed, whichever

is higher, and NGN10,000 for every day in which the failure

continues, except where there is an extension date granted by

the FIRS.

Filing of incorrect disclosure of transactions shall attract an

administrative penalty of NGN10 million or 1% of the value

of controlled transactions incorrectly disclosed, whichever is

higher, except where there is an extension date granted by the

FIRS.

Failure to comply with a notice issued under the Income

Tax (Transfer Pricing) Regulations 2018 shall attract an

administrative penalty NGN10 million or to 1% of the total

value of all controlled transaction, whichever is higher, and

NGN10,000 for every day in which the failure continues,

except where there is an extension date granted by the FIRS.

Failure to furnish the FIRS with any information or document

required within the time specified in a notice shall attract

an administrative penalty of a sum equal to 1% of the value

of each controlled transaction for which the information or

document was required in addition to NGN10,000 for each

day in which the failure continues, except where there is an

extension date granted by the FIRS.

The FIRS may accept an application for an extension to

make a TP declaration, TP disclosures or TP documentation

submission on reasonable grounds. However, failure to meet

the extended submission date granted shall attract penalties

for TP disclosures, declarations and TP documentation,

respectively.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, penalties should arise where taxes charged under the

assessments are not paid within the prescribed period. The

prescribed period for the assessments should be two months

(60 days) from the receipt of the assessment notices. The 60-

day period applies to assessments that have not been a subject

of objection. In practice, the FIRS imposes penalty from the

year the tax is due.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, it is expected that penalties should arise if a

documentation is deemed non-contemporaneous. However,

no specific penalty is currently provided for this occurrence.

Notwithstanding, it is expected that a taxable person who

contravenes the contemporaneous requirement shall be liable

to a penalty as prescribed by the FIRS in future.

> Is interest charged on penalties or payable on a refund?

No, the law imposes interest on unpaid taxes based on

Central Bank of Nigeria monetary policy rate plus spread as

determined by the Finance Minister.

b) Penalty relief

There is no specific penalty relief in the Nigerian TP

regulations.

10. Statute of limitations on transfer pricing

assessments

The statute of limitation is six years; thus, all supporting

documentation for the taxpayer’s returns must be retained

for six years. In cases of criminal tendencies, such as fraud,

negligence or willful default, there is no statute of limitations.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified yet. However, we expect practical

issues in this regard under audits.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium. The FIRS

is now very active on audits, especially given the authority’s

experience and the volume of information at its disposal,

which enables the FIRS to perform risk assessment. The

authority has also increased its team size recently, so we

expect increased intensity on audit. This notwithstanding,

the FIRS maximizes its resources on groups with more than

one entity operating in Nigeria by extending its audit scope to

cover all Nigerian entities within that group.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high. This is more likely

when the FIRS requests certain information or documents

required to fully test the appropriateness of the methodology

adopted by the company and the company is unable to provide

this — either because the information is not locally available

or because the head office or foreign custodian of such

information believes that the requested information is not

relevant for Nigerian purposes.

In practice, the FIRS typically adopts a methodology that

supports higher adjustments and guarantees more taxes in

such instances.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high, because many

taxpayers are unwilling to refer a matter to court, so they may

agree to reasonable adjustments to close the audits.

> Specific transactions, industries, and situations, if any, more

likely to be audited

All cross-border receipts of services, payments for use of

intangibles or purchases of goods are highly challenged. Also,

industries such as fast-moving consumer goods, shipping,

manufacturing, oil servicing and commercial trading are highly

analyzed now.

Key transactions of interest to the tax authority include:

> Procurement transactions

> Intercompany loans

> Royalty transactions

> Shared services and cost contribution arrangement

> Intragroup services

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The TP regulations indicate that a connected taxable person

may request that the FIRS enter into an APA to establish

an appropriate set of criteria for determining whether the

taxpayer has complied with the arm’s-length principle for

certain future controlled transactions over a fixed period. The

taxpayer may request a unilateral, bilateral or multilateral

APA. The new TP Regulations incorporate a section to clarify

that the provision on APA will be effective upon the publication

of relevant notices and guidelines by the FIRS. As of now, it is

not effective.

> Tenure

The tenure could be three years.

> Rollback provisions

This is not applicable.

> MAP opportunities

The FIRS, pursuant to its powers under Section 8 (1) (t) of

the FIRS Establishment Act No. 13 2007, issued detailed

guidance (Guidelines) on the MAP in Nigeria and Certificate of

Residency Forms for taxpayers who intend to take advantage

of the MAP. The Guidelines provide guidance to taxpayers

(Nigerian-resident companies or individuals) on procedures for

obtaining assistance from Nigerian competent authorities (CA).

Accordingly, taxpayers and permanent establishments that

fall within the scope of the treaties can now apply for the MAP

through the CA in Nigeria. However, due to the limited treaty

network of Nigeria, its benefits are accessible to only a limited

number of taxpayers.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings,

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

> The Finance Act 2019 restricts the deductibility of interest

incurred by a Nigerian company or a fixed base of a

foreign company in Nigeria, in respect of debt issued by a

foreign connected person or of similar nature, to 30% of

earnings before interest, tax, depreciation and amortization

(EBITDA). Any excess interest shall be a disallowable

deduction and can be carried forward for only five years

immediately succeeding the assessment year.

Akinbiyi A Abudu

akinbiyi.abudu@ng.ey.com

+ 234 80 624 049 02

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Public Revenue Office.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The amendments of the Corporate Income Tax (CIT) Law are

effective from 1 January 2020.

The CIT Law stipulates an obligation for mandatory transfer

pricing reporting for legal entities whose total annual income

exceeds MKD300 million (approximately EUR4.8 million). Local

taxpayers shall file the annual transfer pricing report until 30

September in the year following the reporting year.

The transfer pricing report shall be provided in an official form

prescribed by the Ministry of Finance with a transfer pricing

rulebook.

For facilitating transfer pricing reporting obligations, it is

envisaged that taxpayers whose volume of related-party

transactions do not exceed the amount of MKD10 million per

annum (approximately EUR162,000) should submit a “short”

transfer pricing report.

Taxpayers that have annual income below MKD300 million

(approximately EUR4.8 million) or have transactions with

related parties that are Macedonian companies do not fall

under the criteria for mandatory transfer pricing reporting.

> Section reference from local regulation

Related parties and associated enterprises are defined in

Article 16 of the local CIT Law. The relevant law is publicly

available only in the Macedonian language.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

1http://www.ujp.gov.mk/en

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Macedonia is not a member of the OECD.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The BEPS standards are expecting to be implemented in the

local regulation until the end of year 2019. However, to date,

in this report, there are still no new developments in respect of

the BEPS implementation.

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

The transfer pricing rulebook prescribes the content of the

Master File for local purposes.

> Effective or expected commencement date

There is none specified.

> Material differences from OECD report template or format

There is no significant difference from the OECD report

template.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is none specified.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

North Macedonia is a member of the Inclusive Framework on

BEPS.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The general transfer pricing rules are embodied in the CIT Law.

The transfer pricing rulebook prescribes the form and

content of the transfer pricing report, the types of methods

for determining the transaction price in accordance with the

arm’s-length principle, and the manner of their application.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, provided that the company meets the criteria for

mandatory transfer pricing reporting.

> Should transfer pricing documentation be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

The obligation for preparation of a transfer pricing report

is prescribed for each local entity that fulfills the criteria

prescribed under the CIT Law. The CIT Law does not prescribe

preparation of a joint transfer pricing report if there are

several local entities that are part of the same group; further

to this, each of the entities is obligated to prepare a separate

Local File.

b) Materiality limit or thresholds

> Transfer pricing documentation

The materiality limit of an annual turnover of MKD300 million

(approximately EUR4.8 million) for the entity obligates it to

file a transfer pricing documentation. However, no materiality

limits or thresholds per related-party transaction are provided.

> Master File

As indicated above, the transfer pricing rulebook prescribes

the content of the Master File for local purposes.

> Local File

Macedonia is not an OECD member, and the local legislation

has not yet been amended to reflect BEPS standards and

recommendations.

> CbCR

No CbCR legislation is in force; refer to the section above.

> Economic analysis

Same as above.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

Please refer to section b.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language — Macedonian.

> Safe harbor availability including financial transactions if

applicable

There is a specific requirement for safe harbor availability.

Safe harbor rules exist only in case of intercompany financing

arrangements. An interest rate that is higher or lower than

the Euribor rate with the same maturity as the related-party

loan increased by one percentage point is deemed an arm’s-

length rate for the domestic loan provider or debtor. For loans

denominated in MKD, the reference rate used for the safe

harbor rule is the Macedonian interbank rate.

However, the above is provided under the rulebook of the

CIT Law and not the transfer pricing rulebook. Although it is

not specifically mentioned, in our view, the transfer pricing

provisions and the transfer pricing rulebook will prevail,

further to which it is recommended that taxpayers perform

a transfer pricing study on the intracompany financing

arrangements, regardless of whether the same are compliant

with the safe harbor rule described above.

> Any other disclosure/compliance requirement

There are no specific prescriptions in respect to the disclosure

or compliance requirements other than the one prescribed in

the transfer pricing rulebook.

> Is aggregation or individual testing of transactions preferred

for an entity

Not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no specific transfer pricing returns.

> Related-party disclosures along with corporate income tax

return

Based on the provisions of the transfer pricing rulebook

and CIT Law, the local transfer pricing report should contain

an overview of the local taxpayer and an overview of all

intercompany transactions and financial information. The

overview of the local taxpayer includes:

> Management and organizational structure

> Main business activities and business strategies

> Local competitors

The overview of the intracompany transactions includes:

> Description of the controlled transactions

> The amount of payments and inflows for the controlled

transactions, grouped by tax jurisdiction of the foreign

payer or recipient

> Identification of related parties involved in each controlled

transaction, as well as the connection between them

> Copies of all contracts concluded by the taxpayer in line

with the transactions

> Detailed functional analysis and analysis of the

comparability of the taxpayer’s transactions with related

parties, for each documented controlled transaction

In addition to the Local File, the taxpayers should submit the

Master File prepared at the level of the group. The Master File

should encompass information on the organizational structure

of the group, business activities of the group, intangible assets

owned, intracompany financing arrangements, and financial

and tax positions of the group. Unlike the Local File, which

should be submitted for the reporting year, the Master File can

be submitted for the year preceding the reporting year.

> Related-party disclosures in financial statement/annual

report

The following documents should be enclosed to the transfer

pricing report for the taxpayer:

> Annual consolidated financial statements for the group

> Annual financial statements for the local taxpayer

> Copies of all contracts concluded by the taxpayer in

connection with the controlled transactions

> Copies of existing unilateral, bilateral and multilateral

APAs and other tax decisions to which the tax authority

is not one of the parties that are related to the controlled

transaction

> Data, reports and documents that are relevant to the

choice of method for determining the transfer price

between related parties in accordance with the arm’s-

length principle

> Other data, reports and documents that the taxpayer

considers relevant to the report

> CbCR notification included in the statutory tax return

There is none specified.

> Other information/documents to be filed

Please see above in section “Related-party disclosures in

financial statement/annual report.”

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The documentation should be filed not later than 30

September in the year following the reporting year.

> Other transfer pricing disclosures and return

The transfer pricing report should be submitted not later than

30 September in the year following the reporting year.

> Master File

The Master File should be submitted together with the local

file not later than 30 September in the year following the

reporting year.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation needs to be finalized not

later than 30 September in the year following the reporting

year.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The deadline for submission is not later than 30 September in

the year following the reporting year.

> Time period or deadline for submission on tax authority

request

The transfer pricing report should be filed with the specified

deadlines above. Provided that the taxpayer fails to submit

the report, in case of tax audit, it can either be requested

to provide the transfer pricing report in a period ranging

from 7 to 14 working days or the tax authorities will review

the intracompany prices applied and make transfer pricing

adjustments. In addition, please see section 8 regarding

penalty exposure for failure of submission of the transfer

pricing report.

> Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions:

Yes.

> Domestic transactions:

No.

b) Priority and preference of methods

The CIT Law specifies the methods that should be used while

determining the price of transactions to be in accordance

with the arm’s-length principle. According to the law, the CUP

method, the resale method, the cost-plus method, the TNMM

and the profit-split method should be used. Additionally, any

other method may be used if the previous methods are not

appropriate.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are generally preferred, if available. The

transfer pricing rulebook states that local comparables should

be taken into consideration with the comparability search.

Provided such comparables are not available, i.e., rejected, the

taxpayer should justify the rejection with the transfer pricing

report, and it is allowed to use regional comparables.

> Single-year vs. multiyear analysis

The analysis should be performed for the year that is subject

to reporting. However, if such data is not available, the data

available for last year’s period may be used.

> Use of interquartile range

Acceptable interquartile range is the one between 25% and

75%.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search needs to be performed every

year.

> Simple, weighted or pooled results

The local regulation prescribes that the taxpayer should

explain why the benchmark has been performed for multiple

years but does not mention anything about preference on

the use of simple or weighted average while presenting the

interquartile range of the comparables.

> Other specific benchmarking criteria, if any

This is not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

This is not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

A penalty in the amount of EUR300–EUR1,000 for a

micro company, EUR600–EUR2,000 for a small company,

EUR1,800–EUR6,000 for a medium-size company, and

EUR3,000–EUR10,000 for a big company shall be imposed

to the taxpayer, if it fails to submit the report to the tax

authorities within the prescribed deadline (Article 12-a

paragraphs (1) and (2) and Article 39).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Provided that the tax authorities challenge the transfer

pricing report submissions by the taxpayer, they are entitled

to make appropriate adjustments and to obligate the taxpayer

to pay the amount of underestimated tax, including late-

payment interest in the amount of 0.03% of the less-paid tax

for each day of delay. In a worst-case scenario, the taxpayer

may be penalized with a fine of 10 times the amount of the

underestimated tax obligation. In practice, the tax authorities

make the reassessment of the tax obligation and the

intercompany charges based on locally available market data.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

A penalty in the amount of EUR600–EUR2,000 for a micro

company, EUR1,200–EUR4,000 for a small company,

EUR3,600–EUR12,000 for a medium-size company, and

EUR6,000–EUR20,000 for a big company shall be imposed

to the taxpayer, if it included incorrect information in the

corporate income tax return that have led to a determination

of a lower taxable base (e.g., declared less income). Further

to this, in an event where the taxpayer would perform an

adjustment for past periods, the tax authorities may issue

penalties on the grounds that the tax returns in the past

periods have been submitted with incorrect data that have led

to determination of lower taxable base.

> Is interest charged on penalties or payable on a refund?

Default interest of 0.03% applies on the amount of the

additional tax liability for each day of delay in settling such

liability.

b) Penalty relief

No penalty relief was available at the time of this publication.

If it objects to the tax authorities’ decision, the taxpayer is

entitled to file a complaint with the tax authorities in the first

instance. The decision reached by the tax authorities upon the

complaint of the taxpayer is final. The taxpayer is entitled to

initiate an administrative dispute with the Administrative Court

against the tax authorities’ final decision. Nevertheless, with

the submission of the legal remedies, the enforcement of the

decision is not postponed, and the taxpayer is obligated to pay

the tax liability assessed by the tax authorities.

10. Statute of limitations on transfer pricing

assessments

There is a five-year statute of limitations beginning with

the year following the year of expiration of the statutory

term granted for filing the CIT returns, after which the tax

authorities may not audit the taxpayer’s reported position and

reassess tax liabilities. Audited tax periods can be reaudited

further based on the decision of the tax authority, as long as

the five-year time period has not elapsed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

There is no mandatory frequency for performing tax audits.

The tax authority has the discretion to initiate a tax audit in

accordance with the audit plans. In general, the likelihood of an

annually recurring tax audit may be considered to be medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that controlled financial transactions may be

reviewed as part of that audit is characterized as high, and

the likelihood that the transfer pricing methodology may

be challenged is characterized as medium. The chances for

auditing the related-party transactions are high, as under

the local CIT Law, transfer pricing adjustments represent

permanent tax adjustments, included in the taxable income.

As for the likelihood for challenging the transfer pricing

methodology, the same may be considered to be medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If the transfer pricing methodology is challenged, the

likelihood of an adjustment can be characterized as medium.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No binding ruling or APA opportunities were available at

the time of this publication. Taxpayers may file a request

for a written opinion with the Public Revenue Office or the

Ministry of Finance for the interpretation and application of

the tax law with regard to a specific tax issue. However, the

value of the position of the tax authorities on a particular tax

aspect is very limited because the tax authorities refuse to

provide any opinion about transactions that have not yet been

implemented.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest expense incurred on loans granted by shareholders

holding at least 20% of the capital of the company is non

deductible if the total amount of the loan exceeds three times

the interest of the shareholder. The thin-capitalization rules do

not apply to financial institutions.

Viktor I Mitev

viktor.mitev@bg.ey.com

+ 35928177343

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Norwegian Tax Administration (Skatteetaten — NTA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The arm’s-length principle is stated in the General Tax Act

(1999) Section 13-1, and the transfer pricing filing and

documentation requirements are stated in the Tax Assessment

Act (2017) Sections 8-11 and 8-12, regulations 8-11-1 to

8-11-16.

> Section reference from local regulation

Taxation Act Section 13-1 and Tax Administration Act (2017)

Sections 8-11 and 8-12 have the references.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Norway is an OECD member.

The NTA has a long history of following the OECD Guidelines.

The Norwegian regulations follow OECD principles, and any

documentation prepared in line with the OECD Guidelines will

generally meet Norwegian requirements.

Taxation Act (1999) Section 13-1 gives the OECD Guidelines

a strong and formal status under Norwegian tax law. However,

OECD Guidelines Chapter IV, Administrative approaches to

avoiding and resolving transfer pricing disputes, and Chapter

1 The General Tax Act: https://lovdata.no/dokument/NL/lov/1999-03-

26-14/KAPITTEL\_14#KAPITTEL\_14

2The Tax Assessment Act: https://lovdata.no/dokument/NL/lov/2016-

05-27-14/KAPITTEL\_8#KAPITTEL\_8

V, Documentation, are not included. The status of the OECD

Guidelines is limited to that of guidance, and they do not

constitute binding rules.

The NTA seems to be applying the principles outlined in OECD

Guidelines Chapter IX, Transfer pricing aspects of business

restructurings. Recent tax audits and court cases have shown

that the principles described in the chapter are applied in

practice.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

BEPS Action 13 has not been formally adopted, but an OECD

Master File and Local File format is accepted as long as the

information is also in line with current Norwegian regulations.

CbCR filing and CbCR notification requirements apply basically

in line with the OECD Guidelines.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

The fundamental elements of Norwegian transfer pricing

documentation requirements align with those under BEPS

Action 13. In addition, the following information needs to be

provided by the Norwegian local entity (either as part of the

master or the Local File):

> A description of the group’s operational model

> A brief historical description of the group and the

local entity, its business activities, and any previously

implemented reorganizations

> A description of the industry, with important competition

parameters and description of local market conditions

> Financial information of the group and the local entity

for the last three years and an explanation for any major

reduction in the local entity’s operating profits

> Explanation on the receiving entities’ expected benefit of

the service in the case of centralized services within the

group and explanation on cost base, allocation ratio and

any markup in the case of a cost-based allocation

> Transaction analysis, including a two-sided function, asset

and risk (FAR) analysis, and a description of the transfer

pricing method (how the price is determined and how it is

tested)

> Exemption for local entities for including a comparability

analysis for transactions if no comparable transactions

exist or it would be unreasonably difficult or costly to

gather such information

> A list of immaterial transactions that the local entity

engages in

> A description of material changes to the local entity

during the income year, including an explanation of

reorganizations and material changes to the functions,

risks and assets of the local entity

> Agreements relevant for transfer pricing must be attached

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not relevant as there are no direct penalties for

noncompliant transfer pricing documentation. A surtax

may apply if there is a tax adjustment and the taxpayer has

provided incomplete or insufficient information.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, in principle, transfer pricing documentation should be

prepared contemporaneously. However, transfer pricing

documentation has to be submitted only upon request from

the tax authorities.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

In principle, Norway requires the preparation of transfer

pricing documentation annually. However, companies have 45

days to submit transfer pricing documentation upon request

from the tax authorities. There is a requirement to retain

transfer pricing documentation for 10 years.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Stand-alone transfer pricing report is not required. However,

every local entity has to be documented in accordance with the

transfer pricing documentation requirements.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is a materiality threshold for transfer pricing

documentation. Documentation requirements do not apply

to enterprises with controlled transactions totaling less than

NOK10 million during the tax year and intergroup outstanding

values below NOK25 million. Further, there is an exemption for

smaller groups with less than 250 employees and either group

revenue of NOK400 million or less or balance sheet total of

NOK350 million or less.

> Master File

Currently, this has not been implemented in the Norwegian

regulations yet.

> Local File

Currently, this has not been implemented in the Norwegian

regulations yet.

> CbCR

The threshold for CbCR is NOK6.5 billion.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

The regulations apply to domestic transactions.

> Local language documentation requirement

Transfer pricing documentation can be prepared in Norwegian,

Swedish, Danish or English.

> Safe harbor availability, including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Not specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is one transfer pricing-specific return to be submitted

together with the tax return — RF-1123, Controlled

transactions and accounts outstanding.

> Related-party disclosures along with corporate income tax

return

The filing requirement is an attachment to the annual

corporate income tax return (RF-1123), which includes a list

of all intercompany transactions. The form serves as a basis

for the NTA when targeting transfer pricing tax audits. The

filing requirements apply to all transactions reported in the tax

return.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

Yes, Norwegian entities have to fill in the required CbCR

(notification) information about the fiscal year integrated with

the tax return before May 31 of the year after the completion

of the accounts.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is 31 May.

> Other transfer pricing disclosures and return

The filing deadline is 31 May.

> Master File

This is not applicable.

> CbCR preparation and submission

The filing deadline is 12 months after the close of the fiscal

year.

> CbCR notification

CbCR notification is part of the tax return and is to be

submitted by 31 May.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation must be submitted within

45 days of a request by the NTA. All documentation must be

retained for 10 years. The NTA assumes that documentation is

made contemporaneously and, accordingly, does not allow for

extensions.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

The deadline is 45 days from the date of request by the

Norwegian tax authority.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

The filing deadline for RF-1123 was extended to 20 August

2021 for FY2020 together with the FY2020 corporate

income tax return for entities that filed for extension. It has

not been announced whether the same extensions will apply

for FY2021, which will normally have the filing deadline 31

May 2022.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The NTA accepts the pricing methods contained in the OECD

Guidelines. The traditional transactional methods (CUP,

resale price and cost plus) are generally preferred over the

profit-based methods (TNMM and profit split). However,

support for applying the profit-based methods under certain

circumstances is increasing. As a starting point, the NTA is

reluctant to accept the use of pan-European searches, and

Norwegian comparables are highly preferred.

There is no specified priority of methods under Norwegian tax

law. As stated by the Norwegian Supreme Court, General Tax

Act (1999) Section 13-1 allows for the use of several transfer

pricing methods, including methods not described in the OECD

Guidelines, if those methods provide arm’s-length results.

8. Benchmarking requirements

> Local vs. regional comparables

The NTA tends to prefer local or Nordic comparables over

foreign comparables. However, in the absence of local

comparables, it is generally recommended to provide

information on foreign comparables. Pan-European

benchmarks are accepted; however, they are often challenged

by the NTA.

There have been incidents in which the NTA has made use of

secret comparables, although this is not deemed a common

practice.

> Single-year vs. multiyear analysis

Multiyear testing, as per common practice, is applicable.

> Use of interquartile range

There is no specific requirement, but practice tends toward the

acceptance of the interquartile range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh search every year,

although it can be requested. The normal practice currently is

three years with financial update for the two years between.

> Simple, weighted or pooled results

Weighted average, as per common practice, is applicable.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

A 20% surtax of the tax that would have applied on the

adjusted amount can be applied in case of incomplete

documentation.

> Consequences of failure to submit, late submission or

incorrect disclosures

There are no specific transfer pricing penalties. A surtax may

apply in cases of tax adjustments if the taxpayer is deemed

to have provided incomplete or insufficient information.

The surtax is 20% of the tax that would have applied on the

adjusted amount. In cases of gross negligence, an additional

surtax of 20% or 40% may be applied.

Failure to comply with the filing requirement carries the same

penalties as failure to complete the annual tax return. The

same is applicable if the documentation is not submitted within

the deadline.

If the taxpayer is not able to submit a compliant transfer

pricing documentation within the deadline, the Norwegian tax

authorities can impose an enforcement fine. The maximum

amount is currently EUR6,170 (NOK59,950).

The same maximum amount can be imposed for not filing

CbCR and CbCR notifications.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

A surtax may apply in cases of tax adjustments if the taxpayer

is deemed to have provided incomplete or insufficient

information. The surtax is 20% of the tax that would have

applied on the adjusted amount. In cases of gross negligence,

an additional surtax of 20% or 40% may be applied.

> Is interest charged on penalties or payable on a refund?

Non deductible interest is applied in certain circumstances.

b) Penalty relief

The risk of a penalty being imposed may be reduced if proper

documentation is prepared. Disclosure in the tax return may,

in principle, relieve penalties because the NTA technically

will have been informed and may further investigate the

transfer pricing case. The assessment of penalties is becoming

increasingly common.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitations for tax assessments in

Norway is five years. Transfer pricing documentation must be

retained for at least 10 years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

To some extent. Due to the current situation in Norway with

businesses and tax authorities working remotely and from

home offices, delays in the tax authorities’ progress and

decisions in ongoing tax audits should be expected.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a transfer pricing tax audit is considered high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium; the NTA has

increased its focus on substance and the reallocation of profits

as it applies the BEPS concepts across a taxpayer’s value

chain.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium; taxpayers

with foreign related-party transactions resulting in low or

negative margins are more likely to face adjustment, but each

case is objectively assessed on the facts.

> Specific transactions, industries and situations, if any, more

likely to be audited

Currently, any company with a low or negative margin

transacting with a foreign related party has a high risk of a

tax audit. The same goes for business restructurings or the

transfer of intellectual property (IP) as well as management

fees and financial transactions.

The NTA has a strong focus on intercompany transactions and

has established a national transfer pricing project involving all

the major tax offices to further its focus on transfer pricing.

This focus continues to increase, in line with the rising number

of dedicated transfer pricing tax inspectors within the NTA.

The NTA selects companies for audit based on the submitted

form RF-1123 and the tax return as well as CbCR.

Based on the initial review, the company is selected for audit

if the documentation does not provide sufficient information

and has answers about the internal transactions and the

profitability of the company.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APAs are available. There are no domestic APA regulations,

but APAs are concluded with reference to the relevant tax

treaty. Only bilateral APAs are available. The procedure for

APA follows the procedures for MAP.

Transactions involving the sale of gas may be covered by APAs

in accordance with Petroleum Tax Act Section 6 (5) (1).

> Tenure

This is not applicable.

> Rollback provisions

In certain cases, an APA can also cover previous income years

(rollback).

> MAP opportunities

Yes, a Norwegian enterprise can submit a transfer pricing MAP

application to Norway regardless of whether the enterprise:

> Requests an income adjustment in Norway to be waived or

reduced

> Requests a corresponding income adjustment for the

associated enterprise in the other state

> Requests an income adjustment in the other state to be

waived or reduced

> Requests a corresponding income adjustment in the

Norwegian enterprise

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Norway does not have statutory thin-capitalization rules,

hence there is no fixed debt-to-equity ratio requirement.

Based on the arm’s-length principle, the tax authorities may

deny an interest deduction on a case-by-case basis if they find

that the equity of the company is not sufficient (for example,

the Norwegian debtor company is not able to meet its debt

obligations). In this regard, please also note there are interest

limitation rules in Norway.

According to Norwegian case law (Statoil Angola case — 2007

and Telecomputing case — 2010), a parent company may

provide interest-free shareholder loans to subsidiaries when

the subsidiary does not have further loan capacity to pay

interest, if there are commercial sound reasons for establishing

such a loan.

Mette Anett Granheim

Mette.granheim@no.ey.com

+ 47 416 50 572

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

During 2019, the Government issued a Royal Decree

to establish the Tax Authority. As a replacement to the

Secretariat General for Taxation, the Tax Authority has its

own legal identity and will operate with autonomy in respect

of its financial and administrative matters. The head of the

Tax Authority is of ministerial rank and has a designation of

“Chairman.”

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Income Tax Law (ITL) issued by Royal Decree 28/2009 as

amended on the basis of Royal Decree 9/2017 — Articles 126

to 128 of the ITL — contains the TP regulations.

On 27 September 2020, Oman’s Tax Authority published

TA Decision 79/2020, which introduces CbCR rules for MNE

groups operating in Oman. Broadly, the rules are in line with

the OECD model legislation set out in the BEPA Action 13.

Under the new CbCR rules, an entity or branch located in

Oman is required to file a CbCR notification and/or CbC report

in Oman if it is a member of an MNE group that had at least

OMR300 million consolidated group revenue in the preceding

fiscal year. The new reporting requirements apply to fiscal

years beginning on or after 1 January 2020.

On 7 July 2021, the Oman Tax Authority announced the

suspension of the local filing requirement which means that

qualifying multinational enterprise (MNE) groups with an

ultimate parent entity (UPE) resident outside of Oman will not

be required to submit the CbCR in Oman.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Oman is not a member of the OECD. However, in the past, the

Tax Authority has taken OECD Guidelines into account as a

point of reference.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Oman has adopted BEPS Action 13 only to the extent of

introducing CbCR compliance. However, Oman has not yet

introduced other TP documentation requirements.

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

As mentioned above.

> Effective or expected commencement date

CbCR requirements apply to fiscal years beginning on

or after 1 January 2020. The introduction of other TP

documentation requirements is expected but the timing is

not clear at this stage.

> Material differences from OECD report template or format

No material differences in respect of the CbCR format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

No (except for CbCR). However, in practice, the Omani tax

authorities expect that appropriate TP documentation will be

made available under a TP audit or investigation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

In practice, the tax authorities expect that an appropriate TP

documentation is maintained and regularly updated so that

it is available to support the reasonableness of related party

transactions in the event of a TP audit.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No formal requirement but separate reports for each entity is

recommended.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable

> Local File

This is not applicable.

> CbCR

OMR300 million of consolidated group revenue in the

preceding year.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

No formal guidance on this.

> Local language documentation requirement

Documentation in English is acceptable. However, an Arabic

could be requested by the Tax Authority.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

No.

> Any other disclosure/compliance requirement

Tax returns include some disclosures around related party

transactions.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The formats of the tax returns have been modified to

collect information from the taxpayer about related party

transactions.

> Related-party disclosures along with corporate income tax

return

Tax returns include certain schedules which include

information around related party transactions.

> Related-party disclosures in financial statement/annual

report

Refer to above section.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is 30 June.

> Other transfer pricing disclosures and return

They should be filed along with the corporate income tax

return, to the extent explained above.

> Master File

This is not applicable.

> CbCR preparation and submission

No later than 12 months after the last day of the reporting

fiscal year of the MNE group.

> CbCR notification

Last day of the reporting period.

b) Transfer pricing documentation/Local File preparation

deadline

No statutory deadline. However, the TP file should be prepared

and maintained contemporaneously so it can be submitted if

requested.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

It should be submitted within 30 days or as discussed and

agreed with the Tax Authority.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

No pricing methods have been specifically prescribed in the

law.

8. Benchmarking requirements

> Local vs. regional comparables

Even though they are not specifically mentioned in the

regulations, local comparables are preferred over regional

comparables.

> Single-year vs. multiyear analysis for benchmarking

There is none specified.

> Use of interquartile range

There is none specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement to conduct a fresh

benchmarking search every year. However, it is recommended

that a fresh search is conducted once every three years and

that financial data be updated for the rest of the years.

> Simple, weighted or pooled results

This is not specified. However, the weighted average could be

preferred over the simple average for an arm’s length analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

No specific penalties have been prescribed in the CbCR

issued by the Oman Tax Authority. General penalties for

non-compliance as contained in the Oman tax law are likely

to be applicable for non-submission of CbCR which carries

a maximum penalty of OMR5,000 applicable as per the

discretion of the Oman Tax Authority.

> Consequences of failure to submit, late submission or

incorrect disclosures

Currently, there are no specific TP penalty provisions

prescribed in the law.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

See above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to above.

> Is interest charged on penalties or payable on a refund?

This is not specified.

b) Penalty relief

Not applicable.

10. Statute of limitations on transfer pricing

assessments

There is no separate statute of limitations for TP assessments.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium to high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium to high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium to high.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is no APA program available in Oman at this stage.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Limited at this stage.

14. Have there been any impacts or changes

to Advanced Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

In accordance with the Executive Regulations, interest paid

on loans from related parties by Omani companies other than

banks and insurance companies may be deductible, provided

loans on which such interest is paid do not exceed twice the

value of shareholder’s equity.

Thus, interest paid to related parties could be subject to partial

or complete disallowance if the debt-equity ratio in general

exceeds 2:1.

Guy Taylor

guy.taylor@ae.ey.com

+ 971501812093

Contact

Adil Rao

adil.rao@ae.ey.com

+ 971565479922

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Federal Board of Revenue (FBR).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

In 2016, the Pakistani Government approved new legislation

to effectively implement CbCR and introduce formal transfer

pricing documentation requirements in Pakistan through

Finance Act 2016. On 16 November 2017, the FBR finalized

the draft rules previously issued in June 2017 to provide

details on the requirements for the CbCR and transfer pricing

documentation.

On 9 February 2018, Pakistan's FBR issued Notification S.R.O.

144(I)/2018 on amendments to Chapter VIA of the Income

Tax Rules, 2002, which prescribe Pakistan's Master File, Local

File and CbCR requirements.

> Section reference from local regulation

Section 108 of the Income Tax Ordinance of 2001.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Pakistan is not a member of the OECD.

The legislation on transfer pricing documentation has

implemented the OECD’s model legislation into the Pakistan

income tax law, including the three-tiered approach to transfer

pricing documentation.

b) BEPS Action 13 implementation overview

Has the jurisdiction adopted or implemented BEPS Action 13

for transfer pricing documentation in the local regulations?

Yes.

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

This covers both the Master File and Local File.

> Effective or expected commencement date

For every financial year ending on or after 1 July 2016.

> Material differences from OECD report template or format

There are no material differences between the OECD

report template or format and Pakistan’s regulations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes, a BEPS Action 13 format report would typically be

sufficient to achieve penalty protection.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, 21 June 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a branch or permanent establishment of a non resident

entity is required to comply with local transfer pricing rules.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity must prepare a separate Local File.

b) Materiality limit or thresholds

> Transfer pricing documentation

For Local File: PKR50 million (approx. USD475,000).

> Master File

Local entity turnover of more than PKR100 million (approx.

USD950,000).

> Local File

Needs to be maintained if related-party transactions exceed

PKR50 million (approx. USD475,000).

> CbCR

MNE group’s turnover should be EUR750 million or equivalent

in PKR.

> Economic analysis

Required.

c) Specific requirements

> Treatment of domestic transactions

There is none specified.

> Local language documentation requirement

The transfer pricing documentation need not be submitted in

the local language.

> Safe harbor availability, including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

No.

> Any other disclosure/compliance requirement

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

No specific transfer pricing returns.

> Related-party disclosures along with corporate income tax

return

> Related-party disclosures in financial statement/annual

report

Pakistan follows International Financial Reporting Standards

(IFRS), adjusted for local GAAP. Therefore, the FBR expects

taxpayers to disclose related-party transactions in their

financial statements in accordance with IFRS or local GAAP.

> CbCR notification included in the statutory tax return

No. CbCR requirements do not apply for tax year 2017 if it

began before 1 January 2016 (Note: Under Pakistan's tax

rules, tax year 2017 would normally be the year beginning

1 July 2016 and ending 30 June 2017, but any year ending

within that normal year is also considered tax year 2017).

> Other information or documents to be filed

No documents are required to be filed.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

31 December for companies with a financial year-end between

1 January and 30 June, and 30 September for companies with

a financial year-end between 1 July and 31 December.

> Other transfer pricing disclosures and return

The transfer pricing documentation must be submitted to the

tax authorities within one month after the receipt of the tax

authority’s written request.

> Master File

Within one month of request by the tax authorities.

> CbCR preparation and submission

Twelve months after the last day of the reporting fiscal year of

the MNE group.

> CbCR notification

There are CbCR notification and report submission

requirements in Pakistan. All MNE groups with annual

consolidated group revenue equal to or exceeding EUR750

million, or an equivalent amount in PKR, in the previous

reporting fiscal year would be required to prepare and file a

CbC report. Every Pakistani constituent entity, ultimate parent

entity or surrogate parent entity, as the case may be, will need

to submit a notification to the tax authority about the identity

and jurisdiction of residence of the reporting entity before the

tax return filing deadline.

b) Transfer pricing documentation/Local File preparation

deadline

There is no statutory deadline for preparation of transfer

pricing documentation.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

The Master File and Local File should be available to the tax

authority within 30 days from the date of the request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions – Yes

> Domestic transactions – Yes

> Priority and preference of methods

The Income Tax Rules of 2002 (the rules) state that the

following methods may be applied by the Commissioner to

determine the arm’s-length result:

> CUP method: The price quoted in a transaction between

uncontrolled parties on similar terms and conditions would

be considered.

> Resale price method: The difference in the resale gross

margin of the two transactions would be considered

and compared for determining whether the transaction

between controlled parties is on an arm’s-length basis.

> Cost-plus method: The cost-plus markup realized in an

uncontrolled transaction would be considered as a basis

to determine whether a similar transaction between

controlled parties is on an arm’s-length basis.

> Profit-split method: Where a group of associates is formed

and the transactions are so interrelated that a separate

basis is not possible to identify the arm’s-length results

for a similar transaction between uncontrolled persons,

the profit-sharing basis agreed to between independent

persons forming an association would be considered.

Of the first three methods, the one that provides the most

reliable measure of an arm’s-length result with regard to

all of the facts and circumstances, in the opinion of the

Commissioner, will be applied. The fourth method will apply

only if the other methods cannot be reliably applied.

8. Benchmarking requirements

> Local vs. regional comparables

Even though it is not specifically mentioned in the regulations,

local comparables are preferred over regional comparables. A

regional search covering countries in Asia-Pacific or the Middle

East could be accepted.

> Single-year vs. multiyear analysis

There is none specified.

> Use of interquartile range

There is none specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement to conduct a fresh

benchmarking search every year. However, it is recommended

that a fresh search be conducted once every three years and

that the financial data be updated for the rest of the years.

> Simple, weighted or pooled results

There is none specified.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Same as below.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to furnish a CbCR is subject to penalties of PKR2,000

for each day of default, with a minimum penalty of

PKR25,000. Failure to maintain the Master File or Local File is

subject to penalties of 1% of the transaction value.

Failure to maintain or furnish documents by the taxpayer is

also subject to penalties mentioned under Section 182.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above.

> Is interest charged on penalties or payable on a refund?

Yes, on penalties.

b) Penalty relief

Penalty relief was not applicable at the time of this publication.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitation, that is five years, shall apply.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Since the regulations are in place, the likelihood of transfer

pricing audits may be high in the future.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium; there is

no clear definition or standards for the likelihood of audits.

However, this is done on a random basis in which the tax

authorities would choose certain clients for audit.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is no opportunity to conclude an APA. However, an

advance ruling is possible.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

May be available depending on treaty provisions.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Confirmed as the tax authorities have not yet introduced

Advance Pricing Agreements in Pakistan.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Under the thin-capitalization rules provided in the tax laws

of Pakistan, if the foreign debt-to-equity ratio of a foreign-

controlled company (other than a financial institution or a

banking company) exceeds 3:1, interest paid on foreign debt in

excess of the 3:1 ratio is not deductible.

In this context, please note that the local tax laws define

“foreign equity” and “foreign debt” as reproduced hereunder.

“Foreign-controlled resident company” means a resident

company in which 50% or more of the underlying ownership

of the company is held by a non resident person (hereinafter

referred to as the foreign controller) either alone or together

with an associate or associates

“Foreign debt” in relation to a foreign-controlled resident

company means the greatest amount, at any time in a tax year,

of the sum of the following amounts, namely:

> The balance outstanding at that time on any debt

obligation owed by the foreign-controlled resident

company to a foreign controller or non resident associate

of the foreign controller on which profit on debt is payable

and is deductible to the foreign-controlled resident

company and is not taxed under this ordinance or is

taxable at a rate lower than the corporate rate of tax

applicable on assessment to the foreign controller or

associate

> The balance outstanding at that time on any debt

obligation owed by the foreign-controlled resident

company to a person other than the foreign controller or

an associate of the foreign controller where that person

has a balance outstanding of a similar amount on a debt

obligation owed by the person to the foreign controller or

a non resident associate of the foreign controller

“Foreign equity” in relation to a foreign-controlled resident

company and for a tax year, means the sum of the following

amounts, namely:

> The paid-up value of all shares in the company owned by

the foreign controller or a non resident associate of the

foreign controller at the beginning of the tax year

> The amount standing to the credit of the share premium

account of the company at the beginning of the tax year

as the foreign controller or a non resident associate would

be entitled to if the company were wound up at that time

> The accumulated profits and asset revaluation reserves

of the company at the beginning of the tax year as the

foreign controller or a non resident associate of the

foreign controller would be entitled to if the company

were wound up at that time; reduced by the sum of the

following amounts, namely:

> The balance outstanding at the beginning of the tax year

on any debt obligation owed to the foreign-controlled

resident company by the foreign controller or a non

resident associate of the foreign controller

> Where the foreign-controlled resident company has

accumulated losses at the beginning of the tax year,

the amount by which the return of capital to the foreign

controller or non resident associate of the foreign

controller would be reduced by virtue of the losses if the

company were wound up at that time

As per the amendments introduced via Finance Act 2020,

a new section, Section 106A, is inserted that restricts the

deduction for foreign profit on debt in excess of 15% of taxable

income. This restriction was introduced to curb international

tax planning and limit tax base erosion achieved by claiming

excessive interest deductions.

As per the law, the deduction for foreign profit on debt claimed

by foreign controlled resident company shall be disallowed as

per the following formula:

[B] – [(A+B) x 0.15]

where A is the taxable income before depreciation and

amortization

and B is the foreign profit on debt claimed as deduction

The provisions of this section shall not apply if the total foreign

profit on debt claimed as a deduction is less than PKR10

million for a tax year.

Where the deduction on profit on debt is disallowed under both

Section 106 and Section 106A, the disallowed amount shall be

the higher of the two.

Where the foreign profit on debt cannot be fully adjusted

against the taxable income for a tax year, the excess amount

shall be added to the amount of foreign profit on debt for

the following tax year and shall be treated to be part of that

deduction, or if there is no such deduction for that tax year, be

treated as the deduction for that tax year and so on for three

tax years following the year in which the foreign profit on debt

was claimed as an expense.

The ordinance defines “foreign-controlled resident company”

as a resident company in which 50% or more of the underlying

ownership of the company is held by a non resident person

either alone or together with an associate or association.

Whereas, “foreign profit on debt” means interest paid or

payable to a non resident person or an associate of a foreign-

controlled resident company, and includes a wide variety

of financial instruments, including instruments which in

substance are in the nature of financial instruments, and also

includes fees, expenses and exchange gains/losses related to

such instruments.

Salman Haq

salman.haq@pk.ey.com

+ 92 300 8233699

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Tax Administration of Panama (Dirección General de Ingresos,

or DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

They are the Articles 762-A to 762-K of the Tax Fiscal Code,

and Articles 1 to 14 of the Transfer Pricing Regulation

(Executive Decree 390) in force in Panama.

Law No. 33, enacted in 2010 and applicable as of fiscal year

2011, established the transfer pricing provisions in the Tax

Code (Chapter IX of Title I of the Fourth Book) in Articles 762-

A to 762-K.

Law No. 52, which modified Law No. 33 and related sections

of the Tax Code, was enacted in August 2012 and is applicable

to fiscal years ending after August 2012.

Executive Decree No. 390, enacted in October 2016, repealed

Executive Decree No. 958, with its regulations on transfer

pricing, and is in the related sections of the Tax Code (Chapter

IX of Title I of the Fourth Book).

Law No. 52 of 17 October 2018 establishes that taxpayers

with a concession for call center activities are subject to

transfer pricing regulations starting with fiscal year 2019.

Law No. 57 of 24 October 2018 amends the multinational

headquarters regime (MHQ regime) and contains provisions on

applying transfer pricing regulations to transactions conducted

by entities with an MHQ license starting from fiscal year 2019.

Law No. 69 of 26 December 2018 includes provisions

on applying transfer pricing regulations to entities under

preferential tax regimes. This law adds Article 762-L to the Tax

Code, which establishes that, starting with fiscal year 2019,

the transfer pricing rules will apply to any transaction that

an individual or entity conducts with related parties that are

established in the Colόn 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

1https://dgi.mef.gob.pa/

special economic areas. Even though individuals or entities

that operate in one of the listed zones, special economic

areas and preferential tax regimes are exempt from or have a

reduced rate of income tax, the transfer pricing rules also will

apply to transactions conducted by those entities with related

parties that are: (1) established in Panama, (2) tax residents of

other jurisdictions, (3) established in any other free zones or

special economic areas, or (4) operate under a preferential tax

regime.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Panama is not a member of the OECD.

The OECD Guidelines can be relied upon for interpretation

of the rules, as long as they do not contradict the Tax Code;

however, local regulations prevail.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, regarding the Master File and CbC report and notification.

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

Coverage exists only for the Master File.

> Effective or expected commencement date

Taxpayers that file the transfer pricing return after

1 January 2017 must comply with the Master File

provisions. Also, tax year 2018 was the first CbC report

and notification required to be filed.

> Material differences from OECD report template or format

There are significant differences between the OECD report

template or format and documentation requirements

under local jurisdiction regulations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Not appliable. In addition, a transfer pricing study and

return will also be required.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it is so as of 24 January 2019.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the transfer pricing report and return must be prepared

annually, updating all the information that allows a correct

transfer pricing analysis. The local tax authorities require

use of the most recent available financial information for the

comparables and the tested party.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

Entities whose global and consolidated gross revenues are

equal to or higher than EUR750 million or its equivalent in

the local currency, at the exchange rate as of January 2015,

during the reporting tax year must submit the information

corresponding to the CbCR.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

Transactions with local related parties are subject to transfer

pricing rules in Panama, as long as one of the counterparties

operates in a preferential tax regime, free zones or special

economic areas in Panama (e.g., Sede de Empresas

Multinacionales (SEM), Panamá Pacífico, Call Center, Colon

Free Trade Zone, Fuel Free Zone).

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

Spanish, per Decree 390, Article 10.

> Safe harbor availability, including financial transactions if

applicable

There are no prescribed safe harbor rules in Panama’s transfer

pricing regulations.

> Is aggregation or individual testing of transactions preferred

for an entity

According to Article 1 of Decree 390, individual testing or

analysis is preferred.

> Any other disclosure/compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

An information return (Form 930) on the transactions

conducted with related parties should be filed within six

months of the close of the fiscal year.

> Related-party disclosures along with corporate income tax return

Taxpayers must report on the income tax return whether they

conducted related-party transactions and disclose the total

amount of such transactions, depending on their nature — that

is, if they are income, costs or other expense items.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

> This is not applicable .Other information or documents to be

filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

This must be filed within three months of the close of the fiscal

year; there is a possibility of a one-month extension.

> Other transfer pricing disclosures and return

The requirement is only for Form 930, mentioned above.

> Master File

This is filed upon request of the Panamanian Tax

Administration.

> CbCR preparation and submission

The reporting entity must submit the CbCR annually within 12

months of the tax year-end.

On 27 May 2019, Panama’s Government published, in the

Official Gazette, Executive Decree No. 46, which addresses

the disclosure of information in the CbCR by tax resident

companies in Panama for purposes of the automatic exchange

of information. Panama’s tax authorities signed the Multilateral

Competent Authority Agreement on the Exchange of country-

by-country Reports, which covers the standards for the

automatic exchange of information of related parties or CbCR,

on 24 January 2019.

Any ultimate parent entity of a multinational group is required

to file the CbCR on an annual basis if it: (1) has consolidated

revenues that are higher than EUR750 million or its equivalent

in Balboas, at the exchange rate as of January 2015, during a

tax year; and (2) is tax resident in Panama.

An ultimate parent entity means an entity in a multinational

group that meets the following criteria: (i) the entity owns

directly or indirectly a sufficient interest in one or more

group entities such that it is required to prepare consolidated

financial statements under applicable local accounting

standards, or would be required to do so if its share interest

were listed on a stock exchange in its jurisdiction of tax

residence; and (ii) there is no other entity of such multinational

group that owns directly or indirectly an interest described in

subsection (i) above in the first mentioned entity.

A reporting entity is any entity of a group or multinational

group that is required to file the CbCR in its tax jurisdiction on

behalf of the multinational group. The reporting entity is the

ultimate parent entity.

Notification

A group or multinational group that is tax resident in Panama

must notify the Panamanian Tax Administration of the identity

and tax residence of the reporting entity, as well as the fiscal

period used by the multinational group. The entity doing the

reporting must submit the notification using the format and

terms and conditions established by the Panamanian Tax

Administration.

The CbCR notification is a one-time notification; however, the

Panamanian entities are obliged to update the information

provided (annually) if there are any changes on the constituent

entity or ultimate parent entity information notified on the first

CbCR notification.

Filing format and due date

The reporting entity must submit the CbCR annually in an

“XML Schema” file within 12 months of the tax year-end. The

CbCR must meet the guidelines and regulations defined by the

Panamanian Tax Administration.

Tax year 2018 is the first CbCR required to be filed.

Sanctions for non-compliance in the supply of information

Failure to comply with the notification of the CbCR will result

in penalties in accordance with Article 756 of the Panamanian

Tax Code. Penalties range from USD1,000 to USD5,000

and closure of the business for two days. However, failure

to comply repeatedly could result in fines of USD5,000 to

USD10,000 and closure of the business for 10 days. If failure

to comply persists, a closure of business for 15 days will apply.

On 11 November, 2021, Panama’s Government published,

in the Official Gazette, Law 254, which modifies Article 756

of the Panamanian Tax Code. In this regard, the Panamanian

entity that is obliged to annually file the CbCR (ultimate

parent entity that is a tax resident in Panama) and does not

comply with this obligation will be penalized with a fine of

USD100,000. It would be applied an additional progressive

fine of USD5,000 daily until the non-compliance is remedied.

Moreover, if the information provided by the entity obliged

to submit the CbCR in Panama is inconsistent or wrong, it

will be penalized with a fine of USD25,000. If the competent

authority proves that the information provided on the CbCR

was maliciously altered, the Panamanian entity will be

penalized with a fine up to USD500,000.

> CbCR notification

A group or multinational group that is tax resident in Panama

must notify the Panamanian Tax Administration within 12

months of the tax year-end of the identity and tax residence

of the reporting entity, as well as the fiscal period used by the

multinational group.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation report must be available

by the time the transfer pricing return is filed.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

This is not applicable.

> Time period or deadline for submission upon tax authority

request

The taxpayer has 45 days to submit the transfer pricing

documentation report once requested by the tax authorities

in an audit or inquiry. However, in case the tax authorities

request the Master File under a separate request, the taxpayer

has only 10 days, approximately, to submit it.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions – Yes

> Domestic transactions – Yes

b) Priority and preference of methods

The transfer pricing methods in Panama are CUP, resale price,

CPM, profit-split, residual profit-split and TNMM. The selection

of the method should be on the basis of the characteristics

of the transaction under analysis and the circumstances of

the case, and should aim to be the one that best respects the

arm’s-length principle.

8. Benchmarking requirements

> Local vs. regional comparables

Under current regulations, local comparables prevail over

international comparables. However, because of a lack of

information on local comparables, international comparables

are well accepted by the tax authorities.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year testing is accepted for the comparables only; in

practice, the number of years is three.

> Use of interquartile range

Yes, the interquartile range calculation with spreadsheet

quartile formulas is used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is fresh benchmarking search every year. A transfer

pricing report must be prepared annually, updating all the

information that allows a correct analysis. Additionally, in

practice, local tax authorities expect to see the most recent

comparable information and to use the most recent available

financial information for the comparables and the tested party.

> Simple, weighted or pooled results

Weighted average is common in practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Penalties for incomplete filing of the transfer pricing

documentation report range from USD1,000 to USD5,000

and closure of the business for two days. However, failure

to comply repeatedly could result in fines of USD5,000 to

USD10,000 and closure of the business for 10 days. If failure

to comply persists, a closure of business for 15 days will apply.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to file the transfer pricing return results in a penalty

of 1% of the total amount of intercompany transactions.

However, the penalty will not exceed USD1 million. For the

penalty calculation, the gross amount of the transactions will

be considered regardless of their nature (i.e., regardless of

whether they are items of income, expense or deduction).

With regard to the transfer pricing documentation report,

no express monetary penalties are specified in the transfer

pricing rules when taxpayers fail to maintain contemporaneous

transfer pricing documentation. Nevertheless, the monetary

penalties for non-compliance set forth in the Tax Code should

apply by default.

Failure to comply with the notification of the CbCR will result

in penalties in accordance with Article 756 of the Panamanian

Tax Code. Penalties range from USD1,000 to USD5,000

and closure of the business for two days. However, failure

to comply repeatedly could result in fines of USD5,000 to

USD10,000 and closure of the business for 10 days. If failure

to comply persists, a closure of business for 15 days will apply.

On November 11, 2021, Panama’s Government published, in

the Official Gazette, Law 254, which in its Article 45 modifies

Article 756 of the Panamanian Tax Code. In this regard, the

Panamanian entity that is obliged to annually file the CbCR

(ultimate parent entity that is a tax resident in Panama), and

does not comply with report this obligation, will be penalized

with a fine of USD100,000. It would be applied an additional

progressive fine of USD5,000 daily until the non-compliance

is remedied. Moreover, if the information provided by the

entity obliged to submit the CbCR in Panama is inconsistent

or wrong, it will be penalized with a fine of USD25,000. If the

competent authority proves that the information provided on

the CbCR was maliciously altered, the Panamanian entity will

be penalized with a fine up to USD500,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Transfer pricing income adjustments imposed by the DGI can

result in a penalty of 10% over the unpaid taxes, plus interest

(currently, 0.8% monthly interest).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Transfer pricing income adjustments imposed by the DGI can

result in a penalty of 10% over the unpaid taxes, plus interest

(currently, 0.8% monthly interest).

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

b) Penalty relief

There is currently no penalty relief regime in place.

If an adjustment is proposed by the tax authority, dispute

resolution options available are:

> Reconsideration request (first administrative instance)

> Administrative tax court (second administrative instance)

> Supreme Court (last instance)

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on assessments is three years from

the date of filing the income tax return. The term is extended

with the filing of an amended return.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a general tax audit currently is categorized

as high, and the likelihood of a transfer pricing assessment as

part of a general tax audit may be considered to be high. As

part of a general tax audit, the tax authorities usually review

compliance with transfer pricing regulations. The DGI requests

transfer pricing documentation from most taxpayers annually

and has been performing tax audits regarding transfer pricing

issues. The DGI has a specialized transfer pricing unit within

the Tax Administration and is active in tax audits regarding

transfer pricing issues.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

When transfer pricing is scrutinized, the likelihood that the

methodology will be challenged may be considered to be

high. In practice, the DGI has been questioning the use of the

transfer pricing methods (i.e., the TNMM instead of resale

price or cost-plus) and comparables with losses, mainly.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

It may be considered to be high, because in most audits, the

DGI challenges either the methodology or the comparables.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Currently, no APA program has been established. However, the

DGI is working on draft regulations to be published in the near

future.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Paul A De Haan

paul.dehaan@cr.ey.com

+ 506-2208-9955

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Internal Revenue Commission (IRC).1

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The following are two references:

> Division 15 of the Income Tax Act (ITA), “Transfer Pricing:

Determination of the taxable income of certain persons from

international transactions” and Papua New Guinea’s double

tax agreements (Division 15)

> IRC Taxation Circular No. 2011/2 — “Commissioner

General’s interpretation and application of the Taxation

Laws on Division 15 of the ITA 1959” (the circular)

The circular was authorized by the Commissioner General on

21 December 2012 and applies to years commencing both

before and after its date of issue (paragraph 251).

> Section reference from local regulation

Division 15 does not require any formal control or relationship

between the parties to an international agreement for it

to apply. Under Section 197, Division 15 applies when the

Commissioner General, having regard to any connection

between the parties, is satisfied that the parties to an

international agreement were not dealing with each other at

arm’s length and the consideration was less than the arm’s-

length consideration in respect of that supply.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

1i rc.gov.pg

UN tax manual/EU Joint Transfer Pricing Forum

Papua New Guinea (PNG) is not a member of the OECD.

The circular states that the OECD Guidelines should be

followed in the absence of guidance in terms of the circular,

the provisions of Division 15 or the double tax agreements

entered into by PNG.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

PNG has adopted BEPS Action 13 for TP documentation in

terms of CbCR to the extent of Articles 3 and 4.

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

Master File and Local File are not covered. CbCR has been

adopted.

> Effective or expected commencement date

The first CbCR is due to be lodged by 31 December 2018 for

MNEs with a 31 December year-end.

> Material differences from OECD report template or format

No.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the documentation does not need to be submitted but

disclosure of the extent of documentation to support transfer

pricing transactions is required in the annual income tax

return.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

The general requirements of the ITA require taxpayers to

keep proper records related to their income and expenses

to enable the assessable income and allowable deductions

to be ascertained. However, there is no specific statutory

requirement to prepare and maintain transfer pricing

documentation. The circular notes that it is in the taxpayer’s

best interest to document how transfer prices have been

determined, since adequate documentation is the best way to

demonstrate that transfer prices are consistent with the arm’s-

length principle.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No.

b) Materiality limit or thresholds

> Transfer pricing documentation

There are no materiality limits specified in either Division

15 or the circular. The circular does note that preparation

of documentation is time-consuming and expensive. It will,

therefore, not be expected that taxpayers go to such lengths

that the compliance costs are disproportionate to the nature,

scope and complexity of the international agreements entered

into.

> Master File

There is no requirement for Master File.

> Local File

There is no requirement for Local File.

> CbCR

The notification and reporting threshold is consolidated group

revenue of PGK2 billion and above.

There is a CbCR notification and CbCR submission requirement

in PNG. Each constituent entity resident in PNG is required to

notify the Commissioner General whether it is the ultimate

parent entity (UPE) or surrogate parent entity (SPE) by the

last day of the reporting fiscal year of the MNE. If it is not a

UPE or SPE, the constituent entity is required to notify the

Commissioner General of the identity and tax residence of the

reporting entity by the last day of the reporting fiscal year of

the MNE.

The CbCR needs to be lodged no later than 12 months

after the reporting fiscal year of the MNE group. The CbCR

is required to be in a form identical to and applying the

definitions and instructions contained in the standard template

set out at Annex III of Chapter V of the OECD Transfer Pricing

Guidelines. The Commissioner General has issued a notice

advising that until further notice PNG companies that are not

the UPE of an MNE and foreign companies with a permanent

establishment in PNG do not need to submit CbCRs for the

years commencing on or after 1 January 2017 as required in

instances where local filing is triggered.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

This is not applicable.

> Local language documentation requirement

The notifications and reports need to be filed in English.

> Safe harbor availability, including financial transactions if

applicable

No.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no guidance provided in the TP legislation or circular.

The appropriate method would depend on the transaction

being tested.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The company income tax return requires completion of an

International Dealings Schedule (IDS) to be included as part

of the company return when the international related-party

dealings exceed PGK100,000 in value (excluding the capital

value of any related-party loans) or when loans with related

parties have an aggregate capital value exceeding PGK2

million at any time during the year.

> The IDS requires disclosure of:

> International related-party transaction types and quantum

> Countries with which the taxpayer has international

related-party transactions

> Percentage of transactions covered by contemporaneous

documentation

> TP methodologies selected and applied for each

international related-party type

> Details of branch operations

> Related-party disclosures along with corporate income tax

return

Refer to the section above.

> Related-party disclosures in financial statement/annual

report

Disclosure required in accordance with International

Accounting Standard (IAS) 24.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The statutory lodgement deadline is two months after the

year-end (i.e., 28 February for 31 December balance dates).

However, extensions are available if lodged under a tax agent’s

extension program. In this case, taxable company returns

are required to be lodged by 30 June. All other returns are

required to be lodged by 31 July. Further extensions may be

granted on request.

> Other transfer pricing disclosures and return

The IDS, if required, is included as part of the company tax

return.

> Master File

This is not applicable.

> CbCR preparation and submission

If the UPE is a PNG resident, the CbCR is required to be lodged

within 12 months following the end of the reporting fiscal year

of the MNE.

> CbCR notification

It is required by the end of the reporting fiscal year of the

MNE.

b) Transfer pricing documentation/Local File preparation

deadline

The disclosure of the methodology used and percentages of

the related-party dealings, supported by documentation, must

be disclosed in the IDS. It is, therefore, recommended that if

the documentation has not been prepared at or before the

time of the actual transaction, it should be available by the due

date for lodging the company tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Transfer pricing documentation is not required to be lodged

unless a specific request is received from the Commissioner

General. An exception applies for management fees in excess

of the statutory limit of 2%, in which case the documentation

must be filed with the annual income tax return.

> Time period or deadline for submission upon tax authority

request

The normal time limit for responding to a request for

information is 14 days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions — Yes

b) Priority and preference of methods

Division 15 and the double tax agreements entered into

by PNG do not prescribe any particular methodology for

ascertaining an arm’s-length consideration. Given that there

is no prescribed legislative preference, the Commissioner

General generally would seek to use the most appropriate

method, per the OECD Guidelines.

8. Benchmarking requirements

> Local vs. regional comparables

Because limited local data is available, the use of regional data

would be acceptable with appropriate adjustments for local

conditions if relevant.

> Single-year vs. multiyear analysis for benchmarking

As per the circular, multiple-year data analysis should be used.

> Use of interquartile range

As per the circular, the interquartile range may be used to

enhance reliability of the analysis.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific guidance provided. Per the OECD

Guidelines, prior-year data may be used, provided it is

reasonable to conclude that conditions have not changed.

> Simple, weighted or pooled results

There is none specified; it depends on the reliability of data.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

If insufficient documentation is available to support transfer

pricing amounts and the Commissioner General makes an

adjustment there would be exposure to penalties per below.

The availability of documentation may mitigate the amount of

penalties imposed.

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to furnish any return or information by the required

date renders the taxpayer liable to a fine of not less than

PGK500 and not exceeding PGK5,000 plus PGK50 for each

day during which the failure continues. When there are

adjustments to tax payable as a result of incorrect disclosures,

the penalty exposure is noted below.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The ITA does not impose specific penalties in respect to non-

arm’s-length pricing practices, and the general additional

tax and penalty provisions will apply to default, evasion or

omission related to transfer pricing.

The penalty, additional tax and offense provisions applicable

in the event of default or omission in the completion of the tax

return or evasion of taxation contained in the act stipulate a

liability for additional tax or penalty of double the difference

between the tax properly payable and the tax that would be

payable based on the return as lodged. The Commissioner

General has the discretion to remit the additional tax either

in whole or in part. If an incorrect return is lodged, the

taxpayer may be prosecuted and liable for a fine not less than

PGK1,000 and not exceeding PGK50,000. In addition, the

court may order the taxpayer to pay to the Commissioner

General a sum not exceeding double the amount of income tax

or dividend (withholding) tax that would have been avoided

if the statement in the return had been accepted as correct.

When additional tax is imposed under prosecution, the amount

of that additional tax will reduce the amount of additional tax

imposed by the Commissioner General.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not applicable.

> Is interest charged on penalties or payable on a refund?

There is no provision for interest to be paid on refunds of

overpaid tax or penalties.

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.

10. Statute of limitations on transfer pricing

assessments

There generally is no statute of limitations with respect to TP

adjustments.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an audit may be considered to be low because

limited resources are available to the IRC. But, if an audit is

initiated, the likelihood of transfer pricing being reviewed as

part of an audit is characterized as high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It depends on the supporting documentation available. If

the IRC considers that a different methodology should be

used and there is insufficient documentation to support the

methodology adopted, there would be a high risk that the

methodology would be challenged.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If the IRC applies a different methodology that results in

increased tax liability and there is insufficient documentation

to dispute that methodology, the risk of an adjustment may be

considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

The Commissioner General may pay closer attention to

a transaction involving an associated entity resident in a

jurisdiction with lower tax rates than PNG. The perception

exists that transactions involving low-tax jurisdictions are often

motivated by tax reasons, rather than strictly commercial

reasons. This will be the case, particularly, when the PNG

entity has ongoing tax losses as a result of its dealings with a

related party in a lower-tax jurisdiction.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The Commissioner General supports having an APA program

operating in PNG, but no current APA program exists.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

MAP opportunities are available under the relevant double tax

agreements.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Where total debt exceeds twice the amount of equity, the

interest on the excess debt to the extent it is paid to overseas

lenders is non deductible. The allowable debt-to-equity

ratio is 3:1 for resource companies that have fiscal stability

agreements.

Colin Milligan

Colin.milligan@pg.ey.com

+ 61 417 626 931

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Undersecretary of State for Taxation (Subsecretaría de Estado

de Tributación1)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Section reference from local regulation

Law No. 6380/19, Regulatory Decree No. 4644/20 and

General Resolutions No. 86/21 and 96/21. It is reasonable to

expect additional regulations to be issued by the Paraguayan

tax authority during 2021–22 with respect to transfer pricing

documentation framework.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Local law doesn’t refer to the OECD Guidelines/UN tax manual/

EU Joint Transfer Pricing Forum; nevertheless, it follows some

OECD general principles.

Since Paraguay became an associate member of the OECD

Development Centre in February 2017, it is reasonable

to expect the local tax authority to use and accept the

OECD transfer pricing Guidelines as an ancillary source for

interpretation purposes (but without binding effect).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

1www.set.gov.py

No.

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

Transfer pricing documentation requirement in Paraguay

consists of the preparation and submission of a local

“Technical Study Report.” Master File and CbCR are not

required in Paraguay as of December 2021.

> Effective or expected commencement date

The first transfer pricing documentation requirement must

be fulfilled in 2022 for the fiscal year ending 31 December

2021.

> Material differences from OECD report template or format

This is yet to be regulated by the tax authority as of

December 2021.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is yet to be regulated by the tax authority as of

December 2021.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Law No. 6380/19 and Decree No. 4644/20 contain very

general provisions related to the content of the local transfer

pricing Technical Study Report. More details about the

specificities of such content are yet to be regulated by the tax

authority as of December 2021.

The local transfer pricing Technical Study Report must be

submitted to the tax authority annually, but the due dates are

yet to be regulated as of December 2021.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Revenues higher than PYG10 billion (approx. USD1.5 million)

in a given fiscal year will trigger the transfer pricing Technical

Study Report submission obligation.

> Master File

This is not applicable.

> Local File

Please see comments in Section 3. b) above.

> CbCR

This is not applicable.

> Economic analysis

There is no monetary limit.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions are subject to transfer pricing rules

when they are not levied/exempted from CIT for one of the

parties.

> Local language documentation requirement

Spanish.

> Safe harbor availability, including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing preferred.

> Any other disclosure/compliance requirement

> General Resolution No. 96/21 establishes new rules

taxpayers should consider when performing a transfer

pricing analysis, such as rejecting comparables with

operational losses.

> The resolution also limits taxpayers to information that

relates to a non-controlled operation (i.e., an operation

between two unrelated parties that is comparable to the

controlled operation under examination) and corresponds

to several tax years when (1) they need to analyze

business cycles, or (2) atypical circumstances affect the

sector or industry in the tax year under analysis.

> Additionally, the resolution clarifies the definition of

“related parties” by highlighting cases in which the parties

are considered related based on a functional influence

(i.e., influence over commercial decisions, contracts or any

other decision-making) between them.

> For the exportation of certain agricultural commodities,

a specific valuation method must be applied, and these

transactions must be reported in a monthly informative

declaration.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

CIT returns are due on the fourth month after fiscal year-end.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Deadlines are yet to be regulated by the tax authority as of

December 2021.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Deadlines are yet to be regulated by the tax authority as of

December 2021.

> Time period or deadline for submission upon tax authority

request

Deadlines are yet to be regulated by the tax authority as of

December 2021.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

This is not applicable.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes, when the transaction is CIT not levied/exempted for one

of the parties.

b) Priority and preference of methods

For the exportation of certain agricultural commodities, a

specific method based on international prices must be applied.

For other transactions, even though the rule of the best

method applies, the taxpayer must justify the use of a method

different from CUP.

8. Benchmarking requirements

> Local vs. regional comparables

This is yet to be regulated by the tax authority as of December

2021.

> Single-year vs. multiyear analysis for benchmarking

Single-year (the one under analysis). Using information related

to a non-controlled operation corresponding to several fiscal

years will only be justified when corresponding or related to

the need to analyze business cycles, or the circumstances

affecting the sector or industry were atypical in the fiscal year

under analysis.

> Use of interquartile range

Yes.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

This is yet to be regulated as of December 2021.

> Simple, weighted or pooled results

This is yet to be regulated by the tax authority as of December

2021, for the exceptional cases in which multiple-year

analyses are acceptable.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

General penalty regime is applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

General penalty regime is applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

General penalty regime is applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

General penalty regime is applicable.

> Is interest charged on penalties or payable on a refund?

Yes. Interest is charged in addition to penalties.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

General statute of limitations for tax matters in Paraguay is

five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood is unknown since it is the first year of transfer

pricing rules application in Paraguay.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be low since it is the first

year of transfer pricing rules application in Paraguay.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be low since it is the first

year of transfer pricing rules application in Paraguay.

> Specific transactions, industries and situations, if any, more

likely to be audited

Based on the tax authority behavior and audit trends, the

agribusiness sector is more likely to be auditeds.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No APA program available as of December 2021. Binding

consultations are available to taxpayers as per general tax law.

It is reasonable to expect additional regulations to be issued

by Paraguayan tax authority during 2021–22 and these might

include APAs as a transfer pricing tool for taxpayers.

> Tenure

Not applicable yet.

> Rollback provisions

Not applicable yet.

> MAP opportunities

Paraguay has five double tax treaties in force (with Chile,

Taiwan, Uruguay, Qatar, UAE). All of them include a MAP

clause.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Gustavo Colman

Gustavo.Colman@py.ey.com

+ 59521664308

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

National Superintendency of Customs and Tax Administration

(Superintendencia Nacional de Aduanas y Administración

Tributaria, or SUNAT)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are the Article 32 (Item 4) and Article 32-A of the

Peruvian Income Tax Law (PITL) and Article 24 and Chapter

XIX (Articles 108 to 119) of the PITL detail transfer pricing

regulations in Peru.

Transfer pricing rules have been effective in Peru since 1

January 2001. Over the years, these rules have undergone

several changes with amendments to the PITL and Tax

Code. On 31 December 2016, Legislative Decree 1312 was

published, amending the Peruvian transfer pricing reporting

requirements by implementing the changes proposed by the

OECD under the BEPS Action 13 final report, in force since 1

January 2017.

Peruvian transfer pricing rules apply both to cross-border

and domestic transactions between related parties and all

transactions with residents in tax havens, noncooperative

jurisdictions or with entities subject to preferential tax

regimes.

The transfer pricing adjustments are applicable solely when

the value agreed upon by the related parties determines a

lower taxable income than the one at arm’s length, or in any

other case, if the tax authority considers that the transfer

pricing adjustment affects the tax determined in Peru for

another related-party transaction.

The regulations consider that a lower amount of income tax is

determined when, among other conditions:

> A deferral of income is evidenced

> Higher tax losses have been determined than those that

would have accrued at arm’s length

Penalties are described in Article 176 (numerals 2, 4 and 8)

and Article 177 (numeral 27) of the Tax Code.

1httransfer pricing://www.sunat.gob.pe/legislacion/renta/ley/capv.pdf

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Peru is not an OECD member jurisdiction. The PITL refers to

the OECD Guidelines as a source of interpretation for transfer

pricing analysis, as long as they do not contradict the PITL.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

In December 2016, through Legislative Decree 1312, Peru

introduced a three-tiered transfer pricing documentation

structure, consisting of a Local File, a Master File and a CbCR,

as set out in the final reports under Action 13 of the OECD

BEPS Action Plan. Subsequently, on 17 November 2017, the

Peruvian Government issued Supreme Decree 333-2007-

EF, which approved the regulations with guidance for the

preparation and submission of the Local File, Master File and

CbCR.

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

Master File, Local File and CbCR are covered.

> Effective or expected commencement date

The law is effective for taxable years beginning on or after 1

January 2017.

> Material differences from OECD report template or format

The Local File must be prepared in accordance with the

format detailed in Annexes I, II and III of the Superintendence

Resolution No. 014 -2018/SUNAT, which specifies the content,

formatting and cross-references with the Local File informative

return that must be included. Although Peruvian legislation

follows the recommendations specified in BEPS Action 13, the

Superintendence Resolution proposes a specific structure for

the Local File (Appendix 3), which presents wide differences in

form with the one proposed by the OECD.

The Master File must be prepared in accordance with the

format detailed in Annex I of the Superintendence Resolution

No. 163 -2018/SUNAT.

The CbCR must be prepared in accordance with the format

detailed in Annex I of the Superintendence Resolution No. 163

-2018/SUNAT and Annex I of the Superintendence Resolution

No. 188 -2018/SUNAT.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Refer to the section “Penalty relief.”

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes, although Peru is not part of the OECD, it is adhered and

the member of the OECD/G20 Inclusive Framework on BEPS.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 9 November 2018.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Peru has transfer pricing documentation guidelines and rules.

The deadline schedule to submit the Local File informative

returns is the same as the one approved for the submission

and payment of monthly taxes due in June (tax period May) of

the following fiscal year.

The deadline schedule to submit the Master File and CbCR

informative returns is the same as the one approved for the

submission and payment of monthly taxes due in October (tax

period September) of the following fiscal year.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Peru requires transfer pricing documentation preparation

annually under its local jurisdiction regulations. All taxpayers

that exceed the threshold levels need to prepare and submit a

full transfer pricing documentation report for each fiscal year.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each taxpayer is responsible to comply with the Local File

and Master File if they meet the requirements.

With regards to the CbCR, in accordance with the dispositions

included in the Superintendence Resolution No. 163 -2018/

SUNAT, an entity can be selected as the representative for

filling purposes among all other entities of the MNE within

the jurisdiction. The filling form is detailed on Annex II of the

previously mentioned resolution and must be filled by the

last working day of the previous month of the filling deadline.

This form must be signed by the legal representatives of

the Peruvian entities of the MNE in Peru, including the legal

representative of the selected company for filling purposes and

the legal representatives of the entities nominating the filling

entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

As of 2017, Peruvian transfer pricing formal obligations are

aligned with the three-tiered proposal from BEPS, subject to

the following conditions.

> Master File

Taxpayers that are constituents of a group of companies (both

domestic and multinational) and have an annual revenue for

the fiscal year of more than 20,000 tax units2 (PEN88 million,

approx. USD22 million) and that have carried out transactions

with related parties, tax havens, noncooperative jurisdictions

or with entities subject to preferential tax regimes for a total

amount that is greater than 400 tax units (PEN1.76 million,

approx. USD440,000) will be required to submit a Master File

with high-level information of the group’s business operations,

its transfer pricing policies, and its global allocation of income

and economic activity.

2The figures have been calculated based on the tax unit corresponding

to the year 2021 (PEN4,400). For fiscal year 2022, the tax unit has

increased to 4,600.

The Master File requirements in Peru are largely consistent

with those under Action 13 of the BEPS Action Plan. The

information required in the Master File provides a “blueprint”

of the group and contains relevant information that has been

grouped into five categories: (1) the group’s organizational

structure, (2) a description of its business or businesses, (3)

the group’s intangibles, (4) the group’s intercompany financial

activities, and (5) the group’s financial and tax positions. The

filling should be done in October of the following year.

> Local File

The Local File documentation requirement applies only to

taxpayers whose annual revenue for the fiscal year exceeds

2,300 tax units (PEN10.12 million, approx. USD2.53 million).

The Local File provides detailed information relating to

intercompany transactions (both domestic and cross-border)

and transactions between local taxpayers and residents in tax

haven jurisdictions.

The second threshold to be observed is the sum of

intercompany transactions:

Annex I: The taxpayer has carried out transactions with related

parties, tax havens, noncooperative jurisdictions or with

entities subject to preferential tax regimes for a total amount

that is greater than or equal to 100 tax units (PEN440,000,

approx. USD110,000) but less than 400 tax units (PEN1.76

million, approx. USD440,000).

And

Annex II, III and IV: The taxpayer has carried out transactions

with related parties, tax havens, noncooperative jurisdictions

or with entities subject to preferential tax regimes for a total

amount that is greater than 400 tax units (PEN1.76 million,

approx. USD440,000).

Both conditions should be met.

> CbCR

In Peru, a CbCR should be filed annually by resident parent

entities of MNE groups with annual revenue, as reflected in

the consolidated financial statements for the immediately

preceding fiscal year, equal to or greater than Peruvian sol

(PEN)2.7 billion (approx. USD6.75 billion). For these purposes,

an MNE has been defined to include two or more enterprises or

entities that are resident of different countries or territories,

where at least one of them is resident in Peru.

The CbC report requires aggregate tax jurisdiction-wide

information relating to the global allocation of the revenue,

profits (or losses), income taxes paid (and accrued) and certain

indicators of the location of economic activity among tax

jurisdictions in which the MNE group operates. The report

also requires a listing of all the constituent entities of the MNE

group, including the tax jurisdiction of incorporation, where

it is different from the tax jurisdiction of residence, as well as

the nature of the main business activities carried out by that

constituent entity.

Resident entities that are constituents of a foreign-based

MNE group whose consolidated annual revenue exceeds the

threshold will also be required to file the CbCR under the

following circumstances:

> The ultimate parent of the MNE group is not required to

file the CbCR in its jurisdiction of residence.

> The CbCR is submitted to the jurisdiction of residence of

the ultimate parent company, but Peru has not established

an information exchange mechanism with that jurisdiction.

> The parent company has submitted the CbCR, and even

though Peru has an information exchange mechanism

with that jurisdiction, there has been systematic failure to

exchange information which has been communicated to

the resident constituent entity by SUNAT.

> The resident constituent entity has been designated by

the foreign-based MNE group as the alternate reporting

entity (which files the CbCR instead of the ultimate parent

company) and such designation is properly communicated

to SUNAT.

> Economic analysis

The Local File documentation requirement will apply only to

taxpayers whose annual revenue for the fiscal year exceeds

2,300 tax units (PEN10.12 million, approx. USD2.53 million).

SUNAT’s ruling has now stated that taxpayers that exceed

the threshold will only be required to prepare and submit the

Local File if, during the year concerned, either of the following

conditions are met:

> Annual related-party transactions in aggregate are equal

to or greater than 100 tax units (PEN440,000, approx.

USD110,000) but less than 400 tax units (PEN1.76

million, approx. USD440,000). In this case, SUNAT only

requests general information about the related parties

involved and the transactions analyzed.

> Annual related-party transactions in aggregate are equal

to or greater than 400 tax units (PEN1.76 million, approx.

USD440,000). In this case, the Local File requirements

are largely consistent with those under Action 13 of the

BEPS Action Plan. A Local File with detailed information

will also be required when the taxpayer has intercompany

transactions involving the transfer of goods that have a

fair market value lower than their cost basis, regardless of

the amount of the transaction.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

Spanish. According to Legislative Decree 1312, in general, the

Master File, the Local File and the CbCR should be translated

to Spanish and kept for five years or during the statute of

limitations period established by the Tax Code, whichever is

longer.

> Safe harbor availability, including financial transactions if

applicable

There is no safe harbor availability.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

According to paragraph c) of Article 32-A of the PITL,

taxpayers must comply with the following requirements in

order to deduct the costs and expenses for services received

from its related parties:

> Comply with the “benefit test”: This implies to examine

whether the service provides an actual economic benefit

(i.e., commercial or economic value) to the receiving

entity. This can be determined by considering whether an

independent company in comparable circumstances would

have been willing to pay for the activity if performed for it

by an independent company or would have performed the

activity in-house for itself.

> Provide supporting documentation that the receiving entity

needs in order to support that the services were actually

rendered by the provider of the service, nature and real

necessity of such service, cost and expenses incurred by the

provider of the services, and the criteria for their allocation.

> In the case of low value-added services, such as routine

activities that are not part of the core business, they are

regulated such that the margin of profitability for the

deduction of expenditure will not exceed 5%.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

> Local File: Taxpayers whose annual revenue for the

fiscal year exceeds 2,300 tax units (PEN10.12 million,

approx. USD2.53 million) and transactions with related

parties exceeds 400 tax units (PEN1.76 million, approx.

USD440,000) must file a Local File informative return

consisting of: (a) an informative return prepared under

the format and configuration detailed by the Peruvian Tax

Authority (Annex II), (b) a Local File in PDF format (Annex

III) and (c) a spreadsheet file supporting the calculations

detailed in Annex III.

> Local File: Taxpayers whose annual revenue for the

fiscal year exceeds 2,300 tax units (PEN10.12 million,

approx. USD2.53 million) and transactions with related

parties between 100 tax units (PEN440,000, approx.

USD110,000) and 400 tax units (PEN1.76 million, approx.

USD440,000) must file a Local File informative return

consisting of: (a) an informative return prepared under

the format and configuration detailed by the Peruvian Tax

Authority (Annex I).

> Master File: Taxpayers that are constituents of a group

of companies (both domestic and multinational) whose

annual revenue for the fiscal year exceeds 20,000 tax

units (PEN88 million, approx. USD22 million) and that

has carried out transactions with related parties, tax

havens, noncooperative jurisdictions or with entities

subject to preferential tax regimes for a total amount that

is greater than 400 tax units (PEN1.76 million, approx.

USD440,000) must file a Master File informative return.

> The CbCR is to be filed annually by resident parent entities

of MNE groups with annual revenue, as reflected in the

consolidated financial statements for the immediately

preceding year, equal to or greater than PEN2.7 billion

(approx. USD675 million).

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

In accordance with Peruvian GAAP requirements.

> CbCR notification included in the statutory tax return

There is no requirement to file CbCR notification.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

It should be submitted by the end of March or beginning of

April based on a schedule.

> Other transfer pricing disclosures and return

The deadline schedule to submit the Local File informative

returns is the same as the one approved for the submission

and payment of monthly taxes due in June (tax period May) of

the following fiscal year.

The deadline schedule to submit the Master File and CbCR

informative returns is the same as the one approved for the

submission and payment of monthly taxes due in October (tax

period September) of the following fiscal year.

The exact filing date for each taxpayer depends on an official

schedule based on the taxpayer’s identification number.

> Master File

The deadline schedule to submit the Master File informative

returns is the same as the one approved for the submission

and payment of monthly taxes due in October (tax period

September) of the following fiscal year. The exact filing date

for each taxpayer depends on an official schedule based on the

taxpayer’s identification number.

> CbCR preparation and submission

The deadline schedule to submit the CbCR informative

returns is the same as the one approved for the submission

and payment of monthly taxes due in October (tax period

September) of the following fiscal year. The exact filing date

for each taxpayer depends on an official schedule based on the

taxpayer’s identification number.

> CbCR notification

Only in those cases in which the CbCR is filed through the

Surrogate Parent Entity, the notification must be submitted via

SUNAT’s Virtual Reception Desk: https://www.sunat.gob.pe/

ol-at-ittramitedoc/registro/iniciar. The deadline is the same as

that of the CbCR.

b) Transfer pricing documentation/Local File preparation

deadline

The deadline schedule to submit the Local File informative

returns is the same as the one approved for the submission

and payment of monthly taxes due in June (tax period May) of

the following fiscal year. The exact filing date for each taxpayer

depends on an official schedule based on the taxpayer’s

identification number.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

The deadline schedule to submit the Local File informative

returns is the same as the one approved for the submission

and payment of monthly taxes due in June (tax period May) of

the following fiscal year. The exact filing date for each taxpayer

depends on an official schedule based on the taxpayer’s

identification number.

> Time period or deadline for submission upon tax authority

request

If the taxpayer did not file the transfer pricing documentation

when it was due, the time given to submit it depends on each

audit or inquiry. Usually, it needs to be submitted within five

business days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There are no new submission deadlines per COVID-19-specific

measures for fiscal years 2020 and 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions — Yes

b) Priority and preference of methods

Peruvian law implicitly adopts a “best method” rule, unless

the transaction being evaluated is a sale or purchase of

commodities or their derivatives. Under Peruvian legislation,

the transfer pricing methods identified are CUP, resale price,

cost-plus, profit-split, residual profit-split and TNMM.

The Legislative Decree states that the CUP method is the

most appropriate transfer pricing method for cross-border

transactions involving commodities and derivative financial

instruments. These rules establish that the arm’s-length price

for Peruvian income tax purposes must be determined by

reference to the quoted price. For the application of the CUP

method, the actual pricing date or period of pricing dates

should be used as a reference to determine the price for the

transaction, as long as independent parties in comparable

circumstances would have relied upon the same pricing date.

The taxpayer needs to notify the SUNAT of the actual pricing

date or period of pricing dates used to determine the price for

the transaction.

The aforementioned notification to SUNAT is considered as a

sworn statement and would have to be done within 15 working

days of the shipment date or the date of disembarkation,

detailing the main terms and conditions agreed by the parties.

In the event the notification is not presented, it is incomplete

or contains inconsistent information, the date to be used as

a reference to determine the price is either: (i) the shipment

date of the commodities exported or (ii) the disembarkation

date of the commodities imported.

8. Benchmarking requirements

> Local vs. regional comparables

Use of local, regional and global comparable operations are

accepted by the law.

> Single-year vs. multiyear analysis for benchmarking

In 2021, SUNAT published ruling No. 036-2021 clarifying the

use of multiple years in the application of the Peruvian transfer

pricing rules.

The ruling concludes that financial information from two or

more years before or after the year under analysis can be used

to determine whether the transactions are comparable, but

that the Income Tax Law Regulations do not contemplate the

use of multiple years for the determination of the interquartile

range and do not have effect in the determination of the

transfer pricing adjustment.

A ruling is an official interpretation by the SUNAT of PITL,

related statutes, tax treaties and regulations.

> Use of interquartile range

Use of interquartile range is mandatory for the application of

transfer pricing methods, as set forth by the PITL, whenever

there are two or more comparable operations.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The regulations do not refer to this point. However, a good

practice is to update the financials of the comparables for

searches undertaken a year before and to conduct a full fresh

benchmarking study for searches that have been undertaken

two or more years previously.

> Simple, weighted or pooled results

The weighted average is preferred.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Non-compliance with the above is penalized with a fine of 0.6%

of the company’s net income for the year preceding that which

is under scrutiny. The penalty cannot be less than 10% of a tax

unit or more than 25 tax units.

> Consequences of failure to submit, late submission or

incorrect disclosures

Non-compliance with the obligation to file a transfer pricing

Local File informative return is penalized with a fine of 0.6% of

the company’s net income for the year preceding that which is

under scrutiny. The penalty cannot be less than 10% of a tax

unit or more than 25 tax units. Likewise, non-compliance with

the obligation to file the transfer pricing return according to

the dates established by SUNAT subjects the taxpayer to a fine

of 0.6% of the company’s net income for the year preceding

that which is under scrutiny. The penalty cannot be less than

10% of a tax unit or more than 25 tax units.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

The adjustments to annual taxable income resulting from the

tax authority’s application of the transfer pricing provisions will

be subject to additional penalties of up to 50% of the resulting

tax deficiency (income misstatement penalties).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

The adjustments to annual taxable income resulting from the

tax authority’s application of the transfer pricing provisions will

be subject to additional penalties of up to 50% of the resulting

tax deficiency (income misstatement penalties).

> Is interest charged on penalties or payable on a refund?

The annual interest rate on any underpayment of tax on

penalties is 10.8%, whereas the annual interest rate on any

overpayment of tax on refund is 5.04%.

b) Penalty relief

The penalty reductions that a taxpayer can be subject to for

not complying with the obligation to have a transfer pricing

technical study or present the transfer pricing information

return are:

> A 100% penalty reduction if the taxpayer files the transfer

pricing informative return after the due date but before it is

detected and compelled to do so by SUNAT

> An 80% (with a transfer pricing study) or 90% (with a

transfer pricing return) penalty reduction if the taxpayer

rectifies the infraction and pays the corresponding fine

within the time frame established by SUNAT

> A 50% (with a transfer pricing study) or 80% (with a transfer

pricing return) penalty reduction if the taxpayer rectifies the

infraction but does not pay the corresponding fine within

the time frame established by SUNAT

10. Statute of limitations on transfer pricing

assessments

According to Articles 87-7 and 43 of the Peruvian Tax Code,

the statute of limitations for income tax assessments is four

years after 1 January of the year that follows the year the

annual income tax return is due (generally, 31 March) and six

years if returns were never filed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit may be characterized as

medium, as is the likelihood of transfer pricing issues being

reviewed as part of a general audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The Peruvian Tax Administration increasingly conducts

transfer pricing audits. Also, it has issued letters requesting

that taxpayers amend their tax returns based on the results

of the transfer pricing studies previously presented or fill the

local reports that have not been filed on time. The likelihood

that the transfer pricing methodology will be challenged during

a transfer pricing review may be considered to be high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high — refer to the

section above for details.

> Specific transactions, industries and situations, if any, more

likely to be audited

The mining industry is more likely to be audited given that 60%

of Peru’s exports are minerals and approximately 30% are sold

to related parties.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Since 2013, unilateral and multilateral APAs have been

available for all transactions (cross-border and domestic

transactions between related parties and with tax haven

residents). Multilateral APAs will be available only for countries

that have entered into double tax avoidance treaties with the

Peruvian fiscal administration.

> Tenure

APAs would be agreed upon for a maximum term of four years.

> Rollback provisions

There is none specified.

> MAP opportunities

There are no specific provisions for the MAP procedure in

domestic law. Taxpayers must rely on the MAP provisions

under DTTs.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

PITL historically has limited the deduction of interests

originated in loans and other credits granted by economically

related entities. Such rules would apply whether the related

party is a resident in Peru or not.

From 1 January 2020 onward, such rules were extended to

include the deduction of interest originated in loans agreed

with third parties, in accordance with the following:

> Up to 31 December 2020, interest paid is not deductible in

the portion that exceeds the result of applying a coefficient

3:1 (debt-to-equity ratio) over the net equity. The borrower’s

net equity to be considered is the one resulting at the end

of the preceding year. As of 1 January 2021, the new rule

sets that interest that exceeds 30% of earnings before

interest, taxes, depreciation and amortization (EBITDA) of

the preceding year will not be deductible. Interest that is not

deducted may be carried forward for up to four years but

will always be subject to the 30% of EBITDA limitation.

Marcial Garcia

Marcial.Garcia@pe.ey.com

+ 5114114424

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Bureau of Internal Revenue (Kawanihan ng Rentas

Internas — BIR).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Section 50 of the National Internal Revenue Code of 1997, as

amended (Tax Code), gives the Commissioner of the Bureau of

Internal Revenue the power to allocate income and expenses

between or among related parties and taxpayers or to make

transfer pricing adjustments to reflect the true taxable income

of taxpayers.

To implement Section 50, the BIR came out with several

issuances expounding on the power of the Commissioner

to allocate income and expenses among related taxpayers,

prescribing the arm’s-length standard for the pricing of

transactions between or among related taxpayers. It also laid

out the methods for determining the arm’s-length price for

related-party transactions.

On 29 March 2012, the BIR issued Revenue Memorandum

Order (RMO) No. 5-2012, prescribing guidelines and policies

under the performance benchmarking method. Under this

RMO, benchmarking shall be done separately for individual

and corporate taxpayers. The BIR will categorize taxpayers as

high risk (more than 30% below the benchmark), medium risk

(16%–30% below the benchmark) and low risk (15%, or less,

below the benchmark). Taxpayers classified as high risk shall

be the top priority for enforcement actions, such as an audit.

On 23 January 2013, the BIR released Revenue Regulations

(RR) No. 2-2013, known as the Transfer Pricing Guidelines.

The regulations provide guidelines for determining the

appropriate revenues and taxable income of parties in the

controlled transaction by prescribing the arm’s-length principle

as the standard to determine transfer prices of related

parties. The transfer pricing regulations apply to cross-border

transactions between associated enterprises and domestic

transactions between associated enterprises.

The transfer pricing regulations took effect on 9 February

2013.

In August 2019, the BIR issued Revenue Audit Memorandum

1https://www.bir.gov.ph/

Order (RAMO) No. 1-2019 known as the Transfer Pricing

Audit Guidelines, to provide for standardized procedures

and techniques in auditing taxpayers with related party as

well as intra-firm transactions. These guidelines apply to the

examination of the following transactions:

> Controlled transactions between related or associated

parties where at least one party is assessable or

chargeable to tax in the Philippines, including:

> Sale, purchase, transfer and utilization of tangible and

intangible assets

> Provision of intragroup services

> Interest payments

> Capitalization

> Transactions between permanent establishment (PE)

and its head office or other related branches: Under the

guidelines, the PE will be treated as a separate and distinct

enterprise from its head office or other related branches

or subsidiaries for tax purposes.

The Transfer Pricing Audit Guidelines were issued primarily

to test the application of arm’s-length principle on related-

party transactions. Related-party transactions to be tested or

audited cover cross-border and domestic ones, including intra-

firm transactions. Intra-firm transactions apply to taxpayers

with different tax regimes: income tax holiday (ITH), 5% gross

income tax (GIT) and regular corporate tax.

To ensure proper disclosures of related-party transactions

(RPTs) and that these transactions are conducted at arm’s

length, the BIR, then, issued on 8 July 2020, RR No. 19-

2020, requiring the submission of a three-page BIR Form No.

1709, Information Return on Transactions with Related Party

(Domestic and/or Foreign), to be attached, together with its

supporting documents, to the Annual Income Tax Return

(AITR).

Certain issues on the filing of the RPT Form and its

attachments were later clarified by the BIR in Revenue

Memorandum Circular (RMC) No. 76-2020.

On 21 December 2020, the BIR issued RR No. 34-2020,

amending RR No. 19-2020 and RMC No. 76-2020 and

prescribing further guidelines and procedures for the

submission of the RPT Form. Under Section 2 of RR No. 34-

2020, only the following taxpayers are required to file and

submit the RPT Form, together with the AITR:

a) Large taxpayers

b) Taxpayers enjoying tax incentives, i.e., Board of

Investments (BOI)-registered and economic zone

enterprise, those enjoying ITH or subject to preferential

income tax rate

c) Taxpayers reporting net operating losses for the current

taxable year and the immediately preceding two consecu-

tive taxable years

d) A related party, as defined under Section 3 of RR No.

19-2020, which has transactions with (a), (b), or (c)

The preparation and submission of transfer pricing

documentation (TPD) under RR No. 2-2013 and all other

relevant issuances shall be mandatory for taxpayers

enumerated in Section 2 of RR No. 34-2020 who meet the

following materiality thresholds:

a) Annual gross sales revenue for the subject taxable

period exceeding PHP150 million and the total amount

of related-party transactions with foreign and domestic

related parties exceeds PHP90 million.

In computing the above threshold, the following items shall be

included:

> Amounts received and/or receivable from related parties

or paid and/or payable to related parties during the

taxable year but excluding compensation paid to key

management personnel, dividends and branch profit

remittances

> Outstanding balances of loans and non-trade amounts

due from/to all related parties

b) Related-party transactions meeting one of the following

materiality thresholds:

> If involving sale of tangible goods in the aggregate

amount exceeding PHP60 million within the taxable year

> If involving service transaction, payment of interest,

utilization of intangible goods or other related-party

transactions in the aggregate amount exceeding PHP15

million within the taxable year

> If transfer pricing documentation was required to be

prepared during the immediately preceding taxable

period for exceeding either (a) or (b) above

The transfer pricing documentation and other supporting

documents as set out in Section 6 of RR No. 19-2020 shall no

longer be attached to the RPT Form, but shall be submitted

within 30 calendar days upon receipt of the request by the

Commissioner or that person’s duly authorized representatives

pursuant to a duly-issued Letter of Authority.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Yes. In 2020, the BIR initially extended the deadlines for the

submission of BIR Form No. 1709 due to the adverse impact of

the COVID-19 pandemic.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The Philippines is not a member of the OECD.

The transfer pricing regulations are largely based on OECD

Guidelines and refer to them for further guidance and

examples.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The Philippines has not yet adopted BEPS Action 13 for

transfer pricing documentation.

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

While the Philippines has not yet adopted BEPS Action 13,

a local transfer pricing documentation is required to be

prepared contemporaneously pursuant to RR No. 2-2013,

subject to materiality thresholds discussed below.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, a transfer pricing report has to be prepared

contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local transfer

pricing rules if it has related-party transactions.

> Should transfer pricing documentation be prepared

annually?

Transfer pricing documentation has to be prepared annually

under local jurisdiction regulations. RR 2-2013 is silent on the

manner of preparation. However, being largely based on the

OECD Transfer Pricing Guidelines, the preparation of transfer

pricing documentation on year one and the benchmarking

updates on years two and three should be sufficient.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

There is none specified, although a stand-alone transfer

pricing report for each entity is done in practice.

b) Materiality limit or thresholds

> Transfer pricing documentation

The preparation and submission of TPDs under RR No. 2-2013

and all other relevant issuances shall be mandatory for

taxpayers enumerated in Section 2 of RR No. 34-2020 who

meet the following materiality thresholds:

a) Annual gross sales revenue for the subject taxable period

exceeding PHP150 million and the total amount of relat-

ed-party transactions with foreign and domestic related

parties exceeds PHP90 million

In computing the above threshold, the following items

shall be included:

> Amounts received and/or receivable from related parties

or paid and/or payable to related parties during the

taxable year but excluding compensation paid to key

management personnel, dividends and branch profit

remittances

> Outstanding balances of loans and non-trade amounts

due from/to all related parties

b) Related-party transactions meeting one of the following

materiality thresholds:

> If involving sale of tangible goods in the aggregate

amount exceeding PHP60 million within the taxable year

> If involving service transaction, payment of interest,

utilization of intangible goods or other related-party

transactions in the aggregate amount exceeding PHP15

million within the taxable year

> If transfer pricing documentation was required to be

prepared during the immediately preceding taxable

period for exceeding either (a) or (b) above

However, the BIR still retains the right to conduct transfer

pricing audits against taxpayers with related-party

transactions, irrespective of whether or not they are required

to file the RPT Form and prepare a TPD.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

There is none specified.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The transfer pricing documentation is prepared in English,

which is an official language in the Philippines.

> Safe harbor availability including financial transactions if

applicable

Please see above materiality thresholds.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

BIR Form No. 1709, Information Return on Transactions with

Related Party (Domestic and/or Foreign) (RPT Form).

> Related-party disclosures along with corporate income tax

return

Please see above.

> Related-party disclosures in financial statement/annual

report

Related-party disclosures are required in the notes to the

audited financial statements, which are filed with the BIR

together with the Annual Income Tax Return.

Moreover, taxpayers who are not required to file the RPT Form

are required to disclose in the notes to the financial statements

that they are not covered by the requirements and procedures

for related-party transactions provided under RR No. 34-2020.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

The transfer pricing documentation and other supporting

documents as set out in RR No. 19-2020 shall no longer be

attached to the RPT Form but shall be submitted within 30

calendar days from receipt of the request to submit during a

tax audit, subject to a non-extendible period of 30 calendar

days.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is the 15th day of the fourth month,

following the close of the taxable year.

> Other transfer pricing disclosures and return

For eFPS filers, the RPT Form shall be submitted within 15

days from the statutory due date or actual date of electronic

filing of the ITR, whichever comes later.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing regulations require contemporaneous

documentation to be maintained and retained. It is

contemporaneous if it exists, or is brought into existence, at

the time the associated enterprises develop or implement any

arrangement that might raise transfer pricing issues. These

arrangements should be reviewed when preparing tax returns.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Pursuant to RR No. 34-2020, the transfer pricing

documentation is no longer required to be attached to the RPT

Form upon filing. However, the transfer pricing documentation

and other documents have to be submitted to the BIR within

30 calendar days from receipt of the request to submit during

a tax audit, subject to a non-extendible period of 30 calendar

days.

> Time period or deadline for submission on tax authority

request

The transfer pricing documentation and other documents

have to be submitted to the BIR within 30 calendar days from

receipt of the request to submit during a tax audit, subject to a

non-extendible period of 30 calendar days.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

The submission dates for the RPT Form have been extended as

follows:

> For fiscal year ending 31 March 2020 and 30 April 2020:

29 December 2020

> For fiscal year ending 31 May 2020 and 30 June 2020:

31 January 2021

> For fiscal year ending 31 July 2020 and 31 August 2020:

1 March 2021

> For fiscal year ending 30 September 2020 and 31 October

2020: 31 March 2021

> For fiscal year ending 30 November 2020 and calendar

year ending 31 December 2020: 30 April 2021

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The transfer pricing regulations adopt the methods to

determine the arm’s-length price under the OECD Guidelines

(i.e., CUP, resale price, cost plus, profit split and TNMM).

There is no specific preference for any one method. In

determining the arm’s-length result, the most appropriate

method for a particular case shall be used.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local jurisdiction

comparables, but local comparable companies are used on the

grounds that the BIR requires most reliable companies and

uses local companies in determining the arm’s-length price of

intercompany transactions. Asia-Pacific comparables would

be acceptable if it can be shown that no local comparables are

available.

> Single-year vs. multiyear analysis

The regulations do not specify, but the Transfer Pricing Audit

Guidelines provide the use of multiple-year data to increase

comparability.

> Use of interquartile range

The Transfer Pricing Audit Guidelines suggest the use of an

interquartile range to enhance the reliability of the analysis.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

RR 2-2013 is silent on the manner of preparation. However,

being largely based on the OECD Transfer Pricing Guidelines,

the preparation of transfer pricing documentation on year

one and the update of the financials on years two and three

should be sufficient as long as the operating conditions remain

unchanged.

> Simple, weighted or pooled results

The regulations do not specify; either simple or weighted

average may be used for arm’s-length analysis.

> Other specific benchmarking criteria, if any

The Transfer Pricing Audit Guidelines provide selection criteria,

which are commonly used in practice, including criteria on

independence and level of revenue.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

The transfer pricing regulations adopt the provisions of the

Tax Code and other applicable laws in imposing penalties

on any person who fails to comply with or who violates the

regulations.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In the case of a deficiency assessment because of a transfer

pricing adjustment, the general penalties apply — a 25%

surcharge (50% in fraud cases) and 12% interest per annum.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Check above.

> Is interest charged on penalties or payable on a refund?

Delinquency interest at the rate of 12% per year may also be

imposed.

b) Penalty relief

There is no penalty relief regime in the transfer pricing

regulations. The regulations provide for a MAP mechanism,

but this has not been implemented yet.

10. Statute of limitations on transfer pricing

assessments

The general statute of limitations applies, which is three years

after the last day prescribed by law for filing the return. In

cases of fraud with the intent to evade tax, the statute of

limitations is 10 years from the discovery of fraud.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No supplemental regulation or issuances on transfer pricing-

specific audits as a result of COVID-19.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high. With the issuance

of the Transfer Pricing Audit Guidelines, revenue officers are

now mandated to include the examination of related-party

transactions in the conduct of tax audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high. If transfer pricing

is reviewed, then the transfer pricing methodology may be

challenged.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

The likelihood may be considered to be high for the same

reason as given above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The transfer pricing regulations give taxpayers the option to

use an APA for their controlled transactions and MAP relief

as prescribed under the Philippines’ bilateral tax treaties.

However, these have not been implemented as the BIR is yet to

issue separate guidelines for the application of APA and MAP

relief.

> Tenure

This is not applicable. APA guidelines have not been issued.

> Rollback provisions

This is not applicable. APA guidelines have not been issued.

> MAP opportunities

This is not applicable. MAP guidelines have not been issued.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

None has been specified.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no formal thin-capitalization rules in Philippines.

However, the Transfer Pricing Audit Guidelines provide that the

audit of intragroup loan transactions shall be conducted to test

the arm’s-length nature of the taxpayer’s debt-to-equity ratio

and to test the reasonableness of the interest rate and other

expenses related to the intragroup loan transaction that are

charged to the taxpayer.

Reynante M Marcelo

Reynante.M.Marcelo@ph.ey.com

+ 63 9178948335

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Tax Inspection Department in the Ministry of Finance, National

Revenue Administration (Krajowa Administracja Skarbowa —

KAS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Tax laws and decrees that govern transfer pricing in Poland

are:

> Corporate Income Tax (CIT) Act, dated 15 February 1992:

Art. 11a (Journal of Laws 2018, Item 1036, as amended)

> Personal Income Tax (PIT) Act, dated 26 July 1991:

Article 23 (Journal of Laws 2012, Item 361, as amended)

> Tax Ordinance Act, dated 29 August 1997: Articles

20a–20r (Journal of Laws 2019, Item 900, as amended)

> Act on the settlement of disputes regarding double

taxation and the conclusion of APAs, dated 16 October

2019: Articles 61-71 and 81-107 (Journal of Laws 2019,

item 2200, as amended)

> Ministry of Finance Decree of 28 March 2019, regarding

the countries and territories applying harmful tax

competition rules for the purpose of CIT (Journal of Laws

2019, No. 600)

> Ministry of Finance Decree of 28 March 2019, regarding

the countries and territories applying harmful tax

competition rules for the purpose of PIT (Journal of Laws

2019, No. 599)

> Minister of Finance Decree from 21 December 2018 on

the transfer pricing documentation with regard to CIT

(Journal of Laws 2018, Item 2479, as amended)

> Minister of Finance Decree from 21 December 2018 on

the manner and procedure for eliminating double taxation

in case of adjustment of affiliated entities’ profits with

regard to CIT (Journal of Laws 2018, Item 2474, as

amended) — repealed on 29 November 2019

> Minister of Finance Decree from 21 December 2018

regarding transfer pricing with regard to CIT (Journal of

Laws 2018, Item 2491, as amended)

> Minister of Finance Decree from 21 December 2018

regarding the information about transfer pricing with

regard to CIT (Journal of Laws 2018, Item 2487, as

amended)

Article 11a of the CIT Act and Article 23m of the PIT Act

introduce the arm’s-length principle, providing a definition of

“affiliation” and the criteria for determining the size of direct

and indirect shares held in another entity. Documentation

requirements can be found in Article 11k of the CIT Act and

Article 23w of the PIT Act. Transfer pricing penalties are

defined in Articles 58a, 58b and 58c of the Tax Ordinance Act.

According to Article 11o and Article 23za of the PIT Act, the

documentation requirements also encompass transactions

in which payment is made directly or indirectly to an entity

considered to be in a tax haven. The list of these territories

and countries is presented in the Ministry of Finance Decree

of 28 March 2019 regarding the countries and territories

applying harmful tax competition rules. The decree was issued

separately for personal and corporate taxation purposes.

Since 1 January 2007, documentation requirements also

apply to Poland-based permanent establishments of foreign

companies.

Since January 2015, documentation requirements have

also applied to partnerships, joint venture agreements and

agreements establishing partnerships.

Transfer pricing regulations introducing BEPS Action 13

guidelines to Polish legislation came into force in January

2017 (requirements regarding CbCR are binding as of January

2016). The respective regulations result in increased transfer

pricing requirements (as mentioned below). Additionally, since

January 2019, new transfer pricing regulations came into

force in Poland as outlined in this document.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Due to the pandemic, the deadline for filing the statement for

FY2019 and FY2020 has been extended. In case of FY2019,

to 31 December 2020 if the original deadline expired between

31 March and 30 September 2020 or by three months if the

original deadline expired between 1 October 2020 and 31

January 2021. In case of FY2020, to 31 December 2021

if the original deadline expired between 31 March and 30

September 2021 or by three months if the original deadline

expired between 1 October 2021 and 31 December 2021.

For FY2021 reporting, no deadline extension is provided so far

(24 February 2022).

The deadline to attach the Master File to local documentation

will be prolonged till the end of the third month from the day

following the date on which the extended deadline for the

submission of the transfer pricing documentation possession

statement expires.

No extensions to the deadline for submitting a CbCR

notification have been granted in light of the COVID-19

situation.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Poland is a member of the OECD.

The Polish tax authorities sometimes refer to the OECD

Guidelines when applying transfer pricing principles (e.g.,

during APA negotiations).

Also, reference to the OECD Guidelines is made with respect to

tax havens. According to Articles 11j and 23v of the PIT Act,

the list of countries recognized as tax havens is issued with

regard to settlements made by the OECD. At the same time,

the transfer pricing methods presented in the Polish rules are

based on the authorized OECD approach.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, Poland has adopted and implemented Action 13. There

are some specific elements incorporated in the Polish law.

There are also some important differences in most cases,

meaning that the local requirements are even more extensive.

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

Master File, Local File and CbCR are covered.

> Effective or expected commencement date

The law is effective for taxable years beginning on or after

1 January 2017.

> Material differences from OECD report template or format

There are material differences between the OECD report

template or format and Poland’s regulations. The relevant

sections from the regulations state that:

> Local management needs to sign off for the Local File in a

written statement. Since 2019, such a statement also has

to confirm the arm’s-length character of the transactions.

> A new form (TP-R) was introduced in 2019 that requires

taxpayers to provide financials connected with the

transactions and compare them with the results of the

benchmarking studies.

The Local File should cover:

> The market analysis

> The transaction values as well as the amounts actually

transferred

> Detailed contact data of the counterparties

> The functional analysis with somewhat more details than

the OECD standard, mainly reflected by the requirement

to describe each risk also from the perspective of the

“ability to bear it” by the parties

> Documents that are the legal basis for the transaction

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is none specified in the regulations. However, BEPS

Action 13 does not fully cover explicit Local File requirements

(examples above).

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, transfer pricing regulations (binding from January 2017

and from January 2016 for CbCR) introduced fundamental

changes to the scope of the mandatory transfer pricing

documentation reflecting the guidelines of BEPS Action 13, as

outlined below:

> Local File and Master File (see next section for thresholds),

requiring the presentation in the transfer pricing

documentation

> Group transfer pricing policy and information about local

transactions, but with the justification for the adopted

methods of calculating remuneration and confirmation

of the arm’s-length character of prices, including

benchmarking analyses, detailed financial data showing

the impact of the transactions on the profits and losses

and income of the company, organizational and reporting

structures, and other information

> Benchmarking analyses mandatory for each entity that is

obligated to prepare the documentation

> Parent company to prepare the CbCR for capital groups

with consolidated revenues or costs of more than EUR750

million

Further, the Local File needs to be contemporaneous and should

be prepared and certified within nine months of the end of the

respective financial year.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, branches need to comply with local transfer pricing rules

in the same manner as regular companies.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the whole documentation needs to be updated with the

financial data and facts being reviewed.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, according to Polish transfer pricing requirements, each

taxpayer engaged in the transactions exceeding the thresholds

described below is obligated to prepare a stand-alone transfer

pricing report and benchmarking analysis.

b) Materiality limit or thresholds

> Transfer pricing documentation

The Local File and Master File (see below sections for

thresholds) are applicable.

> Master File

From 2019, taxpayers are obliged to prepare a Master File only

if all of the following conditions are met:

> The entity is required to prepare local documentation

> The entity belongs to the group of related entities for

which consolidated financial statements are prepared

> Consolidated revenues of the group exceeded PLN200

million (approximately USD50 million) in the previous

financial year

> Local File

From 2019, the obligation to prepare Local File documentation

applies to related entities that conducted transactions meeting

the thresholds presented below.

The materiality thresholds for particular transactions to

include in the Local File for 2020 and 2021 are:

> PLN100,000: transactions conducted with entities from

tax havens

> PLN 500,000: transactions with contractor (related as

well as unrelated) that makes direct settlements with

entity based in a tax haven (from 2021)

> PLN2 million: service transactions, profit allocation to

foreign branches and transactions involving immaterial

values

> PLN10 million: commodity and financial transactions

> CbCR

The report is mandatory in case of consolidated revenues or

costs of more than EUR750 million.

> Economic analysis

Since 2019, benchmarking is mandatory for every transaction

that meets the Local File threshold.

c) Specific requirements

> Treatment of domestic transactions

In 2019, domestic transactions are excluded as long as they

fulfil the requirements listed in Article 11n of the CIT Act.

> Local language documentation requirement

The law mandates the use of the Polish language in Local File

documentation. There is no formal requirement for Master File

documentation to be in Polish; however, the tax authorities

can request a Polish version of the document. Since 2019, a

regulation exists stating that there will be 30 days to prepare

such a translation upon request.

> Safe harbor availability including financial transactions if

applicable

Since 2019, the regulations introduced safe harbor markup

rates for low-value-added services at the minimum level of

5% for the provision of services and a maximum of 5% for the

purchase of services.

Additionally, safe harbor rules were introduced for loans

fulfilling the requirements listed in Article 11g of the CIT

Act. The “safe” rate is annually published by the Ministry of

Finance. At the time of creating this document, the acceptable

base rate is Warsaw Interbank Offer Rate (WIBOR) 3M, Euro

Interbank Offer Rate (EURIBOR) 3M and London Interbank

Offered Rate (LIBOR) 3M (depending on the currency), while

the safe margin is 2%. The margin is treated as the maximum

value in case of Polish borrowers and as a minimum safe value

in case of Polish lenders.

> Is aggregation or individual testing of transactions preferred

for an entity

The regulations require individual testing. However, they also

allow for compensation between transactions concluded with a

particular related party. In this context, consolidated approach

is possible.

> Any other disclosure/compliance requirement

Apart from the specific requirements described above, there

are no additional disclosure or compliance requirements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Since 2019, a new TP-R form has been introduced. All

taxpayers obligated to prepare a Local File, and those exempted

due to the fact that transactions were only conducted with

domestic-related entities, have to file this new electronic

report within nine months from the year-end. In the TP-

R, the taxable person must include detailed information,

including results of benchmarking analysis or transfer pricing

adjustments if applicable, along with various profitability

indicators.

In addition, Polish taxpayers are obligated to file within

nine months from the year-end a statement confirming

the preparation of Local File documentation in line with the

amended requirement. As indicated in the justification for

the law, tax authorities expect that this document will be

signed by a member of the management board. Since the

beginning of 2019, this official statement must also confirm

that all documented transactions were conducted at arm’s-

length value. Furthermore, the statement must be signed

by the entity’s managing director or by all board members

empowered to representations. The statement must be

submitted in the electronic form.

> Related-party disclosures along with corporate income tax

return

Information about related-party transactions is one of the

elements of the annual income tax return. Taxpayers are also

required to indicate in the return whether they were required

to prepare a transfer pricing documentation.

Taxpayers transacting with related entities are subject to the

following reporting and information requirements:

> Disclosing in annual income tax returns whether the

taxpayer was required to prepare statutory transfer

pricing documentation of transactions with related entities

> Reporting agreements with non residents to the Polish tax

authorities; such information to be submitted within three

months of the end of a tax year (by filing the ORD-U form),

and this reporting requirement applies to agreements in

which:

> A one-off amount of receivables or liabilities resulting

from the agreement with a non resident exceeds

EUR5,000 and the non resident owns an enterprise,

branch or representative office in Poland.

> The total amount of liabilities or receivables resulting

from all agreements concluded with the same non

resident in the tax year exceeds EUR300,000.

> One party to the agreement participates directly or

indirectly in the management or control of the other

party to the agreement or has a share in its capital

entitling it to at least 5% of all voting rights.

> Another entity, not being party to an agreement, at

the same time participates directly or indirectly in the

management or control of each party to the agreement

or has a share in their capital entitling it to at least 5% of

all voting rights in each of the parties to the agreement.

> Preparing information about payments to non residents

from which withholding tax is collected and submitting

it to the tax office responsible for taxation of foreign

persons and to the beneficiary of the payment by the

end of the third month of the year following the tax year

in which withholding tax was paid (IFT-2/IFT-2 form);

moreover, the taxpayer required to (at the related party’s

request) prepare and send information to the taxpayer and

competent tax office within 7 (for LF prepared for FY21)

or 14 days (for LF prepared for FY22 and following years)

of the date when the request is submitted

Those taxpayers that have obtained an APA decision from

the Polish Minister of Finance must submit, along with their

annual CIT return, a progress report on the implementation

of the method stipulated in the APA decision. The format of

this report is detailed in the Ministry of Finance Decree of

23 December 2019, which contains the model report on the

implementation of a selected transfer pricing method for CIT

purposes (Journal of Laws No. 99, Item 687).

The obligation of preparing transfer pricing documentation

would not apply to transactions for which a taxpayer obtains

an APA.

Poland’s CIT law tax deductibility restrictions of intangible

intragroup charges would not apply to transactions for which

a taxpayer obtains an APA with the Polish Ministry of Finance.

The rules became effective from 1 January 2018.

Poland transposed a number of the measures set out in the

European Union Anti-Tax Avoidance Directive (ATAD). As such,

this includes, among other things, a PLN3 million or 30%

earnings before interest, taxes, depreciation and amortization

(EBITDA) interest limitation rule and changes to the controlled

foreign company (CFC) legislation, which may broaden the

scope of foreign subsidiaries that meet CFC criteria.

> Related-party disclosures in financial statement/annual

report

According to the Polish Accounting Act, the information

regarding the transactions with related entities must be

presented in the financial statement in note 7.

> CbCR notification included in the statutory tax return

CbCR notification is not included in the statutory tax return.

> Other information/documents to be filed

There are no additional information or documents to be filed

apart from those presented above.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline for the CIT return is three months from the

fiscal year-end.

> Other transfer pricing disclosures and return

Taxpayers are also required to submit an electronic form (TP-R

form), which must be submitted within nine months after the

end of the financial year and should contain information on the

transactions carried out with related entities.

> Master File

It is 12 months from the year-end for the Master File.

> CbCR preparation and submission

The filing deadline for the CbCR is 12 months from the year-

end.

> CbCR notification

The filing deadline for the CbCR notification is three months

from the year-end.

b) Transfer pricing documentation/Local File preparation

deadline

It is 9 months from the year-end for the Local File and 12

months from the year-end for the Master File.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No, but it must be provided within seven days upon the request

of the tax authorities.

> Time period or deadline for submission upon tax authority

request

The documentation should be submitted within seven days of

the request.

d) Are there any new submission deadlines per

COVID-19-specific measures? If Yes, specify which

deadlines are impacted

See opening section for details.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

The local transfer pricing documentation does not have to

include a description of domestic transactions conducted

among Polish taxpayers who are not exempt from income

tax, are not located in the special economic zone and do not

incur losses. Certain other limitations from the transfer pricing

documentation requirements are also provided.

b) Priority and preference of methods

Generally, the transfer pricing methods accepted by the tax

authorities are based on the OECD Guidelines. These methods

are the CUP, resale price, cost plus, profit split and TNMM.

The most appropriate method for assessing income should be

chosen.

Regulations binding from 1 January 2019 changed the

approach of selecting transfer pricing method used for the

purpose of assessing income in related-party transactions.

Previously (also for 2018) the traditional methods (CUP, resale

minus and cost plus) were indicated as first-choice methods.

Currently, the division of methods into two groups has been

terminated; taxpayers can choose independently the most

appropriate method for them.

Also, if the use of these five methods is impossible, taxpayers

can choose another, most appropriate one, including valuation

methods. During the selection process, tax authorities will

consider:

> The specifics of the transaction, including the parties’

contribution to the transaction

> Access to reliable data about similar transactions and

companies in the market

> Comparability of the respective transactions and

companies

If a taxpayer has determined the arm’s-length value of a

transaction by applying one of the accepted methods and tax

authorities wouldn’t be able to find objective reasons that

another method would fit better for economic situation of

taxpayer, the method is also binding for them.

8. Benchmarking requirements

> Local vs. regional comparables

Since 1 January 2019, there is no indication that

benchmarking analysis should cover local entities.

> Single-year vs. multiyear analysis for benchmarking

There is a preference for multiyear testing although not

expressed in the regulations. EY Poland usually provides a

three-year or five-year analysis.

> Use of interquartile range

There is no formal requirement to determine a particular point

in the range, but generally, the interquartile range is a starting

point to consider the arm’s-length price (there is no particular

regulation in this regard).

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Fresh benchmarking does not need to be conducted every

year, but financial data for the final sample needs to be

updated. A fresh benchmark is required every three years or in

case of significant change in the economic environment.

> Simple, weighted or pooled results

There is a preference for the weighted average for arm’s-

length analysis (not mentioned in the regulations).

> Other specific benchmarking criteria, if any

Taxpayers should present financial indicators both accepted

and rejected during the preparation of benchmarking analysis.

Taxpayers are obligated to present part of the information

used for benchmarking analysis in electronic form, which

enables editing, formatting and sorting data.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Yes; see below as in Polish legislation there is no difference

between late, false or incomplete or late preparation of the

documentation or submission of necessary statements.

> Consequences of failure to submit, late submission or

incorrect disclosures

If the tax authorities mention that the tax loss has been

overstated or the tax profit has been understated, they can

levy an additional penalty tax rate of 10% (over the standard

19% rate) (Article 58b Section 1 Tax Ordinance Act).

The rate indicated in Article 58b is doubled if:

> The basis for determining additional tax liability exceeds

PLN15 million — for the excess over this amount.

> It has not been 10 years since the end of the calendar year

in which the taxpayer or payer obtained a final decision

regarding additional taxation.

> The party did not submit to the tax authority the tax

documentation. In the event that together the conditions

mentioned in points 1 and 3 arise, the rate is tripled.

The above point 3 is not taken into consideration if the

documentation in full scope is delivered to the tax authorities

within the time frame specified by the tax authority, not longer

than 14 days.

Moreover, the persons responsible for tax matters locally

may be penalized based on the penal and fiscal code for

non-compliance (with a fine or imprisonment, depending on

materiality of the case). As a result, the magnitude of the

risk may be measured by the exposure to personal penal

responsibility of the company’s representatives. Please find the

summary of Fiscal Penal Code (KKS) regulations below:

> Missing or failure in the delivery of the required tax

documentation: a fine of up to 120 daily rates (i.e., up to

EUR1 million) (Article 80 Section 1 KKS)

> Unreliable preparation of documentation: a fine of up to

720 daily rates (i.e., up to EUR6 million), imprisonment or

both (Article 54 Section 1 KKS)

> Submission of false information: a fine of up to 240 daily

rates (i.e., EUR2 million) (Article 80 Section 3 KKS)

> Failure to monitor compliance of the business activities

with the regulations (Article 84 Section 1 KKS)

Such KKS penalties might impact the board members and the

person responsible for the tax settlements of the taxpayer.

Since 1 January 2019, addition regulation has entered:

> Failure in the submission or submission after the due date

of the required statement concerning preparing transfer

pricing documentation or TP-R: a fine of up to 720 daily

rates (Article 56c Section 1 KKS)

> Missing or failure in the delivery submission or delivery

after the due date or submitting false information

about transfer prices to the Head of National Revenue

Administration: a fine of up to 720 daily rates (Article 80e

Section 1 KKS)

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes; see above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes; see above.

> Is interest charged on penalties or payable on a refund?

Yes, the current rate is 8%.

b) Penalty relief

It will be there if the taxpayer supplements the documentation

in a full scope in time indicated by tax authorities, but not

longer than 14 days. There will be no increase in the penalty

rate for the lack of the documentation (Article 58c § 3 Tax

Ordinance Act).

10. Statute of limitations on transfer pricing

assessments

There are no special time limit provisions applicable

to intercompany transactions. The general statute of

limitations for tax assessment applies, in accordance with

the Tax Ordinance Act. Under Article 70 Section 1 of the Tax

Ordinance Act, tax liability shall expire after five years from

the end of the calendar year in which the tax falls due.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual transfer pricing audit, in general,

has been high since the beginning of 2016. The deepest

scrutiny is put on the biggest taxpayers with a given financial

position (e.g., incurring losses, with significant revenues but

low profitability, claiming an overpaid tax return, with very

low profitability, or with fluctuating revenues or EBIT). Polish

tax authorities in 2017 acquired access to the Orbis database,

purchasing more licenses. This information will allow them to

conduct more detailed screenings of entities before starting

tax audits and help them make a more precise selection of

entities for audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

There is a high likelihood that the transfer pricing methodology

will be challenged if transfer pricing is reviewed as part of

the audit. The tax authorities usually engage in a dedicated

transfer pricing audit if they notice irregularities in

intercompany settlements or believe that the financial result is

biased by transfer pricing. In such cases, they often challenge

the transfer pricing methodology applied.

The 2019 rules introduced the possibility of recharacterization

of a transaction or even declaring a transaction nonexistent

(not influencing the tax result) if the tax authorities assess that

unrelated parties would not partake in such a transaction.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. During transfer

pricing audits, tax authorities are especially interested in

substantial intercompany charges for intangibles, services or

financing; changes in the business model; sudden reduction

in profitability (e.g., due to business restructurings); and

year-end adjustments (especially if they are one-off profit

transfers).

> Specific transactions, industries and situations, if any, more

likely to be audited

In practice, there is no focus on any particular industry. The

authorities try to focus on an automated approach, e.g.,

using databases to find loss makers or limited risk companies

with highly variable financial results or companies with high

spending on intragroup services.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Under Polish rules, unilateral, bilateral and multilateral APAs

are available. There are no transaction value limits to be

covered by the APAs. To submit an application for an APA, the

taxpayer must pay a fee, usually 1% of the transaction value.

The Tax Ordinance Act sets the following fee limits:

> Unilateral APA: PLN5,000 to PLN50,000

> Unilateral APA concerning a foreign entity: PLN20,000 to

PLN100,000

> Bilateral or multilateral APA: PLN50,000 to PLN200,000

The APA Act precisely defines the terms under which the

APA procedure is to be completed:

> The unilateral APA must be issued without unnecessary

delay within six months of the start of the APA application

procedure.

> The bilateral APA must be issued without unnecessary

delay within 12 months of the start of the APA application

procedure.

> The multilateral APA must be issued without unnecessary

delay within 18 months of the start of the APA application

procedure.

> Tenure

The period for which the APA may be concluded is no longer

than five years. The APA may be extended for another five

years if the criteria applied in concluding the APA have not

changed or the entity applies for an extension of the APA no

later than six months before it expires. The decision is valid

from the date of its delivery to all parties (including Polish and

foreign, if applicable, tax authorities).

> Rollback provisions

An APA may cover the year the APA application is submitted.

> MAP opportunities

Yes, taxpayers may request a MAP if taxation has or is likely to

occur that is not in accordance with the provisions of a double

taxation treaty (DTT) to which Poland is signatory.

The application should be submitted no later than three

years from delivery to the taxpayer or an entity related to the

taxpayer’s control protocol or tax decision that leads or may

lead to double taxation, unless the double taxation agreement,

which forms the basis for submitting the application, specifies

another term. The three-year period begins on the first of the

following dates: the date of delivery of the control report or

the date of delivery of the tax decision.

Application should be supplemented with:

> Transfer pricing documentation

> Financial statement

> Relevant agreements

> Benchmarking analysis

> Protocols from tax control or tax decisions regarding

double taxation

> Correspondence with foreign tax authorities concerning

adjustments

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

The deadline for issuing a tax ruling has been extended by

three months to six months.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

From 2019, the taxpayer is obligated to sign a statement

that “the prices have been set in accordance with arm’s-

length conditions.” This means that interest rate is not the

only characteristic that must be tested. In fact, the standard

interest rate benchmarking study should be the last step of a

robust arm’s-length analysis. Although such a full analysis is

not specifically defined in the Polish CIT Act, one must take

into consideration that the new regulations also include a

possibility to “recharacterize” any transaction, i.e., act as it

did not happen or happened under different (arm’s length)

circumstances. According to Article 11c of the CIT Act, if the

tax authority considers that in comparable circumstances,

unrelated entities guided by economic viability would not

conclude a given controlled transaction or would conclude

another transaction, the income (loss) of the taxpayer might

be determined without taking into account the controlled

transaction, and where justified, the tax authorities shall

determine the income (loss) of the taxpayer earned (incurred)

by the taxpayer based on the “proper” transaction. For

example, in case of an intercompany loan, if the tax authorities

assess that the borrower is not able to carry and service some

amount of debt, this part may be recharacterized as an equity,

and the interests from that part of the financing will not be

tax-deductible. The so-called “debt capacity” analysis will

therefore become required more often.

Andrzej Broda

andrzej.broda@pl.ey.com

+ 48502444249

Contact

1. Tax authority and relevant transfer pricing

(TP) regulation or rulings

a) Name of tax authority

Portuguese Tax and Customs Authority (Autoridade Tributária

e Aduaneira).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 63 of the Corporate Income Tax (CIT) Code (CITC)

articulates the arm’s-length principle, and Article 130

introduces submission obligations of TP documentation for

taxpayers under the authority of the Large Taxpayers Unit.

These provisions were updated by Law No. 119/2019 on 18

September 2019.

Decree-Ruling 268/2021 of 26 November (TP Decree-

Ruling), effective on 27 November 2021, sets the rules

for the application of Article 63 and the TP documentation

requirements for eligible taxpayers. The previous Decree-

Ruling 1446-C/2001 of 21 December was repealed with the

exception of Chapter IV, Of the ancillary obligations of taxable

persons, that shall apply until the tax periods beginning on or

after 1 January 2020. In addition, Chapter IV of TP Decree-

Ruling takes effect during tax periods beginning on or after 1

January 2021.

Articles 121-A and 121-B of the CITC cover the obligation for

multinational groups to submit CbCR and, for its constituent

entities, to communicate the reporting entity.

A detailed APA procedure, setting out the APA submission

requirements, process and fees, was updated by Decree-Ruling

267/2021 of 26 November (effective on 27 November 2021)

and is currently foreseen in Article 138 of the CITC (updated

by Law No. 119/2019 on 18 September 2019). The previous

Decree-Ruling 620-A/2008 of 16 July was repealed.

> Section reference from local regulation

See details above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Portugal is a member of the OECD. The Portuguese regulations

and tax practice follow the OECD Guidelines, and in cases of

greater technical complexity, the TP Decree-Ruling indicates

that it is advisable to consult the reports produced by the

OECD in TP matters.

Business restructurings are specifically addressed in the

Portuguese TP regulations as transactions that must rely on

the arm’s-length principle; however, the approaches stated in

Chapter IX of the OECD Guidelines are likely to affect the TP

interpretations in the context of audit procedures.

The part of Action 13 of the OECD BEPS Action Plan devoted

to CbCR has been introduced in Portugal.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

A three-tier documentation format as per BEPS Action

13 (Master File, Local File and CbCR) has been formally

prescribed in local legislation, as per the TP Decree-Ruling

268/2021 of 26 November. There are, however, specific

requirements foreseen in the Portuguese legislation

concerning the contents of the Master File and Local File.

> Effective or expected commencement date

The new TP Decree-Ruling comes into force on 27

November of 2021. However, Chapter IV of Decree-Ruling

1446-C/2001 of 21 December shall apply until the tax

periods beginning on or after 1 January 2020. In addition,

Chapter IV of TP Decree-Ruling takes effect during tax

periods beginning on or after 1 January 2021.

CbCR rules apply to fiscal years starting on or after 1

January 2016.

> Material differences from OECD report template or format

The documentation must follow the format prescribed

in TP Decree-Ruling 268/2021 of 26 November. Please

see above comment regarding the differences at level of

Master File and Local File.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is no penalty protection regime in Portugal. The

documentation will only be accepted as complete if fully

compliant with the format prescribed in TP Decree-Ruling

268/2021 of 26 November.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

According to the Decree-Ruling 268/2021 of 26 November,

two new distinct documentation models have been created:

the standard and the simplified.

The standard model consists of a Master File and a Local File,

which must be delivered together, each containing a set of

elements specified in detail in the annexes to the TP Decree-

Ruling.

On the other hand, the simplified model must contain the

following elements:

> Identification of the related parties involved

> Description, characterization and quantification of

transactions carried out with related parties

> Identification of the TP methods applied

> Identification of comparables and values or ranges of values

resulting from the application of the methods

The simplified model must also include the elements that

demonstrate the arm’s-length nature of the following

transactions:

> Related transactions of any nature carried out with non

resident persons or enterprises subject to a clearly more

favorable tax regime

> Transfer of businesses

> Transfer of securities, shares or equity not traded on

regulated stock markets or traded on tax havens’ regulated

markets

> Business reorganizations or restructurings

> Transactions on real estate and intangible assets

The new legislation explicitly provides that the documentation

obligation is considered fulfilled only when the documentation

file submitted contains all relevant information relating to the

controlled transactions in which the taxable person has been

involved.

Taxpayers who, in the period to which the obligation refers,

have reached a total annual amount of income of less than

EUR10 million shall be exempted from presenting this

documentation. Even if this limit is exceeded, that exemption

shall apply to controlled transactions whose value in the period

has not exceeded EUR100,000 and, in total, EUR500,000,

considering their market value. However, any taxpayer may be

requested to submit documentation regarding the taxpayer’s

controlled transactions upon request from the Portuguese tax

authority. The deadline for presentation of the documentation

in this case should be 10 days.

The exemptions referred to in the preceding paragraph do not

cover the controlled transactions carried out with natural or

legal persons residing outside the territory of Portugal and are

subject to a more favorable tax regime, following paragraphs

1 or 5 of Article 63-D of the General Tax Law nor, as stated

above, when the taxable person is notified to prove that the

terms and conditions practiced in the controlled transactions

are in accordance with the arm’s-length principle.

The simplified model will apply to taxpayers who, not being

accompanied by the Large Taxpayers Unit and not covered

by the exemptions already mentioned regarding the standard

model, are qualified as a small or medium-sized enterprise,

following the terms set out in the annex to Decree-Law No.

372/2007 of 6 November. However, and as provided in the

TP Decree-Ruling, the preparation of the simplified model

does not preclude the obligation to provide the Portuguese

tax authority, whenever the taxpayer is notified to do so, all

relevant information to prove that the terms and conditions

practiced in the controlled operations comply with the arm’s-

length principle.

In addition, taxpayers under the authority of the Large

Taxpayers Unit have to submit TP documentation prepared

according to the format prescribed in TP Decree-Ruling 1446-

C/2001 of 21 December, within the deadline for submission of

the Annual Tax and Accounting Information Return (IES), on or

before 15 July (7 months and 15 days after tax year-end).

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

All companies, irrespective of the materiality of their

controlled transactions, may be requested to present

documentation to support the arm’s-length nature of such

transactions if notified by the Portuguese tax authority to do

so.

Entities with total annual income of EUR10 million will be

required to prepare the documentation within the deadline

foreseen in the law. If this threshold is exceeded, an exemption

shall apply to controlled transactions whose value in the period

has not exceeded EUR100,000 and, in total, EUR500,000,

considering their market value.

> Master File

This is applicable (with local requirements).

> Local File

This is applicable (with local requirements).

> CbCR

The report should be consistent with OECD requirements (i.e.,

group consolidated revenue of EUR750 million).

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The law mandates the use of Portuguese in TP documentation.

However, before submission to the Portuguese tax authority, it

is possible to request the presentation in a foreign language.

> Safe harbor availability including financial transactions if

applicable

Entities with total annual income of EUR10 million will be

required to prepare the documentation within the deadline

foreseen in the law. If this threshold is exceeded, an exemption

shall apply to controlled transactions whose value in the period

has not exceeded EUR100,000 and, in total, EUR500,000,

considering their market value.

Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is preferred. Aggregation is allowed only if

certain conditions are met.

> Any other disclosure/compliance requirement

For the first time, an obligation is established for third parties

to issue a statement of responsibility regarding the information

and techniques used in technical studies requested by the

taxpayer in the preparation of the TP documentation.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The main disclosure requirements at this level are contained

in annex A, B, C and H (TP annex) of the Annual Tax and

Accounting Information Return (IES), which include (on a

yearly basis) the following information:

> Identification of the related entities

> Transactions conducted with each of the related parties

> Confirmation that proper contemporaneous (annual)

TP documentation is prepared on a timely basis and is

currently retained

The deadline for the submission of such return corresponds to

the 15th day of the seventh month after the corresponding tax

year-end.

Taxpayers must state in good faith in this annual return that

they have complied with the contemporaneous documentation

requirements. Misleading information may result in tax

penalties and criminal proceedings.

> Related-party disclosures along with corporate income tax

return

In the Corporate Income Tax Return the taxpayer is expected

to adjust in favor of the Portuguese state the positive impact

of any deviations from the arm’s-length principle.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

No, but it should be submitted on the same date. The deadline

for submission for the CbCR notification is the end of the fifth

month following the fiscal year-end.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The CIT return should be filed on or before the last day of the

fifth month following tax year-end or on 31 May, if the fiscal

year coincides with the calendar year.

> Other transfer pricing disclosures and return

The IES, including the specific TP annexes, should be filed until

the 15th day of the seventh month after the end of the fiscal

year or on 15 July if the fiscal year coincides with the calendar

year.

> Master File

The deadline for the submission of Master File (and Local File)

is the 15th day of the seventh month following the fiscal year-

end (applicable only to the taxpayers under the authority of

the Large Taxpayers Unit).

> CbCR preparation and submission

The deadline for submission of the CbCR is the end of the 12th

month following the fiscal year-end.

> CbCR notification

The deadline for the submission of the CbCR notification is the

end of the fifth month following the fiscal year-end.

b) Transfer pricing documentation/Local File preparation

deadline

The statutory deadline for the preparation of TP

documentation is the 15th day of the seventh month following

the fiscal year-end.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, taxpayers followed by the Large Taxpayers Unit have to

submit TP documentation prepared according to the format

prescribed in TP Decree-Ruling 268/2021 of 26 November

within the deadline for submission of the IES, i.e., until the

15th day of the seventh month after the end of the fiscal year

or on 15 July if the fiscal year coincides with the calendar

year.

> Time period or deadline for submission on tax authority

request

The taxpayer is normally given 10 days’ notice to submit the

TP documentation once requested by the tax authorities in an

audit or inquiry.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The TP methods hierarchy was removed from the TP

Decree-Ruling, aligning it with Article 63 of the CIT Code.

Taxpayers are entitled to use any of the accepted TP methods

(comparable uncontrolled price method, resale price method,

cost-plus method, profit-split method and transactional net

margin method).

If the controlled transaction is unique (real estate rights,

unlisted companies’ share capital, credit rights, intangible

property) or if there is a lack of available data regarding

potentially comparable transactions, the taxpayer may

adopt other methods, techniques or models of economic

assets valuation when the traditional methods are not viable.

Nonetheless, when using other methods, techniques or models

of economic assets valuation, the taxpayer needs to describe

and explain the method and the rationale of its selection.

The TP Decree-Ruling adopts the principle of the prevalence

of substance over form since the applicable regulations now

determine that controlled transactions’ terms and conditions

to be considered are those in force, even if those terms and

conditions are distinct from the ones contractually formalized.

8. Benchmarking requirements

> Local vs. regional comparables

There is a preference for local comparables and if not

so, Iberian comparables; if these prove scarce, European

comparables may be accepted.

> Single-year vs. multiyear analysis for benchmarking

The tested party’s single-year results are usually tested against

multiple-year interquartile ranges.

> Use of interquartile range

Spreadsheet interquartile range calculations are used following

general statistics rules for respective calculations.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The benchmarking search may remain valid for three years

(with an update of the financials), provided that the facts

and circumstances surrounding the transactions have not

materially changed. One of the aspects to be confirmed

annually is whether the 20% independence threshold specified

in the Portuguese legislation is still met by all comparables

included in the final set.

> Simple, weighted or pooled results

There is a preference for the weighted average for arm’s-

length analysis.

> Other specific benchmarking criteria, if any

Local independence threshold (20%) and criteria must be used

in benchmarking studies.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

Failure to comply with documentation requirements may shift

the burden of proof from the tax authorities to the taxpayer

and the application of secret comparables.

Non-submission of the TP documentation and the lack of

presentation of the CbCR are punishable with a fine ranging

between EUR500 and EUR20,000, plus 5% of daily interest for

each late day in delivering the relevant document.

In addition, the General Regime on Tax Infractions (Regime

Geral das Infracções Tributárias — RGIT) addresses penalties

for the following situations:

> The taxpayer stated in the IES that the TP documentation

was prepared and, despite being notified by the tax

authorities to submit it, it was late in its delivery. The

penalty related to late delivery can reach EUR20,000 per

year and per company.

> The taxpayer does not state in the IES that the TP

documentation was prepared but was notified by the tax

authorities to submit it. The penalty for non-compliance

related to an omission or lack of evidence in the IES can

reach EUR45,000 per year and per company.

> The taxpayer stated in the IES that the TP documentation

was prepared, and it was notified by the tax authorities to

submit it, but the documentation was not prepared. The

penalty for non-compliance related to improper fulfillment

can reach EUR75,000 per year and per company.

> The taxpayer stated in the IES that the TP documentation

was prepared but refused to submit it to the tax

authorities (when duly requested). The penalty for

non-compliance related to the refusal to submit TP

documentation can reach EUR150,000 per year and per

company.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

TP adjustments are subject to the general tax penalty regime.

A late-payment interest penalty is also applicable for TP

adjustments per year.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Please see above.

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

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

the administrative level and tax court.

10. Statute of limitations on transfer pricing

assessments

In Portugal, an assessment is possible during the four years

after the end of the assessment year. All Portugal-based

companies have a statutory obligation to keep their TP

documentation available (at the Portuguese establishment or

premises) and in good order for the relevant year for 10 years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit, in general, may be

considered to be medium, as is the likelihood that TP will be

reviewed as part of that audit. When it comes to recurrent loss-

making companies or business model conversions, especially

those often involved in cross-border transactions, the risk

becomes high. Companies followed by the Large Taxpayers

Unit are more frequently audited.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high that the TP

methodology will be challenged if TP is reviewed as part of the

audit.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood of an adjustment, if TP methodology is

challenged, may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

Transactions more likely to be audited include:

> Recurrent loss-making companies that often perform

significant cross-border transactions

> Contradictions disclosed in the IES also lead to audits

> Companies with low profitability and considerable public

exposure

> Financial transactions including cash pooling

arrangements and guarantees are also likely to be

scrutinized

> Restructuring operations are becoming increasingly more

subject to audits

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Taxpayers are allowed to negotiate unilateral, bilateral and

multilateral APAs.

A detailed APA procedure, setting out the APA submission

requirements, process and fees, was updated by Decree-Ruling

267/2021 of 26 November (effective on 27 November 2021)

and is currently foreseen in Article 138 of the CITC (updated

by Law No. 119/2019 on 18 September 2019). The previous

Decree-Ruling 620-A/2008 of 16 July was repealed.

> Tenure

APAs cannot exceed a four-year period, which may be

renewable upon a written request to the tax authorities.

> Rollback provisions

Yes, up to a two-year period under certain conditions.

> MAP opportunities

Yes, taxpayers may request a MAP if taxation has or is likely

to occur that is not in accordance with the provisions of

a double tax treaty to which Portugal is signatory under

Article 1(1) of the EU Arbitration Convention (90/436/EEC).

Taxpayers may also request a MAP when income included in

the profits of an enterprise of a contracting state are or may

be equally included in the profits of an enterprise from another

contracting state.

In the case of negotiation of a unilateral APA, the taxpayer will

be required to waive its right to apply to a MAP.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Debt/equity rules according to the new OECD Transfer Pricing

Guidance on Financial Transactions should be observed.

Paulo Mendonca

Paulo.Mendonca@pt.ey.com

+ 351937912045

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

The Puerto Rico Department of the Treasury (Departamento

de Hacienda de Puerto Rico) is the governmental authority

that administers the Puerto Rico Internal Revenue Code

of 2011 as amended (2011 Code). The tax authority that

provides for transfer pricing matters is the 2011 Code.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are regulations to implement the provisions of Section

1047 of Act No. 120 of 31 October 1994, as amended,

known as the Puerto Rico Internal Revenue Code of 1994

(1994 Code), promulgated under Section 6130 of the Code

that authorizes the Secretary of the Treasury to adopt the

necessary regulations to put into effect said Code (1994 Code

Regulations).

This was effective 30 days after its publication on 22

December 2000.

Although the 1994 Code was repealed by the 2011 Code,

regulations issued under the 1994 Code corresponding to

their identical provisions in the 2011 Code shall continue in

full force and will be effective until regulations under the 2011

Code are issued.

Furthermore, on May 11, 2021 the Puerto Rico Treasury

Department issued Administrative Determination Letter 21-

05 to among others, clarified that there is no need to issue

a Transfer Pricing Report each year to the extent that the

facts, circumstances and intercompany transactions have

not changed substantially from the time the Transfer Pricing

Report was issued.

> Section reference from local regulation

Articles 1047-1 through 1047-4 of the 1994 Code

Regulations.

Such articles regulate the current provisions of Section

1040.09 of the 2011 Code which is equivalent to Section

1047 of the 1994 Code.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The regulations do not rely on OECD Transfer Pricing

Guidelines, the UN tax manual or the EU Joint Transfer Pricing

Forum.

The rules are modeled after Section 482 of the United

States Internal Revenue Code of 1986, as amended, and its

regulations (US Code).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If yes, does it need to be submitted or

prepared contemporaneously?

The 2011 Code disallows as a deduction for income tax

purposes, 51% of certain intercompany expenses (51%

disallowance) incurred by the taxpayer unless such taxpayer

voluntarily provides, along with its income tax return,

a transfer pricing study that includes an analysis of the

operations taking place in Puerto Rico, prepared according to

and in compliance with the requirements established in Section

482 of the US Code.

For tax years beginning after 31 December 2019, form AS

6175, Certification of Compliance with Sections 1033.17(a)

(16) and (17) of the 2011 Codemust be completed and filed

with the Puerto Rico Treasury Department’s Unified System

of Internal Revenue (Sistema Unificado de Rentas Internas —

SURI). Form AS 6175 serves as a certification of compliance

and certifies that a transfer pricing study has been issued and

is available as of the income tax return filing due date. In the

event the transfer pricing study is requested by the Puerto

Rico Treasury Department, it must be provided within 30

calendar days after being requested. At the present time, the

Puerto Rico Treasury Department has not issued regulations to

further interpret these provisions.

Please note that apart from intercompany expenses limitation

per above, the transfer pricing regulation provides the rules

for transactions between related parties/controlled groups.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, local branches who wish to fully deduct the allocated

expenses from their home office must submit, along with

their income tax returns, the transfer pricing study under

Section 482 of the US Code, which includes an analysis of the

operations taking place in Puerto Rico as provided above.

> Does transfer pricing documentation have to be prepared

annually?

Taxpayers can reasonably rely on a certified transfer pricing

study prepared for previous years, provided the taxpayer’s

facts and circumstances and relevant transactions in the tax

year have not substantially changed since the certification

of the transfer pricing study. Despite this, taxpayers need to

submit annually form AS 6175 together with their income tax

return.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

The Puerto Rico Treasury Department has not issued

regulations with respect to the impact of transfer pricing study

provisions to MNEs with multiple entities in Puerto Rico. It is

unclear whether MNEs with multiple entities may be able to

submit consolidated transfer pricing studies to cover all the

entities operating in Puerto Rico.

b) Materiality limit or thresholds – Rules and provisions pre-

viously noted are generally applicable regardless of the

amount of expenses involved

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

Even when not specifically required as to have written

documentation but transactions between related parties/

controlled group of entities are governed by the transfer

pricing regulation and highly recommended to have the same

documented accordingly.

> Local language documentation requirement

Documentation may be submitted in English or Spanish.

> Safe harbor availability including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

This is not applicable.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

No.

> Related-party disclosures along with corporate income tax

return

Entities in Puerto Rico that are part of a group of controlled

corporations or related entities must obtain an identification

number from the Puerto Rico Treasury Department for the

group. Such number must be included in their income tax

return.

> Related-party disclosures in financial statement/annual

report

> Audited Financial Statements (AFS) are required when the

volume of business is equal to or greater than $10,000,000.

In the case of members of a group of related entities, the

combined volume of business of the group shall be taken

into consideration to determine if the threshold has been

met. Under these circumstances, every member of the

group with volume of business of $1,000,000 or more is

required to accompany its income tax return with AFS.

Provided that every member of the group with volume of

business of less than $1,000,000 is required to submit an

Agreed Upon Procedure (AUP) or Compliance Attestation

(CA) report.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporations with a calendar

year must file their income tax return, or extension thereof,

on or before 15 April following the close of the calendar year.

Corporations with a fiscal year period of accounting must file

their income tax returns, or extension thereof, on or before the

15th day of the fourth month following the close of the fiscal

year. If duly extended by the due date, the taxpayer will have

an additional six months to file its income tax return.

AS 6175, Certification of Compliance with Sections

1033.17(a)(16) and (17) to certify / confirm that a transfer

pricing study has been prepared and is available by the time

the return is due is required to be submitted with the income

tax return.

> Other transfer pricing disclosures and return

No.

> Master File

This is not applicable.

> CbCR preparation and submission

No.

> CbCR notification

No.

b) Transfer pricing documentation/Local File preparation deadline

AS 6175, Certification of Compliance with Sections

1033.17(a)(16) and (17).

c) Transfer pricing documentation/Local File submission deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The transfer pricing study related to the 51% disallowance

must be issued on or before the due date to file the income tax

return, and Form AS 6175 must be filed along with the income

tax return of the entity.

> Time period or deadline for submission on tax authority

request

If requested by the Puerto Rico Treasury Department, the

transfer pricing study must be submitted within 30 calendar

days after its request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

The 1047 Regulation provides various methodologies to

account for transaction between related parties/controlled

group of entities (ie sale of personal property)

> Domestic transactions

The 1047 Regulation provides various methodologies to

account for transaction between related parties/controlled

group of entities (ie sale of personal property).

b) The 1047 Regulation provides various methodologies

to account for transaction between related parties/con-

trolled group of entities (ie sale of personal property).

Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

> Local vs. regional comparables

Reference would be made to Section 482 of the US Code and

customary benchmarking requirements used thereunder.

> Single-year vs. multiyear analysis for benchmarking

Reference would be made to Section 482 of the US Code and

customary benchmarking requirements used thereunder.

> Use of interquartile range

Reference would be made to Section 482 of the US Code and

customary benchmarking requirements used thereunder.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Reference would be made to Section 482 of the US Code and

customary benchmarking requirements used thereunder.

> Simple, weighted or pooled results

Reference would be made to Section 482 of the US Code and

customary benchmarking requirements used thereunder.

> Other specific benchmarking criteria, if any

Reference would be made to Section 482 of the US Code and

customary benchmarking requirements used thereunder.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Intercompany Expenses not allowed as deduction. In addition

penalties can be assessed from 20% or 40%, in the case of

gross valuation misstatements, of the amount assessed as

deficiency. In the case of fraud the penalty should be 100% of

the amount assessed as deficiency.

> Consequences of failure to submit, late submission or

incorrect disclosures

Intercompany Expenses not allowed as deduction. In addition

penalties can be assessed from 20% or 40%, in the case of

gross valuation misstatements, of the amount assessed as

deficiency. In the case of fraud the penalty should be 100% of

the amount assessed as deficiency.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, as the Transfer Pricing Study needs to be available by the

filing due date.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

Generally, the Puerto Rico Treasury Department may assess

tax deficiencies up to four years after filing the income tax

return or six years if 25% of income or more is omitted from

the income tax return. Since Form AS 6175 certifying that a

transfer pricing study is available, must be filed together with

the income tax return, it would appear, the Secretary of the

Treasury may challenge a transfer pricing study within the

four-year or six-year period for assessment of deficiencies, as

applicable.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Low.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Low.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Low.

> Specific transactions, industries and situations, if any, more

likely to be audited

Entities that are considered large taxpayers may be subject to

increased likeliness of a tax audit. However, the general audit

risk is low.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

This is not applicable.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Pablo Hymovitz Cardona

pablo.hymovitz@ey.com

+ 17877727119

Rosa Rodriguez-Ramos

rosa.rodriguez@ey.com

+ 17877727062

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

State tax regime: General Tax Authority (GTA)

Qatar Financial Centre (QFC) tax regime: QFC Authority

(QFCA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

State tax regime: Income Tax Law No. 24 of 2018 (Qatar

Income Tax Law), is effective from 13 December 2018, whilst

Executive Regulations to Tax Law No. 24 were issued on 11

December 2019. The law and regulations apply to Qatari

taxpayers, except for those registered in the QFC.

The “Related-party” concept is defined under Article 52 of the

Executive Regulations, and the definition aligns with the IFRS

definition of “related party”.

QFC tax regime: Law No. 7 of 2005 applies to taxpayers in the

QFC regime and it is separate and distinct from the State tax

regime. Law No. 7 introduced the QFCA Tax Manual (Transfer

Pricing Manual), and it applies to QFC-registered entities only.

“Associated person” is defined under Section 56 of the QFC

Regulations, and it is based on control.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Qatar is not an OECD member jurisdiction although in practice

Qatar generally follows the OECD Guidelines.

On 4 December 2018, Qatar signed the Multilateral

Convention to Implement Tax Treaty Related Measures to

Prevent Base Erosion and Profit Shifting (the Multilateral

Instrument or MLI).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Master and Local File requirements were recently

introduced under the Executive Regulations of the Qatar

Income Tax Law. In 2020 the GTA released President’s

Decision No. 4 of 2020 (Transfer Pricing Decision),

requiring certain taxpayers with related-party transactions

to submit a Transfer Pricing Declaration form with their

FY2020 tax return.

It is a requirement to submit master and Local Files by 30

June of the year following the reporting year, subject to

certain statutory thresholds whilst the taxpayer should

have at least one foreign related party. The Transfer

Pricing Decision applies to financial years starting on or

after 1 January 2020.

> Effective or expected commencement date

Financial years beginning on or after 13 December 2018

and mandatory submission of the master and Local File

applies from FY2020 (financial years starting on or after 1

January 2020).

> Material differences from OECD report template or format

No significant differences relative to the OECD format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There are no provisions in the law that provide for penalty

protection regarding the submission of a report prepared

according to the BEPS Action 13 format. That said,

submission of a BEPS Action 13 format report should be

sufficient to meet local documentation requirements.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, Qatar signed the MCAA on 19 December 2017 whilst on 9

September 2018, whilst it published new CbCR requirements

that align to the OECD’s BEPS Action 13 Final Report. These

requirements also apply to entities that are registered under

the QFC regime.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

State tax regime: recently, master and Local File requirements

were introduced through the new Executive Regulations of

the Qatar Income Tax Law. Subject to certain conditions, the

reports should be prepared contemporaneously and should be

submitted to authorities by 30 June of the year following the

reporting year.

QFC tax regime: the burden of proof is on the QFC-registered

taxpayer to establish that the pricing, term and conditions

attached to their related party transactions are consistent with

the arm’s-length standard.

The following records and evidence should be considered by

the taxpayer in complying with the burden of proof:

> Primary accounting records

> Tax adjustment records; if any

> Records of transactions with related parties

> Evidence demonstrating an arm’s-length result (including

a description of the intercompany transactions and a

functional analysis)

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

State tax regime: yes.

QFC tax regime: preparation of a transfer pricing report is

recommended if the related party transactions do not produce

an arm’s length result for the taxpayer. Risk may materialize if

the taxpayer returns losses or where its profits are lower than

in previous years, or when compared to the profits earned by

competitors in the taxpayer’s industry.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

State tax regime: there is a requirement to submit the transfer

pricing disclosure form if the taxpayer’s total revenues or total

assets are above QAR10 million. The requirement to prepare

transfer pricing documentation is based on the taxpayer

having total revenues or total assets above QAR50 million.

Transactions above QAR200,000 (by type of transaction) must

be disclosed.

If the threshold is not met, documentation should still be

prepared and made available, if requested by the GTA.

QFC tax regime: no amount is specified.

> Master File

State tax regime: please see the thresholds above.

QFC tax regime: please see above.

> Local File

State tax regime: please see above.

QFC tax regime: please see above.

> CbCR

The materiality limit is an annual consolidated group revenue

of QAR3 billion (approximately EUR700 million or USD824

million) in the preceding fiscal year.

> Economic analysis

State tax regime: transactions above QAR200,000 (by type of

transaction) require analysis.

QFC tax regime: no materiality specified.

c) Specific requirements

> Treatment of domestic transactions

There is no distinction between domestic and international

transactions under the current transfer pricing regulations.

Therefore, it is expected that all related-party transactions

should comply with the law and regulations, which are based

on the arm’s-length standard.

> Local language documentation requirement

State tax regime: transfer pricing documentation prepared in

English is currently accepted by the GTA. However, in practice,

and in the event of a preapproval application to use an OECD

method other than the CUP method, a summary memorandum

should be prepared in Arabic and submitted to the GTA for its

approval.

It remains to be seen, however, whether an Arabic translation

of the master and Local File prepared in English will be

requested by the GTA.

QFC tax regime: English language documents are accepted

under the QFC regime.

> Safe harbor availability including financial transactions if

applicable

State tax regime: while there is no explicit reference to safe

harbor rules in the new regulations, a limit on the deductibility

of interest on related-party loans applies. The limit is a

maximum of three times the shareholders’ equity, as recorded

in the financial statements for the relevant accounting period.

QFC tax regime: under the Transfer Pricing Manual, the safe

harbor debt and equity ratios are as follows:

> 2:1 for a nonfinancial institution.

> 4:1 for a financial institution.

The safe harbor debt and equity ratios only relate to the

quantum of the loan and not the interest rate on the loan.

> Is aggregation or individual testing of transactions preferred

for an entity

No specific distinction in the regulations.

> Any other disclosure/compliance requirement

A transfer pricing form was recently introduced by the

Executive Regulations of the Qatar Income Tax Law. Taxpayers

are required to submit the transfer pricing form with the

corporate income tax return if the taxpayer has a foreign

related entity and if revenue or total assets exceeds QAR10

million and where related-party transactions (either local or

abroad) are above QAR200,000 (by type of transaction), for

the relevant accounting period.

Taxpayers wishing to use an OECD transfer pricing method

other than the CUP for determining an arm’s-length price

on their related-party transactions should apply to the GTA

seeking its approval.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

State tax regime: per the above, there is a requirement to

complete the transfer pricing form.

QFC tax regime: there is currently no requirement to prepare

a transfer pricing specific return separately or with the

corporate income tax return.

> Related-party disclosures along with corporate income tax

return

State tax regime: related-party disclosures (transfer pricing

form) are included as part of the income tax return. In

addition, the notes to the audited financial statements, which

are filed with the GTA, should support the figures in the annual

tax declaration.

QFC tax regime: related-party transactions must be disclosed

in the notes to the audited financial statements that are filed

with the QFCA Tax Department, along with the income tax

return. A QFC branch is not required to submit full financial

statements.

Currently there are no related-party disclosures or transfer

pricing-related appendices that need to be submitted under

the QFC regime.

> Related-party disclosures in financial statement/annual

report

Same as above.

> Other information/documents to be filed

State tax regime: an application should be made to the GTA to

use an OECD transfer pricing method other than the CUP.

QFC tax regime: none.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

It should be filed within four months after the end of the

accounting period.

> Other transfer pricing disclosures and return

It should be submitted by the corporate income tax return

deadline.

> Master File

It should be submitted by 30 June of the year following the

reporting year.

> CbCR preparation and submission

It should be submitted within 12 months from the end of the

reporting fiscal year.

> CbCR notification

For the fiscal year beginning on or after 1 January 2018

(FY2018), the local authorities require MNE groups whose

ultimate parent entities are tax residents in Qatar to file CbCR

notifications with the authorities on or before 12 months from

the end of reporting fiscal year. For subsequent fiscal years,

the deadline is the last day of the reporting year.

b) Transfer pricing documentation/Local File preparation deadline

It is recommended that the transfer pricing documentation is

available on or before the date of the annual tax return filling.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, master and Local Files should be filed by 30 June of the

year following the reporting year, subject to certain statutory

thresholds, which includes the taxpayer having at least one

foreign related party. This requirement applies to years

starting on or after 1 January 2020.

> Time period or deadline for submission on tax authority

request

In the event that Qatar entities do not meet the conditions or

prescribed thresholds and hence are not required to submit

the master and Local Files within the statutory deadline, the

transfer pricing documentation should be readily available for

submission within 30 days upon the GTA’s request.

d) Are there any new submission deadlines per

COVID-19-specific measures? If Yes, specify which

deadlines are impacted

For FY2020, deadlines for submission of Master File and local

file were moved to 30 September 2021. For FY2021, it is

expected that submissions will be by 30 June 2022. To date

no extensions or new deadlines have been communicated by

the authorities.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

There is no distinction between domestic and international

transactions in the current transfer pricing legislation, and

the authorities accept all OECD recognized transfer pricing

methods, subject to the following.

State tax regime: under the Executive Regulations to the

Qatar Income Tax Law, an arm’s-length price should be

determined using the CUP method. This price is determined

by comparing the pricing, terms and conditions on the related

party transaction with similar goods or services provided

between third parties. The following considerations should be

performed as part of the CUP analysis:

> Characteristics of the goods supplied, or services provided

> The pricing and contractual terms attached to the

transactions

> Functions performed, assets utilized, and risks incurred

and

> All relevant economic circumstances.

When the CUP method cannot be applied, the other OECD

methods may be applied, subject to approval of the GTA.

The GTA expects comparables from Qatar or the Middle

East and North Africa (MENA) region. However, if this is not

possible, Asian comparables should also be acceptable.

QFC tax regime: when the CUP method is available as

evidence, the QFCA Tax Department is likely to consider it as

the preferred method. A discussion should be included in the

documentation about the appropriateness of the selected

method.

The QFCA Tax Department prefers comparables from the

MENA region, or failing that, Asian or African comparables are

preferred to European comparables.

8. Benchmarking requirements

> Local vs. regional comparables

Qatar tax authorities prefer local jurisdiction and MENA region

comparables.

Geographic preference is given to MENA; however, if a MENA

search cannot provide sufficient comparable companies, the

search may be expanded to other regions (generally in the

following order of preference: Asia, Africa and Europe).

> Single-year vs. multiyear analysis

Multiyear analysis is performed.

> Use of interquartile range

The interquartile range is used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Roll forwards and updates of the financials of a prior study

are used, provided the benchmarking search is not more than

three years old.

> Simple, weighted or pooled results

The weighted average is adopted.

> Other specific benchmarking criteria, if any

Independence threshold of 50% and above is applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not specified in regulations so far.

> Consequences of failure to submit, late submission or

incorrect disclosures

There are currently no specific transfer pricing penalties for

failure to maintain transfer pricing documentation. In practice,

general late filing penalties may apply. However, given the

Transfer Pricing Declaration Form is to be filed with the tax

return, and that tax returns cannot be filed without the form

(where applicable), penalties for late filing of the tax return

apply if delays are caused due to non-timely filing of the form.

Penalties amount to QAR500 per day and penalties are capped

at QAR180,000.

Although no specific penalty is mentioned in transfer pricing

regulations for the late submission of the master and local

file, in practice the GTA currently applies the same general

penalties imposed on late submission of the income tax return

(QAR 500 per day).

The transfer pricing assessment of the Qatar tax authorities

may become final in the event of failure to provide transfer

pricing documentation and supporting information upon

request.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

State tax regime: financial penalties, in the form of interest

imposed for non-compliance with income tax rules under the

Qatar Income Tax Law may apply in the case of a deficiency

assessment due to transfer pricing adjustments.

Interest on any additional income tax due as a result of a

transfer pricing adjustment may be levied at a rate of 1.5% per

month of delay (capped at the amount of income tax due).

QFC tax regime: if the QFC-registered taxpayer fraudulently or

negligently files a tax return, the QFC-registered taxpayer may

be exposed to a financial sanction of an amount not exceeding

the understated tax. The late payment of tax is subject to a

delay payment charge of 5% per year, calculated for the period

from the due date of the tax to the actual payment date.

If a QFC-registered taxpayer fails to maintain adequate records

to support the pricing of transactions with associates or

claims in its return that no adjustment is required under the

transfer pricing regulations without being able to substantiate

that claim, then there may be a penalty liability for failure to

maintain adequate records (not exceeding QAR20,000) or for

filing an incorrect return (financial sanctions not exceeding the

tax understated).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not clarified in the regulations, and there are currently no

cases or precedent in this area.

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

b) Penalty relief

Currently there is no penalty relief.

A penalty exemption/reduction may be electronically

requested as a first step before discussing late filing penalties

with the authorities. If no response is received or the

exemption/reduction is not granted, an appeal may be lodged

to the Qatar tax authorities or to a body designated by the

relevant local tax regulations.

10. Statute of limitations on transfer pricing

assessments

State tax regime: a transfer pricing assessment is a part of the

regular corporate income tax audit by the GTA. The statute

of limitations to complete a regular tax audit is five years

following the year in which the taxpayer submitted the tax

return.

QFC tax regime: the time limit for the QFCA Tax Department

to conduct a tax assessment is six years after the end of the

accounting period to which it relates.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny or

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

State tax regime: the likelihood may be considered to be

medium to high.

QFC tax regime: The likelihood may be considered to be high.

The QFCA Tax Department has a rigorous process in place

compared to the GTA regarding transfer pricing reviews and

audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

State tax regime: the likelihood of a challenge to the transfer

pricing methodology is characterized as low to medium,

provided that sufficient transfer pricing documentation is

made available on request.

QFC tax regime: the likelihood of a challenge to the transfer

pricing methodology is characterized as medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

State tax regime: the likelihood of an adjustment is

characterized as low to medium, provided that sufficient

transfer pricing documentation is available.

QFC tax regime: the likelihood of an adjustment is

characterized as medium to high.

> Specific transactions, industries and situations, if any, more

likely to be audited

State tax regime: recently the GTA has challenged

management fees and head office cost allocations.

QFC tax regime: the QFCA Tax Department is currently

focusing on intragroup services, intercompany loans and thin

capitalization issues.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

State tax regime: there is currently no formal APA program in

place. APA regulations are expected to be issued by the GTA

soon.

QFC tax regime: the QFCA Tax Department has an advance

ruling regime and welcomes QFC-registered entities to apply

for an APA to obtain certainty about their tax position.

> Tenure

There is none specified.

> Rollback provisions

There is none specified.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Refer to the sections above.

Guy Taylor

guy.taylor@ae.ey.com

+ 971501812093

Adil Rao

adil.rao@ae.ey.com

+ 971565479922

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Tax Administration of Serbia.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Articles 59 through 62 of the Corporate Income Tax (CIT) Law

define the arm’s-length principle, the acceptable methods

and the obligation to prepare and file transfer pricing

documentation (effective from 1 January 2020).

The rulebook on transfer pricing and methods for the

determination of arm’s-length prices in intragroup transactions

provides further details about these and prescribes obligatory

content of the transfer pricing documentation (effective from

30 January 2014).

> Section reference from local regulation

Article 59 of the CIT Law defines related parties and

associated enterprises.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Serbia is not an OECD member; however, Serbian transfer

pricing provisions and documentation requirements are

generally based on the OECD Guidelines.

Similarly, the EU Joint Transfer Pricing Forum and UN tax

manual are not directly recognized by Serbian transfer pricing

legislation.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

Only CbCR is covered.

> Effective or expected commencement date

The obligation of filing the CbCR is effective as of fiscal

year 2020.

> Material differences from OECD report template or format

The template is mostly in line with OECD template.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

It is sufficient.

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

on BEPS?

Yes.

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

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the rulebook on transfer pricing and methods for the

determination of arm’s-length prices in intragroup transactions

provides rules for transfer pricing documentation in Serbia,

which provides for a contemporaneous document preparation.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, every section of transfer pricing documentation should be

updated with the latest available information.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

If a taxpayer did not realize intercompany transactions

exceeding Serbian dinar (RSD)8 million with either of the

related parties, its transfer pricing disclosure can be fulfilled in

a summary form.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

There is a materiality threshold for preparation of the CbCR.

For Serbian domestic ultimate parent companies, CbCR only

has to be prepared where the consolidated revenues of the

group in the previous fiscal year amounted to at least EUR750

million.

> Economic analysis

The threshold is RSD8 million.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language.

Per Article 6 of the Law on Tax Procedure and Tax

Administration, if a taxpayer submits a document in a

language and letter not used officially by the tax authorities in

accordance with the law governing the official use of language

and letter, the tax authority will set a time limit that may

not be shorter than five days for the taxpayer to deliver a

certified translation into Serbian. If the taxpayer fails to deliver

the certified translation within the provided time limit, the

document shall be deemed not submitted.

> Safe harbor availability, including financial transactions if

applicable

Serbia prescribes safe harbor interest rates for intercompany

loans, which are updated every year.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

Serbian legislation does not explicitly prescribe the currency in

which the transfer pricing documentation should be prepared;

however, implicitly it may be concluded that the transfer

pricing documentation should be prepared in local currency

(RSD) and that the stated amounts should be consistent with

the information from the official financial statements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no specific transfer pricing return in Serbia.

> Related-party disclosures along with corporate income tax

return

Taxpayers are obligated to disclose their annual corporate

income tax return revenues and expenses resulting from

transactions with related parties, as well as disclose tax-based

adjustments based on the transfer pricing analysis.

In addition, related-party disclosures and details of

transactions are to be documented through obligatory transfer

pricing documentation, which needs to be prepared and filed

along with the corporate income tax return.

> Related-party disclosures in financial statement/annual

report

There is none prescribed.

> CbCR notification included in the statutory tax return

Not yet introduced.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline for submission of the corporate income tax

return is set within 180 days from the date of expiration of the

period for which the tax is assessed.

> Other transfer pricing disclosures and return

The prescribed deadline is the same as for corporate income

tax return.

> Master File

This is not applicable.

> CbCR preparation and submission

The ultimate parent entity of an MNE group established in

Serbia must submit the CbCR for each fiscal year to the

competent authority within 12 months from the end of the

MNE group’s reporting financial year.

The template is prescribed by the local transfer pricing

rulebook (mostly in line with the OECD template) and should be

submitted in local (Serbian) language in paper form.

> CbCR notification

Not yet introduced.

b) Transfer pricing documentation/Local File preparation

deadline

There is a statutory deadline and recommendation for the

preparation of transfer pricing documentation — by the time

of lodging the tax return to achieve penalty protection (e.g.,

where there is a contemporaneous requirement).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Yes, transfer pricing documentation must be submitted

with the corporate income tax return. The deadline for

submission of the corporate income tax return and transfer

pricing documentation is set within 180 days from the date of

expiration of the period for which the tax is assessed.

> Time period or deadline for submission upon tax authority

request

If transfer pricing documentation is not submitted, the CIT

Law prescribes that the tax authorities could ask in writing for

a taxpayer to submit transfer pricing documentation and are

obligated to give a deadline of 30 to 90 days to act upon the

request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

This is not applicable for fiscal year 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The taxpayer is required to select the most appropriate

method for determining that the transaction price is at arm’s

length. Selection of the most appropriate method is based on

the following criteria:

> Nature of transactions that are subject to the analysis

> Availability and reliability of data for the analysis

> Level of comparability between transactions affected

by transfer prices and transactions carried out with or

between unrelated parties

> The appropriateness of using financial data of unrelated

parties for the analysis of transfer pricing compliance by

certain types of transactions

> The nature and reliability of assumptions

To determine the arm’s-length price of a transaction, the

regulations prescribe the following methods: CUP, resale-

minus method, cost-plus method, TNMM and profit-split

method.

The taxpayer is also allowed to use any other unspecified

method that is reasonable to apply in a given circumstance,

assuming that the above-specified methods cannot be applied.

Foreign comparables are accepted for the purpose of a

benchmark analysis if no local comparables can be identified.

There is no priority in the selection of methods.

8. Benchmarking requirements

> Local vs. regional comparables

Foreign comparables are accepted for the purpose of a

benchmark analysis if no local comparables can be identified.

> Single-year vs. multiyear analysis for benchmarking

Use of a multiyear analysis is mandatory.

> Use of interquartile range

Use of the interquartile range is mandatory.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year. Transfer pricing documentation has to be prepared

and submitted annually, and there is no need to conduct a

fresh benchmarking search every year — i.e., a rollforward

(update of financials of comparable companies) of the previous

year’s benchmarking analysis could be acceptable, too.

Furthermore, financials of a taxpayer should be updated every

year in accordance with financial statements for that year.

> Simple, weighted or pooled results

Application of the weighted average for arm’s-length analysis

is mandatory.

> Other specific benchmarking criteria, if any

Independence of a company is evaluated by related-party rules

stating that an entity shall be considered a related party if

it has 25% of shares or votes of the taxpayer. Also, a related

party is considered to be a person closely related to the

taxpayer or an entity registered in a tax haven.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There are no immediate penalties imposed for incomplete

documentation. If submitted documentation is not sufficient

for review, the tax authority gives additional time to taxpayer

to add complementary documentation (additional expenses

and possibility of taxpayer to provide required documentation

are taken into consideration by the tax authorities). Additional

deadlines for adding complementary documentation and

penalties for non-compliance are the same as for failure to

submit transfer pricing documentation (please see below).

The tax authority may complete or perform entire transfer

pricing analysis independently, without sending the request

to taxpayer to complete the documentation, if in the process

of tax audit the tax authority determines that documentation

is not prepared in accordance with the prescribed transfer

pricing rules.

> Consequences of failure to submit, late submission or

incorrect disclosures

Generally, each taxpayer is obligated to file annual transfer

pricing documentation together with the annual corporate

profits tax return. However, penalties are prescribed only if the

taxpayer fails to submit the transfer pricing documentation

upon official written request by the tax authorities, subject

to an additional filing deadline between 30 and 90 days. The

range of penalties for eventual non-compliance is between

RSD100,000 and RSD2 million for the legal entity and up to

RSD100,000 for the responsible individual in the legal entity.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In addition, the possible adjustment of taxable income on a

transfer pricing basis may result in a penalty of up to 30%

of the understated tax liabilities and may further result in

increased interest for late tax payments.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

In addition, the possible adjustment of taxable income on a

transfer pricing basis may result in a penalty of up to 30%

of the understated tax liabilities and may further result in

increased interest for late tax payments.

> Is interest charged on penalties or payable on a refund?

Legislation in the Republic of Serbia prescribes that the

interest is charged on penalties or payable on refund at a

yearly rate set by the National Bank of Serbia and increased

by 10%.

b) Penalty relief

Taxpayers may opt for 50% of imposed penalties (if imposed

to tax offense) no later than eight days from the receipt of

the transfer pricing order, whereas they would be exempt

from payment of the remainder 50% of imposed penalties.

Additionally, taxpayers may be approved for an additional

period of up to 90 days to comply with the transfer pricing

documentation requirements (i.e., to submit to the tax

authorities the prescribed transfer pricing document).

10. Statute of limitations on transfer pricing

assessments

The general statute-of-limitations period of five years for taxes

in Serbia also applies to transfer pricing assessments. A five-

year period starts from the beginning of the year following the

year in which the respective tax liability arose.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium, although

audits by the Serbian tax authorities are not conducted

regularly, and audited periods are not considered irrevocably

closed. Typically, audits take place only once every three to

five years, and they cover all taxes. Transfer pricing is likely to

be within the scope of most tax audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium; currently, tax

authorities have a limited level of practice with transfer pricing

methodology, but they have raised pertinent questions in

certain previous situations.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium, for the same

reasons given above.

> Specific transactions, industries and situations, if any, more

likely to be audited

The transactions that have the highest likelihood of

undergoing audit are management and consulting services,

while no specific industry has a special audit treatment in

this regard. There is a more frequent audit of large taxpayers

concerning transfer pricing than other taxpayers.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Advance rulings and APAs are not available in the Republic of

Serbia.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is applicable through double tax treaties. There is no

elaborate practice in Republic of Serbia regarding MAP.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules are prescribed in Article 62 of the CIT

Law.

In general, to meet the thin-capitalization test, a debt-to-equity

ratio of 4:1 needs to be met (10:1 for financial institutions).

This ratio means that the interest and related expenses

accrued on the basis of loan from related party are deductible

to the extent being related to the part of the borrowed amount

that equals 4 (10) times the value of taxpayer’s average

own capital. Any interest above that level is considered as

non deductible expense for Serbian corporate income tax

purposes.

Ivan Rakic

Ivan.Rakic@rs.ey.com

+ 38163635690

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority 1

National Agency for Fiscal Administration (ANAF), part of the

Ministry of Public Finance.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Law 227/2015 regarding the Fiscal Code, as

subsequently completed and amended

> Government Decision 1/2016, for the approval of the

norms for the application of Law 227/2015 regarding

the Fiscal Code, as subsequently completed and amended

> ANAF Order 222/2008, on the content of the transfer

pricing documentation file applicable for administrative

procedures initiated before 1 January 2016

> ANAF Order 442/2016, on the content of the transfer

pricing documentation file applicable for administrative

procedures initiated after 1 January 2016

> ANAF Order 3737/2015, approving the form of the

decision issued by the tax authority in application of the

procedure for elimination of double taxation between

Romanian related parties

> ANAF Order 3735/2015, approving the procedure for

the issuance or amendment of APAs and the content of

the respective APA request

> ANAF Order 3736/2015, approving the procedure

for the issuance of advance individual rulings and the

content of the respective request

> Law 207/2015, regarding the Fiscal Procedure Code, as

subsequently completed and amended

> ANAF Order 3049/2017, approving the template and

content of the CbC report, as subsequently completed

and amended

1https://www.anaf.ro/anaf/internet/ANAF/acasa/!ut/p/a1/

hY7LCsIwFET\_KPdaTeg2BWnsyrpJvBtJoS-ticRi\_HxTcGud-

3cAZ5gCBAXL2NfZ2Hr2z09JJXNRGCZXlWYWqRqx5cTjx8o-

hY7hJwTgD-iMR\_ew20iqD4AisXFVA\_-Sbp6gJoxvewl4uYdM-

0274FC27WhDWzwzxlMjJFZZzsWPDzuBq\_8pj-AtqSt/dl5/d5/

L2dBISEvZ0FBIS9nQSEh/

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Romania is not a member of the OECD.

The Romanian Fiscal Code and the related norms provide

that the tax authority should also consider the OECD

Guidelines when analyzing the prices applied in related-party

transactions. In addition, the legislation on transfer pricing

documentation requirements in Romania refers to the EU Code

of Conduct on transfer pricing documentation (C176/1 of 28

July 2006). No reference to the UN tax manual is made under

the Romanian transfer pricing legislation.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Romanian transfer pricing regulations have been amended in

view of implementing the changes introduced by BEPS Action

13 for transfer pricing documentation.

In 2016, the Romanian regulations regarding the required

content of the transfer pricing documentation have been

revised in consideration of the elements recommended by

the Master File and Local File under the OECD Guidelines to

BEPS Action 13; such revised transfer pricing documentation

regulations are applicable for tax audits performed by the

Romanian tax authorities from 2016 onward, which may also

cover tax years prior to 2016.

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

Yes, although a three-tiered documentation format as per

BEPS Action 13 (Master File, Local File and CbCR) has not

been formally prescribed in the local legislation, the transfer

pricing documentation regulations in Romania are, from an

overall content requirement perspective, aligned with the

prescribed content requirements of the Master File and Local

File under BEPS Action 13. Furthermore, the Romanian

transfer pricing legislation refers to and is considered to be in

line with the OECD Guidelines as amended or revised, and the

EU Code of Conduct on transfer pricing documentation. No

specific thresholds are applicable for differentiating between

the types of elements to be included in the transfer pricing

documentation or to be prepared in line with the Romanian

transfer pricing documentation requirements.

Local filing of CbCR often required in Romania as automatic

exchange relationships of non-EU parent CbCR filings to

Romania have not been activated per the OECD webpage.

Romania is a nonreciprocal jurisdiction. Local filing is required

using Romanian specific XML schema as provided by the

Romanian tax authorities.

> Effective or expected commencement date

Revised transfer pricing documentation regulations are

applicable for tax audits performed by the Romanian tax

authorities from 2016 onward, which may also cover tax

years prior to 2016.

> Material differences from OECD report template or format

There are no material differences between the OECD

report template or format and Romania’s regulations.

Romanian regulations do not prescribe the use of a

specific format, whereas content-wise, the requirements

are generally aligned.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The Romanian regulations on the required content of the

transfer pricing documentation are broadly aligned with

the OECD standard from an overall content perspective

(though no specific format is required). Additional specific

items would, however, be required in the transfer pricing

documentation prepared in accordance with the local

regulations in Romania (e.g., actual payments made for

related-party transactions).

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, as of 19 December 2017. At this stage, Romania is a

nonreciprocal jurisdiction.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, there are local transfer pricing documentation rules.

Transfer pricing documentation compliant with the specific

transfer pricing documentation regulations in Romania (i.e.,

ANAF Order 442/2016) must be provided to the Romanian

tax authorities upon their request to demonstrate that the

transactions performed with related parties were carried

out at arm’s length. Taxpayers that entered into APAs for

related-party transactions are not required to prepare and

submit a transfer pricing documentation file for the periods

and transactions covered by the APA. Transfer pricing

documentation may need to be prepared contemporaneously

by Romanian large taxpayers, but no taxpayer is required to

submit transfer pricing documentation in the absence of a

specific request from the tax authorities.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, permanent establishments in Romania of foreign

companies are subject to the same transfer pricing

documentation requirements as any Romanian legal entities.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the requirement to prepare transfer pricing

documentation annually is only applicable from 2016 onward

for Romanian taxpayers that qualify as large taxpayers (per

the specific criteria established annually by the Romanian

tax authorities), with respect to the transaction types carried

out with related parties exceeding the following thresholds

(obtained by cumulating the value of all transactions of that

specific type undertaken during the year with all related

parties, excluding value-added tax): EUR200,000 in the case

of interest for financial services, EUR250,000 in the case of

services and EUR350,000 in the case of acquisitions or sales

of tangible or intangible assets. The standard transfer pricing

documentation content requirements are applicable also in the

case of reports that must be prepared annually (no specific

minimum requirement is provided under the local regulations).

The term for the preparation of the annual transfer pricing

documentation is within the legal deadline for submission of

the annual corporate income tax return (the 25th day of the

third month after the tax year-end). For the period 2021–25,

the legal deadline for submission of the annual corporate

income tax return was prolonged by the 25th day of the sixth

month after the tax year-end.

In all other cases, transfer pricing documentation has to be

prepared upon specific request from the tax authority and

within the required term specified by the authorities.

In case of a tax audit, transfer pricing documentation

(comprising MF and LF information) may be requested

for all IC transactions of the types exceeding any of the

following cumulative thresholds (obtained by cumulating

the value of transactions with all related parties, excluding

VAT): EUR50,000 in case of interest for financial services,



EUR50,000 in case of services and EUR100,000 in the case of

acquisitions/sales of tangible/intangible assets.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

As transfer pricing documentation requirements are applicable

at individual taxpayer level in Romania, each entity is in

principle expected to be able to provide transfer pricing

documentation that is fully compliant with the Romanian

transfer pricing documentation requirements upon the request

from the tax authorities issued at an individual entity or

taxpayer level. While no provision under the Romanian transfer

pricing regulations prohibits to cover the content requirements

for more than one Romanian taxpayer in the same transfer

pricing report, it may be rather recommendable from a

practical perspective to prepare stand-alone transfer pricing

reports for each entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

> EUR50,000 in the case of interest for financial services

> EUR50,000 in the case of services

> EUR100,000 in the case of acquisitions or sales of

tangible or intangible assets

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The CbCR requirements apply to MNE groups having

consolidated income reported in the last fiscal year prior to the

reporting period equal to or exceeding EUR750 million.

> CbCR filing

An entity with tax residence in Romania is required to file a

CbCR with respect to its reporting fiscal year if one of the

following is true:

> It is the ultimate parent entity of the MNE group.

> It is the surrogate parent entity, being appointed by the

MNE group as a sole substitute for the ultimate parent

entity.

> It is a constituent entity of the MNE group, having the

obligation under certain conditions of filing the CbCR in

Romania on behalf of such MNE group (e.g., the CbCR for

the MNE group is submitted in a non-EU jurisdiction).

> CbC notification

Romanian constituent entities forming part of an MNE group

that are subject to the aforementioned requirements must

notify the Romanian tax authorities of the identity and tax

residence of the reporting entity.

> Economic analysis

Taxpayers qualifying as subject to documentation

requirements need to document all transactions that exceed

the materiality thresholds.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

No distinction is made with respect to the content of transfer

pricing documentation required for cross-border vs. domestic

related-party transactions.

> Local language documentation requirement

The transfer pricing documentation (including all appendices

attached, e.g., intercompany agreements) needs to be

submitted in Romanian.

Per the provisions of Order 442/2016, “in case of documents

in a foreign language, these shall be accompanied by

Romanian translations, according to the law.”

> Safe harbor availability, including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Not specified.

> Any other disclosure/compliance requirement

There is none in particular.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

No specific transfer pricing returns for related-party

transactions are currently in place under the transfer pricing

rules.

> Related-party disclosures along with corporate income tax

return

No specific related-party disclosures are required along with

the corporate income tax return. Generally, information about

related-party transactions undertaken by a Romanian entity is

disclosed only upon the specific request of the Romanian tax

authority.

> Related-party disclosures in financial statement/annual

report

For statutory accounting reporting purposes, Romanian

companies are required to disclose the transactions

undertaken with related parties in financial statements.

> CbCR notification included in the statutory tax return

No, it is not included in the corporate income tax return. A

dedicated CbCR notification form is required to be separately

submitted not later than the legal deadline of filing the annual

corporate income tax return.

> Other information/documents to be filed

The Romanian legislation provides for the following general

disclosure requirements:

> Disclosure of transactions performed by Romanian entities

with non resident companies for which the Romanian

company has an obligation to withhold taxes

> Disclosure or registration of contracts concluded by

Romanian entities with non resident companies and

individuals performing services in Romania that may

trigger Romanian permanent establishment exposure

> Disclosure of long-term financing contracted by a

Romanian entity with non resident companies or

individuals

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

25 March (in the case of taxpayers with calendar tax years) —

the deadline for filing the annual corporate income tax return

is generally the 25th day of the third month following the tax

year-end. For the period 2021–25, the deadline for filing the

annual corporate income tax return was prolonged by the 25th

day of the sixth month following the tax year-end.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

31 December (applicable in the case of groups with reporting

fiscal years ending 31 December) — generally, the deadline

being within 12 months from the last day of the reporting

fiscal year of the MNE group

> CbCR notification

Notification to the competent authority in Romania is required

to be submitted until the last day of the reporting fiscal year

of the MNE group, but no later than the last day of filing of the

annual corporate income tax return by the constituent entity in

Romania for the preceding year.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation subject to preparation

annually by large taxpayers (for transactions that exceed

the specific thresholds provided under the local regulations)

has to be prepared within the statutory deadline of filing the

annual corporate income tax return and submitted to the

tax authorities upon request within maximum 10 calendar

days from such request. In all other cases, transfer pricing

documentation has to be prepared only upon request and

within the term established by the tax authorities (between 30

and 60 days, with one possible extension upon request of up to

30 additional days).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No, submission is to be performed only upon request from the

tax authorities.

> Time period or deadline for submission upon tax authority

request

In cases in which the annual transfer pricing documentation

is required to be prepared by large taxpayers by the legal

deadline of filing the tax return, such transfer pricing

documentation must be provided to the tax authorities upon

their request during or outside an audit within a maximum of

10 days. In all other cases of transfer pricing documentation

prepared upon receiving a formal request from the tax

authorities during an audit, the Romanian tax authorities must

establish a term for the preparation and submission of such

transfer pricing documentation that can be of 30 to 60 days

(one extension of up to 30 days can be obtained upon request).

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

For the period 2021–25, the deadline for filing the annual

corporate income tax return is the 25th day of the sixth month

following the tax year-end. Thus, the deadline for preparing

the transfer pricing documentation for large taxpayers as well

as the deadline for submission of the CbCR notification for

2021 were prolonged.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The tax authority accepts transfer pricing methods provided

by the OECD Guidelines. The traditional methods (CUP,

resale price and cost plus) are generally preferred over the

profit-based methods (TNMM and profit split) subject to the

availability of data.

When selecting the most adequate method, the following must

be taken into consideration:

> The method that is the most appropriate given the

circumstances in which the prices that are subject to free

competition on the commercial comparable markets are

established

> The method for which information resulting from the

actual related parties involved in the transactions subject

to free competition is available

> The degree of accuracy to which adjustments can be made

in order to achieve comparability

> The circumstances of the individual case

> The activities effectively conducted by various related

parties

> The documentation that can be made available by the

taxpayer

In addition, the selected method should reflect the

circumstances of the market and the taxpayer’s activity.

8. Benchmarking requirements

> Local vs. regional comparables

According to the provisions of Order 442/2016, in the case of

a benchmarking analysis performed to determine the arm’s-

length nature of the related-party transactions, the territorial

criteria should be considered in the following sequence: local,

EU, pan-European and international. In the absence of local

comparables (aspect thoroughly investigated by the Romanian

tax authorities), foreign comparables are accepted (e.g., within

the EU as the next level in case local comparables cannot be

found).

> Single-year vs. multiyear analysis for benchmarking

There is a preference for single-year testing; multiyear analysis

might also be acceptable if properly justified.

> Use of interquartile range

The Romanian transfer pricing documentation regulations

prescribe the use of the interquartile range for transfer pricing

analyses.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is required to be performed

periodically; a rollforward or update of financial results of

a prior study might also be acceptable for a certain period,

depending on the circumstances of the case. With respect to

comparable searches required to be included in the transfer

pricing documentation for supporting the appropriateness

of the pricing for the related-party transactions, the local

regulations provide that “justification of compliance with

the arm’s-length principle shall be based on the information

reasonably available to the taxpayer at the moment of

establishing or documenting the transfer prices, by presenting

the supporting evidence in this respect.”

> Simple, weighted or pooled results

No preference is indicated based on the Romanian transfer

pricing regulations. Romanian tax authorities have been

observed to conduct transfer pricing analyses on a year-

on-year basis. Both simple-average and weighted-average

methods have been accepted in case of multiyear analyses.

> Other specific benchmarking criteria, if any

The search strategy should incorporate the independence

criteria as provided by the Romanian legislation currently in

force. In this respect, the definition of related parties under

the current Romanian Fiscal Code states that a person is

considered related party if its relationship with another person

is defined by at least one of the following cases:

> An individual is a related party of another individual, if

such individuals are spouse or relatives up to the third

degree, inclusive.

> An individual is related with a legal entity if the individual

owns, directly or indirectly, including holdings of related

parties, a minimum of 25% of the value/number of shares

or voting rights in the legal entity, or if effectively controls

that legal entity.

> A legal entity is related with another legal entity if it

owns at least, directly or indirectly, including holdings of

related parties, a minimum of 25% of the value/number of

shares/units or voting rights in the other legal entity, or if

effectively controls that legal entity.

> A legal entity is related with another legal entity if one

person owns, directly or indirectly, including holdings of

related parties, a minimum of 25% of the value/number

of shares or voting rights in the other legal entity, or if

effectively controls that legal entity.

Therefore, when performing a comparable search, it should

be ensured that the accepted comparables have no known

shareholder (including individual) controlling or owning

directly/indirectly more than 25% interest both in the accepted

company and in another company(ies) and hence, a check of

the historic shareholdings of the accepted companies for the

years under review should be done in order to eliminate such

companies.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

See below.

> Consequences of failure to submit, late submission or

incorrect disclosures

Large-, medium- and small-sized taxpayers failing to provide

the transfer pricing documentation to the tax authority upon

request are sanctioned as follows:

> In the case of non-submission of the transfer pricing

documentation by large taxpayers (that have the

obligation to prepare the transfer pricing documentation

within the legal deadline for submission of the annual

corporate income tax return) upon the request of the

tax authority outside of a tax audit, a penalty ranging

from RON25,000 to RON27,000 (approx. EUR5,000 to

EUR5,400) will be imposed.

> In the case of non-submission of the transfer pricing

documentation upon the request of the tax authority

during a tax audit, a penalty ranging from RON12,000

to RON14,000 (approx. EUR2,400 to EUR2,800) will

be imposed on the large and medium-sized taxpayers,

respectively, and ranging from RON2,000 to RON3,500

(approx. EUR400 to EUR700) on small taxpayers.

> There are no specific provisions on penalties for not filing

CbCR notifications. General penalty provisions for not

filing required information to the tax authorities may be

imposed (e.g., penalties for failing to provide periodic

information or fulfill reporting obligations (as provided

for under the law) ranging from EUR110 to EUR3,100,

depending on the taxpayer size (large/medium/small)

and on how the infringement would be classified by the

authorities).

> Penalty ranging from RON30,000 to RON50,000 (approx.

EUR6,000 to EUR10,000) is applicable in case of late

submission of the CbCR or incorrect or incomplete

submission of information. However, a penalty ranging

from RON 70,000 to RON 100,000 (approx. EUR 14,000

to EUR 20,000) is applicable in case of failure to submit

the CbCR.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In the case of a transaction between related parties, the tax

authority may adjust or estimate the amount of the respective

income or expenses of either party as necessary to the level

considered to reflect the central tendency of the market (i.e.,

median). This is done either in the case that the tax authority

determines that the arm’s-length principle is not observed

for the respective transaction or that the taxpayer does not

provide to the tax authority sufficient evidence to establish if

the arm’s-length principle was observed.

The resulting adjustments or estimation would trigger a profits

tax liability of 16% (the standard profits tax rate) and late-

payment interest and penalties according to the provisions of

the legislation. Currently, the late-payment interest is 0.02%

per day of delay. Late-payment penalties of 0.01% per day of

delay can also be imposed.

In addition, a penalty for undeclared or incorrectly declared

tax liabilities established by the tax authorities through tax

decisions of 0.08% for each day of delayed payment can

be imposed. If this type of penalty is applicable, then it is

a substitute for the late-payment penalty (only one type of

penalty can be applied). If the tax claims are paid within a

specific term after the tax decision assessing the tax liabilities

is issued, then this penalty is reduced by 75%; however, if the

tax liabilities are the result of tax evasion, then this penalty is

increased by 100%. This penalty is applicable for tax liabilities

due starting from 2016 onward.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not specified.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

In case a transfer pricing adjustment is imposed by the tax

authorities, the taxpayer may challenge the decision at

an administrative level or in court. An MAP might also be

initiated depending on the circumstances of the case, under

the provisions of the EU Arbitration Convention or the EU Tax

Dispute Resolution Directive or the double tax treaties entered

into by Romania.

The interests, penalties and all tax accessories may be waved if

it is applied for the tax amnesty. Such new legislative provision

allows the cancellation of all interests, penalties and all tax

accessories related to principal tax obligations outstanding at

31 March 2020, if certain conditions are cumulatively met.

The possibility of benefiting from the tax amnesty is up to 31

January 2022.

10. Statute of limitations on transfer pricing

assessments

No specific statute of limitations exists for transfer pricing

assessments. However, general rules for statutes of limitations

are applicable — i.e., the Romanian tax authority may normally

review tax-related matters retroactively for 5 years (or 10

years in the case of fiscal evasion or fraud).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Considering the current transfer pricing environment

in Romania and the declared focus of the Romanian tax

authorities on transfer pricing matters, the likelihood of a

transfer pricing-related audit, in general, can be characterized

as high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Based on the observed practice of the tax authorities, the

likelihood may be considered to be medium to high that the

transfer pricing methodology will be challenged if transfer

pricing is reviewed as part of the audit.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Based on the observed practice of the tax authorities, the

likelihood of an adjustment in case the transfer pricing

methodology is challenged is rather high.

> Specific transactions, industries and situations, if any, more

likely to be audited

There are no such specific transactions and industries.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> APA availability (unilateral, bilateral and multilateral)

Comprehensive APA procedures and requirements have

been in effect in Romania since June 2007. An APA may be

unilateral, bilateral or multilateral.

By means of an APA, the ANAF approves the specific transfer

pricing method utilized by a multinational entity prior to the

actual transaction. APAs are binding on the tax authority

as long as taxpayers observe their terms and conditions.

Unilateral APAs are issued for a term of 12 months, while

bilateral and multilateral APAs are issued for a term of 18

months.

The fees payable to the ANAF for the issuance or amendment

of an APA are:

> EUR20,000 (issuance), EUR15,000 (amendment) — in the

case of large taxpayers or for agreements on transactions

with a consolidated value exceeding EUR4 million

> EUR10,000 (issuance), EUR6,000 (amendment) — in all

other cases

> Tenure

As a general rule, APAs are issued for a period of up to five

years; however, this term may be extended in certain cases.

> Rollback provisions

None.

> MAP opportunities

The MAP program addressing cross-border double taxation

issues is rather at incipient stages in Romania. The availability

of the program is provided under the Romanian Tax Procedure

Code, either based on a double tax treaty or the EU Arbitration

Convention (90/436/EEC) or the EU Tax Dispute Resolution

Directive (2017/1852 applicable since 2019) as transposed

into the local regulations. So far, a Romanian-specific MAP

application procedure based on a double tax treaty or the

EU Arbitration Convention has not been released by the

Romanian tax authorities. Romanian taxpayers must submit

an application for the initiation of MAP before the deadline

stipulated under the relevant double tax treaty, EU Arbitration

Convention or the EU Tax Dispute Resolution Directive, from

the date of the ANAF notification or action that leads or may

lead to double taxation. Taxpayers have three years to present

a case to ANAF under the EU Arbitration Convention or the EU

Tax Dispute Resolution Directive.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

In principle no direct impacts or changes to the overall APA

program — this has been available and running also during

the state of emergency period in Romania. Depending on the

circumstances of each case (e.g., critical assumptions), specific

APA change requests could potentially be triggered on account

of COVID-19 pandemic impact.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

A corporate income taxpayer’s exceeding borrowing costs (i.e.,

the amount by which borrowing costs exceed interest revenues

and other revenues of equivalent nature) in relation to various

types of financing (including bank loans, intercompany loans

and finance leasing) may be deducted for corporate income

tax purposes in Romania by only up to 30% of the company’s

EBITDA, adjusted for tax purposes.

The above 30% EBITDA limitation is applied to those exceeding

borrowing costs that are above an annual threshold of EUR1

million (i.e., the first EUR1 million would not be, in principle,

subject to the interest deductibility limitation).

Non deductible borrowing costs would be available to carry

forward for an unlimited period of time (i.e., until corporate

income tax deduction would be available).

Adrian Rus

Adrian.Rus@ro.ey.com

+ 40724204966

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Federal Tax Service of the Russian Federation (FTS).1

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Tax Code of the Russian Federation, Section V.1.

interdependent persons and multinational groups of

companies, general provisions concerning prices and taxation,

tax control in connection with the conclusion of transactions

between interdependent persons, pricing agreement, and

documentation for multinational groups of companies,

effective from 1 January 2012.

> Section reference from local regulation

The Russian Tax Code (Article 105.1) includes a list of criteria

defining how companies and individuals might be declared

related parties. The relationship is defined by presence of

economic control. Formal criteria (positive list) also exist, and

the main criterion is the ownership threshold, i.e., if one party

directly or indirectly controls more than 25% of another party.

There are a number of other formal criteria in the Tax Code.

In addition, courts will be able to deem companies and/or

individuals related on any other reasonable grounds, if it

is demonstrated that the relationship between the parties

influenced the terms and the results of the transactions.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

1https://www.nalog.gov.ru/eng/

Russia is not a member of the OECD.

The Russian transfer pricing regulations are largely based on

the principles stipulated by the OECD Guidelines, although

the Guidelines do not have a force of law. In practice, the law

prevails if there are any differences with the OECD Guidelines.

Same applies to any other transfer pricing guidelines, including

UN tax manual or EUJTPF — they do not have a force of law in

Russia either.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, Russia adopted BEPS Action 13 documentation

requirements in November 2017.

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

Yes, all the three files are covered.

> Effective or expected commencement date

The BEPS Action 13 requirements apply to financial years

starting on or after 1 January 2017, with optional CbCR

for financial years starting in 2016.

> Material differences from OECD report template or format

There are a few material differences between the OECD

report template or format and Russian regulations. The

relevant sections from the regulation are mentioned

below:

Master File

> A brief functional analysis must be provided for

members of an MNE that have influence on the financial

performance of the group (vs. the OECD Guidelines

referring to material influence).

> A brief description of all transactions related to transfer

of rights for intangible assets is required (vs. the OECD

Guidelines referring only to material transactions).

> Not only unilateral APAs, as recommended by the OECD

BEPS Action 13, but all other APAs (i.e., bilateral and

multilateral agreements) are to be disclosed if the FTS

was not part of these APAs.

CbCR

> Additional requirements: Table 1 of the CbCR contains

additional columns (indicators) such as capital surplus,

and additional columns regarding information on

employees (number of employees under employment

agreements, number of employees under civil contracts,

additional information on number of employees).

> Divergent requirements: Revenue received from related

parties should exclude payments received from other

constituent entities of the MNE group that are treated as

dividends in the payer's tax jurisdiction. Language of the

report should be Russian (or bilingual).

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

For a Master File, penalties may only apply for a late

submission or non-submission of the file, and there is no

penalty protection as such.

For a Local File, penalty protection should be available,

provided that all local documentation requirements are

met, including Russian translation, local comparability

analysis, financial analysis of a local tested party based on

local GAAP, etc.

Penalties will not apply for financial years starting in

2017, 2018 and 2019.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

Yes, it is as of 1 January 2018.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, transfer pricing documentation needs to be submitted

only upon request.

As an exception, transfer pricing documentation is not

required for third-party transactions, transactions where the

prices conform to a regulated price or a price that is prescribed

by the anti-monopoly authorities. It is also not required for

transactions with securities and derivatives traded on an

organized equity market, and for transactions covered by an

APA.

There are two types of transfer pricing documentation under

Russian law: traditional transfer pricing documentation

and BEPS Action 13-compliant Local File. The Local File is

also known as the national transfer pricing documentation,

which has replaced, starting from 2018, the traditional

transfer pricing documentation when it comes to cross-

border transactions of the Russian constituent entities of the

qualifying groups.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, if the local branch is involved in controlled transactions, it

needs to comply with local transfer pricing rules. Additionally,

a transfer pricing analysis is needed to justify the amount of

taxable profits attributable to a permanent establishment.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the full-scope transfer pricing documentation should be

prepared annually; a mere update will not be accepted by the

tax authorities.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

It is required to have a stand-alone transfer pricing

documentation for each legal entity in Russia.

b) Materiality limit or thresholds

> Transfer pricing documentation

Cross-border transactions between related parties: With

respect to 2018 and previous reporting periods, no materiality

limits existed for recognizing cross-border transactions

between related parties as subject to transfer pricing rules.

Starting from 1 January 2019, a threshold of RUB60 million

applies for cross-border transactions to be classified as

controlled for transfer pricing purposes.

Cross-border transactions between unrelated parties involving

the sale of certain types of commodities or in case a party

to transactions is located in a low-tax jurisdiction: There is a

threshold of RUB60 million.

Domestic transactions between related parties: Refer to the

“Specific requirements” section below.

> Master File

There is a threshold of RUB50 billion for MNEs with an UPE in

Russia, and the applicable CbCR threshold as established by

the home jurisdiction of the UPE if outside Russia.

> Local File

Only from 2019: RUB60 million — total annual value of all

transactions in each pair of counterparties (no threshold for

prior years).

> CbCR

There is a threshold of RUB50 billion for MNEs with a UPE in

Russia, or the applicable CbCR threshold as established by the

home jurisdiction of the UPE if outside Russia.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

With respect to 2018 and previous reporting periods, there

was a documentation obligation for domestic transactions.

The local TP documentation requirements covered domestic

related-party transactions exceeding RUB1 billion (or from

RUB60 million to RUB100 million if a party to a transaction is,

for instance, subject to certain tax incentives).

Starting from 1 January 2019, a significant number of

domestic transactions were excluded from the transfer pricing

rules in Russia. Related-party transactions remaining under

transfer pricing rules are those exceeding RUB1 billion per

year and meeting one of the following conditions:

> The parties to the transaction apply different tax rates on

profits derived from that transaction.

> One of the parties pays mineral extraction tax at ad

valorem rates.

> One party applies or both parties apply a special tax

regime (for example, the unified tax on imputed income or

the unified agricultural tax).

> One of the parties is exempt from profits tax.

> One of the parties is an operator or holder of a license to

develop a new offshore deposit.

> One or both parties are residents of the Skolkovo research

center.

> One or both parties apply an investment tax deduction for

profits tax purposes.

> One of the parties pays tax on additional income from the

hydrocarbons extraction with respect to income from the

transaction.

For those domestic transactions that fall outside the

transfer pricing rules, there is still a possibility for the local

tax authorities to review those from the perspective of the

unjustified tax benefit. When doing so, a pricing approach

in those domestic transactions may be examined using the

transfer pricing methods.

As an exception, certain domestic transactions are not subject

to transfer pricing rules:

> Transactions between members of a domestic

consolidated group of taxpayers.

> Transactions where both parties are registered within

the same region of Russia, where none of the parties has

economically autonomous subdivisions in other regions of

Russia or pays income tax to the budgets of other regions,

where none of the parties has tax losses and there are

no other grounds for the transaction to be deemed

controlled.

> Transactions where two of the parties are operators

or license holders in relation to a project involving

hydrocarbon extraction activities at the same field on

Russia’s continental shelf.

> Interbank credits (deposits) granted for up to seven days.

> Transactions relating to military and technical cooperation

between Russia and foreign countries.

> Transactions involving the provision of guarantees if all

parties to the transaction are Russian legal entities (RLEs)

that are not banks.

> Transactions involving interest-free loans between Russian

related parties.

> Assignment of rights (cession) by banks as part of the

bankruptcy prevention measures and enforcement of

banking regulations by Bank of Russia.

For the purposes of the Tax Code, the main condition

for two entities to be regarded as related parties is a

25% ownership threshold, i.e., if one party directly or

indirectly controls more than 25% of the other party.

There are numerous other conditions, and the courts can

also declare companies and individuals to be related on

any other grounds, if it is proved that the relationship

between the parties influenced the terms and results of

transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language, i.e., Russian. This comes from the general

provisions of the Russian legislation, pursuant to which office

work of the state authorities must be in Russian only.

> Safe harbor availability, including financial transactions if

applicable

An interest rate is considered to be at arm’s length if it is within

the safe harbor intervals indicated in the Tax Code. The safe

harbor intervals vary depending on the currency of the loan

and whether it is a cross-border or a domestic transaction.

Safe harbors are stipulated for financial transactions

(minimum and maximum interest rates). In case the interest

rate is outside the safe harbor, a taxpayer is still able to

conduct an economic analysis to sustain the rate.

> Is aggregation or individual testing of transactions preferred

for an entity

According to the local transfer pricing rules aggregation of

transactions for the purposes of transfer pricing analysis

(except for application of the comparable uncontrolled price

(CUP) method) is allowed for a group of homogeneous

transactions. Such group is defined by law as transactions

with identical or homogenous products, works or services

and that are undertaken under comparable commercial and

(or) financial terms. Homogeneous products (works, services)

are defined as those having similar characteristics that allow

them to perform the same functions and/or be commercially

interchangeable. At the same time, based on clarifications

of the regulatory authorities transactions can be aggregated

for transfer pricing analysis provided they meet the following

criteria:

> Taxpayer performs same/similar functions under these

transactions.

> Same profit-level indicator is or can be used for the

activities performed by taxpayer in the analyzed

transactions.

> Same transfer pricing method applies or can be applied for

the transactions.

> Same set of independent comparable companies is used

for testing the arm's-length result in these transactions.

> Any other disclosure/compliance requirement

Please refer to Section 4 below regarding the transfer pricing

notification form.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no other specific transfer pricing returns in Russia.

> Related-party disclosures along with corporate income tax

return

Disclosure of transactions with related parties and third-party

transactions that are subject to transfer pricing rule is required

by way of filing a transfer pricing notification. This notification

is due for each year by 20 May of the following year (e.g., by

20 May 2022 for tax year 2021).

> Related-party disclosures in financial statement/annual

report

Certain information regarding related parties should be

disclosed in financial statement/annual reports to the extent

required by the applicable accounting rules.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

28 March.

> Other transfer pricing disclosures and return

20 May.

> Master File

Master File is submitted only upon request. The request is

possible not earlier than 12 months and not later than 36

months after the end of the reporting financial year, and

should be provided within three months of request. The first

Master File may be requested for financial years starting on or

after 1 January 2017.

> CbCR preparation and submission

It’s 12 months after the end of the reporting financial year,

with the first mandatory filing period to be financial years

starting on or after 1 January 2017. CbCR must be submitted

by the ultimate parent entity (UPE) or a designated surrogate

parent entity in its home location and then automatically

exchanged with the FTS. If Russia has not activated automatic

exchange with the UPE/surrogate entity’s jurisdiction by the

CbCR filing deadline, Russian members of the MNE group

may be requested to submit a CbCR directly to the Russian

tax authorities. In such case the CbCR should be submitted

to the tax authorities within three months upon receipt of the

request.

> CbCR notification

It’s eight months after the end of the reporting financial year,

with the first mandatory filing period to be financial years

starting on or after 1 January 2017.

b) Transfer pricing documentation/Local File preparation

deadline

There is no statutory deadline and recommendation for

preparation of transfer pricing documentation (Local File).

It only needs to be finalized by the time of submitting upon

request.

> Both the transfer pricing documentation and BEPS Action

13-compliant Local File may be requested from 1 June of

the calendar year following the reporting calendar year

and should be provided within 30 days upon receipt of

request. The BEPS Action 13-compliant Local File may

be requested only in relation to calendar year 2018 and

onward. For years 2018 and 2019, the BEPS-compliant

Local File may be requested not earlier than 31 December

of the year following the reporting calendar year.

> A BEPS Action 13-compliant Master File may be requested

from a taxpayer not earlier than 12 months and not later

than 36 months after the end of the reporting financial

year and should be provided within three months upon

request. The first Master File may be requested for

financial years starting on or after 1 January 2017.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No, transfer pricing documentation should be provided to the

tax authorities only upon request.

> Time period or deadline for submission upon tax authority

request

30 days upon receipt of request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions — Yes

b) Priority and preference of methods

The Tax Code includes five methods similar to those in the

OECD Guidelines.

The resale-minus method has first priority for a routine

distributor reselling goods to unrelated customers. In all other

cases, the CUP method prevails, whereas the profit-split is a

method of last resort.

It is also allowed to use the independent valuation report for

one-off transactions where none of the five transfer pricing

methods can be applied.

As part of implementing BEPS Action 8 requirements

addressing transfer pricing implications related to intangible

assets, there are new requirements to a transfer pricing

analysis of transactions involving intangible assets. These

apply from 1 January 2020. Specifically, the law establishes

a list of functions and risks that must be taken into account

when conducting a functional analysis with respect to

intangibles. These relate to development, enhancement,

maintenance, protection and exploitation of intangibles (also

known as DEMPE functions and associated risks). The Tax Code

also establishes the characteristics of intangible assets that

must be taken into account in assessing the comparability of

related transactions involving such assets: type of intangible

asset, exclusivity, conditions of legal protection (existence

and duration), territory of the right to use the intangible

asset, useful life, life cycle stage (development, enhancement,

exploitation), the rights and functions of the parties associated

with the intangibles, value increase as a result of their

enhancement and the income-obtaining possibility from the

use of the intangible assets.

8. Benchmarking requirements

> Local vs. regional comparables

Searching for local comparables is a must in the case of a

Russian tested party. In case of a foreign tested party, foreign

comparables are possible (it is recommended, however, to

consider the applicable region).

> Single-year vs. multiyear analysis for benchmarking

Each year is to be tested on a stand-alone basis. A

benchmarking analysis should cover three years preceding the

reporting year.

> Use of interquartile range

The interquartile range is a must unless there is a CUP

application based on exchange quotations or the recognized

pricing agencies’ data. In the latter case, the full range of

pricing data is acceptable. There are specific requirements in

relation to the formula to be used for the interquartile range

calculation.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is to be conducted every year

pursuant to the official clarifications of the FTS. Exceptions

are made for long-term transactions (i.e., license agreements

and loans), assuming that the terms and conditions have not

changed.

> Simple, weighted or pooled results

The way the interquartile range is to be calculated mandates

the use of a pooled range on the basis of the three-year period

as opposed to simple and weighted averages.

> Other specific benchmarking criteria, if any

> Net assets criteria: Companies’ net assets should not have

a negative value as of 31 December of the last three years

preceding the reporting period.

> Losses: Companies should not have reported losses

in more than one year during the three-year period

preceding the reporting year.

> Independence: Companies are eliminated as dependent

if they have subsidiaries where direct, indirect or total

participation exceeded 25%, or have a shareholder in

the form of a legal entity that reported direct, indirect or

total participation in excess of 25% in any year during the

reviewed period.

> The independence threshold may be increased up to 50%

if less than four comparable companies are found on the

basis of the combination of the above criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Incomplete transfer pricing documentation (Local File) may

result in losing of penalty protection in case a tax assessment

is made by the tax authority as a result of a transfer pricing

audit.

> Consequences of failure to submit, late submission or

incorrect disclosures

The Tax Code establishes the following penalties:

> Failure to submit/late submission of or submission of

inaccurate information in a CbCR notification may result

in a penalty of RUB50,000 (applies for financial years

starting in 2020).

> Failure to submit/late submission of or submission of

inaccurate information in a CbCR may result in a penalty

of RUB100,000 (applies for financial years starting in

2020).

> Failure to submit/late submission of a Master File may

result in a penalty of RUB100,000 (applies for financial

years starting in 2020).

> Failure to submit/late submission of a Local File may result

in a penalty of RUB100,000 (applies for financial years

starting in 2018).

> Failure to submit/late submission or submission of

incorrect information in a transfer pricing notification may

result in a penalty of RUB5,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

If a tax assessment is made by the tax authority as a result

of a transfer pricing adjustment, a penalty of 40% of the

tax understatement (but not less than RUB30,000) may be

assessed, plus a late-payment interest at a rate of 1/300th

of the Central Bank of Russia key (refinancing) rate (up to

30 days of delay) and 1/150th of the Central Bank of Russia

refinancing rate (starting from the 31st day of delay).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not applicable as there is no contemporaneous TP

documentation (Local File) preparation requirement in Russia

> Is interest charged on penalties or payable on a refund?

Interest is payable by the tax authorities on a tax refund

starting from the day following the due date of the refund. The

interest rate shall be the refinancing rate of the Central Bank

of the Russian Federation that is effective on each day of the

delayed refund.

b) Penalty relief

Penalties will be imposed if a taxpayer’s taxable income is

adjusted as a result of a transfer pricing audit, and if the

taxpayer did not provide the transfer pricing documentation

(Local File) supporting the arm’s-length level of prices in a

controlled transaction. Penalties cannot apply if prices were

established in accordance with an applicable APA.

If an adjustment is made by the tax authority, the available

dispute resolution mechanism is through litigation or Mutual

Agreement Procedure (MAP), if available under a relevant

double tax treaty.

10. Statute of limitations on transfer pricing

assessments

The general rule is that the tax authority may audit the

controlled transactions within two years from the moment

of submission of a transfer pricing disclosure (notification)

form (due by 20 May following the reporting year). A transfer

pricing audit may cover only three preceding calendar years.

Any amendment of the transfer pricing notification form or

the profits tax return resulting in a decrease of the profits tax

liability (increase of a tax loss) because of a transfer pricing

adjustment, if submitted, will renew the statute of limitation

from the amendment date.

Additionally, a transfer pricing audit may be initiated as a

result of a general tax audit if the latter reveals any controlled

transactions which were not reported by a taxpayer as

required by law.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Yes. Ongoing transfer pricing audits and decisions on initiating

new transfer pricing audits were put on hold during the

period from 6 April 2020 to 30 June 2020. This resulted in a

corresponding extension of the statute of limitation on transfer

pricing assessments, as described in Section 10 above, by two

months and 25 days for the impacted reporting years.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Russian tax authorities use a risk-oriented approach to

open a transfer pricing audit. As a result, the number of

transfer pricing audits is limited in practice. Once a transfer

pricing audit is launched, and if it results in a transfer pricing

assessment, it would normally be expected to repeat annually

until pricing in controlled transactions is confirmed to be at

arm’s length.

A transfer pricing audit may cover only three preceding

calendar years. Controlled transactions may be audited only

once for a specific calendar year.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Considering the risk-oriented approach of the Russian tax

authorities, the likelihood that a transfer pricing methodology

will be challenged may be considered to be high. If tax

authorities are able to apply a comparable price method that

is a priority method under Russian transfer pricing rules,

the likelihood of an alternative methodology, if any, to be

challenged would normally increase in practice.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

On the basis of the risk-oriented approach of the tax

authorities, the likelihood of an adjustment is expected to be

high in practice.

At the same time, for domestic transactions symmetrical

adjustments are available. The right of other parties to a

controlled transaction to make symmetrical adjustments

arises: (1) where a decision of the FTS to charge additional tax

has been complied with by a party to a controlled transaction

that was subject to tax assessment, or (2) where a party to

a controlled transaction has made a voluntary adjustment

by recording it in the tax return and paid additional tax if

applicable.

> Specific transactions, industries and situations, if any, more

likely to be audited

Transfer pricing matters in controlled transactions are subject

to special transfer pricing audits, which are separate from

general tax audits and should be performed by the FTS

rather than local tax authorities. To date, most of the transfer

pricing audits have been focused on cross-border commodity

transactions and transactions involving low-tax jurisdictions.

Additional high-risk factors include intercompany service

fees, royalties and losses, as well as significant reductions in a

tax base and deviations from the industry-wide benchmarks.

Some domestic transactions may also be regarded as high risk

if they involve entities resident in special economic zones, if

they are subject to advantageous tax regimes or if they involve

loss-making entities. Transactions that are viewed by the tax

authorities as leading to a receipt of an unjustified tax benefit

may also be scrutinized using the transfer pricing methods.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No limitations regarding type of transactions. APA program

is available for all jurisdictions if there is a double tax

treaty concluded between the Russian Federation and such

jurisdiction. To date, the APA program in Russia is available

only for companies that are classed as major taxpayers.

> Tenure

APAs are available for up to a three-year term.

> Rollback provisions

There is none specified, except for an option to extend the APA

terms from 1 January of the year in which the APA application

was filed by a taxpayer.

> MAP opportunities

MAPs are generally available under the double tax treaties that

Russia has with its treaty partners. The competent authority

that is responsible for MAP cases in Russia is the Russian

Ministry of Finance. In January 2019, the Russian Ministry of

Finance issued MAP guidelines for taxpayers.

From January 2020, the Tax Code provides a number of

reference clauses to the effect that the conduct of MAP is

governed by the provisions of the relevant double taxation

treaty, while the procedure and time limits for the submission

of a MAP request are prescribed by the Ministry of Finance

(Articles 142.7–142.8 of the Tax Code). Detailed rules on

the application of MAP are laid down in a Ministry of Finance

order dated 11 June 2020 (entered into force in October

2020). According to that order, Russian taxpayers are allowed

to submit a MAP request within three years from the date of

receipt of a report on the results of a tax audit, or a reasoned

opinion of a tax authority in the context of tax monitoring,

or a report issued by the tax authority of a foreign state that

is a party to the applicable double tax treaty, which, in the

taxpayer’s opinion, results in taxation not in accordance with

the treaty. The Ministry of Finance must review the application

within 90 days and make a formal decision on whether or not

it agrees to initiating MAP.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalisation or debt

capacity in the jurisdiction

The thin-capitalization test restricts deductibility of interest on

loans to RLEs that are issued either by (i) a foreign company

that owns (directly or indirectly) more than 25% of the Russian

company’s share capital or by (ii) a Russian company that

is a related party to a foreign company mentioned above,

or in respect of which (iii) the foreign company itself or a

Russian related party (mentioned above) acts as a guarantor

or otherwise undertakes to guarantee the repayment of

the loan by the RLE. The debt-to-equity ratio above which

restrictions apply is generally 3:1, but is 12.5:1 for banks and

leasing businesses. Excess interest, which is the amount of

interest on loans in excess of the 3:1 or 12.5:1 ratio, is non

deductible and is treated as a dividend paid to the organization

in relation to which controlled indebtedness exists and is taxed

accordingly.

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Rwanda Revenue Authority (RRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 33 of the Rwanda Income Tax Act and the Rwanda

Ministerial Order Establishing General Rules on Transfer

Pricing (transfer pricing rules) enacted 14 December 2020.

> Section reference from local regulation

Related people are defined under Article 3 16 of the Rwanda

Income Tax Act.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Rwanda is a member of the OECD. The transfer pricing rules

significantly borrow from and rely on the OECD Transfer

Pricing Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

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

CbCR is applicable where the ultimate parent of the

taxpayer is required to prepare such a report.

> Effective or expected commencement date

1https://www.rra.gov.rw/

The transfer pricing rules became effective 14 December

2020 once they were assented to. They are used for guidance

in complying with Article 33 of the Rwanda ITA.

> Material differences from OECD report template or format

No significant differences.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes, this is applicable to a large extent. Additional

information is, however, required based on the transfer

pricing rules.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, there are transfer pricing rules. Ministerial Order on

Transfer Pricing Rules, 2020, was published on 14 December

2020 and took effect on the publication date. Based on the

transfer pricing rules, the document needs to be prepared

contemporaneously and submitted upon requested within

seven days.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the transfer pricing rules require documentation for a

relevant tax period and must be in place prior to the deadline

of income tax declaration.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Under the transfer pricing rules, taxpayers with a turnover

below RWF600 million are not required to prepare the transfer

pricing documentation. However, they must comply with the

arm’s-length principle.

> Master File

This is not applicable.

> Local File

Applicable.

> CbCR

Applicable where the ultimate parent of the taxpayer is

required to prepare such a report.

> Economic analysis

This is required.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

The transfer pricing rules cover persons involved in the

related-party transactions where one is located in Rwanda and

subject to tax in Rwanda while the other person is located in or

outside Rwanda.

> Local language documentation requirement

Documentation must be submitted in any of the official

languages of the Republic of Rwanda (English, French

and Kinyarwanda). However, in practice, transfer pricing

documents are normally completed in English.

> Safe harbor availability, including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual transaction testing

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

Yes, the taxpayer is required to disclose certain information

on the related-party transactions in its tax return, e.g., the

name of related parties, pricing methodology and value of the

transaction.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

None.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is three months after the financial year-end

of the company.

> Other transfer pricing disclosures and return

As noted above.

> Master File

This is not applicable.

> CbCR preparation and submission

As under Section 3 above

> CbCR notification

As under Section 3 above

b) Transfer pricing documentation/Local File preparation

deadline

Yes, the documentation should be prepared by the deadline of

submission of the annual return – by the time of lodging the

tax return to achieve penalty protection.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

None.

> Time period or deadline for submission upon tax authority

request

Upon request by the Tax Administration, the taxpayer should

provide the documentation within seven days from the date of

receipt of the written request.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The transfer pricing rules provide for the most appropriate

method.

8. Benchmarking requirements

> Local vs. regional comparables

There is a preference for local comparables; however, it is not

mandatory.

> Single-year vs. multiyear analysis for benchmarking There

is a preference for multiple-year testing (preferably three

years).

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is needed every year.

> Simple, weighted or pooled results

There is a preference for the weighted average for arm’s-

length analysis.

> Other specific benchmarking criteria, if any

The transfer pricing rules stipulate that if the relevant financial

indicator derived from a controlled transaction, or from a set

of controlled transactions that are combined, falls outside the

arm’s-length range, the taxable profit is computed on the basis

that the relevant financial indicator is the median of the arm’s-

length range.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

There are no specific penalties prescribed.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

No.

b) Penalty relief

No.

10. Statute of limitations on transfer pricing

assessments

A general rule of five years from the date of filing the tax

return applies.

The tax authorities can ignore the five-year limitation when

they suspect fraud or intention to evade the payment of tax.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium. The tax

authority issued transfer pricing rules in late 2020. We

have seen requests for transfer pricing documents for some

companies. We expect to see more activity on transfer pricing

audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood is moderate. Refer to the section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood is moderate. Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

There have been no active transfer pricing audits in the

market.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

None.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Yes; however, it is in the context of double tax treaties.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest arising from loans between related parties either

paid or due on a total loan that is greater than four times the

amount of equity is non deductible.

Francis N Kamau

francis.kamau@ke.ey.com

+ 254 736 701851

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Zakat, Tax and Customs Authority (ZATCA)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Kingdom of Saudi Arabia (KSA) income tax law (ITL) has the

following provisions:

Article 63(c) of the KSA ITL authorizes ZATCA to reallocate

revenues and expenses in transactions between related

parties or parties under the same body to reflect the returns

that would have resulted if the parties were independent or

unrelated.

Pursuant to Board Resolution No. [6-1-19] dated

25/05/1440H corresponding to 31/01/2019, ZATCA issued

Transfer Pricing Bylaws (transfer pricing bylaws) that apply to

all taxable persons (being persons subject to the income tax

law). For persons covered by Article 2 of the Zakat Regulations

(Ministerial Resolution No. 2082 dated 1/6/1438 H) the

transfer pricing bylaws only apply insofar they are meeting the

obligations of CbCR (Article 18) of the bylaws.

Article 15 of the transfer pricing bylaws requires taxable

persons with controlled transactions to maintain requisite

transfer pricing documentation (subject to certain threshold

limits).

> Section reference from local regulation

Article 63 of the KSA ITL and the transfer pricing bylaws

issued 15 February 2019.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

1 https://zatca.gov.sa/en/Pages/default.aspx

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Saudi Arabia is not a member of the OECD. However, Saudi

Arabia has made a commitment to the BEPS minimum

standards and the transfer pricing bylaws mostly follow the

OECD Transfer Pricing Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The transfer pricing bylaws have introduced transfer

pricing documentation (Master File, Local File) and CbCR

requirements.

> Coverage in terms of Master File, Local File and CbCR

The transfer pricing bylaws incorporate the Master File,

Local File and CbCR concept as recommended under BEPS

Action 13 on transfer pricing documentation.

> Effective or expected commencement date

This is applicable for fiscal years ended on or after 31

December 2018.

> Material differences from OECD report template or format

As per the transfer pricing bylaws, the following difference

can be noticed:

Local File: In addition to the OECD Local File template,

the transfer pricing bylaws prescribe to include a

comprehensive industry analysis, exclusion of loss-making

comparables, with preference to local comparables.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is none specified. All penalties and fines under the

ITL are applicable to all income tax matters.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The transfer pricing bylaws have introduced the three-tiered

transfer pricing documentation, including Master File, Local

File and CbCR broadly aligned with the OECD Transfer Pricing

Guidelines.

Article 2 of the transfer pricing bylaws states that the transfer

pricing provisions apply to all taxable persons under the ITL.

Hence, entities or persons that are subject only to Zakat are

not subject to the transfer pricing bylaws (with the exception

of CbCR). Further, FAQs clarify that applicability extends to

mixed-ownership entities whose income is subject to corporate

income tax (CIT) to the extent attributed to shares owned by

non-Saudis and those treated by Saudis.

At present, the taxpayer needs to maintain the transfer pricing

documentation and indicate in its annual tax return whether

such documentation has been maintained. Upon ZATCA’s

request, transfer pricing documentation needs to be submitted

within 30 days.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local transfer

pricing rules if it has related-party transactions and meets

the threshold of such documentation (aggregate arm’s-length

value of related-party transaction is greater than SAR6

million).

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

As per the transfer pricing guidelines section 5.3.2, it might

be acceptable to prepare one combined Local File for multiple

taxpayers that belong to the same MNE group if the combined

Local File includes a similar level of detail with respect to the

individual taxpayers.

b) Materiality limit or thresholds

> Transfer pricing documentation

It is advisable to maintain general documentation regarding

the controlled transactions, the relationship between the

related persons involved in the controlled transactions, and

how the price of the controlled transactions is calculated for all

taxpayers having related-party transactions.

> Master File

Master File needs to be prepared and maintained if arm’s-

length value of controlled transactions in a 12-month period

exceeds SAR6 million.

> Local File

Local File needs to be prepared and maintained if arm’s-length

value of controlled transactions in a 12-month period exceeds

SAR6 million.

> CbCR

The report should be submitted if the consolidated group

revenue of an MNE group during the year immediately

preceding the current reporting year, as reflected in its

consolidated financial statement, exceeds SAR3.2 billion

(approx. EUR750 million).

> Economic analysis

There is no material threshold for economic analysis.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions are not excluded from the scope of

transfer pricing provisions as per the transfer pricing bylaws.

> Local language documentation requirement

Regarding CbCR, the transfer pricing bylaws specify that the

documentation needs to be submitted in the language and

form that the authority may specify. Further, for Master File

and Local File, the transfer pricing bylaws do not specify any

language; however, the FAQs recommend the use of the official

language (Arabic) to the extent reasonably possible.

> Safe harbor availability, including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

If a taxable person carries out, under the same or similar

circumstances, two or more controlled transactions that

are economically closely linked to one another or that form

a continuum such that they cannot reliably be analyzed

separately, those controlled transactions may be combined

to perform the comparability analysis to apply the transfer

pricing methods.

> Any other disclosure/compliance requirement

A dual CbCR notification is required to be filed using both

methods as follows:

> Along with the disclosure form

> On a separate AEOI portal

These notifications are to be filed within 120 days of the

end of the financial year.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Disclosure form (as explained below).

> Related-party disclosures along with corporate income tax

return

Pursuant to Article 14(B) of the transfer pricing bylaws, all

income tax filers in KSA will be required to submit to ZATCA,

together with their annual income tax declaration, a disclosure

form containing information related to their controlled

transactions. KSA taxpayers that have controlled transactions

will have to submit the disclosure form within 120 days after

the end of the fiscal year.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

Yes.

> Other information/documents to be filed

The transfer pricing bylaws also require an annual affidavit

signed by a licensed auditor in the jurisdiction through which

the auditor certifies that the transfer pricing policy of the

MNE group is consistently applied by, and in relation to, the

taxpayer.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

It should be filed within 120 days from the end of the fiscal

year.

> Other transfer pricing disclosures and return

The annual tax return includes disclosure form and affidavit

along with CITR.

> Master File

The Master File and Local File need to be maintained and filed

on request.

> CbCR preparation and submission

The documentation should be submitted within 12 months

from the end of the reporting year of the MNE group.

> CbCR notification

CbCR notification is an integral part of the disclosure form and

has to be filed within 120 days of the fiscal year-end. Further,

a separate notification must be filed on the AEOI portal within

120 days of the end of the fiscal year.

b) Transfer pricing documentation/Local File preparation

deadline

The preparation of contemporaneous transfer pricing

documentation in the form of Master File and Local File is

recommended to be maintained within 120 days from the

fiscal year-end since a confirmation to this effect has to be

given in the disclosure form. The Master File and Local File

have to be submitted within 30 days of request by the tax

authorities. It is possible to apply for extensions on a case-by-

case basis.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No, there is currently no statutory deadline for the submission

of transfer pricing documentation. It needs to be submitted

within 30 days upon request.

> Time period or deadline for submission upon tax authority

request

The transfer pricing documentation shall be provided to

ZATCA upon request within the specified duration (which

shall be not less than 30 days from the date of request). It is

possible to apply for extensions on a case-by-case basis.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes, Article 7 of the transfer pricing bylaws provides the five

approved methods to determine the arm’s-length result of

transactions, while Article 9 provides for the use of methods,

other than the approved methods.

> Domestic transactions

Yes, Article 7 of the transfer pricing bylaws provides the five

approved methods to determine the arm’s-length result of

transactions, while Article 9 provides for the use of methods,

other than the approved methods.

b) Priority and preference of methods

No, Article 7 B of the transfer pricing bylaws provides that

there is no order of preference for the five approved methods.

However, the other methods provided under Article 9 can be

applied only if the five approved methods cannot be applied.

8. Benchmarking requirements

> Local vs. regional comparables

Article 13 C of the transfer pricing bylaws provides that

foreign comparable transactions can be used in the absence

of domestic comparable transactions, provided difference in

geographic and other factors are accounted for.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year analysis for comparable companies is acceptable

(preferably three years). In case of multiple-year analysis

for a tested party (especially for loss-making scenarios), in

exceptional cases and depending on the situation, a multiple-

year approach could be applied after providing sufficient

reasons in the Local File.

> Use of interquartile range

The interquartile range is considered to be the appropriate

approach for determining the arm’s-length range. EY quartile

is preferred.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Taxpayers are required to perform comparability analyses

on a triennial basis if there is no change in conditions and

circumstances of the taxpayer and its controlled transactions.

However, it would be prudent to note that a financial update of

the comparability analysis would have to be performed on an

annual basis.

> Simple, weighted or pooled results

Weighted average is preferred.

> Other specific benchmarking criteria, if any

Article 13 provides that secret comparables cannot be used.

Additionally, transfer pricing guidelines issued by ZATCA

expect that comparable persons do not report any losses in

the years under review. Full range is not acceptable under local

transfer pricing regulations.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

There is none specified.

> Consequences of failure to submit, late submission or

incorrect disclosures

There is none prescribed. All penalties and fines under the ITL

are applicable to all income tax matters.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Currently, there is no specific transfer pricing penalty

prescribed under the ITL. However, all penalties and fines

under the ITL are applicable to all income tax matters,

including transfer pricing.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Currently, there is no specific transfer pricing penalty

prescribed under the ITL. However, all penalties and fines

under the ITL are applicable to all income tax matters,

including transfer pricing.

> Is interest charged on penalties or payable on a refund?

There is none specified.

b) Penalty relief

There is none specified.

10. Statute of limitations on transfer pricing

assessments

There is no specific statute of limitations set out in KSA ITL

regarding transfer pricing assessments. The general statute

of limitations (Article 65) for ZATCA to make or amend a tax

assessment is five years from the end of the deadline specified

for filing the tax declaration for the taxable year. The ZATCA

may, however, make or amend an assessment within 10 years

of the deadline specified for filing the tax declaration for the

taxable year in cases where the tax return was not filed or, if

filed, was found to be incomplete or incorrect with the intent of

tax evasion.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

High.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

High.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

High. The risk is increased in case of inadequate transfer

pricing documentation.

> Specific transactions, industries and situations, if any, more

likely to be audited

Presently, the tax authority in KSA is conducting multiple

audits specially for corporate taxpayers with high amounts of

related-party transactions and loss-making scenarios.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Currently, there is no APA procedure in place. However,

taxpayers can apply for advance rulings with the tax

authorities on specific matters — however, these advance

rulings are not binding on ZATCA.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

There are detailed guidelines provided by ZATCA on the

procedure to avail MAP opportunities subject to there being

specific provisions for initiating MAP proceedings in the

relevant double tax avoidance agreement.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalisation or debt

capacity in the jurisdiction

There is an interest deduction ceiling rule in KSA corporate

tax law. The Saudi tax law limits interest rate deductibility as

follows:

The lower of the interest charged for the year and income from

loan fees (interest income) plus 50% of (A-B), where A and B

are defined as:

A: Income subject to tax less income from loan fee (interest

income)

B: Expenses allowable for tax purposes less loan fee (interest

expense)

Interest (or loan fees) in excess of the deductibility limit set

out above is a permanent disallowance under the tax law and

its bylaws. This is, however, an overall deduction rule and not

specific to related-party transactions.

Ricardo M Cruz

ricardo.m.cruz.sanchez@sa.ey.com

+ 966112605680

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority 1

Senegalese Revenue Authorities (SRA) (Direction Générale des

Impôts et Domaine or DGID)

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are the General Tax Code (GTC) Articles 17 (arm’s-length

principle), 31bis (annual declaration of foreign related-party

transactions), 31ter (CbCR), 638 and 639 (transfer pricing

documentation obligation), 9-2 (thin-capitalization legislation,

applied in the context of certain intragroup financing

arrangements only, e.g., intragroup interest payments on

intragroup debt), 667-III.a (annual transfer pricing return fines)

667-III.c (transfer pricing documentation fine) and 667-III.b

(CbCR fine). The effective date of applicability was 1 January

2018.

> Section reference from local regulation

Direct taxes in the GTC.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Senegal is not a member of the OECD. However, as a member

of the inclusive framework, Senegal agrees to implement

a minimum BEPS standard (Actions 5, 6, 13 and 14). In

addition, the guides published regarding transfer pricing by the

SRA clearly refers to OECD Principles.

However, in practice, tax authorities stated in some tax

audits that they were not bound by the OECD Guidelines and

OECD Principles in assessing the effectiveness of intragroup

1 http://www.impotsetdomaines.gouv.sn/

transactions, such as management fees. This position seems

marginal.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

All the three, i.e., Master File, Local File and CbCR, are

covered.

> Effective or expected commencement date

The transfer pricing regulations entered into force in

Senegal as of 1 January 2018. However, the Local File

was also due for FY2017.

> Material differences from OECD report template or format

There is none specified.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report should be sufficient to

achieve penalty protection, but financial data relating

to the Senegalese entity itself (including amounts of

intragroup transactions) needs to be sourced from the

Senegalese statutory accounts.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 4 February 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Taxpayers that fulfill at least one of the following conditions

need to prepare the transfer pricing documentation:

> Turnover, excluding taxes or gross assets, equal to XOF5

billion, at least

> Holding, at the end of the fiscal year, directly or indirectly,

more than half of the share capital or voting rights of a

company, located in Senegal or abroad, which generates

a turnover, excluding taxes or holds gross assets, equal to

XOF5 billion at least

> Being directly or indirectly held for more than half of the

share capital or voting rights by a company generating a

turnover, excluding taxes, or holding gross assets equal to

XOF5 billion

> Master File

As from financial years opened after 1 January 2018, the

content of the documentation is fully in line with BEPS Action

13 (Master File and Local File).

> Local File

As from financial years opened after 1 January 2018, the

content of the documentation is fully in line with BEPS Action

13 (Master File and Local File).

> CbCR

Taxpayers that fulfill at least one of the following conditions

need to file the CbCR:

> The Senegalese tax-resident company has been elected by

the multinational group to file a CbCR and has informed

the Senegalese Tax Administration.

> The Senegalese tax-resident company fails to give

evidence that another company of the multinational

group (either based in Senegal or in a jurisdiction that

has implemented a similar CbCR requirement or in a

jurisdiction that has concluded with Senegal a qualified

exchange of information instrument) has been designated

for purposes of filing the CbCR.

> The Senegalese jurisdiction has been notified regarding a

systematic failure to exchange the information.

> Economic analysis

The GTC does not provide for any materiality limit with regard

to the intercompany transactions to be reported in the transfer

pricing documentation. Indeed, there is no applicable notion of

“important intercompany transactions,” which consequently

entails the reporting of all intercompany transactions to which

a local company is a party.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. However, it is expected for domestic transactions

to follow arm’s-length principles as they may be under scrutiny

during tax audit.

> Local language documentation requirement

There is no guidance as for the language for documentation.

However, tax auditors are entitled to request a translation of

the documentation if it is provided in English.

> Safe harbor availability, including financial transactions if

applicable

There is no specific guidance.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The transfer pricing return needs to be submitted in French

as part of the taxpayer’s annual tax return. Online submission

tool is provided.

> Related-party disclosures along with corporate income tax

return

There is no filing obligation for the transfer pricing

documentation (Master File and Local File). The documentation

package has to be prepared on a contemporaneous basis and

provided upon request during a tax audit (20 days after an

official request).

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

Yes, it is there if the Senegalese entity is not the ultimate

parent entity (UPE) or surrogate parent entity (SPE).

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 30 April following each fiscal year-end.

> Other transfer pricing disclosures and return

The annual transfer pricing return due date is 30 April.

> Master File

This is not applicable.

> CbCR preparation and submission

CbCR is to be submitted within 12 months following the fiscal

year-end.

> CbCR notification

The deadline is by the last day of the MNE's fiscal year (31

December).

b) Transfer pricing documentation/Local File preparation

deadline

It should be available by the time of a tax audit (accounts

examination on-site).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No, there is no submission deadline.

> Time period or deadline for submission upon tax authority

request

The deadline is 20 days following the tax auditor’s request of

the transfer pricing documentation.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

These methods are accepted: CUP, resale price, cost-plus,

profit-split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific indication. However, local comparables

would be preferred.

> Single-year vs. multiyear analysis

There is no guidance provided.

> Use of interquartile range

Yes, there are requirements.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no guidance provided.

> Simple, weighted or pooled results

There is no guidance provided.

> Other specific benchmarking criteria, if any

There is no guidance provided.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

XOF10 million fine applies for the failure or delay to submit the

transfer pricing return. It is also to be noted that the transfer

pricing return is used as a “risk assessment tool” by the tax

authorities.

In cases where the transfer pricing return is incomplete or

inaccurate, and in accordance with Article 667-II of the GTC, a

fine of XOF200,000 is due for each time when the information

is incomplete or inaccurate. However, the amount of the fine

recorded in a “procès-verbal” of violation should not exceed

XOF1 million.

XOF25 million fine applies for the failure or delay to submit the

CbCR. As for the transfer pricing documentation and, in case

where it is either not provided or is incomplete within the 20-

day period, a fine applies at the rate of 0.5% of the volume of

transactions that were not documented or are missing.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

After a transfer pricing reassessment is made, the profit

indirectly transferred should be qualified as a deemed

distribution of a benefit. Such “benefit” transfer should entail

corporate income tax and withholding tax (WHT) on distributed

amounts payments. Accordingly, tax auditors should apply

penalties at the rate of 25%, applied on the due corporate

income tax, and 50% applied on the due WHT on distributed

amounts. See article 671(III)(4) of the Senegalese General Tax

Code.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

After a transfer pricing reassessment is made, the profit

indirectly transferred should be qualified as a deemed

distribution of a benefit. Such “benefit” transfer should entail

corporate income tax and withholding tax (WHT) on distributed

amounts payments. Accordingly, tax auditors should apply

penalties at the rate of 25%, applied on the due corporate

income tax, and 50% applied on the due WHT on distributed

amounts. See article 671(III)(4) of the Senegalese General Tax

Code.

> Is interest charged on penalties or payable on a refund?

No interest will apply on the penalties mentioned above.

b) Penalty relief

Subject to further negotiations with tax authorities

10. Statute of limitations on transfer pricing

assessments

Four years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium as it will allow

tax authorities to assess the effective profit which should be

taxed locally.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium if they assume

that the company chose this method to lower the taxable base.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium as we assume

that challenging the transfer pricing method may entail for

SRA an increase of the taxable base.

> Specific transactions, industries and situations, if any, more

likely to be audited

The industries are large companies: telecommunication, oil

and gas, mining, and companies in the hospitality industry.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral and bilateral APAs are available.

> Tenure

The APA application should be filed at least six months before

the beginning of the first fiscal year indicated in the APA

request.

> Rollback provisions

There is no guidance provided.

> MAP opportunities

Yes, taxpayers may request an MAP if taxation has or is likely

to occur that is not in accordance with the provisions of a

double taxation treaty to which Senegal is signatory.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Senegal does not have specific thin-capitalization rules, but

the following limitations are imposed on interest paid to related

foreign parties in respect of funds provided to local companies:

> The rate of interest paid to shareholders, partners or other

related parties on loans advanced directly or indirectly

to the company in excess of the share capital may not

exceed the advance rate of the central bank by more than

3 percentage points.

> The interest referred to in (1) may be deducted only if the

capital is fully paid up.

> The deduction of interest paid to an individual is limited

to the interest attributable to loans not exceeding the

amount of the share capital.

> Interest, referred to in (1) when paid to companies, is not

deductible to the extent it is paid on loans that exceed 1.5

times the share capital and the interest exceeds 15% of

profits from ordinary activities, plus interest, depreciation

and provisions taken into account in determining those

profits.

> The total amount of deductible annual interest in respect

of all debts incurred by members of a group cannot exceed

15% of the group’s consolidated profits from ordinary

activities, plus interest, depreciation and provisions taken

into account for the determination of those profits.

Eric Nguessan

eric.nguessan@ci.ey.com

+ 2250708025038

Contact

Alexis Popov

alexis.popov@ey-avocats.com

+ 33 6 46 79 42 66

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Inland Revenue Authority of Singapore (IRAS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

On 22 February 2018, the Singapore Government published

the Income Tax (Transfer Pricing Documentation) Rules 2018

(the TPD rules), under the Singapore Income Tax Act (ITA),

in the Singapore Government Gazette. The TPD rules are

effective as of 23 February 2018, and apply for the basis

period for the year of assessment (YA) 2019 and thereafter.

On 23 February 2018, the IRAS released the fifth edition of

the Singapore transfer pricing guidelines (2018 Singapore

Transfer Pricing Guidelines). The changes incorporate the

TPD rules into the guidelines and provide examples and

explanations on certain aspects of the TPD rules.

Section 34D of the ITA2 relates to transfer pricing and

empowers the IRAS to make transfer priing adjustments in

cases where a Singapore taxpayer’s transfer pricing practices

are not consistent with the arm’s-length principle.

Section 34E allows the comptroller to impose a surcharge

of 5% on the transfer pricing adjustments made by the

comptroller with effect from the YA 2019.

Section 34F legislates the mandatory requirement

for contemporaneous and adequate transfer pricing

documentation, and penalties for non-compliance from YA

2019 onward.

On 10 August 2021, the IRAS released the sixth edition of the

Singapore transfer pricing guidelines, which provides updates

and additional transfer pricing guidance in a number of areas

as compared with the previous edition.

The sixth edition does not deviate significantly from the fifth

edition in terms of guidance on the considerations for the

application of the arm’s-length principle and transfer pricing

1 https://www.iras.gov.sg/.

2 Relevant sections of the Singapore ITA are available at

http://statutes.agc.gov.sg/aol/search/display/view.

w3p;page=0;query=DocId%3A45fc380e-12d4-4935-b138-c42d-

c45d377c%20Depth%3A0%20Status%3Ainforce;rec=0.

documentation requirements. However, the various updates

and guidance in additional areas (including conditions for

mitigating a transfer pricing surcharge) are reflective of

the IRAS’ continuing focus on transfer pricing matters and

enforcement of the arm’s-length requirement on taxpayers.

> Section reference from local regulation

Under Section 13(16) of the Singapore ITA, “a related party,

in relation to a person, means any other person who, directly

or indirectly, controls that person, or is controlled, directly or

indirectly, by that person. It also means where he or she and

that other person, directly or indirectly, are under the control

of a common person.”

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No, the Inland Revenue Authority of Singapore (IRAS) has

published on its website with responses to certain transfer

pricing questions commonly asked by taxpayers who are

dealing with the disruption caused by COVID 19.

In the COVID 19 transfer pricing guidance, the IRAS has set

out the types of information to be provided in the transfer

pricing documentation to substantiate the arm’s-length nature

of the transfer pricing outcome arising from COVID 19

The IRAS has also stated that taxpayers, under usual

circumstances, are required to consult the IRAS before

applying term testing. Recognising COVID-19 to be exceptional

circumstances, the IRAS has indicated willingness for a

taxpayer to apply term testing (generally over three years) for

the year of assessment 2021 due to COVID 19 impact without

prior consultation with the IRAS, provided that this is a one-off

application and the taxpayer is also able to substantiate with

evidence such impact on its business.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Singapore is not an OECD member jurisdiction; however, it is a

BEPS associate jurisdiction (as announced on 16 June 2016).

The 2021 Singapore Transfer Pricing Guidelines are generally

consistent with the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations? Yes

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

Under Action 13, the IRAS has not adopted the

application of the OECD Master File and Local File

concepts as separate documents. Nonetheless, the

information requirements for Singapore transfer

pricing documentation are largely aligned to the OECD

approaches though the details requested are for the

applicable Singapore entity.

> Effective or expected commencement date

This is already in place (under the requirements for local

Singapore transfer pricing documentation).

> Material differences from OECD report template or format

There are no material differences, but the requirements

under both the OECD Master File and Local File need to be

met in the Singapore transfer pricing documentation.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format report (including both OECD

Master File and Local File requirements) will help in

mitigating penalties, particularly non-compliance with

transfer pricing documentation requirements.

Having contemporaneous transfer pricing documentation

is also one of the conditions to mitigate the surcharge

of 5% on the amount of the transfer pricing adjustment

under Section 34E (applicable from YA2019 onward).

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

on BEPS?

Yes, it is.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 21 June 2017.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, with effect from YA2019, Singapore has compulsory

transfer pricing documentation requirements. It is mandatory

to prepare a transfer pricing report on a contemporaneous

basis, which should be ready by the time of the filing of the tax

return.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, they need to comply.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation should be prepared annually

under the 2021 Singapore Transfer Pricing Guidelines.

However, to reduce taxpayers’ compliance burden, IRAS allows

them to use the transfer pricing documentation they have

prepared previously to support the transfer price in the basis

period concerned if it is a qualifying past transfer pricing

documentation.

Qualifying past transfer pricing documentation means:

> Past transfer pricing documentation prepared for the

first basis period immediately preceding the basis period

concerned and that satisfies certain conditions

Or

> 

In the absence of subparagraph (a), past transfer pricing

documentation prepared for the second basis period

immediately preceding the basis period concerned and

which satisfies certain conditions

Hence, the transfer pricing documentation is required to be

refreshed only once every three years if the existing one

qualifies as past transfer pricing documentation.

For existing transfer pricing documentation to be qualify as

past transfer pricing documentation, the following conditions

must be satisfied:

> The transaction for which the past transfer pricing

documentation was prepared must be of the same type as

the transaction undertaken in the basis period concerned.

> The transaction for which the past transfer pricing

documentation was prepared and the transaction in the

basis period concerned must have been undertaken with

the same related parties.

> The past transfer pricing documentation must contain

documentation at group level and entity level as

prescribed in the TPD rules.

> The past transfer pricing documentation must be dated

and prepared in English.

> The information contained in the past transfer pricing

documentation on the following matters accurately

describes the same matters in relation to the transaction

in the basis period concerned.

> The commercial or financial relations between the

taxpayers and their related parties

> The conditions made or imposed between the taxpayers

and their related parties

> The transfer pricing method that is used for the

transaction

> The arm’s-length conditions

To make use of qualifying past transfer pricing documentation

for a related-party transaction undertaken in the basis period

concerned, taxpayers only need to prepare simplified transfer

pricing documentation for that transaction. The simplified

transfer pricing documentation need only:

> Contain a declaration by the taxpayer that it has prepared

qualifying past transfer pricing documentation

> Include, by way of an attachment, a copy of the qualifying

past transfer pricing documentation

However, it is still required to conduct annual testing of the

actual results against the arm’s-length results in the qualifying

past transfer pricing documentation.

As mentioned above, with effect from YA2019, Section 34F

legislates the requirement for Singapore taxpayers to prepare

contemporaneous transfer pricing documentation. They must

prepare transfer pricing documentation if they meet certain

conditions. It must be prepared no later than the statutory

deadline for the filing of the income tax return.

Additionally, per paragraph 6.6 of the 2021 Singapore

Transfer Pricing Guidelines, the preparation of

contemporaneous transfer pricing documentation is important

to help avoid the consequences of being unable to deal with

transfer pricing enforcement actions by tax authorities and the

double taxation arising from those actions. This includes:

> 

Defending the taxpayer’s transfer pricing in the event of a

transfer pricing audit by tax authorities

> Helping tax authorities resolve potential transfer pricing

issues under the MAP

> Facilitating the discussion and conclusion of APAs

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

transfer pricing reports if it has related-party transactions.

b) Materiality limit and thresholds

> Transfer pricing documentation

Unless exemption from transfer pricing documentation for

specified transactions applies, taxpayers must prepare transfer

pricing documentation for their related-party transactions

undertaken in a basis period (referred to as the “basis period

concerned”) when either of these two conditions are met:

> Condition (a): The gross revenue from their trade or

business for the basis period concerned is more than

SGD10 million.

> Condition (b): They were required to prepare transfer

pricing documentation under Section 34F of the ITA for

the basis period immediately before the basis period

concerned. In other words, taxpayers who were required

to prepare transfer pricing documentation for a previous

basis period would continue to be required to do so for the

subsequent basis period, and so on.

Transfer pricing documentation is not required in the following

situations:

> When the taxpayer transacts with a related party in

Singapore and such local transactions (excluding related-

party loans) are subject to the same Singapore tax rates or

exempt from Singapore tax for both parties

> When a domestic loan is provided between the taxpayer

and a related party in Singapore, and the lender is not in

the business of borrowing and lending

> When the taxpayer applies the “safe harbor” 5% cost

markup for routine services that fall under Annex C of the

2021 Singapore Transfer Pricing Guidelines

> Where the taxpayer applies the indicative margin for

related-party loans in accordance with the administrative

practice

> When the related-party transactions are covered under an

APA, although annual compliance reports are still required

under an APA

> When the related-party transaction does not exceed a

certain value as follows:

> SGD15 million for purchase or sale of goods (respectively)

> SGD15 million for loans owned to, or by, related parties

(respectively)

> SGD1 million for all other categories of transactions (e.g.,

service income and expense, royalty income and expense,

rental income and expense, and guarantee income and

expense)

For the purpose of determining if the threshold is met,

aggregation should be done for each category of transactions

(strict pass-through costs should be included in the

computation to determine if the threshold is met). For

example, all service incomes received from related parties

should be aggregated.

> Master File

The IRAS has not adopted the application of the BEPS

Master File concepts as separate documents. Nonetheless,

the information requirements for Singapore transfer pricing

documentation are largely aligned to the OECD approaches,

though the details requested are for the applicable Singapore

entity. The 2021 Singapore Transfer Pricing Guidelines

contains a two-tiered approach in which both group and

entity-level details are required when preparing Singapore

transfer pricing documentation.

> Local File

The IRAS has not adopted the application of the BEPS Local

File concepts as separate documents. Nonetheless, the

information requirements for Singapore transfer pricing

documentation are largely aligned to the OECD approaches,

though the details requested are for the applicable Singapore

entity. The 2021 Singapore Transfer Pricing Guidelines

contains a two-tiered approach in which both group and

entity-level details are required when preparing Singapore

transfer pricing documentation.

> CbCR

The IRAS has published an e-tax guide on CbCR. Broadly, CbCR

is required for an MNE group in relation to a financial year

beginning on or after 1 January 2017 (but before 1 January

2018), where Singapore-resident ultimate parent entities

(UPEs) of the following two types of MNE groups are required

to submit a CbC report to the comptroller (or an authorized

person):

> Type A group: an MNE group with consolidated revenues

of at least SGD1.125 billion (USD850 million) and has

two or more entities that are tax residents in different

countries

> Type B group: an MNE group with consolidated revenues

of at least SGD1.125 billion having a single entity that

is tax resident in one jurisdiction, but is also subject

to income tax for its business carried out through a

permanent establishment in another jurisdiction

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

Still taxpayers are not expected to prepare transfer pricing

documentation in the following situations:

> Where the taxpayer transacts with a related party in

Singapore and such local transactions (excluding related-

party loans) are subject to the same Singapore tax rates or

exempt from tax for both parties

> Where a related domestic loan is provided between the

taxpayer and a related party in Singapore, and the lender

is not in the business of borrowing and lending

> Local language documentation requirement

The transfer pricing documentation needs to be prepared in

English. Paragraph 6.40(c) of the 2021 Singapore Transfer

Pricing Guidelines specifies that the IRAS may request

translation of any transfer pricing documentation not written

in English.

> Safe harbor availability, including financial transactions if

applicable

As mentioned above, safe harbor is available for routine

services and related-party loans if certain conditions are met

(refer to paragraph 14.29 of the 2021 Singapore Transfer

Pricing Guidelines for routine services and paragraph 15.50 of

the same for related-party loans).

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is no transfer pricing return required to be filed, either

separately or along with the Singapore income tax return.

> Related-party disclosures along with corporate income tax

return

With effect from YA2018, a related-party transactions

reporting requirement for companies was introduced. Under

the related-party transactions reporting requirement, a

company must state in Form C whether the value of related-

party transactions, as disclosed in the audited accounts,

exceeds SGD15 million for the relevant year of assessment. If

the value of related-party transactions exceeds SGD15 million,

the company has to complete the Related-Party Transactions

Form and submit it together with Form C.

> Related-party disclosures in financial statement/annual

report

It is required to disclose related-party transactions in the

annual financial statement; however, the same may not be

presented as a separate note.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporate income tax return should be filed by 30 November.

> Other transfer pricing disclosures and return

With effect from YA 2018, it should be filed by 30 November

for Related-Party Transactions Form which is to be submitted

together with Form C.

> Master File

There is no Master File preparation or submission requirement

in Singapore.

> CbCR preparation and submission

For financial years beginning on, or after, 1 January 2017,

Singapore MNE groups are required to submit a CbC report

to the comptroller within 12 months from the end of that

financial year.

> CbCR notification

There is no CbCR notification requirement in Singapore.

Nonetheless, Singapore-headquartered MNEs having a filing

obligation in Singapore will need to provide the following

information to the IRAS at least three months before the filing

deadline via email:

> Name and unique entity number (UEN) of the UPE (i.e.,

reporting entity)

> Financial reporting period of the UPE (DD/MM/YYYY to

DD/MM/YYYY)

> Contact person’s name and contact number

> Email of contact person (if different from the one used to

provide the reply)

b) Transfer pricing documentation/Local File preparation

deadline

To be considered contemporaneous, the transfer pricing

documentation is required to be prepared no later than the

statutory deadline for the filing of the income tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Taxpayers should have evidence that their transfer pricing

documentation was prepared in accordance with the

contemporaneous requirements (e.g., dating of the report).

> Time period or deadline for submission upon tax authority

request

Transfer pricing documentation should be submitted within 30

days upon request.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Transfer pricing documentation and transfer pricing

declaration/form/filing: not applicable

CbCR notification: not applicable

CbC report: not applicable

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The IRAS generally does not have a specific preference for

any of the five prescribed methods outlined in the OECD

Guidelines, and it stipulates that the transfer pricing method

that produces the most reliable results should be selected and

applied.

To apply the arm’s-length principle, the 2021 Singapore

Transfer Pricing Guidelines recommends a three-step

approach:

1. Conduct a comparability analysis.

2. Identify the most appropriate transfer pricing method and

tested party.

3. Determine the arm’s-length results.

8. Benchmarking requirements

> Local vs. regional comparables

As much as possible, taxpayers should use local comparables

in their comparability analysis. When taxpayers are unable to

find sufficiently reliable local comparables, they may expand

their search to regional comparables (such as pan-Asian).

> Single-year vs. multiyear analysis for benchmarking

Single-year results of the tested party are expected to be

compared with multiple-year results of the comparables.

> Use of interquartile range

Interquartile range calculation is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year; however, the 2021 Singapore Transfer Pricing

Guidelines states that taxpayers should update their transfer

pricing documentation, including the benchmarking set, when

there are material changes that impact the functional analysis

or transfer pricing analysis. Taxpayers are also required to

update their transfer pricing documentation at least once

every three years.

> Simple, weighted or pooled results

There is a preference for weighted average for arm’s-length

analysis.

> Other specific benchmarking criteria, if any

Per paragraph 5.50 (a) to (d), the IRAS has clarified that:

> The IRAS has no preference for any particular commercial

database, as long as it provides a reliable source

of information that assists taxpayers in performing

comparability analysis.

> Taxpayers should only use comparables with publicly

available information. Such information can be readily

obtained from various sources and verified, making the

analyses of these comparables more reliable, compared

with those based on privately held information.

> Taxpayers should use local comparables in their

comparability analysis. When taxpayers are unable to find

sufficiently reliable local comparables, they may expand

their search to regional comparables.

> Taxpayers should exclude comparables that have weighted

average loss for the tested period, or loss incurred for

more than half of the tested period.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

A penalty of up to SGD10,000 (USD7,600) applies to a person

who knowingly provides materially false or misleading transfer

pricing documentation to the comptroller.

> Consequences of failure to submit, late submission or

incorrect disclosures

With effect from YA2019, taxpayers will be fined not more

than SGD10,000 if they fail to comply with any of the

following:

> 

Prepare contemporaneous transfer pricing documentation

if required to do so under Section 34F

> Prepare transfer pricing documentation with the details

and in the form and content as prescribed in the TPD

rules.

> Retain the transfer pricing documentation for a period

of at least five years from the end of the basis period in

which the transaction took place

> Furnish the comptroller with a copy of the transfer pricing

documentation within 30 days of receiving the notice to

submit

Similar penalties apply to a person who knowingly provides

materially false or misleading transfer pricing documentation

to the comptroller.

An SGD1,000 (USD760) penalty will be imposed upon failing

to file the CbC report by the due date or in order to retain

all records used to prepare a CbC report for a period of five

years. If the penalty is not paid, the responsible person may be

imprisoned for up to six months. An additional penalty of up

to SGD50 (USD38) per day may also be imposed for every day

the failure continues after conviction.

A penalty of up to SGD10,000 (USD7,600) applies to the

filing of false or misleading CbCR information. The responsible

person may also be imprisoned for up to two years.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Applicable from YA 2019 onward, Section 34E introduces

the penalty regime which allows the comptroller to apply a

surcharge of 5% on the transfer pricing adjustment made for

non-compliance with the arm’s-length principle.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to above section

> Is interest charged on penalties or payable on a refund?

The Comptroller may also collect and recover any interest

charged on top of the surcharge. The Comptroller is required

to refund the taxpayer the surcharge and interest paid if the

surcharge is reduced or annulled at a later date.

b) Penalty relief

Adequate and contemporaneous transfer pricing

documentation to support the pricing of the taxpayer’s related-

party transactions will help in mitigating penalties in relation

to non-compliance with transfer pricing documentation

requirements.

It is also one of the conditions to mitigate the surcharge of

5% on the transfer pricing adjustments under Section 34E

(applicable from YA 2019 onward).

10. Statute of limitations on transfer pricing

assessments

The statute of limitations is four years from the end of the

year of assessment (i.e., the latest date the IRAS may make an

additional assessment for YA2018 is 31 December 2022).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not applicable

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium to high: the IRAS may raise transfer pricing queries

as part of its routine corporate income tax reviews, as well as

through more detailed transfer pricing audits with taxpayers.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium to high: in examining the related-party transaction

under audit, the IRAS may question the applicability of the

transfer pricing methodology adopted. This may include

the PLI applied, the specific margin and results arrived at,

the transfer pricing method applied, as well as economic

substance questions and request for evidence.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium to high: this depends on whether the taxpayer’s

position is defensible. The risk of an adjustment may be

mitigated through contemporaneous transfer pricing

documentation.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APAs are available;

requests for APAs have markedly increased in recent years.

> Tenure

The IRAS will generally accept an APA request to cover three

to five financial years.

> Rollback provisions

The IRAS accepts taxpayers’ requests to extend APAs to prior

years for bilateral or multilateral APAs. The number of rollback

years will generally not exceed two financial years immediately

prior to the covered period. Depending on the facts and

circumstances, the IRAS may exercise discretion to vary the

number of rollback years.

> MAP opportunities

They are available. Taxpayers should submit an MAP

application to the IRAS within the time limit specified in the

MAP article of the relevant DTT.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

The Inland Revenue Authority of Singapore (IRAS) has recently

published guidance on its website on APA implications related

to COVID 19.

For APA applications that are under review, if taxpayers

assess that there are transfer pricing implications arising

from COVID 19 that may impact their APA application (e.g.,

changes in functional profile), they should provide the relevant

details to the IRAS as soon as possible. In the case of ongoing

bilateral/multilateral APA, the IRAS will have to discuss the

case with the other competent authorities to reach a mutually

acceptable conclusion.

For existing APAs, if taxpayers evaluate that there may be

a breach in terms and conditions of the existing APA as a

result of COVID 19, they should notify the IRAS as soon as

possible and provide an analysis of the impact, explaining

why the terms and conditions may have been breached, and

suggest the next course of action. In the case of ongoing

bilateral/multilateral APA, the IRAS will have to discuss the

case with the other competent authorities to reach a mutually

acceptable conclusion.

For taxpayers considering a new APA or renewal on an existing

APA, only cases where there is high level of certainty on the

factors that may affect the determination of arm’s-length

transfer prices between related parties will be considered by

IRAS. In the event of doubt, taxpayers are recommended to

approach IRAS early for a discussion.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no thin-capitalization rules in Singapore.

Luis Coronado

luis.coronado@sg.ey.com

+ 65 6309 8826

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Slovak Financial Directorate, local tax authorities and Ministry

of Finance.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Slovak transfer pricing rules established in the Income

Tax Act generally conform to the OECD Guidelines. The

OECD Guidelines were published in the Slovak Financial

Newsletter but are not legally binding. Nevertheless, the

tax authorities generally follow them in practice.

Since 2009, taxpayers have been obligated to prepare

and keep transfer pricing documentation supporting the

transfer pricing method used in transactions with foreign

related parties. The Slovak Ministry of Finance regularly

issues official guidance on the contents of transfer pricing

documentation.

Transfer pricing rules in Slovak Republic are stipulated by:

> Sections 2, 17 (5, 6, 7) and 18 of the Income Tax Act

> Relevant sections of the Act on Tax Administration (Tax

Code)

> Guidance of the Ministry of Finance on the content of the

transfer pricing documentation (new guidance applicable

for documentations from 2018 onward)

> Section reference from local regulation

See the previous section.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The Slovak Republic is a member of the OECD.

The tax authority usually follows the provisions of the OECD

Guidelines (e.g., the acceptable methods listed in the Income

Tax Act correspond with the methods listed in the OECD

Guidelines). As of 1 January 2014, the Slovak Income Tax

Act reflects the 2010 version of the OECD Guidelines (e.g.,

elimination of preference in applying the selected transfer

pricing method).

At the time of this publication, there was no formal

acknowledgment of the 2017 BEPS-updated version of the

OECD Guidelines in the Slovak legislation (except for the update

regarding the transfer pricing documentation — see below).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Master File, Local File and CbCR are covered.

> Effective or expected commencement date

The law is applicable for the fiscal year beginning on 1

January 2018.

> Material differences from OECD report template or format

There is none specified.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

BEPS Action 13 format report should be sufficient to

achieve penalty protection. However, the OECD templates

do not match with local reality completely, and some

details might be missing either in functions, assets and

risk (FAR) analysis or intercompany transactions. Thus,

local review is recommended.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it became a signatory on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

No; however, tax authorities can request the transfer pricing

documentation for the relevant year once the obligation to file

the tax return for the relevant period is fulfilled.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Obligation to prepare full documentation is set for every

cross-border transaction (or a group of such transactions)

whose value exceeds EUR10 million during the tax period.

Basic documentation will be required for each cross-border

transaction (or group of such transactions) that exceeds the

value of EUR1 million. The basic documentation should also

be prepared by every taxpayer with revenues exceeding EUR8

million regardless of the value of a cross-border transaction.

> Master File

The new Slovak guidelines for transfer pricing documentation

issued in 2018 are almost fully compatible with the BEPS

recommendations for Local and Master File.

> Local File

The new Slovak guidelines for transfer pricing documentation

issued in 2018 are almost fully compatible with the BEPS

recommendations for Local and Master File.

> CbCR

CbCR reporting is required.

> Economic analysis

Economic analysis should be performed as part of the full

documentation for each transaction exceeding the materiality

threshold. Shortened analysis substantiating the transfer

pricing method used (but not requiring the benchmark) is

required for basic documentation.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions,

but only in specific cases, i.e., material transactions of

taxpayers applying for tax relief, APA, MAP or corresponding

adjustments.

> Local language documentation requirement

The transfer pricing documentation should be submitted in

the local language. However, it is also possible to submit the

documentation in English if permitted by the tax authority. The

tax authority can always request for a translation into Slovak

language.

> Safe harbor availability, including financial transactions if

applicable

This is not reflected formally in Slovak tax regulations but, in

general, tax authorities abide by the OECD Transfer Pricing

Guidelines.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

There are no other specific requirements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no transfer pricing-specific returns in the Slovak

Republic. The corporate income tax form contains an overview

of the transactions in a summarized format.

> Related-party disclosures along with corporate income tax

return

The taxpayer should state (on a specific row of the tax

return) the difference, if any, between the prices charged in

transactions with related parties and the arm’s-length prices

that decreased the tax base or increased the tax loss. The tax

base must be increased by this difference at the same time.

The corporate income tax return includes a summary table in

which the amounts of various types of related-party sales and

purchases must be stated (regardless of whether they diverge

from arm’s-length prices).

Transfer pricing documentation does not need to be enclosed

with the tax return.

> Related-party disclosures in financial statement/annual

report

Financial statements contain specific rows for related-party

loans, receivables and liabilities. Also, the notes to financial

statements contain a section with information about related-

party transactions.

Transfer pricing documentation doesn’t need to be enclosed

with the financial statements.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

No other information is required.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is usually three months after the end of the fiscal

year, with the possibility of a three-month extension.

> Other transfer pricing disclosures and return

The high-level information on intercompany transactions is

submitted within the corporate income tax return.

> Master File

Master File should be enclosed with the Local File. On the basis

of the guidance, Master File and Local File form one complete

documentation. This applies only if the taxpayer has the

obligation to prepare full transfer pricing documentation.

> CbCR preparation and submission

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

> CbCR notification

Yes, the deadline is three months from the end of fiscal year.

b) Transfer pricing documentation/Local File preparation

deadline

It should be available at the time the corporate income tax

return is filed.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for the submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

The taxpayer has 15 days to submit the transfer pricing

documentation once requested by the tax authorities in an

audit or inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: The Slovak Income Tax Act is in

line with the OECD Guidelines. A combination of methods is

permitted. Non-listed methods may be used if they comply

with the arm’s-length principle.

> Domestic transactions: Yes, the same conditions apply as

listed above.

b) Priority and preference of methods

There is no direct preference, though the most appropriate

method should be used (in line with the OECD Guidelines).

8. Benchmarking requirements

> Local vs. regional comparables

Regional searches are acceptable and preferred.

> Single-year vs. multiyear analysis

Multiyear analysis is acceptable.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Slovak legislation does not explicitly require new benchmark

studies every year, but our experience indicates that it

is recommended to update benchmark searches at least

annually. Brand-new benchmarks should be prepared every

three years.

> Simple, weighted or pooled results

There is none specified (not formally mentioned in

regulations).

> Other specific benchmarking criteria, if any

Comparables with not more than 25% ownership are specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The penalty is up to EUR3,000 per any type of non-

compliance; it can be assessed repeatedly.

> Consequences of failure to submit, late submission or

incorrect disclosures

The penalty is up to EUR3,000 per any type of non-

compliance; it can be assessed repeatedly.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section below.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to section below.

> Is interest charged on penalties or payable on a refund?

If any discrepancies are identified in transfer prices, the Slovak

Tax Authorities (SKTA) would levy an additional tax at the

rate of 21% from an adjusted amount, plus a penalty of 10%

per year or three times the base interest rate of the European

Central Bank (ECB) — whichever is higher — from additional

levied tax.

There is also a system of transfer pricing-related penalties

under which the SKTA can impose a penalty, doubling a

sanction of 10% or three times the base interest rate of the

ECB (whichever is higher) on the sums equal to differences

in the newly determined tax liability of the taxpayer. This

would apply if the SKTA determines that the tax base is not

calculated using arm’s-length prices in transactions with the

taxpayer’s related parties and that the general anti-abuse

rules stated in the Slovak tax legislation have been breached.

If the taxpayer does not file an appeal against a decision of the

SKTA on an increase of the tax liability stated in the tax return,

a double penalty increase should not apply (i.e., only three

times the base interest rate of the ECB should be applied).

b) Penalty relief

As of 2016, there is a general option to submit a

supplementary tax return within 15 days from the beginning of

the tax audit, which offers taxpayers a possibility of reducing

the imposed penalty, compared with a tax audit determination

of the tax assessment. That means a penalty at 7% per year

or twice the base interest rate of the ECB per year (whichever

is higher) could be assessed (instead of 10% per year or three

times the ECB base rate per year).

10. Statute of limitations on transfer pricing

assessments

The statute of limitations in the Slovak Republic in the case of

applying a double tax treaty is 10 years from the end of the

year in which the tax return is filed.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

In general, the likelihood of a corporate income tax audit in

Slovakia may be considered to be medium, while the likelihood

that the taxpayer’s related-party transactions will be reviewed

as part of that audit may be considered to be high.

On the basis of the experience with transfer pricing audits

in Slovakia, if transfer pricing is reviewed as part of the tax

audit, the risk of a challenge by the Slovak tax authorities of

the taxpayer’s methodology is also medium to high. Since the

obligation to prepare and keep transfer pricing documentation

was introduced, the tax authority has intensified its activity

on transfer pricing and is increasingly focused on the transfer

pricing and related documentation when auditing companies

that form part of a multinational group. In 2013, a group

specializing in transfer pricing was established within the

structure of the tax authorities, and the first audits solely

focused on transfer pricing issues have commenced.

Notwithstanding the focus of documentation rules on

taxpayers that are obligated to maintain the so-called full

transfer pricing documentation, transfer pricing audits do

not focus only on such taxpayers. The likelihood of a transfer

pricing audit is roughly the same for companies falling in the

“basic” documentation scope (e.g., for midsize companies).

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium to high since

the SKTA normally has internal control to select the taxpayer

for which an audit should be performed. Therefore, once

an audit takes place, there is a medium to high probability

that the SKTA will focus on challenging the transfer pricing

structure.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium to high. As per

experience, the SKTA usually tries to push for its position, but

many circumstances are taken into account during the audit

process from the standpoint of both the client and authorities.

> Specific transactions, industries and situations, if any, more

likely to be audited

This can vary depending on the transfer pricing structure,

though structure on royalties, services, financial transactions

and limited-risk manufacturers is an area of relatively

straightforward challenge.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

In cases of related-party transactions, the taxpayer may

request that the tax authority approves the selected transfer

pricing method. If approved, the method should be applied for

a maximum of five tax periods. The Income Tax Act does not

explicitly stipulate whether the tax authority may approve the

particular price or margin percentage used. Nevertheless, in

practice, the Slovak tax authority may approve the practical

application of the transfer pricing method (e.g., process of

identifying comparable transactions or entities) and request

information regarding the specific targeted remuneration

considering the model under application. Given this, an APA

should provide a reasonable level of comfort for taxpayers.

> Tenure

The tenure is up to five years from the approved fiscal year (if

business circumstances don’t change).

> Rollback provisions

For a unilateral APA, no rollback provisions exist. For a bilateral

APA, there may be a five-year rollback if the tax authority

agrees.

> MAP opportunities

MAP is applicable under tax treaties, and the EU Arbitration

Convention and the Ministry of Finance has issued Guidance

in February 2018. From July 2019, an act governing the MAP

and local procedure for resolution of transfer pricing disputes

in Slovakia will be effective.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules restrict the maximum amount of

tax-deductible interest on related-party (foreign and domestic)

loans (new and old) to 25% of the taxpayer’s earnings before

interest, taxes, depreciation and amortization (EBITDA).

Marian Biz

marian.biz@sk.ey.com

+ 421 910 492 208

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Financial Administration of the Republic of Slovenia (Finančna

Uprava Republike Slovenije, or FURS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer pricing rules are provided under the:

> Corporate Income Tax Act (Official Gazette of the Republic

of Slovenia, Nos. 117/06, 56/08, 76/08, 5/09, 96/09,

110/09 — ZDavP-2B, 43/10, 59/11, 24/12, 30/12,

94/12, 81/13, 50/14, 23/15, 82/15, 68/16,69/17,

79/18, 66/19 and 172/21) (Zakon o Davku od Dohodkov

Pravnih Oseb (ZDDPO-2))

> Rules on Transfer Prices (Official Gazette of the Republic

of Slovenia, No. 141/06 in 4/12) (Pravilnik o Transfernih

cenah)

> Rules Amending the Rules on Transfer Prices (Official

Gazette of the Republic of Slovenia, No. 4/12) (Pravilnik o

spremembah in dopolnitvah Pravilnika o transfernih cenah)

Tax Procedure Act (Official Gazette of the Republic of

Slovenia, Nos. 13/11 — official consolidated text, 32/12,

94/12, 101/13 — ZDavNepr, 111/13, 22/14, 25/14

— ZFU, 40/14 — ZIN-B, 90/14, 91/15, 63/16, 69/17

13/18 – ZJF-H, 36/19, 66/19, 145/20 and 203/20 —

ZIUPOPDVE) (Zakon o Davčnem Postopku (ZDavP-2))

> Section reference from local regulation

Articles 16 and 17 of the Corporate Income Tax Act provide

the definition of “related party” and the general requirements

with which related parties need to comply.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Slovenia is a member of the OECD and EU Joint Transfer

Pricing Forum (JTPF).

As the Slovenian transfer pricing regulations follow the

principles established in the OECD Guidelines, the tax

authority, in the absence of guidance in Slovenian legislation,

will also consider the OECD Guidelines during tax audits. The

JTPF’s recommendation shall also generally apply.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Based on BEPS Action 13, Slovenia implemented the CbCR

requirement for certain multinational entities. The Master File

and Local File concepts according to BEPS Action 13 have not

yet been implemented in the law. However, similar concept and

requirement exists for Master File and Local File, and follows

the Code of Conduct on transfer pricing documentation in the

EU.

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

Master File and Local File to a great extent, while CbCR is

fully covered.

> Effective or expected commencement date

> Relevant legislation for CbCR was adopted in 2016 and

2017 respectively. The CbC reports are due within 12

months after the end of the fiscal year of the entity.

Material differences from OECD report template or format

Slovenian requirements on the CbCR template or

format follow the OECD report template or format on

essential items. Information on financing and intellectual

property (IP) is not explicitly required by the Slovenian

documentation rules.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is no penalty protection concept in Slovenia. The

content of the documentation and deadline is prescribed

and penalties may be raised if the documentation does not

comply with the requirements.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, the Slovenian transfer pricing documentation

requirements are based on a Master File concept. Under this

concept, as recommended by the European Community (EC)

Council and the JTPF, the transfer pricing documentation

should consist of a Master File and a jurisdiction-specific

file. Disclosure of any related-party transaction amounts

should be provided with the tax return when it is filed with

the tax authority. Following the implementation of CbCR

rules in 2016, relevant multinational entities are required

to file CbCRs, which are commonly considered a part of

transfer pricing documentation. The documentation should

be prepared contemporaneously, within three months of the

financial year-end.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes — if it is considered taxable as permanent establishment.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation should be prepared annually

and for each year separately. A mere memo that outlines

changes vis-à-vis previous years is not acceptable.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit and thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

There is no materiality limit.

> Local File

There is no materiality limit.

> CbCR

The CbCR requirement applies to multinational groups with

consolidated revenues of EUR 750 million or above in the

reporting period.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

For Local File: if one of the related parties involved in the

controlled transaction is in a beneficial tax position of one of

the following:

> Has TLCF (Tax Losses Carries Forward)

> Pays tax at a 0% rate or at a special rate lower than the

general tax rate

> Is exempt from paying corporate income tax

For local transfer pricing documentation: no specific rules

for domestic transactions in the other local transfer pricing

documentation.

> Local language documentation requirement

The transfer pricing documentation should be prepared

in Slovenian. However, an entity may decide to prepare

it in another language and translate it in Slovenian upon

tax authorities’ request (the tax authorities should grant a

minimum of 60 days to translate the documentation)

> Safe harbor availability, including financial transactions if

applicable

Safe harbor rules are available for related-party loans.

Intercompany interest rate is determined as an interbank

interest rate with a markup. Markup is determined based on

the characteristics of the loan (credit rating and the term).

> Any other disclosure/compliance requirement

Disclosure of turnover with related parties is required with

submission of a corporate income tax return for intercompany

loans and other transactions if it exceeds a threshold of EUR

50,000.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

Related-party transactions must be reported as part of

the information included on the annual corporate income

tax return. In addition, if certain conditions are fulfilled,

specifically prescribed attachments must be enclosed with the

corporate income tax return. Such conditions include:

> If the cumulative amount of the given or received loans

from a particular related party exceeds EUR 50,000 in a

tax period, the taxpayer must disclose the name of the

related party, its state of residence and tax number, the

cumulative amount of the loan given or received and the

relationship with the related party.

> Similarly, if the cumulative amount of other intercompany

receivables or liabilities toward a particular related

party exceeds EUR 50,000 in a tax period, the taxpayer

must disclose the name of the related party, its state of

residence and tax number, the cumulative amount of

receivables or liabilities toward the related party and the

relationship with the related party.

A similar attachment is required if the resident taxpayer

has tax losses generated from previous periods, if it is

taxed at a 0% corporate income tax rate or at a lower rate

than the general one, or if the resident related party is

tax-exempt.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

CbCR notification should be filed as an appendix to the

corporate income tax return.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The documentation should be filed within three months after

the end of the fiscal year (i.e., by 31 March for a fiscal year

ending on 31 December).

> Other transfer pricing disclosures and return

Related-party transaction volumes should be reported in an

appendix to the corporate income tax return.

> Master File

This is not applicable.

> CbCR preparation and submission

> The CbCR should be filed within 12 months after the end

of the fiscal year of the entity.

> CbCR notification

The CbCR notification should be filed as an appendix to

the corporate income tax return.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation (including jurisdiction

specific file and Master File) should be prepared by the time the

corporate income tax reporting is due. Nevertheless, it does

not need to be submitted to the tax authority on this date, as

submission is required only upon the tax authority's formal

request made in scope of a tax audit.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation apart from the CbCR.

In line with provisions of the Tax Procedure Act, the CbCR

should be submitted to the tax authorities within 12 months

following the fiscal year-end.

> Time period or deadline for submission upon tax authority

request

The documentation should be provided to the tax authority

upon request, which is usually made in the course of a

tax audit. If it is not possible to submit the documentation

immediately, an extension of up to 90 days (depending on the

extent and complexity of the information) may be granted. If

the Master File is not kept in the Slovenian language, the tax

authority may request that it be translated before submission,

with an extension of minimum 60 days granted to do so.

In line with provisions of the Tax Procedure Act, the CbC report

should be submitted to the tax authorities within 12 months

following the fiscal year-end.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

In accordance with the Article 382 of Tax Procedure Act, the

TP documentation has to be prepared by the taxpayer before

submission date of its CIT return (i.e. 3 months after the end

of the fiscal year e.g. for companies which FY ended on 31

December this means 31 March).

Nevertheless, the Slovenian National Assembly on 22nd of

February 2022 decided that the taxpayer must submit the

corporate income tax return to the tax authorities no

later than 30th of April for the year of 2021. Since this day

falls on Saturday, the actual effective deadline for submission

of CIT return is therefore 3 May 2022.

Although there is no explicit information within this new law

about the prolongation of the deadline for preparation of TP

documentation, the applicable regulations links the deadline

for TP documentation to the relevant deadline for CIT return.

For this reason, we believe it is safe to assume the deadline

for submission of full set of TP documentation for 2021 (in

case fiscal year of the company is aligned with calendar year)

has also been delayed until the above noted deadline for CIT

return.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Following the changes to the OECD Guidelines regarding

the hierarchy of transfer pricing methods, the Regulation

on Transfer Prices introduced the “best-method rule” in

the beginning of 2012. The best-method rule replaced the

previous hierarchy, which preferred traditional transactional

methods over transactional profit methods.

> Domestic transactions

Refer to the section above.

b) Priority and preference of methods

To some degree, the preference for transactional methods

over profit methods still exists; when both can be applied in an

“equally reliable manner,” the traditional transactional method

should be selected. There is a similar conclusion regarding the

application of the CUP method, which will trump any other

method if both can be applied in an equally reliable manner.

8. Benchmarking requirements

> Local vs. regional comparables

Pan-European benchmarks are acceptable in Slovenia.

> Single-year vs. multiyear analysis

There are no specific rules on this; it should be examined on

a case-by-case basis. As the tax authorities usually review

m ultiple periods, it is possible to apply a multiyear analysis

(usually 3-year period is accepted by the tax authority).

> Use of interquartile range

An interquartile range is determined in such a way that 25% of

the lower values and 25% of the upper values are eliminated

from the total observed range of comparable market prices.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A benchmarking study may be updated by a refresh of the

financials in the study. There is no legal requirement to

perform a new benchmarking study each year. Updating it at

least every three years is required.

> Simple, weighted or pooled results

Weighted average.

> Other specific benchmarking criteria, if any

When establishing comparable market prices, the conditions

from related transactions must be compared with the

conditions, in identical, or comparable transactions between

unrelated parties.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

A taxpayer may be fined up to EUR30,000 if the transfer

pricing documentation is not submitted in the prescribed

manner. Additionally, the individual responsible for preparing

the documentation on behalf of the taxpayer may also be fined

up to EUR4,000.

> Consequences of failure to submit, late submission or

incorrect disclosures

A taxpayer may be fined up to EUR30,000 if the transfer

pricing documentation is not submitted in the prescribed

manner. Additionally, the individual responsible for preparing

the documentation on behalf of the taxpayer may also be fined

up to EUR4,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In the case of a tax adjustment, late-payment interest and

penalties for offenses may be charged.

Interest rates for non-compliance as of 1 January 2017 are:

> For postponement of payment or payment in instalments,

2% per year

> For submitting a tax return based on voluntary self-

disclosure, 3% per year

> For submitting a tax return during tax audit (new institute),

5% per year

> Penalty interest based on decision issued by the tax

authorities in tax audit, 7% per year

> Interest rate for late payment of tax and late filing of tax

returns, 9% per year

If the additional tax exceeds EUR5,000, the tax offense

qualifies as severe, and fines in the amount of 45% of the

additional tax may be levied.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

See section above.

> Is interest charged on penalties or payable on a refund?

No, there is no interest on penalties or on penalty interest.

Late-payment interest is applied only on the tax underpayment

arising from adjustments of income and costs corresponding to

related-party transactions as a result of the tax audit process.

b) Penalty relief

Penalties (fines) for a tax offense may be avoided if the

taxpayer makes a voluntary disclosure before receiving the

notice at the beginning of a tax audit or the notice at the

beginning of a tax offense procedure or criminal procedure.

When making a voluntary disclosure, the taxpayer should

adjust the tax liability accordingly.

When making the voluntary disclosure, the taxpayer also must

pay the amount of tax due and late-payment interest. When

tax and late-payment interest are paid simultaneously while

making the disclosure, the taxpayer avoids facing penalties for

a tax offense.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on corporate income tax

assessments is generally five years.

If the tax authorities intervene with any official action against

the taxpayer with a purpose to assess or collect tax, the

relevant period is reset, without taking into account any

previous lapse of time. Nevertheless, the right of the tax

authorities to assess and collect tax will cease after 10 years.

The transfer pricing documentation must be archived for 10

years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

In general, the risk of an annual tax audit is characterized as

medium; however, the risk of an immediate tax audit after a

taxpayer applies for a tax refund may be considered to be high.

In practice, taxpayers that exhibit the following characteristics

are at a higher risk of being subject to a transfer pricing audit

in Slovenia:

> Losses for more than three consecutive years

> An increase in gross revenue or receipts, but no change in

net profit

> Lower net profit in comparison with other comparable

enterprises or with the industry average, i.e., those

taxpayers whose profits fall below the range of profit

ratios are exposed to increased transfer pricing audit risk

> Fluctuating profit and loss histories

> Related parties in tax havens

> A high number of related-party transactions

In addition, there is a high risk for a tax audit:

> For a branch that operates in Slovenia that does not pay

corporate income tax

> For a taxpayer for which a specific risk was recognized in a

previous tax audit

> For a taxpayer subject to an exchange of information

between tax authorities

Despite the medium likelihood of a transfer pricing-related

audit, the likelihood that transfer pricing will be reviewed as

part of the audit may be considered to be high.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It’s generally medium; the likelihood depends on the

appropriateness of the transfer pricing system in place (i.e.,

if the transfer pricing system of the company under review

seems to be reasonable and is supported by transfer pricing

documentation).

For example, if an entity having a limited risk profile incurs

tax losses, the tax authorities will most likely challenge the

transfer pricing method.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

It’s generally high; the tax authorities make a transfer pricing

adjustment for controlled transactions especially when they

can support such a decision with a benchmark study. In this

respect, the tax authorities recommend to the company what

kind of PLI (Profit Level Indicator) it should have based on the

benchmark study performed by the tax authorities. Since the

recommended PLI is usually different from the current one,

the company should make a transfer pricing adjustment in its

corporate income tax return.

> Specific transactions, industries and situations, if any, more

likely to be audited

The tax authority mainly initiates a transfer pricing audit

when a Slovenian taxable person is part of a multinational

group. The tax authority is currently putting the following

transactions under increased scrutiny:

> Limited function and risk entities with tax losses carried

forward

> Intragroup services

> Intangible goods, e.g., royalties and licensing

> Financial transactions, e.g., loans and cash pooling

Additional risk factors are the profitability of the local taxpayer,

business restructurings, the nature and volume of related-

party transactions, transfer pricing issues identified in previous

tax audits and information available from the media.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

As of 2017, a taxable entity can request a unilateral, bilateral

or multilateral APA with the Slovenian tax authorities.

However, the following conditions apply:

> The taxable entity and the tax authorities have met

beforehand and agreed on the feasibility of an APA.

> The transaction that is subject to the APA has economic

substance.

> The taxable entity has a genuine intention to perform such

a transaction.

> The taxable entity and the tax authorities agree on

concluding an APA.

> The transaction that is subject to the APA will be

performed for a longer period of time and is not due to

end shortly after the APA is concluded.

The duration of the APA is determined at the tax authorities’

discretion. Administrative fees of EUR15,000 for first

conclusion and EUR7,500 for extension of an APA apply.

> Tenure

The duration of the APA is determined at the tax authorities’

discretion. The maximum duration is five years, with the

possibility of an extension.

> Rollback provisions

There is none specified.

> MAP opportunities

Guidance on the access and the use of MAP is available on the

website of the Ministry of Finance of the Republic of Slovenia.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There is a safe harbor debt-to-equity ratio of 4:1. The

definition of debt and equity generally follows the accounting

rules. The calculation is as following:

> Equity: an average of the equity at the beginning and

the end of the tax period should be considered in the

calculation (taking into account all components of capital

for capital in accordance with the accounting standards

in place, including tax losses carried over from previous

years as deductible components of the capital and except

net profit or loss for the financial year).

> Debt: any related-party debt qualifies and should be

included in the calculation. Third-party loans guaranteed

by the shareholder or granted in relation with the deposit

of the shareholder also qualify as debt.

Please appreciate this rule is expected to change in the next 2

years, as a result of ATAD 2 (Anti Tax Avoidance Directive 2).

Matej Kovacic

matej.kovacic@si.ey.com

+ 386 41 395 325

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

South African Revenue Service (SARS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Section 31 of Income Tax Act No. 58 of 1962 (the act)

contains the main legislative provisions concerning transfer

pricing.

The SARS issued Practice Note 7 (PN7) as a practical guide

to implementing Section 31 and applying the arm’s-length

principle. PN7 is essentially based on the OECD Guidelines

and states that the SARS intends following PN7 and the 2022

OECD Guidelines when conducting transfer pricing reviews.

PN7 constitutes an “official publication” under SA tax law and

therefore represents “practice generally prevailing” to which

the SARS is legally bound.

Section 210 (1) and 211 of Tax Administration Act, 2011:

Amendments contain fixed-amount penalties for non-

compliance with regard to CbCR filing in South Africa.

> Section reference from local regulation

Section 1 of the act contains the definition of “connected

person,” which is used to determine whether a related party

can be considered to be within the scope of Section 31 of the

act.

With effect from 1 January 2021 and applicable in respect

of years of assessment commencing on or after that date,

Section 31 of the act includes the definition of “associated

enterprise,” to be defined as contemplated in Article 9 of the

Model Tax Convention on Income and on Capital (MTC) of the

Organisation for Economic Co-operation and Development

(OECD).

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

There are no changes expected to the local transfer pricing

legislation; however, the guidance on the transfer pricing

1 https://www.sars.gov.za/Pages/default.aspx

implications of the COVID-19 pandemic published by the OECD

on 18 December 2020 should be considered.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

South Africa is not a member of the OECD. However, PN7

acknowledges that the OECD Guidelines should be followed

in the absence of specific guidance in terms of PN7, the

provisions of Section 31 or the tax treaties entered into by

South Africa.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

It covers the Master File and Local File.

> Effective or expected commencement date

1 January 2016, for financial years commencing after

1 October 2016 (if not a reporting entity) to submit the

Master and Local Files.

> Material differences from OECD report template or format

There are no material differences between the OECD

report template or format and South Africa’s regulations.

True but manual data would need to be completed on

an income tax return (ITR14) e filing form for each local

entity, together with the information related to the

constituent entities.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A BEPS Action 13 format is sufficient, however, penalty

protection is not guaranteed.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes. Documentation is required to be prepared

contemporaneously and submitted as per the thresholds

below.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

A local branch will need to comply with the local transfer

pricing rules if it has related-party transactions. Although the

transactions between a head office and a branch do not meet

the “affected transaction” definition as defined in Section

31 of the act, the arm’s-length principle should be applied to

transactions entered into between a SA branch and its head

office if there is a DTA in place between South Africa and the

jurisdiction of the head office. It follows that the transaction

should be governed by the guidance provided by Article 7 of

the OECD MTC and paragraph 6.4 of PN7.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation should be prepared annually.

However, benchmarking studies are required to be updated

annually and prepared anew every three years.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-

alone transfer pricing reports if it has potentially affected

transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

The threshold for filing information pertaining to the Master

File is the aggregate of potentially affected transactions

(without offsetting any transactions against each other)

exceeding or reasonably expected to exceed ZAR100 million.

Please note that even if an entity does not meet this threshold

to submit its documentation, it is still required to prepare

transfer pricing documentation and have this available should

SARS request it.

> Local File

The threshold for filing information pertaining to the Local File

is the aggregate of potentially affected transactions (without

offsetting any transactions against each other) exceeding or

reasonably expected to exceed ZAR100 million. Please note

that even if an entity does not meet this threshold to submit

its documentation, it is still required to prepare transfer pricing

documentation and have this available should SARS request it.

> CbCR

Total consolidated group revenue of more than ZAR10 billion

(EUR750 million) during the fiscal year immediately preceding

the reporting fiscal year.

> Economic analysis

No set rule but it is advisable to perform a benchmarking study

for transactions in excess of ZAR5 million.

c) Specific requirements

> Treatment of domestic transactions

There is none specified.

> Local language documentation requirement

Transfer pricing documentation should be prepared in English.

> Safe harbor availability, including financial transactions if

applicable

There are none specified; however, reliance is placed on the

OECD Guidelines for Financial Transactions published 11

February 2020.

> Is aggregation or individual testing of transactions preferred

for an entity

As the Local File documentation requirements apply to

taxpayers that have aggregated connected party transactions

of a value of ZAR100 million or more. If this threshold is

met, documentation should be completed for all individual

transactions of ZAR5 million or more.

> Any other disclosure/compliance requirement

None.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no transfer pricing returns.

> Related-party disclosures along with corporate income tax

return

Income Tax Return 14 (ITR14) provides for specific

information pertaining to cross-border transactions with

“connected persons.” In particular, taxpayers are required

to provide the values of individual cross-border transactions

entered into with foreign-connected persons. This includes

information such as the amounts received or receivable from

foreign-connected persons and amounts paid or payable to

foreign-connected persons, and whether there have been any

changes to the taxpayer’s transfer pricing methodologies. In

addition, taxpayers are required to provide certain financial

ratios that indicate the level of borrowings and the overall

performance of the South African entity.

> Related-party disclosures in financial statement/annual

report

Yes, all annual financial statements that are prepared in

accordance with the IFRS are supposed to disclose all related-

party transactions within the related financial period. Further

guidance can be obtained in IFRS standard IAS 24.

> CbCR notification included in the statutory tax return

Yes, the CbCR notification now forms part of a taxpayer’s

ITR14 (tax return).

> Other information/documents to be filed

None.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

An ITR14 return must be submitted to the SARS within 12

months after the taxpayer’s financial year-end.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

Master File needs to be submitted with a taxpayer’s Local File

within 12 months after the taxpayer’s financial year-end.

> CbCR preparation and submission

A CbCR must be submitted to the SARS within 12 months after

the taxpayer’s financial year-end.

> CbCR notification

A CbCR notification must be submitted to the SARS within 12

months after the taxpayer’s financial year-end.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation is typically recommended

to be finalized by the time of lodging the tax return to

achieve compliance (e.g., where there is a contemporaneous

requirement).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

Taxpayers have to submit the transfer pricing documentation

within 21 business days once requested by the tax authorities

in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

For CbCR: the South African Revenue Service has extended

the deadline to file the returns required for reporting fiscal

years commencing before 1 July 2020 as follows:

> With regard to persons required to file by 31 December

2020 or 31 January 2021, the deadline is extended to 30

June 2021.

> With regard to persons required to file by 28 February

2021, 31 March 2021, 30 April 2021, 31 May 2021 and

30 June 2021, the deadline is extended to 30 July 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Not applicable

b) Priority and preference of methods

The SARS accepts the methods prescribed by the OECD (i.e.,

CUP, resale price, cost-plus, TNMM and profit-split).

The SARS has indicated that it will subscribe to the OECD’s

view of accepting a best-method approach as long as it is

substantiated. The SARS may require that adjustments

be made to foreign comparable company results used for

benchmarking the results of the South African entity to

compensate for differences in risks assumed by entities

operating in a different jurisdiction.

8. Benchmarking requirements

> Local vs. regional comparables

The South African domestic transfer pricing legislation does

not contain specific legislation or guidelines for the selection

and or use of domestic or foreign comparables. However,

the OECD Guidelines are consulted to provide guidance on

comparability analysis.

> Single-year vs. multiyear analysis

The South African domestic transfer pricing legislation does

not contain a specific provision that allows or requires the

use of an arm’s-length range and/or statistical measure for

determining the arm’s-length range. However, South Africa

follows the OECD Guidelines, which provide in-depth guidance

on the use of an arm’s-length range and/or statistical measure

for determining arm’s-length remuneration. This is reflected in

PN7 at a high level.

> Use of interquartile range

See previous response.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year. A fresh benchmarking search is to be conducted

every three years, with a financial update annually.

> Simple, weighted or pooled results

There is a preference for the weighted average for arm’s-

length analysis.

> Other specific benchmarking criteria, if any

Regarding independence criteria, South African statutory rules

stipulate that companies are considered to be related parties

if ownership share is above 20% and should be excluded from

a comparables search, as per the definition of “connected

person” in Section 1 of the act. This provision does not apply

for financial services transactions (specifically excluded in

Section 31 of the act).

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

If the Local File does not pass the validation, the party

submitting will be notified and be requested to resubmit

the documents or submit more information. If the uploaded

documents have successfully passed validations, they will be

saved on the SARS system for further evaluation.

> Consequences of failure to submit, late submission or

incorrect disclosures

An administrative penalty of up to ZAR16,000 can be levied

for every month that the documentation remains outstanding.

The administrative penalty is based on the assessed loss or

taxable income for the preceding year.

Prior to 11 May 2018, the filing of the CbCR was compulsory;

however, no specific interest or penalties were assigned for

non-compliance. From May 2018, a fixed amount penalty is

imposed by Section 211 and it varies from R250 to R16,000

per month, dependent on the amount of an assessed loss

or taxable income for the preceding year. The amount of

the penalty will increase automatically by the same amount

for each month that the person fails to remedy the non-

compliance.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalty is the amount resulting from applying the highest

percentage (up to 200%) to the shortfall arising from the

understatement resulting from an adjustment in the event of

default, omission, incorrect disclosure or misrepresentation.

The 200% penalty can be reduced depending on the applicable

behavior in which the understatement relates as per Section

223 of the Tax Administration Act.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above.

> Is interest charged on penalties or payable on a refund?

Yes, interest is levied at the prescribed rate, which is

determined by the Minister of Finance from time to time by

notice in the Government Gazette.

b) Penalty relief

With respect to other penalties that may be imposed under the

Tax Administration Act, if taxpayers have made conscientious

efforts to establish transfer prices that comply with the arm’s-

length principle and have prepared documentation as evidence

of such compliance, the SARS will likely take the view that

the taxpayer’s transfer pricing practices represent a lower

tax risk. Such evidence may provide some mitigation against

the maximum penalty for the underpayment of income tax of

200%, as provided by the Tax Administration Act.

Should the transfer pricing report be prepared by a

South African-registered tax practitioner, a substantial

understatement penalty would not be levied by the SARS.

SARS must remit the understatement if either:

> It resulted from a bona fide inadvertent error (a

misstatement that genuinely is not achieved through or

does not result from deliberate planning; or a misstatement

that is genuinely, sincerely and honestly unintentional,

unintended, unpremeditated, unplanned and unwitting)

Or

> There was “substantial understatement” and the taxpayer

has:

> Made full disclosure of the arrangement

> Received an opinion by an independent registered tax

practitioner that:

> Was issued by or before the return was due

> Was based on full disclosure of specific facts and

circumstances of the arrangement; however, this is not

applicable for opinions regarding cases of substance

over form doctrine or anti-avoidance provision unless

the taxpayer can demonstrate that all steps or parts of

arrangement were fully disclosed to the tax practitioner

> Confirms that the taxpayer’s position is more likely than

not to be upheld if matter goes to court

The taxpayer can object to the adjustment, or a portion

thereof.

10. Statute of limitations on transfer pricing

assessments

The normal statute of limitations is three years from the date

of assessment of the taxpayer. Under the Tax Administration

Act, self-assessment provisions have an extended statute of

limitations of five years. As transfer pricing is now a self-

assessment provision, the statute of limitations is arguably

now five years where the Commissioner issued a notice to

the taxpayer prior to the prescription. This can be extended

or removed in the cases of fraud, misrepresentation or

nondisclosure of material facts.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Yes. The tax authority has suspended physical interactions

with taxpayers in the form of meetings and has encouraged

SARS officers to make use of online platforms for any

assessments and communication with taxpayers.

Case-by-case application to SARS for the waiving of penalties:

Larger businesses (with gross income of more than R100

million) that can show they are incapable of making payment

due to the COVID-19 pandemic may apply directly to SARS

to defer tax payments without incurring penalties. Similarly,

businesses with gross income of less than R100 million may

apply for an additional deferral of payments without incurring

penalties.

12. Likelihood of transfer pricing scrutiny and

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of a general annual tax audit is currently

assessed as medium, and the likelihood of transfer pricing

forming a part of such an audit may be considered to be

high. To the extent that the SARS requests information from

a taxpayer, including transfer pricing documentation that

the taxpayer does not have, this is grounds for an automatic

transfer pricing audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It depends on a case-by-case basis; however, the methodology

is normally challenged within the audit process. The likelihood

may be considered to be medium.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

The likelihood of an adjustment may be considered to be high,

should SARS challenge the methodology.

> Specific transactions, industries and situations, if any, more

likely to be audited

There is none specified.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral, multilateral)

On 11 November 2020, SARS published draft legislation and

proposed a model for the establishment of an APA program in

the jurisdiction.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

South Africa introduced a draft interpretation note (IN) on

thin capitalization, which provides guidance to taxpayers on

the application of the arm’s-length principle in determining

whether a taxpayer is thinly capitalized under the revised

version of Section 31 of the ITA. The draft IN relates to years

of assessment commencing on or after 1 April 2012, which is

therefore applicable to South African taxpayers as part of the

potential borrowing analysis.

In terms of the draft IN, financial assistance is subject

to the arm’s-length principle. The arm's-length principle

is used internationally as a yardstick in assessing the

financial assistance from a transfer pricing perspective. The

authoritative statement of the arm’s-length principle is found

in paragraph 1 of Article 9 of the OECD Model Tax Convention,

which forms the basis of bilateral tax treaties involving OECD

member countries and an increasing number of non-member

countries.

Michiel C Els

michiel.c.els@za.ey.com

+ 27 83 256 7712

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

National Tax Service (NTS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The following regulations refer to transfer pricing:

> 

Adjustment of International Taxes Act (AITA) (since

December 1995)

> 

Enforcement Decree (PED) of the AITA (since December

1995)

> 

Enforcement Regulations of the AITA (since March 1996)

> Basic Rulings of the AITA (since June 2004)

> Section reference from local regulation which defines

related party or associated enterprise

AITA Article 2 (1) 3 defines the term “special relationship” for

transfer pricing purposes.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No) Not yet, but planned (as of Feb

2022)

Currently not applicable; however, under the Korean transfer

pricing regulations, a taxpayer can apply for an extension (up

to one year) prior to 15 days from the statutory filing deadline;

and AITA is now planned to be enacted since July 2022 as it

will accept the comaprables (under applying the Transactional

Net Margin Method) who achieved negative profits under

specific circumstances i.e. COVID-19 pandemic.

An application for the extension shall be submitted to regional

tax office in person or via online filing website, Hometax, and

it will be determined whether the NTS will grant any extension

within seven days. It can be extended up to one year, and a

taxpayer shall have one of following reasons:

1. Data cannot be submitted due to fire, disaster or theft.

1 https://www.moef.go.kr/lw/entexlaw.do?bbsId=MOSFBBS\_000000

000058&menuNo=7060000&pageIndex=7

2. The business is in serious trouble, and it is very difficult to

submit data.

3. The related books and documents are confiscated by the

competent authority.

4. Related-party’s fiscal year has not been ended.

5. It requires significant time in collecting and preparing the

data

6. Tt can be determined that documents cannot be submitted

by the deadline due to the similar reasons under

subparagraphs 1 through 5.

BEPS threshold

A taxpayer having more than KRW100 billion of sales revenue

and KRW50 billion of total overseas related-party transaction

shall submit a Master File and Local File within 12 months from

its fiscal year-end.

Traditional transfer pricing documentation

Where a taxpayer prepares and maintains transfer pricing

documentation by CIT due and submits the transfer pricing

report in 30 days upon tax authority’s request, taxpayer

could get a waiver of underreporting penalty (10% on the

additional tax to be paid through transfer pricing adjustment

in audit). No automatic submission is required. There is no

specific threshold for preparing traditional transfer pricing

documentation, but it is advised to prepare it in practice when

the taxpayer meets the threshold for transfer pricing forms.

Extension

To our experience, a one-year extension is rarely granted, and

it varies upon regi onal tax office.

Contemporaneous documentation shall include the followings:

> Overview of business

> Information of related-party structure that may affect

transfer price

> Reasonings for selection of transfer pricing method

(including economic analyses, etc.)

> Reasonableness of the documentation might be

determined by the following:

> Representativeness of data used

> Selection and application of transfer pricing method based

on systematic analyses

> Whether there is agreed transfer pricing method with tax

authority or there is a reason to choose another transfer

pricing method

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

South Korea is a member of the OECD.

The AITA, though enacted based on the OECD Guidelines,

takes priority over them. The NTS recognizes the OECD

Guidelines, but they are not legally binding. Hence, if a

taxpayer’s argument is based only on the OECD Guidelines

and not on the AITA, the NTS or regional tax offices may not

accept it.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, after the OECD’s announcement of the BEPS actions in

2015, the NTS revised the AITA reflecting the BEPS Action 13

recommendations to implement the Consolidated Reports on

International Transaction Information (CRIT), which comprises

the CbCR, Master File and Local File. The format of CRIT is

specified by the NTS which is not exactly same as the BEPS

Action 13.

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

It covers all.

> Effective or expected commencement date

It was enacted in December 2015, effective for fiscal years

starting on or after 1 January 2016.

> Material differences from OECD report template or format

There is no material difference between the OECD report

template and the Korean Master File and Local File templates

released by the NTS. However, as the NTS released the

standardized template for the preparation of the master

and Local Files, the taxpayer needs to localize the reports

prepared and provided from a foreign affiliate to fully align

with the Korean standardized templates (following the exact

standardized template form is not strictly required for the

Master File as long as the relevant contents are covered)

including RPT forms.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Penalty protection is available to taxpayers that have

prepared and submitted a Local File and Master File in Korean

by the prescribed due date and where the tax authorities

acknowledge that the transfer pricing method as documented

in the Local File was reasonably selected and applied.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 30 June 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Taxpayers who meet thresholds aforementioned must prepare

BEPS transfer pricing documentation (i.e., Master File, Local File

and CbCR) annually.

Taxpayers that are not subject to the BEPS transfer pricing

documentation but wish to be eligible for penalty relief should

prepare and maintain a transfer pricing study report at the

time of filing their corporate income tax return (CITR) annually

and submit the report within 30 days upon request from the

tax authority.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, a separate report per entity is required.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is none specified.

> Master File

Domestic corporations and foreign corporations with a

domestic place of business must prepare a Master File if they

meet the following conditions:

> Revenue of the relevant fiscal year exceeds KRW100

billion.

> Total cross-border related-party transaction amount for

the relevant fiscal year exceeds KRW50 billion.

> Local File

Domestic corporations and foreign corporations with a

domestic place of business must prepare Local File if they meet

the following conditions:

> Revenue of the relevant fiscal year exceeds KRW100

billion.

> Total cross-border related-party transaction amount for

the relevant fiscal year exceeds KRW50 billion.

> CbCR

CbCR should be submitted by the following:

> A domestic UPE with consolidated group revenue in the

immediately preceding fiscal year exceeding KRW1 trillion

will be required to submit the CbCR.

> Taxpayers whose foreign ultimate parent meets the

prescribed threshold (i.e., equivalent to EUR750 million)

will be required to submit the CbCR if any of the following

conditions apply:

> The ultimate parent jurisdiction does not impose CbCR

submission requirement.

> There is no exchange of CbCR between the relevant

jurisdictions due to the absence of tax treaty or other

reasons.

> Economic analysis

There is none specified by the law but the NTS shall request

to perform it with the local database when the tested party is

Korean entity.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. However, the tax authority may question and

challenge the domestic related-party transaction based on the

Corporate Income Tax Law.

> Local language documentation requirement

The Local File and Master File must be submitted in Korean.

While the Master File can be initially submitted in English, a

Korean version must be additionally submitted within one

month of the date of submitting the English version. (See AITA

PED Article 21-2, paragraphs 5 and 6.)

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

The preference is not applicable, but the appropriateness shall

be considered.

> Any other disclosure/compliance requirement

The master and Local File should be submitted with electronical

form defined by the NTS and uploaded on the Hometax

homepage by the deadline.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The transfer pricing disclosure forms mentioned above should

be filed with the tax authority at the time of the corporate

income tax filing subject to the following:

A taxpayer having more than transaction amount of KRW 1

billion of tangibles or KRW200 million of services including

royalties between each foreign related parties (or KRW5

billion of tangibles/KRW1 billion of services in total among all

foreign related parties) shall submit transfer pricing forms with

attaching those in the CITR.

> Related-party disclosures along with corporate income tax

return

The AITA requires a taxpayer to submit the following transfer

pricing disclosure forms at the time the CITR is filed:

1. A form stating the transfer pricing method selected and

the reason for selecting the method for each related-

party transaction (there are different forms for tangible

property transactions, intangible property transactions,

service transactions and cost sharing arrangement (CSA))

2. A summary of cross-border transactions with foreign

related parties

3. A summary of income statements of foreign related

parties that have cross-border transactions with the South

Korean entity

There are certain minimum threshold exemptions for the first

and third forms mentioned above, based on the transaction

amount.

When the taxpayer meets the BEPS master and Local File

threshold, the 3 Related-party disclosures mentioned above

should not be included on the corporate income tax return but

on the Local File with 2 additional disclosures.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

See above transfer pricing forms 1, 2 and 3.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Taxpayers that do not meet the thresholds for Master File

and Local File documentation requirements but, nonetheless,

wish to be eligible for penalty protection should prepare and

maintain a transfer pricing study report by the time of filing

their CITR. The CITR is due three months from the fiscal year-

end date (four months in the case of a consolidated return).

> Other transfer pricing disclosures and return

TP (Related-party) disclosure shall be submitted at the time

of the CITR filing. Taxpayers can apply for an extension; the

application must be submitted 15 days prior to the original

deadline. The tax authority may approve the extension due

date up to one year.

The master and Local Files must be submitted within 12 months

of the taxpayer’s fiscal year-end date. The Master File can

be submitted in English; however, a Korean version must be

submitted within one month of submitting the English version.

When the taxpayer meets the BEPS master and Local File

threshold, the TP disclosures shall be included on Local File

with 2 additional disclosures. Hence the filing deadline shall

be same as the master and Local Files. For the taxpayer does

not meets the BEPS master and Local File threshold, the TP

disclosures shall be filed with the CITR (3 months from the

fiscal year-end) or submitted within 6 months from the fiscal

year-end date.

> Master File

The Master File must be submitted within 12 months of

the taxpayer’s fiscal year-end date. The Master File can be

submitted in English; however, a Korean version must be

submitted within one month of submitting the English version.

> CbCR preparation and submission

Domestic UPEs with consolidated group revenue in the

immediately preceding year exceeding KRW1 trillion are

required to prepare and submit the CbCR within 12 months of

the end of the relevant fiscal year.

If the Korean entity’s foreign UPE meets the CbCR filing

threshold (i.e., equivalent to EUR750 million), but the NTS

cannot obtain the CbCR successfully from the other foreign

tax jurisdiction (e.g., due to the absence of a tax treaty),

the Korean entity will be required to submit the CbCR to the

Korean tax authorities within 12 months of the end of the

relevant fiscal year.

> CbCR notification

CbCR notification is due within six months of the end of the

fiscal year.

b) Transfer pricing documentation/Local File preparation

deadline

There is no specified deadline for the preparation of transfer

pricing documentation.

However, taxpayers that are not subject to BEPS transfer

pricing documentation requirements (i.e., Master File, local

file and CbCR) but wish to be eligible for penalty protection

should prepare and maintain a transfer pricing study report at

the time of filing the CITR (three months from the end of the

relevant reporting year).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, taxpayers that meet the thresholds for BEPS transfer

pricing documentation (i.e., Master File, Local File and CbCR)

must prepare and submit such documentation within 12

months from the end of the relevant reporting year.

> Time period or deadline for submission on tax authority

request

Taxpayers that are not subject to BEPS transfer pricing

documentation requirements (i.e., Master File, Local File and

CbCR) have 30 days to submit the documentation upon the

tax authority’s request. In a tax audit setting, however, the

taxpayer will be expected to submit the documentation within

a very short timeframe upon request.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No change in submission deadlines.

7. Transfer pricing methods

a) Applicability

> International transactions

Yes.

> Domestic transactions

This is not applicable; fair market value gets priority for

domestic transactions.

b) Priority and preference of methods

Regulations prescribe the following five transfer pricing

methods: CUP, resale price, cost plus, profit split and TNMM.

Other reasonable methods can only be used if the five

methods are not applicable. Of the aforementioned methods,

the taxpayer is to select the most reasonable one based on the

availability and reliability of data.

According to recent amendments to the AITA (Article 5),

the tax authority must thoroughly understand the actual

circumstances of the transaction between a resident and its

foreign related party by considering the commercial, financial

and other important conditions of the transaction and

evaluate whether the tested transaction can be considered

commercially reasonable by comparing it with third-party

transactions between independent companies that engage

under similar circumstances. If the tested transaction is

determined to considerably lack commercial rationality,

making it difficult to calculate an arm’s-length price, the

transaction can be denied as a whole and recharacterized for

the purpose of application of the transfer pricing methods.

8. Benchmarking requirements

> Local vs. regional comparables

The tax authority will request a local benchmark (if the tested

party is a Korean company).

> Single-year vs. multiyear analysis for benchmarking

Single year analysis is preferred.

> Use of interquartile range

The NTS has its own version of calculating the interquartile

range.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Rollforwards and update of the financials.

> Simple, weighted or pooled results

The weighted average is preferred for arm’s-length analysis in

practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Penalty of KRW30 million per report (Master File, Local File or

CbCR).

> Consequences of failure to submit, late submission or

incorrect disclosures

There are certain penalties for failing to comply with

information or documentation requests issued by the NTS. A

taxpayer must submit information and documents requested

by the NTS within 30 days.

A penalty shall be imposed on the taxpayer for omitting

or falsifying a part or all of the “summary of cross-border

transactions with foreign related parties” at the time of filing

a CITR. A penalty of KRW5 million applies for each foreign

related party.

Under the current tax law, taxpayers failing to file a Master File,

Local File or country-by-country report, or those found to file

false information or omit a filing, are subject to penalties of

KRW30 million (USD27,000) per report.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, there are two types of penalties associated with a

transfer pricing adjustment: an underreporting penalty and an

underpayment penalty:

> The underreporting penalty is approximately 10% of the

additional tax resulting from a transfer pricing adjustment.

> The underpayment penalty, which is an interest payment

in nature, is calculated as 0.03% of the additional tax on

a transfer pricing adjustment per day (10.95% per year)

on cumulative days. Counting the cumulative days of the

underpayment starts from the day after the statutory

tax filing due date, which is three months after the fiscal

year-end and ends on the date that a payment for the tax

assessment is made.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes; underreporting penalty (10% on the additional tax due

through transfer pricing tax audit) and underpayment penalty

(9~11% of yearly interests).

> Is interest charged on penalties or payable on a refund?

Refer to the section above.

b) Penalty relief

Under Article 13 of the AITA, if the taxpayer has prepared and

maintained contemporaneous transfer pricing documentation

for the transfer pricing methods applied to the cross-border

related-party transactions reported in the CITR, and it

is acknowledged that such documentation supports the

reasonableness of the transfer pricing methods reported, the

penalty for underreporting may be waived if a transfer pricing

adjustment is made. To be eligible for an underreporting

penalty waiver, the transfer pricing documentation must be

submitted within 30 days upon request by the NTS.

10. Statute of limitations on transfer pricing

assessments

This is generally five years from the day after the income tax

return filing due date. It extends to 10 years in the case of

fraud or another wrongful act and 7 years if a taxpayer does

not submit the tax filing by the due date.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny or

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Companies should expect to be audited every four to five

years, depending on their size, or more frequently if other

special factors exist. The likelihood of transfer pricing being

reviewed during a tax audit may be considered to be high. The

NTS, in practice and as a matter of policy, requests transfer

pricing documentation at the onset of a tax audit. Such

requests can also be made separately from a field tax audit

(e.g., desk audit).

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Generally, if transfer pricing is reviewed as part of a tax audit,

the tax auditors are likely to challenge the method used by

the taxpayer and may propose alternate methods that are less

favorable to the taxpayer.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high to medium,

depending on the size and nature of transactions, industries

and situations. Refer to the section below.

> Specific transactions, industries and situations, if any, more

likely to be audited

The NTS closely monitors companies whose profitability

suddenly drops and companies whose profits fluctuate

substantially over a number of years. These companies are

likely to be subject to tax audits.

Also, the NTS will likely scrutinize companies paying high

royalties abroad or receiving high management service fee

charges or cost allocations from overseas related parties.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral, bilateral and multilateral APAs are available under

the AITA. To encourage the use of APAs, the NTS does not

require an application fee, and documents submitted to the

NTS with regard to an APA are to be kept confidential from

tax audit. In addition, APA officials of the NTS are making

continuous efforts to shorten the APA processing period.

> Tenure

An APA with the NTS is generally for three to five years with

rollbacks to previous open tax years.

> Rollback provisions

Five-year rollback is applicable for bilateral and multilateral

APAs, and three-year rollback is applicable for a unilateral

APA.

> MAP opportunities

Taxpayers can resort to MAP under the relevant tax treaty in

order to resolve double taxation arising from a transfer pricing

adjustment. MAP can generally be requested within three

years from the date that the taxpayer becomes aware of the

adjustment (depending on the applicable tax treaty, the time

limit for requesting MAP may be extended).

A request for MAP requires the submission of a request form

and position paper on audit background, assessment, issues

addressed and taxpayer’s position along with supporting

material.

MAP is often initiated in the jurisdiction that is expected to

make a tax refund. Competent authority (CA) negotiations

will commence at the date the relevant CA sends a letter to

the other CA accepting the request for MAP. The CAs will then

discuss issues through the exchange of position papers and via

CA meetings in a year (generally one to two meetings).

MAP will be deemed to be closed where no agreement is

reached within five years (or eight years if extended for three

more years).

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Though there is no official publication from the NTS with

regard to APAs, it is expected that term test as opposed to

year-by-year test and/or other accounting adjustments could

be allowed due to the impact of the COVID-19 pandemic.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The thin-capitalization rules recommend 2:1 debt-to-equity

ratio (6:1 in case of financial institutions). Further, deduction

of net interest (i.e., the amount of interest expense paid to

overseas related parties minus the interest income received

from overseas related parties) claimed by a domestic

company for international transactions will be limited to 30%

of the adjusted taxable income (i.e., taxable income before

depreciation and net interest expenses) of the domestic

company. This has been implemented from the fiscal year

beginning on or after 1 January 2019.

In-Sik Jeong

in-sik.jeong@kr.ey.com

+ 82 10 8750 2090

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

National Revenue Authority, Ministry of Finance.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are no special transfer pricing regulations or rulings in

South Sudan.

The transfer pricing regulations are contained in Taxation Act

2009 as part of the Tax Act 2009 — Regulations.

> Section reference from local regulation

Section 81 of the Taxation Act 2009 and Regulation 1.81,

Transfer Pricing.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

South Sudan is not a member of the OECD. Though its

regulations do not specifically refer to the OECD Guidelines,

the jurisdiction broadly follows them.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No.

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

There’s no prescribed format. There’s only limited

information required, compared with the OECD report and

transfer pricing methods limited to CUP, resale price and

cost plus, in that order of priority — separate documents of

each transaction as opposed to OECD template.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Significant modification and adaptation will be required.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

The law is silent on this. However, taxpayers engaged in

cross-border related-party transactions must keep separate

documentation of each transaction, including the transfer

price paid and the arm’s-length price.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No.

b) Materiality limit or thresholds

> Transfer pricing documentation

There’s no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

It’s required.

c) Specific requirements

> Treatment of domestic transactions

There’s no requirement for documentation.

> Local language documentation requirement

The documentation should be in English.

> Safe harbor availability including financial transactions if

applicable

There’s none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no specification.

> Any other disclosure/compliance requirement

There’s none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

IFRS format.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

There’s none specified, but audited financial statements are

required.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

1 April of the year following the tax period, which is the

calendar year.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

No specific deadline is prescribed under the Taxation Act 2009

and the accompanying regulations.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No; however, it should be submitted upon request.

> Time period or deadline for submission on tax authority

request

Normally, the tax authority gives seven days.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

None.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Transfer pricing rules apply.

> Domestic transactions

Not subject to transfer pricing rules.

b) Priority and preference of methods

The CUP method, followed by the resale-price or cost-plus

methods in that order of priority.

8. Benchmarking requirements

> Local vs. regional comparables

There is a preference for local and regional comparables based

on geographical market area comparability.

> Single-year vs. multiyear analysis for benchmarking

There is a preference for single-year analysis.

> Use of interquartile range

There is none specified.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Though not specific, the regulations require annual

justification.

> Simple, weighted or pooled results

There is a preference for the simple average.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

This is not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

It’s not applicable since filing is not a requirement.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, additional tax can be assessed — a 5% late payment

penalty per month and 3.6% interest per month.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No specific information available for penalty. Refer to the

above section

> Is interest charged on penalties or payable on a refund?

1% per month.

b) Penalty relief

No defense is available; however, an application for a waiver

can be submitted to the tax authorities.

Objection to the additional assessment can be lodged with the

Commissioner of Domestic Taxes, and an appeal can follow to

the tax tribunal.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations on transfer pricing assessments is

three years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Not covered in the COVID-19 tracker.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

It may be considered to be low, as tax authorities have not

started these kinds of audits. South Sudan is a new tax

jurisdiction, and taxation is still in its infancy.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Refer to the section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Refer to the section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

Refer to the section above.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is no APA program available in South Sudan.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

No thin-capitalization rules exist.

Francis N Kamau

Francis.kamau@ke.ey.com

+ 254 736 701851

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Spanish National Tax Agency (Agencia Estatal de

Administración Tributaria — AEAT) and General Directorate of

Taxation (Dirección General de Tributos — DGT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The transfer pricing regulations are contained in the Corporate

Income Tax Law (CITL) 27/2014 of 27 November and in the

Corporate Income Tax Regulations (CITR), approved by Royal

Decree 634/2015, of 10 July.

> Section reference from local regulation

The section reference is Article 18 of the CITL and Articles 13

and following of the CITR.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Spain is a member State of the OECD.

The CITL’s Explanatory Statement explicitly says that Spanish

transfer pricing regulations must be interpreted in accordance

with the OECD Transfer Pricing Guidelines and with the

recommendations of the Joint Transfer Pricing Forum of the

EU, insofar as they do not contradict what is expressly stated

in the CITL.

b) BEPS Action 13 implementation overview

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

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Master File, Local File and CbCR is covered.

> Effective or expected commencement date

1 January 2016.

> Material differences from OECD report template or format

There are no material differences between the OECD

report template or format and the jurisdiction’s

regulations.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Since there are no material differences, the OECD

Master File and Local File should suffice to achieve penalty

protection.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, transfer pricing documentation should be prepared

contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, transfer pricing documentation needs to be prepared

annually under local jurisdiction regulations.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

There are no specific rules in this regard. Although it would be

advisable to prepare a single transfer pricing report for each

entity, in certain cases, it might be acceptable to prepare a

transfer pricing report that covers more than one entity, which

in any case should have the content prescribed by the local

regulations.

b) Materiality limit or thresholds

> Transfer pricing documentation

Transactions carried out with the same counterparty that, in

sum, are lower than EUR250,000 at market value are exempt

from documentation obligations.

Additionally, transfer pricing documentation is not required in

the following cases:

> Transactions carried out within the same consolidated tax

group

> Transactions carried out with its members, or with other

entities forming part of the same consolidated tax group,

by economic interest groupings (Agrupación de Interés

Económico — AIEs), and temporary joint ventures (Uniones

Temporales de Empresas — UTEs)

> Transactions carried out in the context of share public

offerings or takeover bids

> Master File

Groups with income lower than EUR45 million are exempt from

preparing a Master File.

> Local File

See above ‘Transfer pricing documentation’ thresholds.

> CbCR

Consolidated revenues of the group in the previous fiscal year

amounted to at least EUR750 million.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

No specific rules are set out in this regard. If documentation

is drafted following the recommendations of the EU Joint

Transfer Pricing Forum, it should be acceptable. Although

documentation in English may be acceptable in practice,

a tax auditor may request a translation into Spanish,

depending on the case. Penalties are not applied in practice to

documentation prepared in English if translated in the course

of a tax audit.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is preferred.

> Any other disclosure/compliance requirement

There is none other than those mentioned in this guide.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

One of the new measures introduced by Royal Decree

634/2015 relates to the reporting obligations of transactions

with related parties, which has been traditionally complied

within the annual corporate income tax return and which is

now switched to a new model with the aim of simplifying the

administrative burden deriving from the annual tax return

compliance. The information includes the amount, payer,

payee, type of transaction and valuation method applied.

Specific disclosure rules exist for transactions with tax havens,

even with unrelated parties (as per a prohibited list).

> Related-party disclosures along with corporate income tax

return

None.

> Related-party disclosures in financial statement/annual

report

Notes to the annual accounts should disclose information

about related-party transactions that have taken place and the

effect of those transactions on the financial statements.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

There is none other than those mentioned in this guide.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The corporate income tax return should be filed 25 days after

a six-month period after the end of the fiscal year. Normally, it

is 25 July for companies closing books on 31 December.

> Other transfer pricing disclosures and return

Informative statement of related transactions and operations

and situations related to tax havens (Model 232): The

statement should be filed within one month after a 10-month

period after the end of the fiscal year. Normally, it is 30

November for companies closing books on 31 December.

> Master File

There is no filing deadline. It should be available for the tax

authorities by the end of the voluntary period for filing the CIT

return.

> CbCR preparation and submission

During the 12 months following the end of the fiscal year to

which it refers

> CbCR notification

The documentation should be filed before the end of the fiscal

year.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation should be available for the tax

authorities by the end of the voluntary period for filing the CIT

return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

No.

> Time period or deadline for submission on tax authority

request

The taxpayer has to submit the transfer pricing documentation

within 10 days once requested by the tax authorities in an

audit or inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

To determine the market value, the law establishes that one

of the following methods should be applied: CUP, cost plus,

resale price, profit split or TNMM. In any case, other methods

different from these can be applied if they are more useful

to price the transaction at arm’s length. All of these methods

have the same preferential level. The selection of the transfer

pricing methods should be based on the nature of related-

party transactions, the availability of information and the

comparability analysis.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local jurisdiction

comparables, and Western European and Eastern European

comparables are accepted, although Spanish comparables are

preferable if available.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year (three-year) analysis, as per common practice.

> Use of interquartile range

The Spanish tax authorities always rely on the information

publicly available. Thus, they prefer spreadsheet quartile since

they can ascertain the results.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year. As long as the operating conditions remain

unchanged, searches in databases could be updated every

three years while financial data for the comparables should be

updated every year.

> Simple, weighted or pooled results

The weighted average is preferred, as per common practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

When the assessment does not produce a tax adjustment, the

penalty will be EUR1,000 per fact or EUR10,000 per group of

omitted or false facts. Certain limits apply.

> Consequences of failure to submit, late submission or

incorrect disclosures

When the assessment does not produce a tax adjustment, the

penalty will be EUR1,000 per fact or EUR10,000 per group of

omitted or false facts. Certain limits apply.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

When the tax authorities adjust the pricing of a transaction,

the penalty may be up to 15% of the gross adjustment.

> Is interest charged on penalties or payable on a refund?

There is no interest on penalties; if payable, up to 5%,

depending on the year.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

b) Penalty relief

Some reductions are applicable to penalties. Penalties do

not apply if the documentation requirements have been

completely fulfilled, even if the tax authorities propose a

reassessment.

10. Statute of limitations on transfer pricing

assessments

A general statute of limitations of four years applies. The term

will be interrupted in the case of a tax audit. If a new income

tax return is filed with the tax authorities, the four-year period

is interrupted and a new one begins.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Tax audits have been reactivated following the lockdown

period. An increase in the number of tax audits opening has

been observed as compared to similar periods in past years.

The Spanish Tax Administration has introduced the possibility

to attend meetings electronically, via videoconference.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood that transfer pricing will be reviewed as part of

an audit may be considered to be high if the taxpayer regularly

enters into cross-border related-party transactions. For all

other cases, the likelihood of a transfer pricing review during

a general audit may be considered to be medium. This implies

that the related transactions will only be audited if they mean

less taxes as a consequence of the prices determined by the

companies.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of a challenge to the transfer pricing

methodology may be considered to be high. Companies

normally under audit have been previously selected

to be audited because their financial statements show

inconsistences between the transfer pricing methodology and

the business rationale (loss-making companies would be a

good example of this).

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. When the

methodology is not accepted, an adjustment will normally

occur.

> Specific transactions, industries and situations, if any, more

likely to be audited

The tax authorities have stated that transfer pricing audits are

an area of major attention, particularly with regard to business

restructurings and intangible transactions.

In this sense, loss-making companies, limited risk distributors

and limited risk services providers are normally a focus of the

tax authorities.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Spain. Taxpayers may

request that the tax authorities issue rulings on related-party

transactions before they are carried out. This request has to

be filed with a proposal based on the arm’s-length principle.

On the other hand, tax authorities may also settle agreements

with other tax authorities to determine the market value of the

transactions jointly (i.e., bilateral APAs).

> Tenure

The APA will take effect with respect to the transactions

carried out after the date on which it is approved and will be

valid for the tax periods specified in the agreement itself,

without exceeding the four tax periods following that of the

date in which it is approved.

> Rollback provisions

An APA can be rolled back to reach previous tax periods for

which the tax authority’s right to conduct a tax audit has not

become statute-barred and no final assessment in relation to

the transactions referred in the APA request has been carried

out.

> MAP opportunities

MAP opportunity is made available. Spain has been allocating

more resources to the MAP function in order to meet the

target of 24 months’ average timeframe to resolve MAP cases.

If requested under a Spanish double taxation treaty (DTT),

taxpayers must make an MAP request before the end of

the period provided for in the respective DTT, starting from

the day following the notification of the act which causes

or is likely to cause the taxation not in accordance with the

provisions of the Convention. If requested under the EU

Arbitration Convention (90/436/EEC), taxpayers have three

years to present a case to the tax authorities

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No specific changes.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

In general, net interest expenses exceeding 30% of earnings

before interest, tax, depreciation and amortization (EBITDA),

with some adjustments, may not be claimed as a deduction

for tax purposes in the year of their accrual (with some

exceptions, such as a minimum allowance of EUR1 million per

year). The excess may be carried forward indefinitely. This

restriction applies regardless of whether the interest is paid

to a related party or an unrelated lender. In addition, interest

expense on intragroup financing related to the acquisition (or

equity increase) of participation in group entities is disallowed

unless valid business reasons for such transactions are proven.

Additional rules for leveraged acquisitions limit the

deductibility of interest on loans to purchase shares

(acquisition debt) to 30% of the operating profit of the

acquiring entity. The limitation applies if the acquired and

acquiring entities are merged within a four-year period or

if new entities join the tax group in which the acquiring

and acquired entity are included. Under an escape clause

in the law, the limitation does not apply in the year of the

acquisition if the acquisition debt does not exceed 70% of the

consideration paid for the shares. In the following years, the

limitation will not apply if the acquisition debt is proportionally

repaid within an eight-year period until it is reduced to 30% of

the total consideration.

Javier Montes Urdin

javier.montesurdin@es.ey.com

+ 34630443004

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Inland Revenue Department (IRD).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Inland Revenue Act (IRA), transfer pricing regulations and

relevant provisions of the double tax treaties.

> Section reference from local regulation

TP rules are primarily contained in Sections 76, 77 and 78 of

the IRA.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No, but the Transfer Pricing Disclosure Form filing deadline

was extended by one month from the usual deadline of 30

November 2021 to 31 December 2021.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Sri Lanka is not a member of the OECD. However, the IRD

generally refers to the OECD Transfer Pricing Guidelines

to resolve matters involving interpretations of its own TP

regulations. By the same token, the IRD broadly recognizes

the pricing methods stipulated in the OECD Transfer Pricing

Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Sri Lanka has adopted the OECD’s three-tiered documentation

approach (i.e., Master File, Local File and CbCR) set out in BEPS

Action 13.

1 www.ird.gov.lk

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

Yes.

> Effective or expected commencement date

The effective commencement date for Local File and

Master File is 1 April 2018. The CbCR is effective from 1

April 2020.

> Material differences from OECD report template or format

The Sri Lankan format is generally in line with the format

of the OECD.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

There is no concept of penalty protection in Sri Lankan tax

law.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.2

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, TP documentation has to be prepared annually as per the

TP regulations. Local File and Master File are required to be

submitted upon request.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with local TP rules if it

has associated enterprise transactions.

> Does transfer pricing documentation have to be prepared

annually?

2 https://www.oecd.org/tax/exchange-of-tax-information/

CbC-MCAA-Signatories.pdf

The Master File and Local File must be available at the time

of the income tax return filing, on or before 30 November,

following the end of each year of assessment (YA).

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity of an MNE is required to prepare stand-alone

TP reports if it has associated enterprise transactions.

b) Materiality limit or thresholds

> Transfer pricing documentation

Taxpayers are required to maintain TP documentation,

comprising a Local File, Master File and CbCR, if the following

thresholds are met.

> Master File

If the aggregate revenue exceeds EUR50 million (or LKR

equivalent).

> Local File

If the aggregate value of associated enterprise transactions

exceeds LKR200 million.

> CbCR

If the entity is a member of an MNE group and the group’s

revenue exceeds EUR750 million (or LKR equivalent) in the

preceding financial year.

> Economic analysis

There is a materiality limit of LKR200 million for the

preparation of economic analysis.

c) Specific requirements

> Treatment of domestic transactions

In the case of domestic transactions, the TP provisions apply

only in the following cases:

> If exemptions are granted to any one of the associated

enterprises, or

> If the associated enterprises are taxed at different income

tax rates, or

> If any one of the associated enterprises have incurred

losses

> Local language documentation requirement

For international transactions, English language should be

used. For domestic transactions, Sinhalese or Tamil can be

used.

> Safe harbor availability including financial transactions if

applicable

No.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing is required.

> Any other disclosure/compliance requirement

Taxpayers are required to make TP-specific disclosures in the

income tax return.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Refer to the section below.

> Related-party disclosures along with corporate income tax

return

The taxpayer needs to file a Transfer Pricing Disclosure Form

along with the income tax return by the due date. The Transfer

Pricing Disclosure Form should provide information related to

transaction, associated enterprise, TP methodology and arm’s-

length price.

> Related-party disclosures in financial statement/annual

report

Yes, there is a requirement under the Sri Lankan Accounting

Standards.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Taxpayers should file this on or before 30 November following

the end of each YA.

> Other transfer pricing disclosures and return

The Transfer Pricing Disclosure Form specified in Section 5

above should be filed along with the income tax return.

> Master File

The Master File should be submitted to the IRD within 60 days

upon request.

> CbCR preparation and submission

The CbCR should be filed no later than 12 months after the

last day of the reporting fiscal year of the MNE group.

> CbCR notification

The CbCR notification should be filed annually by not later

than 31 December of the reporting fiscal year of such MNE

group.

b) Transfer pricing documentation/Local File preparation

deadline

The Master File and Local File must be available at the time

the income tax returns are filed, on or before 30 November

following the end of each year of assessment (YA).

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

The Master File and Local File should be furnished upon request.

> Time period or deadline for submission upon tax authority

request

The taxpayer has to submit the Master File and Local File

within 60 days from the corresponding notice by the IRD in an

audit or inquiry. Usually, the IRD will determine a submission

deadline for other documents, which can vary greatly from

case to case (e.g., from only one week to several weeks).

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

The Transfer Pricing Disclosure Form filing deadline was

extended by one month from the usual deadline of 30

November 2021 to 31 December 2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The TP regulations prescribe the following methods for the

determination of the arm’s-length price:

> CUP method

> Resale price method

> Cost-plus method

> Profit-split method

> TNMM

The TP regulations do not provide a hierarchy of methods, but

require that the process of selecting a method should be aimed

at finding the most appropriate method.

8. Benchmarking requirements

> Local vs. regional comparables

TP regulations neither provide a clear guidance on

benchmarking studies nor prohibit the use of regional

comparables. Therefore, regional comparables should be

acceptable, provided that the differences can be eliminated

through appropriate adjustments and analyses.

> Single-year vs. multiyear analysis for benchmarking

In general, the data of the current YA is required to be

considered. However, data pertaining to up to two preceding

financial years may be used, if such data reveals facts that

could affect the determination of transfer prices.

> Use of interquartile range

As per the TP regulations, the use of interquartile range is

mandatory. However, there is a risk that the IRD may amend

the TP regulations, narrowing the range further.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

As per the TP regulations, if no significant changes

have occurred, no fresh benchmarking search needs to

be conducted every year, but the financial data of the

comparables needs to be updated. A fresh benchmark search

is required every three years.

> Simple, weighted or pooled results.

The TP regulations do not contain guidance regarding the

application of simple or weighted average prices in cases

where multiple years are considered for benchmarking

purposes. In this regard, it is our view that taxpayers should

apply the method that represents a proper application of the

arm’s-length principle.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Refer to the section below for penalties. In addition, the

Income Tax Return may be considered as incomplete.

> Consequences of failure to submit, late submission or

incorrect disclosures

The TP-specific penalty regime became effective from 1 April

2018. Such penalties are imposed as follows:

> For not maintaining documentation, a penalty of up to 1%

of the aggregate transaction value may be levied.

> For not furnishing required documents, a penalty of up to

LKR250,000 may be levied.

> For nondisclosure of any required information, a penalty of

up to 2% of the aggregate transaction value may be levied.

> For failure to submit documents on the specified date, a

penalty of up to LKR100,000 may be levied.

> Concealment of income, furnishing inaccurate particulars

or evasion could lead to imposing a penalty of 200% of

incremental tax on the TP adjustment.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, it may be 200% of the incremental tax.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

This is not applicable.

> Is interest charged on penalties or payable on a refund?

Yes, the IRA provides for interest at the rate of 1.5% per

month.

b) Penalty relief

Penalties may be avoided by establishing reasonable cause and

good faith via preparation of documentation of the taxpayer’s

application of the arm’s-length principle.

10. Statute of limitations on transfer pricing

assessments

There are 30 months from the date of the filing of the income

tax return. In the case of fraud or willful evasion, the statute of

limitations will not apply.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

The likelihood depends on the facts and circumstances. The

questions below will help taxpayers understand the key risk

factors that prompt TP audits:

> 

Are the transactions with associated undertakings large or

complex?

> Does the Sri Lankan entity have transactions with

associated undertakings in low-tax jurisdictions?

> Are there other dealings with associated undertakings that

are not charged for?

> Has there been a business restructuring recently?

> Are there secondments of senior management to the

associated undertakings?

> Are there local entities or permanent establishments in Sri

Lanka with operating losses?

> Does the Sri Lankan entity pay royalty fees to associated

undertakings for the use of intangible assets?

> Was there a failure to submit the Transfer Pricing

Disclosure Form as required by the regulations?

> Was there a failure to prepare TP documentation for the

YA?

If any of the responses to the above are yes, there is a higher

risk of being selected for audit.

> Likelihood of transfer pricing-related audits (high/medium/

low)

In general, the likelihood may be considered to be high if the

selection of the most appropriate method is not supported

with an explanation of the reasons why it was considered the

method that best reflected the arm’s-length principle.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

In general, the likelihood may be considered to be high.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If a methodology has been challenged, there is high risk that

an adjustment will be proposed and a dispute process will

commence.

> Specific transactions, industries and situations, if any, more

likely to be audited

No particular transaction, industry and situation is more at

risk of receiving a tax audit than another. Experiences indicate

that once the IRD has had substantial success with a tax audit

of a particular company, other companies in the same industry

have been targeted.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The TP regulations provide an opportunity for taxpayers to opt

for a unilateral, bilateral or multilateral APA.

> Tenure

The TP regulations provide that an APA is available for a

period not exceeding four years. This term could be reduced if

the economic circumstances from one year to another change

drastically. However, the corresponding guidelines have not yet

been issued specifying the procedures to be followed.

> Rollback provisions

As stated above, the corresponding guidelines have not yet

been issued.

> MAP opportunities

In the case of international transactions, the taxpayer may

request relief from double taxation under the double tax

treaty.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

For group companies, a debt-to-equity ratio of 4:1. Finance

costs paid in excess of the debt-to-equity ratio are not

deductible for tax purposes. As a temporary concession, the

thin-cap adjustment has been suspended in YA 2021/22.

Duminda Hulangamuwa

duminda.hulangamuwa@lk.ey.com

+ 94773647440

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Swedish Tax Agency1 (STA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Sections 14:19–20 of the Income Tax Act

(Inkomstskattelagen (1999:1229)) include the arm’s-

length principle and definition of related party.

> Section 33a of the Tax Procedures Act

(Skatteförfarandelagen (2011:1244)) includes the CbCR

requirements.

> Sections 39:15–16 of the Tax Procedures Act

(Skatteförfarandelagen (2011:1244)) include the transfer

pricing documentation requirements.

> The Advance Pricing Agreements Act (Lag (2009:1289)

om prissättningsbesked vid internationella transaktioner.

The STA issues general taxation guidelines and opinions,

including information about transfer pricing.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules in the current

COVID-19? (Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Sweden is an OECD member.

1 https://www.skatteverket.se/

The Swedish tax laws on transfer pricing are based on the

OECD Guidelines, and the courts and tax authorities apply the

OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, it is effective for financial years starting after 31 March

2017.

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

It covers all the three — Master File, Local File and CbCR.

> Effective or expected commencement date

Financial years starting after 31 March 2017.

> Material differences from OECD report template or format

There are no material differences.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Transfer pricing documentation prepared in line with

the documentation requirements and provided in a

timely manner, has adhered to the OECD transfer pricing

principles, describes actual facts and circumstances and

also has been implemented in the business at hand, may

give 50% penalty reduction. Full reduction of the penalties

may be applicable if the taxpayer in addition to the above

can show that there has been a misjudgement of what

constitutes correct transfer pricing. However, MNEs,

due to their international business, are also presumed

to be aware of transfer pricing issues and regulations.

Hence, full reduction may only be at hand if the taxpayer

clearly provides information of any deviation of the above

requirements in order to trigger the STA’s investigation

obligation; a so called “open disclosure”.

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

on BEPS?

Yes, Sweden is a part of the OECD/G20 Inclusive Framework on

BEPS.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, transfer pricing documentation has to be prepared

contemporaneously on an annual basis under the local

jurisdiction regulations, but is only to be submitted to the STA

upon request.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, the documentation requirements apply to Swedish

branches and permanent establishments of foreign companies.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation has to be prepared annually

under the local jurisdiction regulations but is only to be

submitted to the STA upon request.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

A Swedish Local File may include information on multiple

Swedish entities.

b) Materiality limit or thresholds

> Transfer pricing documentation

The Swedish transfer pricing documentation requirements

are based on the OECD Master File-Local File concept.

Documentation is not required if the company has less than

250 employees, and the company has either an annual

turnover of SEK450 million or less, or a balance sheet value of

SEK400 million or less. The thresholds are evaluated based on

consolidated numbers, i.e., on group level.

Additionally:

> Insignificant transactions do not need to be documented.

> Transactions amounting to less than SEK5 million per

counterparty are always considered insignificant and do

not need to be analyzed in detail in the Local File.

> For the materiality limit to be applied to transactions

involving intangible assets, the intangible assets at hand

need to be considered immaterial or insignificant for the

business operations engaged.

> Master File

See above.

> Local File

See above.

> CbCR

Multinational groups with a total turnover of at least SEK7

billion, or a corresponding amount in foreign currency, are

subject to the CbCR rules. Generally, this means that the

ultimate parent entity is required to file a CbC report for the

entire group in the jurisdiction where it resides. Swedish parent

companies of groups exceeding the threshold are required to

file the CbC report with the STA within 12 months after the

end of the financial year covered by the report, the “reporting

year.” If the ultimate parent entity resides in a jurisdiction

that has not adopted CbCR filing requirements, or has an

agreement on information exchange but is not exchanging

information with the STA, a Swedish entity or permanent

establishment or branch may be obligated to file the report in

Sweden.

> Economic analysis

This is not applicable; refer to the section above.

c) Specific requirements

> Treatment of domestic transactions

There are no documentation requirements for domestic

transactions, although the arm’s-length principle must still be

adhered to.

> Local language documentation requirement

The transfer pricing documentation can be prepared in

Swedish, English, Norwegian or Danish.

> Safe harbor availability including financial transactions, if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

Aggregation of the same type of transactions is generally

accepted.

> Any other disclosure/compliance requirement

There is none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no specific returns that have to be filed for transfer

pricing purposes.

> Related-party disclosures along with corporate income tax

return

No specific disclosure requirements currently exist for filing

the tax return.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

There are four different dates for filing the corporate income

tax return, depending on the taxpayer’s financial year-end. For

taxpayers with a calendar year-end, the tax return is due by 1

July (paper return) or 1 August (electronic return). Generally,

the due date is approximately six months after the end of the

financial year.

> Other transfer pricing disclosures and return

There is none specified.

> Master File

Refer to “Transfer pricing documentation/Local File

preparation deadline” section below.

> CbCR preparation and submission

The report has to be submitted within 12 months after the end

of the financial year covered by the report.

> CbCR notification

Before the end of the reporting year.

b) Transfer pricing documentation/Local File preparation

deadline

The documentation does not have to be filed unless requested

by the STA. The Master File may be requested when the parent

entity is due to file its corporate tax return for the relevant

year. The Local File may be requested when the Swedish entity

is due to file its corporate tax return for the relevant year.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation.

> Time period or deadline for submission upon tax authority

request

Under the previous transfer pricing documentation legislation,

there was a 30-day time period to submit once the transfer

pricing documentation was requested by the STA. However,

in the transfer pricing documentation legislation that was

introduced in 2017, there is no formal time period that the

STA gives after it requests the submission of the transfer

pricing documentation and one to four weeks is common.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: No

b) Priority and preference of methods

One of the methods described in the OECD Guidelines should

be applied. There is no local priority or preference of methods

other than what is stated in the OECD Guidelines.

8. Benchmarking requirements

> Local vs. regional comparables

Local benchmarks are preferred, but regional (Nordic) or

pan-European benchmarks are generally accepted if the

comparability criteria are met.

> Single-year vs. multiyear analysis for benchmarking

Single-year analysis is preferred.

> Use of interquartile range

Yes, interquartile range calculation is preferred.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Sweden follows the OECD recommendations, and annual

financial updates are therefore generally advised, and fresh

benchmarking every third year.

> Simple, weighted or pooled results

The weighted average is generally preferred.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Transfer pricing documentation that is prepared in line with

the documentation requirements, is provided in a timely

manner, has adhered to the OECD transfer pricing principles,

describes actual facts and circumstances and has been

implemented in the business at hand may give 50% penalty

reduction. Full reduction of the penalties may be applicable

if the taxpayer, in addition to the above, can show that there

has been a misjudgement of what constitutes correct transfer

pricing. However, MNEs, due to their international business,

are also presumed to be aware of transfer pricing issues

and regulations. Hence, full reduction may only be at hand

if the taxpayer clearly provides information of any deviation

of the above requirements to trigger the STA’s investigation

obligation: a so-called open disclosure.

> Consequences of failure to submit, late submission or

incorrect disclosures

Sweden has no specific transfer pricing penalties; however,

general penalties apply, ranging from 10%–40% of the

additional tax imposed or reduction of losses carried forward

in case of adjustments. In transfer pricing cases, penalties at a

rate of 40% are generally imposed. For 2022, penalties above

SEK48,300 are reported to the Swedish Economic Crime

Authority.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the section above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

Interest is charged on additional tax imposed, but not on

penalties if paid on a timely basis. The interest rate currently

ranges from 1.25%–16.25%, mainly depending on when the

payment is made.

b) Penalty relief

Penalties are imposed on taxpayers for supplying the STA with

inaccurate or insufficient information.

Transfer pricing penalties may be eliminated if there is a so

called open disclosure of an issue related to transfer pricing.

General descriptions or attachment of the transfer pricing

documentation do not suffice as an open disclosure. Instead,

an issue must be presented that triggers the investigation

obligation of the STA.

Dispute resolution options include litigation in court, MAPs and

the EU Arbitration Convention.

10. Statute of limitations on transfer pricing

assessments

A reassessment may be made during the six-year period after

the end of the calendar year in which the relevant fiscal year

ended.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit, in general, may be

considered to be medium to high. The likelihood depends

on a number of factors, including the industry in which the

company operates, the occurrence of certain transactions,

the outcome of previous tax audits and changes in turnover or

profit levels, compared with prior years.

The likelihood that transfer pricing will be reviewed as part

of an audit may be considered to be high. The STA’s focus on

transfer pricing-related issues has increased significantly since

formal documentation requirements were introduced in 2007.

In some cases, tax audits focus only on transfer pricing.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be low to high that the

transfer pricing methodology will be challenged if transfer

pricing is reviewed as part of the audit. The likelihood depends,

for example, on the transactions involved, the transfer pricing

methods applied, whether documentation and agreements

have been prepared, and whether the documentation and

agreements are adhered to in practice.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If the transfer pricing methodology is challenged, the

likelihood of an adjustment may be considered to be high,

unless the amounts are insignificant.

> Specific transactions, industries and situations, if any, more

likely to be audited

Business restructurings and transactions involving intangible

assets are often subject to audit.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

In Sweden, formal APA procedures have existed since 1

January 2010. Bilateral and multilateral APAs are available.

An APA can only be concluded if Sweden has entered into

a tax treaty with the jurisdiction of the counterparty to the

transaction(s). APAs are not available for transactions that are

not sufficiently complex or that involve minor amounts. This

will be assessed on a case-by-case basis.

> Tenure

The term for an APA would generally be three to five years

unless there are specific reasons for a shorter or longer term.

> Rollback provisions

Rollbacks may be possible.

> MAP opportunities

Taxpayers may request an MAP if taxation has or is likely to

occur that is not in accordance with the provisions of a double

taxation treaty of which Sweden is signatory. Taxpayers

have three years to present a case to the STA under the EU

Arbitration Convention (90/436/EEC).

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

The Swedish Government has issued a deferral of the DAC6

reporting obligations for a period of six months, which means

that reportable arrangements for the transition period (25

June 2018–1 July 2020) should be reported no later than

28 February 2021, and that reporting for the rest of the

reportable arrangements (1 July 2020–31 December 2020)

should be made no later than 31 January 2021.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no formal thin-capitalization rules, although

substantial interest deduction restrictions apply on loans from

affiliated persons. New interest deduction limitation rules that

became effective on 1 January 2019 and apply to fiscal years

commencing after 31 December 2018 include targeted and

general restrictions on deductions for interest expense, and

provisions for hybrid arrangements.

Olov Persson

olov.persson@se.ey.com

+ 46 70 3189448

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Cantonal tax administrations and Swiss Federal Tax

Administration (SFTA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

There are no specific references to transfer pricing in Swiss

tax law. The legal support for adjusting a taxpayer’s taxable

profits is derived from the arm’s-length principle in Article 58

of the Federal Direct Tax Act on a federal level (14 December

1990), as well as in Article 24 of the Federal Law on the

Harmonization of Taxes on a cantonal and communal level (14

December 1990).

Additionally, on 4 March 1997, the SFTA issued a circular

letter instructing the cantonal tax administrations to adhere

to the OECD Guidelines and the arm’s-length principle when

assessing cross-border intercompany transactions.

There is no definition of the term “related party” in Swiss

domestic law or regulations. According to the jurisprudence

of the federal court, an entity is considered related if a

commercial or a close personal relationship exists between

two entities or individuals. A direct or indirect participation in

the management, control or capital is not required. The crucial

criterion is whether the tested transaction was conducted only

as a consequence of the close relationship or not.

> Section reference from local regulation

Refer to the information provided above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Switzerland is a member of the OECD. Switzerland relies on

the OECD Guidelines for the interpretation of the arm’s-length

principle.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Switzerland adopted the global minimum standard included

in Action 13 of the OECD BEPS project for the international

automatic exchange of CbCR.

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

Switzerland adopted the global minimum standard included

in Action 13 of the OECD BEPS project for the international

automatic exchange of CbC reports. However, there is no

specific requirement for Master File and Local File.

There is a CbCR notification requirement for Swiss ultimate

parent entities or surrogate parent entities. The Government

is entitled to put in place notification requirements for other

Swiss constituent entities. Mandatory CbC report filing applies

for fiscal years starting on or after 1 January 2018.

> Effective or expected commencement date

Financial years beginning on or after 1 January 2018 for

CbCR.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it was signed on 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Switzerland does not have transfer pricing documentation

guidelines or rules concerning the Master File and Local

File. Switzerland does, however, have transfer pricing

documentation regulations for CbCR. Switzerland adopted the

global minimum standard included in Action 13 of the OECD

BEPS project for the international automatic exchange of

CbCRs.

Besides the obligation to file a CbCR for fiscal years starting

in or after 2018, there is no specific requirement concerning

transfer pricing documentation. In particular, there is no

obligation to prepare a Master File and a Local File.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Besides the obligation to file a CbCR for fiscal years starting in

or after 2018, there are no specific requirements concerning

transfer pricing documentation. Swiss domestic legislation

requires the taxpayer to provide all the documents necessary

for properly assessing the taxable income. In the case of

related-party transactions, the taxpayer has to demonstrate

that the transfer prices are based on the arm’s-length principle

(implicit obligation to prepare transfer pricing documentation).

It is hence recommended that a Master File and a Local

File be prepared to document the arm’s-length character of

transactions in case of an inquiry by the tax administration.

Even though Switzerland has no legal documentation rules

for the Master File and Local File, Swiss taxpayers factually

prepare them to defend their transfer pricing system in tax

audits.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

This is not applicable.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

Multinational groups with an annual consolidated turnover

of CHF900 million or more (in the fiscal year immediately

preceding the reporting fiscal year) must file a CbCR. Filing of

a CbCR is mandatory for fiscal years starting in or after 2018.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions. However, especially for material and complex

transactions, it is recommended preparing a transfer pricing

documentation also for domestic transactions to demonstrate

the arm’s-length character of the transactions in case of an

inquiry by the tax administration.

> Local language documentation requirement

The CbCR must be submitted in one of the Swiss official

languages (German, French or Italian) or in English.

Besides the CbCR, other transfer pricing documentation

(Master File and Local File) should be submitted in one of

the Swiss official languages (German, French or Italian).

Documentation submitted in English is usually accepted by

the tax administration. Taxpayers may sometimes be asked to

provide translations.

> Safe harbor availability, including financial transactions if

applicable

The SFTA has issued circulars containing safe harbor rules

for financing with regard to thin capitalization and interest

rates for intragroup debt or receivables in Swiss francs and in

foreign currency. The safe harbor interest rates are updated

annually.

> Is aggregation or individual testing of transactions preferred

for an entity

Both approaches may be accepted, depending on the case.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Corporate tax returns must be filed annually (an exemption

applies in the first business year in case of an extended

business year). The filing deadlines vary from canton to canton

(usually between six and nine months after the close of the

business year).

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The CbCR must be filed with the SFTA within 12 months

following the end of the reporting period.

> CbCR notification

There is a CbCR notification requirement for Swiss ultimate

parent entities or surrogate parent entities of 90 days after

the end of the reporting period. The government is entitled

to put in place notification requirements for other Swiss

constituent entities.

b) Transfer pricing documentation/Local File preparation

deadline

Even though Switzerland has no legal documentation rules

for the Master File and Local File, Swiss taxpayers factually

prepare them to defend their transfer pricing system in tax

audits.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

This is not applicable.

> Time period or deadline for submission on tax authority

request

Once requested by the tax authorities, documentation

must usually be submitted within 30 days (extendable upon

agreement).

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

There is none specified. In principle, the same methods as for

international transactions should be used.

b) Priority and preference of methods

In practice, Switzerland relies on the most appropriate method

as recommended by the OECD Transfer Pricing Guidelines.

8. Benchmarking requirements

> Local vs. regional comparables

Because of the lack of sufficient independent comparable

companies in the Swiss market, pan-European comparables

are generally accepted. Benchmarking searches of local

comparable companies are preferred, but not mandated by

law.

> Single-year vs. multiyear analysis

Both, in principle, are accepted, but the multiyear analysis is

more commonly used.

> Use of interquartile range

The use of interquartile ranges is usually accepted.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no requirement to conduct a fresh benchmarking

search every year. Typically, annual financial updates are

performed, whereas new benchmark searches are performed

every three years.

> Simple, weighted or pooled results

Typically, simple or weighted average is applied. There is no

preference between the two in practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Refer to the following section.

> Consequences of failure to submit, late submission or

incorrect disclosures

Swiss tax legislation does not contain specific transfer pricing

penalties. In particular, there are no penalties for a lack of

transfer pricing documentation (other than for the CbCR — see

below). Rather, the general penalty provisions of each relevant

tax act apply. Formal penalties include monetary fines for

infractions of administrative duties or for tax evasion, and

imprisonment in severe cases of tax fraud. In addition, the

following penalties may apply:

> Assessment of the taxable base by the tax authorities: if

the taxable base cannot be properly determined during

a tax assessment (for example, because of inappropriate

documentation), it is estimated at the discretion of the tax

authorities. By law, these estimates must be dutiful and

based on experience in other cases. However, assessments

of the taxable base are rarely in favor of the taxpayer.

> Withholding tax: if a constructive dividend is paid by a

Swiss taxpayer, a withholding tax of 35% is imposed.

According to Swiss practice, in most cases, the Swiss

recipient has the right to a refund of the withholding tax

under the “direct beneficiary theory.” In the case of an

international beneficiary, that is not the direct parent

but a sister company of the Swiss taxpayer, this situation

results in a higher rate of nonrefundable withholding

tax, even if a double tax treaty (DTT) is available. This is

because DTTs generally require direct investment between

companies for them to benefit from the higher refund

rate.

Regarding the CbC report, there are different layers of

penalties:

> Administrative penalty for late submission: CHF200 per day

after the expiration of the deadline, capped at a maximum

amount of CHF50,000

> Criminal sanctions:

> Intentional falsification or incompleteness of CbCR data:

up to CHF100,000 to whoever intentionally submits

a false or incomplete CbCR that substantially distorts

the information requested, and provides an inaccurate

representation of the facts

> Non-compliance with the decision of the tax authority: up

to CHF10,000 to whoever intentionally does not comply

with the decision of the tax authority in the event of an

audit

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Refer to the preceding section.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Refer to the preceding section.

> Is interest charged on penalties or payable on a refund?

Late interest is due on penalties that are not paid on time. The

general provisions on late interest apply. The interest rate is

determined by the SFTA annually.

b) Penalty relief

There are no special provisions for penalty reductions.

Penalties charged are lower in the case of ordinary negligence

and higher in the case of gross negligence.

Many tax disputes can be prevented using the advance ruling

process or settled by negotiation with the tax authorities

during a tax assessment or tax audit process (by way of formal

complaint). In this way, the number of court cases can be

reduced. However, if a transaction was not subject to a ruling,

or if a ruling was not properly implemented, disputes may still

arise and require resolution. Additionally, if transfer prices

are adjusted by a foreign tax authority, a dispute resolution

mechanism may be needed to avoid double taxation. Each

canton has one or two judicial instances that are competent for

tax litigation. The highest court for tax litigation is the Federal

Court.

According to the Federal Constitution, intercantonal double

taxation is prohibited. Therefore, the Federal Court has

developed numerous rules on how intercantonal double

taxation can be avoided. In practice, these rules often also

apply to international cases unless overruled by a DTT.

The Swiss competent authority for tax treaties is the State

Secretariat for International Finance (SIF), a division of the

Federal Department of Finance. Among other duties, the SIF

represents Switzerland’s interests in international financial and

tax matters, and leads negotiations in these areas.

10. Statute of limitations on transfer pricing

assessments

As a general rule, the right to assess a taxpayer in relation to

corporate income and capital taxes expires five years after

the end of the corresponding tax period (relative statute

of limitations). Under certain conditions (e.g., when the

relative statute of limitations is interrupted), the absolute

statute of limitations of 15 years applies. In the cases of tax

fraud or tax evasion (e.g., when specific information was not

available to the tax inspector at the time of the assessment),

finally assessed tax periods can be reopened. The statute of

limitations to reopen finally assessed tax periods is 10 years

after the end of the corresponding tax period.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Tax audits focusing exclusively on transfer pricing are rare.

However, the likelihood that transfer pricing will be reviewed as

part of an audit may be considered to be medium. Even though

the level of awareness is different from canton to canton,

recent experience with tax audits seems to indicate that the

tax authorities are taking a firm stand on transfer pricing

issues, notably as a reaction to the OECD’s BEPS Action Plan.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of the transfer pricing methodology being

challenged may be considered to be medium.

Switzerland has various safe harbor and administrative

guidelines (e.g., debt-capacity, interest rates, low-value-adding

services, valuation), and it is common practice for the tax

authorities to assess the appropriateness of transfer prices on

the basis of these guidelines. In case where taxpayers follow a

different methodology or do not comply with the safe harbor

thresholds, there is a high likelihood of inquiry by the tax

administration, either upon the tax return assessment or in a

tax field audit.

Another area in which disputes arise more frequently is

business valuations; tax authorities sometimes apply the

“practitioner method” (a method based on past earnings

and value of assets), whereas taxpayers use internationally

accepted methods such as the discounted cash-flow approach.

For this reason, it is recommended requesting a ruling or APA

prior to transactions involving the transfer of a business.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

In cases in which the transfer pricing methodology is

challenged, the likelihood of a transfer pricing adjustment

may be considered to be medium, as the disallowance of the

methodology regularly leads to an adjustment of profitability.

> Specific transactions, industries and situations, if any, more

likely to be audited

The risk of scrutiny may be considered to be high, concerning

the transfers of intangibles and restructurings leading to

significant base erosion, unless agreed upfront in a tax

ruling with the authorities. Risk of scrutiny is moderate for

intercompany financing and guarantee fees. The risk of

scrutiny for tangible transactions is low.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The mechanisms available in Switzerland to prevent and

resolve transfer pricing disputes include rulings, bilateral

APAs, multilateral APAs and MAPs.

It is common practice to clarify the taxation of critical or

complex transactions, including transfer pricing issues, in an

advance ruling from the Swiss tax authorities. An advance

ruling can be requested for both the interpretation of a

relevant tax law or administrative guideline and the actual

amount of tax payable on a transaction. The Swiss practice of

issuing advance rulings helps reduce the number of disputes.

Bilateral APAs with foreign tax authorities have become a

favored option for Swiss-based multinational groups with

complex or high-volume transactions. Bilateral APAs are

conducted under the corresponding MAP in the relevant DTT.

In practice, the procedure starts with a presentation of the

facts and a formal request to the SIF. The SIF has proven

very helpful in supporting the interests of Swiss taxpayers in

APA negotiations with foreign tax authorities. The SIF has

published guidance on MAPs and APAs, which can be found at

www.sif.admin.ch/sif/en/home/themen/ doppelbesteuerung---

dba/dba-verstaendigungsverfahren.html.

> Tenure

The tenure period is subject to negotiation, but only up to

three to five years.

> Rollback provisions

Depending on the countries involved, taxpayers have the

option of requesting rollbacks.

> MAP opportunities

Taxpayers may request a MAP, if taxation has or is likely to

occur that is not in accordance with the provisions of a DTT

to which Switzerland is signatory. Most of Switzerland’s DTTs

permit taxpayers to present a case to the SIF within three

years from the first notification to the taxpayer of the actions

giving rise to taxation not in accordance with the DTT. It is

prudent to consult the relevant DTT to determine the time limit

that applies and to ensure that the deadline for presenting a

case is not missed.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The SFTA has issued a circular containing safe harbor rules for

financing with regard to thin capitalization.

Nathan Richards

Nathan.richards@ch.ey.com

+ 41 79 611 3167

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

National Taxation Bureau.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Article 43-1 of the Income Tax Law (ITL)

> Article 50 of the Financial Holding Company Law (FHCL)

> Article 42 of the Business Mergers and Acquisitions Law

(BMAL)

The Regulations Governing Assessment of Profit-Seeking

Enterprise Income Tax on Non Arm’s-Length Transfer Pricing

(transfer pricing guidelines) became effective on 30 December

2004 (amended 28 December 2020, 13 November 2017 and

6 March 2015).

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Taiwan is not a member of the OECD; however, it recognizes

the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

1 https://www.dot.gov.tw

Ministry of Finance (MOF) drew up an amendment (the

amendment) to the transfer pricing guidelines on the basis

of the BEPS Action 13 final report. The final amendment was

released 13 November 2017. In line with OECD BEPS Action

13, the amendment adopts a three-tiered transfer pricing

documentation requirement that includes the Master File

(Master File), CbCR, and Local File or transfer pricing report.

The amendment applies to profit-seeking enterprises’ income

tax returns starting fiscal year 2017.

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

Both the Master and Local Files (transfer pricing report) are

covered.

> Effective or expected commencement date

The Master File and CbCR requirements came into effect

starting fiscal year 2017.

> Material differences from OECD report template or format

There are no material differences between the OECD report

template or format and Taiwan’s regulations. However, for

CbCR, there is an additional requirement for the appendix

list of all constituent entities of the MNE group. The taxpayer

should disclose tax jurisdiction, tax identification number

(TIN), other identification number (IN), English name of

constituent entity, Chinese name of constituent entity, English

address of constituent entity, and additional Information.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

A penalty protection regime is not available. An enterprise that

fails to file or submit the required information and documents

shall be subject to a fine of no less than TWD3,000 but no

more than TWD30,000, as per Article 46 of the Tax Collection

Act. Specifically, for the first-time infringement, penalty will be

TWD3,000; second-time infringement, it will be TWD9,000;

third-time and onward, it will be TWD30,000 per request.

Please note that the penalty under the said Article 46 can be

imposed repeatedly until the taxpayer submits the relevant

penalty.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

As of February 2022, Taiwan has bilateral CbCR exchange

agreements with Switzerland, Australia, Japan and New

Zealand, respectively.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Taiwan has transfer pricing documentation guidelines and

rules. A transfer pricing report has to be prepared annually.

Refer to the below for more information.

Taiwan’s Taxation Administration, MOF, released the transfer

pricing guidelines in December 2004.

Except for immaterial related-party transactions, extensive

contemporaneous documentation is required. According to

the transfer pricing guidelines, an enterprise must have the

transfer pricing report and relevant documentation prepared

when the annual income tax return is filed.

If the enterprise meets the safe harbor threshold and does not

prepare a transfer pricing report, the tax authority may still

request other supporting documents as evidence for the arm’s-

length nature of the intercompany transactions (alternate

transfer pricing documentation). One example of other

supporting documents is the parent’s or headquarters’ transfer

pricing report, as long as it does not significantly vary from the

concepts presented in the transfer pricing guidelines.

If the taxpayer does not meet the safe harbor criteria for the

transfer pricing report, its transfer pricing report must contain:

> Business overview

> Organizational structure

> Description of controlled transactions

> Industry and economic analysis

> Functions and risks analysis

> Application of the arm’s-length principle

> Selection of comparables and related information

> Comparability analysis

> transfer pricing methods selected by the enterprises

> transfer pricing methods selected by related parties under

the same control

> Result of comparables search under the best method of

transfer pricing

> A copy of intragroup agreements

> A copy of unilateral APAs concluded with other tax

jurisdictions for the same controlled transactions

> Report of affiliated enterprises under Article 369 of the

Taiwan Company Law

> Any other documents that significantly influence pricing

between the related parties

In November 2017, the MOF released the amendment to

revise the existing Articles 21 (addition of new guidance for

CbCR notifications) and 22 (amended guidance for the transfer

pricing report). To be in accordance with OECD BEPS Action

13, the amendment also added two new Articles, 21-1 and 22-

1, to the transfer pricing guidelines. Article 21-1 added new

guidance regarding the Master File and Article 22-1 added new

guidance for the CbCR.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation has to be prepared annually

under the local jurisdiction regulations. The minimum

requirement to achieve this is an annual update of the transfer

pricing documentation, including the transaction values and

benchmarking analysis.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

A separate transfer pricing report per entity must be prepared.

b) Materiality limit or thresholds

> Transfer pricing documentation

Refer to the “Safe harbor availability” section below.

> Master File

This covers Master File. Please refer to the “Safe harbor

availability” section below.

> Local File

This covers Local File. Please refer to the “Safe harbor

availability” section below.

> CbCR

Refer to the “Safe harbor availability” section below.

> Economic analysis

Transaction value greater than TWD10 million by type of

transaction (e.g., tangible goods, intangible, service or fund),

and TWD5 million for each transaction with one related party.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

> Local language documentation requirement

The transfer pricing report and Master File need to be

submitted in the local language.

> Article 22, paragraph V: the transfer pricing report or

alternate transfer pricing documentation provided by

profit-seeking enterprises pursuant to the preceding

paragraphs should contain a table of contents and an

index. A Mandarin Chinese translation should be attached

if the materials are provided in a foreign language, unless

otherwise agreed upon by the tax collection authorities

with the provision of the English documents.

> Article 21-1, paragraph II: the Master File is to be

prepared in English. A Mandarin Chinese translation

shall be provided to the tax authority within one month

after receipt of a notice of examination. The submission

deadline can be extended for one month with the

justification for an extension.

The CbCR needs to be submitted in both the local language

and English.

> Safe harbor availability, including financial transactions if

applicable

The safe harbors for transfer pricing report (Local File) are

provided as follows:

> The MOF released a letter ruling to further relax the safe

harbor criteria. The rule applies for fiscal years ending in

December 2008 and afterward. The ruling states that the

enterprise is not required to prepare a transfer pricing

report if any of the following criteria are met:

> The total annual revenue (including operating and

nonoperating) of the enterprise does not exceed TWD300

million.

> The total annual revenue (including operating and

nonoperating) of the enterprise exceeds TWD300 million,

but does not exceed TWD500 million, and either:

> The enterprise does not utilize tax credits of more than

TWD2 million in a particular year or a loss carryforward of

more than TWD8 million for the preceding 10 tax years to

reduce the income tax or undistributed earnings surplus

tax.

> The enterprise, under the FHCL or BMAL, has no

transactions with any overseas related parties (whether

a company or an individual), or the enterprise has no

transactions with overseas affiliated companies.

> The total annual controlled transactions amount is less

than TWD200 million.

> The total annual revenue (including operating and

nonoperating) of the enterprise exceeds TWD500 million,

but the total annual controlled transactions amount is less

than TWD200 million.

The safe harbors for the Master File are provided as follows:

> A Taiwan profit-seeking enterprise that is a member of

an MNE group can be exempted from the Master File

requirement if either of the criteria below is met (the letter

ruling was released by the MOF on 13 December 2017):

> The sum of operating revenue and nonoperating revenue

in the current year is less than TWD3 billion.

> The aggregated amount of cross-border controlled

transactions in the current year is less than TWD1.5

billion.

The safe harbors for the CbCR are provided as follows:

> An MNE group’s total consolidated revenue in the preceding

year is less than TWD27 billion, which is consistent with

OECD standards of EUR750 million (the letter ruling was

released by the MOF on 13 December 2017).

> A Taiwan profit-seeking enterprise that is a member of an

MNE group can be exempted from the CbCR requirement

if either of the criteria below is met (the letter ruling was

released by the MOF on 10 December 2019):

> The sum of operating revenue and nonoperating revenue

in the current year is less than TWD3 billion.

> The aggregated amount of cross-border controlled

transactions in the current year is less than TWD1.5

billion.

> Is aggregation or individual testing of transactions preferred

for an entity

There is no specific rule, but in practice individual testing of

transactions is preferred by tax authorities.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The tax authority currently does not require transfer pricing-

specific returns.

> Related-party disclosures along with corporate income tax

return

A taxpayer must disclose related-party transactions and

include the disclosure with the annual income tax return

(pages B2-B5), pursuant to the transfer pricing guidelines. The

disclosure generally includes:

> The investing structure

> Identification of related parties

> The related-party transaction amounts by type, including

transfer of tangible assets, use of tangible assets, transfer

of intangible assets, use of intangible assets, rendering

of services, use of funds and other types of transactions

prescribed by the MOF

> The related-party transaction balances

> The related parties’ financial information, including total

revenues, gross margins, operating margins and net

margins

> Whether the enterprise has prepared transfer pricing

documentation for that fiscal year

The tax authority has issued safe harbor rules for related-

party transaction disclosures in two rulings. Both rulings

provide that the enterprise must disclose related-party

transactions in its income tax return if the sum of its annual

operating and nonoperating revenue (total annual revenue

amount) exceeds TWD30 million and meets one of the

following criteria:

> The enterprise has related parties outside Taiwan,

including the headquarters and branches.

> The enterprise utilizes tax credits of more than

TWD500,000, or loss carryforwards of more than TWD2

million, to reduce the income tax or undistributed earnings

surplus tax.

> The enterprise has total annual revenue exceeding

TWD300 million.

> Related-party disclosures in financial statement/annual

report

Yes.

> CbCR notification included in the statutory tax return

Notification shall be done upon filing income tax return by

completing a form of the tax return.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

31 May (example for a calendar-year profit-seeking

enterprise).

> Other transfer pricing disclosures and return

31 May (example for a calendar-year profit-seeking

enterprise).

> Master File notification: Notification shall be done upon

the filing of an income tax return by completing a form of

the tax return (page B6).

> Master File preparation and submission: The Master File

shall be prepared while filing the income tax returns and

submitted to the tax authority within 12 months after the

fiscal year-end.

> Master File

Master File needs to be prepared by the tax return submission

date and must be submitted within 12 months after the last

day of the reporting fiscal year.

> CbCR preparation and submission

The CbCR shall be submitted to the tax authority within 12

months after the fiscal year-end.

> CbCR notification

Notification shall be done upon filing income tax return by

completing a form of the tax return.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation should be prepared by the

time of lodging the tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

The transfer pricing report shall be prepared upon the filing

of income tax returns and be submitted to the tax authority

within one month after the receipt of a notice of examination.

The CbCR shall be submitted to the tax authority within 12

months after the fiscal year-end.

The Master File shall be prepared upon the filing of income tax

returns and submitted to the tax authority within 12 months

after the fiscal year-end.

> Time period or deadline for submission upon tax authority

request

The Local File shall be submitted within one month after

the receipt of a notice of examination. The CbCR shall be

submitted to the tax authority within 12 months after the

fiscal year-end. The Master File shall be submitted within 12

months after the fiscal year-end.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

NO

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions — Yes

b) Priority and preference of methods

In accordance with the OECD Guidelines, the pricing methods

are as follows: CUP, resale price, cost-plus, profit-split,

comparable profit and other methods prescribed by the MOF.

The MOF follows the changes in the hierarchy of the methods

in favor of the “most appropriate method” approach within the

OECD Guidelines.

8. Benchmarking requirements

> Local vs. regional comparables

Local benchmarks are preferred; this can be expanded to

countries in the Asia-Pacific region if necessary.

> Single-year vs. multiyear analysis for benchmarking

Multiyear analysis is preferred.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no specific requirement for a fresh benchmarking

search every year. However, the transfer pricing guidelines

requires that the financials of a benchmarking study remain

updated to the current year. In case the current year data

is not available upon the filing of the income tax return, the

enterprise may use the most recent three years’ data without

the current year.

> Simple, weighted or pooled results

The weighted average is required while testing an arm’s-length

analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Where the profit-seeking enterprises failed to comply with

the assessment regulations thereby resulting in a reduction

of tax payable, and the collection authorities in charge have

made transfer pricing adjustments and assessed the taxable

income of related taxpayers in accordance with the Income Tax

Act and these assessment regulations, Article 110 of Income

Tax Act, shall apply to the following specific tax omission or

underreporting situations:

> The reported price of controlled transaction is two times

or more than the arm’s-length price assessed by the

collection authorities-in-charge; or lower than 50% of the

arm’s-length price.

> The increase in taxable income of the controlled

transactions adjusted and assessed by the collection

authorities in charge is more than 10% of the annual

taxable income of the enterprise; and more than 3% of the

annual net operating revenue.

> A profit-seeking enterprise cannot produce transfer

pricing report as required under paragraph 1 of Article

22 thereof, and no other documents evidencing the

transactions is arm’s-length result.

> The increase in taxable income of the controlled

transactions, which are not disclosed in the report or

transfer pricing document in accordance with Articles

21 to 22-1 by a profit-seeking enterprise, adjusted and

assessed by the collection authorities in charge is more

than 5% of the annual taxable income of the enterprise;

and more than 1.5% of the annual net operating revenue.

> Consequences of failure to submit, late submission or

incorrect disclosures

> A profit-seeking enterprise that fails to file or submit the

relevant information and documents required would be

subject to a penalty prescribed under Article 46 of the Tax

Collection Act.

> Pursuant to the transfer pricing guidelines, up to 200% of

the tax shortfall could be imposed if assessed by the tax

authority, under certain circumstances.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Per the Taiwan regulations, if an adjustment is sustained,

penalties can be assessed. However, penalties are generally

rarely assessed, should the taxpayer fully cooperate with the

requests from the tax authorities during an audit.

The penalties under Article 110 of the Income Tax Act are

imposed if both:

> The profit-seeking enterprise failed to comply with the

requirements to disclose its controlled transactions in its

income tax return and transfer pricing documentation.

> The increase in taxable income of the controlled

transactions adjusted and assessed by the tax collection

authorities is more than 5% of the annual taxable income

of the enterprise and more than 1.5% of the annual net

operating revenue.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Per the Taiwan regulations, if an adjustment is sustained,

penalties can be assessed. However, penalties are generally

rarely assessed, should the taxpayer fully cooperate with the

requests from the tax authorities during an audit.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

Currently, there is no penalty relief regime in place.

10. Statute of limitations on transfer pricing

assessments

The statute of limitations is five years (commencing from the

date following the expiration date of the period for payment

of said tax) if the tax return was filed in a timely manner — and

seven years if it was not.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Yes. Approval of extension may be granted after discussion

with the tax authority.

12. Likelihood of transfer pricing scrutiny and

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

In general, the likelihood of an annual tax audit is

characterized as high because the tax authority frequently

conducts corporate income tax audits.

The likelihood that transfer pricing will be reviewed as part of

the annual corporate income tax audit is also characterized as

high. All corporate income tax audits may include a request

and review of the documentation, as well as related supporting

materials. In the past year, there has been increased activity

by the tax authority, especially with respect to requests to see

documentation reports.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the transfer pricing methodology will

be challenged in Taiwan may be considered to be medium.

According to the Taiwan regulations, the most appropriate

transfer pricing methodology should be applied in evaluating

arm’s-length pricing of intercompany transactions. Generally,

the CPM or TNMM are the most widely applied methods

in Taiwan. It is advised that the taxpayer discusses with

the authorities to find a consensus on the transfer pricing

methodology, should questions arise. Through such steps,

challenges on the transfer pricing methodology can be

mitigated.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

It’s high, because the tax authority in Taiwan has been taking a

firm stand in conducting transfer pricing audits in recent years.

> Specific transactions, industries and situations, if any, more

likely to be audited

The MOF has issued a ruling that sets forth circumstances

under which a transfer pricing audit will be triggered as

follows:

> The gross profit ratio, operating profit ratio and net-

income-before-tax ratio are below the industry average.

> The parent or headquarters reports profit on the global

consolidated level, but the local affiliate reports a loss or

much less profit than the industry average.

> The enterprise reports significant fluctuations in profit

during the transaction year and in the two preceding

years.

> The enterprise fails to disclose related-party transactions

in accordance with the related-party transactions

disclosure requirements.

> The enterprise fails to determine whether its related-party

transactions are within an arm’s-length range and fails to

prepare documents in accordance with the transfer pricing

guidelines.

> The enterprise fails to charge related parties in accordance

with the transfer pricing guidelines or charges an

abnormal amount.

> The enterprise fails to provide the transfer pricing report

upon a tax audit.

> The tax authority adjusted the transfer pricing of the

enterprise, in which case the tax years preceding and

subsequent to the year of a transfer pricing audit are likely

to be selected for audit.

> The enterprise has significant or frequent controlled

transactions with related parties in tax havens or low-

tax jurisdictions. (In particular, companies conducting

business through tax havens have attracted more scrutiny,

along with those making losses.)

> The enterprise has significant or frequent controlled

transactions with related parties entitled to tax incentives.

> Any other transaction fails to meet the arm’s-length

requirements in accordance with the transfer pricing

guidelines.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

APAs are available under Articles 23–32 of the transfer pricing

guidelines.

If the transactions undertaken by a profit-seeking enterprise

with related parties satisfy the following criteria, the

enterprise may file an application for an APA with the tax

collection authorities, pursuant to the following provisions:

> The total amount of the transactions being applied for

APAs shall be no less than TWD500 million, or the annual

amount of such transactions is no less than TWD200

million.

> No significant tax evasion was committed in the past three

years.

> Documentation, as required under subparagraphs 1–3,

and subparagraphs 5–9, paragraph 1, of Article 24, has

been well-prepared.

> A transfer pricing report, as prescribed under

subparagraph 4, paragraph 1 of Article 24, has been

prepared.

> Other criteria, as approved by the MOF, have been met.

In addition, the taxpayer may file an application for a pre-

meeting with the tax authority, per the amendment.

According to Tax Letter Ruling No. 9404540920, under an

APA, a tax return is not subject to a transfer pricing audit

except when:

> The enterprise fails to provide the tax authority with the

annual report regarding the implementation of the APA.

> The enterprise fails to keep the relevant documents in

accordance with the transfer pricing guidelines.

> The enterprise fails to follow the provisions of the APA.

> The enterprise conceals material facts, provides false

information or conducts wrongful acts.

> Tenure

Three to five years.

> Rollback provisions

Yes, upon the successful agreement of bilateral (or

multilateral) APA, the taxpayer could further request both tax

authorities (Taiwan and treaty party) to consider, and agree

with, the application of APA conclusion to the prior years

which have not been assessed yet.

> MAP opportunities

Yes, Taiwan has concluded 32 double tax agreements in

total and all of them include an MAP article with language,

in general, equivalent to Article 25 of the OECD Model

Tax Convention. In June 2018, the MOF further published

“Regulations Governing Application of Mutual Agreement

Procedure for Double Taxation Agreements,” which provides

procedures to taxpayers and tax authorities for making the

dispute resolution mechanism more effective and settling the

cases within a reasonable time frame.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No changes.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest expense from related-party debt exceeding a 3:1 debt-

to-equity ratio is not deductible for tax purposes. Companies

in the financial industry, such as banks, financial holding

companies, insurance companies and securities firms, are not

subject to the thin-capitalization rules.

Yishian Lin

Yishian.Lin@tw.ey.com

+ 886 972293669

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority 1

Tanzania Revenue Authority (TRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Section 33 of the Income Tax Act (ITA) 2004 emphasizes the

arm’s-length principle of transactions between associates.

Transfer pricing regulations were issued on 7 February 2014

and published in May 2014.

Updated regulations were published on 27 April 2018 as The

Tax Administration (Transfer Pricing) Regulations, 2018.

Section 7(3) stipulates the transfer pricing documentation

framework.

> Section reference from local regulation

Associates are defined under Section 3 of the ITA 2004.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Tanzania is not a member of the OECD.

Tax authorities and the Commissioner recognize the OECD

Guidelines and the United Nations transfer pricing manual (UN

manual).

Nevertheless, the ITA 2004 and the 2018 transfer pricing

regulations prevail if there are any inconsistencies between

them and the OECD/UN documents.

1 https://www.tra.go.tz/

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

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

This is not applicable.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes, this is applicable to a large extent. Additional details

will be required.

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

on BEPS?

No.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, The Tax Administration (Transfer Pricing) Regulations,

2018, were issued by way of a gazette notice published on 27

April 2018 and took effect on the date of the publication.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the regulations require contemporaneous transfer pricing

documentation to be prepared “for the year of income”

(Regulation 7(3)).

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Each entity (including branches) needs transfer pricing

documentation.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality threshold for transfer pricing

documentation. However, the filing of the transfer pricing

documentation together with the income tax return is

required for entities with an aggregate value of related-party

transactions of TZS10 billion (around USD 4.3 million).

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

The regulations apply to taxpayers dealing with related parties

both inside and outside Tanzania.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted

in either of the official languages of Tanzania (English or

Swahili). In practice, TP documentation is normally completed

in English.

> Safe harbor availability, including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified. However, there is preference for

individual testing

> Any other disclosure/compliance requirement

Annual updating of benchmarking is expected.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

The taxpayer is required to disclose the amount of sales,

purchases and loans made or received from associates in and

outside Tanzania in its tax return.

> Related-party disclosures in financial statement/annual

report

Yes, IFRS is applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is six months after the financial year-end of

the company.

> Other transfer pricing disclosures and return

The filing should be made together with the CIT return six

months after the company’s financial year-end (if the value of

the related-party transactions is TZS10 billion (around USD

4.3 million) or more).

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The documentation should be prepared by the due date of the

annual income tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Yes, taxpayers with an aggregate value of related-party

transactions of TZS10 billion (around USD 4.3 million) and

above should submit the documentation together with the CIT

return.

> Time period or deadline for submission upon tax authority

request

A taxpayer who is required to file a tax return may apply in

writing to the Commissioner General for an extension of time

by which the return shall be filed. The application should be

made within 15 days before the due date of filing the return.

The extension of time to file the return shall not exceed 30

days from the due date of filing the return.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

Despite the fact that transfer pricing methods are based on the

OECD Guidelines and the UN TP manual, taxpayers must first

apply traditional transactional methods. Transactional profit

methods can be applied if traditional transactional methods

cannot be reliably applied.

Notwithstanding the above, the transfer pricing regulations

reiterate that the most appropriate method should be

applied with regard to the nature and specific features of the

transaction in question.

8. Benchmarking requirements

> Local vs. regional comparables

There is a preference for local comparables; however, it is not

mandatory.

> Single-year vs. multiyear analysis for benchmarking

There is a preference for multiple-year testing (preferably

three years).

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is needed every year. As per

Section 6(3), ”When applying the comparability factors in

determining the arm’s-length price, the results of a controlled

transaction shall be compared with the results of an

uncontrolled transaction for the same basis year for a year of

income.”

> Simple, weighted or pooled results

There is a preference for the weighted average for arm’s-

length analysis.

> Other specific benchmarking criteria, if any

The regulations stipulate that where four or less comparable

data points are used, the average is the arm’s-length result;

meanwhile, in the case of more than four comparable data

points, the arm’s-length result is to be the data point between

the 35th percentile and 60th percentile. If the result falls

outside the arm’s-length range, the price should be adjusted to

the median point of the range.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

The penalty for taxpayers who fail to comply with the transfer

pricing regulations is set at a minimum of 3,500 currency

points as prescribed from time to time by the Commissioner

(currently 1 currency point is equal to TZS15,000), which

results in a penalty of TZS52.5 million. This penalty is in

addition to a possible penalty of 100% of the tax shortfall of

the adjusted amount that is applicable for failure to comply

with the arm’s-length principle when transacting with

associates.

> Consequences of failure to submit, late submission or

incorrect disclosures

The penalty for taxpayers that fail to comply with the transfer

pricing regulations is set at a minimum of 3,500 currency

points as prescribed from time to time by the Commissioner

(currently 1 currency point is equal to TZS15,000), which

results in a penalty of TZS52.5 million. This penalty is in

addition to a possible penalty of 100% of the tax shortfall of

the adjusted amount that is applicable for failure to comply

with the arm’s-length principle when transacting with

associates.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, it will be 100% of the tax shortfall of the adjusted amount.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, it will be 100% of tax shortfall of the adjusted amount.

> Is interest charged on penalties or payable on a refund?

Yes, a strict interpretation of the law provides for interest

on penalties and refunds at the current statutory rate (7%).

However, in practice, the tax authority does not apply interest

on penalties and refunds.

b) Penalty relief

The Commissioner may grant relief for interest and

penalties if he or she is satisfied that the non-compliance or

underpayment of tax has reasonable cause.

10. Statute of limitations on transfer pricing

assessments

A general rule of five years (previously three), effective from 1

July 2016, from the date of filing the tax return applies.

The tax authorities can ignore the five-year limitation when

they suspect fraud or intention to evade the payment of tax.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high. The tax authority

has revamped its transfer pricing team and there has been an

increased number of transfer pricing audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be high. Refer to the

section above.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high. Refer to the

section above.

> Specific transactions, industries and situations, if any, more

likely to be audited

A wide range of related-party transactions are targeted and,

thus, all related-party transactions are potentially auditable

by the tax authority. However, there is an increased focus on

intra-group services, such as management services and IP-

related transactions.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

The transfer pricing regulations provide for an opportunity

to enter into unilateral, bilateral or multilateral APAs. In a

seminar for taxpayers on transfer pricing, the tax authorities

have indicated that, until further notice, no APAs will be

stipulated until local expertise has been built.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

Yes; however, it is in the context of double tax treaties.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The total amount of interest that an “exempt controlled

resident entity” may deduct for corporate tax purposes may

not exceed the amount of interest equivalent to a debt-to-

equity ratio of 7:3. An entity is an exempt controlled resident

entity if it is a resident and 25% or more of the underlying

ownership of the entity is held by entities exempt under the

second schedule to the Income Tax Act, approved retirement

funds, charitable organizations, non resident persons or

associates of such entities or persons.

Silke J Mattern

silke.mattern@tz.ey.com

+ 255 22 292 7868

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Thai Revenue Department (TRD).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Thai Revenue Code (TRC) — Section 35 Ter, Section 71 Bis

and Section 71 Ter

> Ministerial Regulation No. 369 (B.E. 2563) — clarification

regarding the adjustment of income and expenses by the

TRD

> 

Director-General of the Revenue Department No. 400

(DGN 400) — clarification regarding the adjustment of

income and expenses by the TRD

> 

Notification of Director-General of Revenue Department

No. 407 (DGN 407) — mandatory items to be included in

transfer pricing documentation

> Director-General on Income Tax No. 408 (DGN 408) — local

requirement for CbCR

> Section reference from local regulation

See above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Thailand is not a member of the OECD. However, most Thai

transfer pricing-related regulations and guidelines generally

follow the OECD Guidelines.

1 https://www.rd.go.th

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

Local File and CbCR are covered.

> Effective or expected commencement date

Local File requirement under the transfer pricing laws —

from the fiscal year starting on or after 1 January 2019

onward

CbCR – effective from the fiscal year starting — from the

fiscal year starting on or after 1 January 2021 onward

> Material differences from OECD report template or format

No.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

It was not a signatory at the time of this publication’s

preparation.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Master File — not specified in any transfer pricing guidelines,

laws and regulations

Local File — yes but contemporaneous documentation was not

specified

CbCR — yes and submission will be when the conditions are

met only

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch will need to comply with the local transfer

pricing laws and regulations.

> Does transfer pricing documentation have to be prepared

annually?

See above.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Local File must be prepared on an entity basis. The group

entity concept is not applied in Thailand.

b) Materiality limit or thresholds

> Transfer pricing documentation

For Local File, THB200 million (USD6 million) threshold is

generally applied in Thailand.

> Master File

Master File is not required in Thailand.

> Local File

For Local File, please see our response above.

> CbCR

A consolidated revenue threshold of THB28 billion per year

(approx. USD840 million) (or proportionate amount if such

ultimate parent company operates less than a year) is applied.

> Economic analysis

The benchmarking study is not required in the Local File if all

of the following apply:

> Revenue of the financial year is less than THB500 million.

> The taxpayer has only domestic related-party

transactions.

> Neither the taxpayer nor any of the relevant

counterparties have loss carryforwards for corporate

income tax computation purposes.

> All relevant counterparties are subject to the same

corporate income tax rate.

c) Specific requirements

> Treatment of domestic transactions

Domestic and cross border transactions must be declared in

the Local File.

> Local language documentation requirement

As per transfer pricing regulation, effective for the fiscal year

starting on or after 1 January 2021, Local File should be

submitted to TRD in local Thai language.

> Safe harbor availability, including financial transactions if

applicable

No.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none stipulated in the Thai transfer pricing regulations

but aggregation approach (i.e., TNMM) is widely used in

Thailand.

> Any other disclosure/compliance requirement

Refer to Section 5.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

With effect for financial years starting on or after 1 January

2019, taxpayers with annual revenue of at least THB200

million are required to prepare a transfer pricing Disclosure

Form (transfer pricing disclosure form). The due date is within

150 days from the financial year-end.

> Related-party disclosures along with corporate income tax

return

No.

> Related-party disclosures in financial statement/annual

report

It’s only required for public accountable entities or PAEs (i.e.,

listed companies), which are required to prepare audited

financial statements in accordance with Thai Financial

Reporting Standards (TFRS). TFRS require PAE to disclose

about related-party transactions. For non-public accountable

entities or NPAEs (i.e., non-listed companies), it is their choice

to disclose their transactions with related parties.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

CbCR: a Thai corporate taxpayer with consolidated revenue of

THB28,000 million or more in the immediately preceding fiscal

year is required to submit a CbCR if it is:

> Thai ultimate parent entity of an MNE group

> A Thai subsidiary of an MNE group where:

> The ultimate parent entity of the MNE group is not

required to submit a CbCR in its jurisdiction of residence

for tax purposes.

> The ultimate parent entity of the MNE group is required

to submit a CbCR in its jurisdiction of residence for

tax purposes, but that jurisdiction does not have an

agreement on exchange of information with Thailand,

or such agreement was not yet effective during the

reporting period.

> There is a systematic failure during information exchange.

> A Thai subsidiary is appointed as a surrogate by the

ultimate parent entity of the MNE group

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The tax return should be submitted within 150 days after each

financial year-end of the taxpayer.

> Other transfer pricing disclosures and return

Transfer pricing disclosure form must be submitted within 150

days after each financial year-end.

Local File must be submitted within 60 days after the request.

> Master File

Not applicable.

> CbCR preparation and submission

Submission of CbCR by ultimate parent entity or Thai

surrogate entity must be made within 12 months from fiscal

year-end. Submission of CbCR by a subsidiary carrying on

business in Thailand must be made within 60 days after

receiving request from an assessment officer.

> CbCR notification

The taxpayer must notify whether it is a part of MNE group

that is obliged to file CbCR by ticking a box in Part C of transfer

pricing disclosure form.

b) Transfer pricing documentation/Local File preparation

deadline

See above.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

See above.

> Time period or deadline for submission upon tax authority

request

See above.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Same as OECD guideline.

> Domestic transactions — Same as OECD guideline.

b) Priority and preference of methods

No.

8. Benchmarking requirements

> Local vs. regional comparables

There is no written regulation; however, in practice, local

comparables are requested.

> Single-year vs. multiyear analysis for benchmarking

Both single-year and three-year testing are required.

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

In practice, there is a need to conduct new benchmarking

on a three-year basis, i.e., after new benchmarking study is

prepared in a financial year, conducting only financial updates

on that benchmarking study are acceptable for the next two

years.

> Simple, weighted or pooled results

The preference is for the weighted average for arm’s-length

analysis.

> Other specific benchmarking criteria, if any

> Revenue threshold

> Majority foreign shareholders

> Availability of financial data

> Different function or product

> Unqualified audited financial statements

> Evidence of related party transaction

> Consistent operating losses

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Non-compliance for transfer pricing disclosure form and Local

File or wrongly declaring the information will be subject to a

penalty not exceeding THB200,000.

> Consequences of failure to submit, late submission or

incorrect disclosures

See above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

Interest is applied on the shortfall tax amount.

b) Penalty relief

No.

10. Statute of limitations on transfer pricing

assessments

Generally, five years.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

High likelihood of transfer pricing-related audits.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Low if the Local File strictly follows the principle in OECD

Guidelines.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Depends on the results.

> Specific transactions, industries and situations, if any, more

likely to be audited

Normally tax officers focus on the significant intercompany

transactions. Recently, service fee and royalty transactions

have become a focus by tax officers.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Only bilateral APA.

> Tenure

It is up to five years.

> Rollback provisions

No.

> MAP opportunities

Yes.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no thin-capitalization rules specified.

Kasem Kiatsayrikul

kasem.kiatsayrikul@th.ey.com

+ 668 4439 2703

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Office Togolaise des Recettes (Togolease Revenue Office).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

> Article 106 of the General Tax Code: Transfer Pricing

form/declaration obligation (Finance Bill 2020)

> Article 106 of the General Tax Code: Transfer Pricing

documentation obligation (Finance Bill 2020)

> Article 206 of Tax Book Procedure: Transfer Pricing

documentation obligation (Finance Bill 2020)

> Section reference from local regulation

General Tax Code: Article 106 (Updated Finance Bill 2022)

Article 125 of General Tax Code provides rules about transfer

pricing documentation in case of closure of the company or

suspension of activities

Tax Book Procedure: Article 206 (Updated Finance Bill 2022)

Article 113 Tax Book procedures provides rules in case of

failure for the submission of transfer pricing return

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Togo is not a member of the OECD and is not a member of the

Inclusive Framework on BEPS as of December 2019.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Togo has implemented transfer pricing documentation and

transfer pricing return obligations.

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

Master File and Local File.

> Effective or expected commencement date

1 January 2020.

> Material differences from OECD report template or format

A BEPS Action 13 format report typically is sufficient to

achieve penalty protection.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes.

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

on BEPS?

No.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> 

Article 106 of the General Tax Code: Transfer Pricing

documentation obligation (Finance Bill 2020)

> Article 206 of Tax Book Procedure: Transfer Pricing

documentation obligation (Finance Bill 2020)

The transfer pricing documentation (Master File and Local

File) will have to be prepared within three months from

the submission of annual financial statements to the tax

authorities.

Also, the transfer pricing documentation (Master File and Local

File) must be available to the tax authorities at the beginning

of a tax audit of the accounting records.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

A separate transfer pricing report is required per legal entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

The documentary obligation in French applies to anyone who

meets the following conditions:

> Companies established in Togo whose annual turnover net

of tax or gross assets on the balance sheet is greater than

XOF20 billion

> Companies established in Togo that hold at the end of

the financial year, directly or indirectly, more than half of

the capital or voting rights of a company whose annual

turnover, excluding taxes or the gross assets on the

balance sheet, exceeds XOF20 billion

> Companies established in Togo that own or control, at the

end of the financial year, directly or indirectly, more than

half of their capital or their rights of voting by a company

whose annual turnover, excluding taxes or the gross assets

on the balance sheet, is greater than XOF20 billion

The transfer pricing return is required even if the conditions

are not met, and the local company has transactions with local

or foreign affiliates companies (according to the definition of

Togo legislation).

Only transactions above XOF10 million must be disclosed.

> Master File

There is no materiality limit or threshold.

> Local File

Only transactions more than XOF10 million should be

disclosed in the transfer pricing documentation.

> CbCR

This is not applicable.

> Economic analysis

There is no materiality limit or threshold.

c) Specific requirements

> Treatment of domestic transaction

Yes, the obligation of documentation shall be applied to all

transactions of all kinds carried out with related companies

established in or outside Togo.

> Local language documentation requirement

The transfer pricing documentation and return should be

submitted in French.

> Safe harbor availability, including financial transactions if

applicable

There is no specific requirement.

> Is aggregation or individual testing of transactions preferred

for an entity

Individual testing of transactions is preferred.

> Any other disclosure/compliance requirement

During the tax audit, the tax authorities can request transfer

pricing information (nature of relationship between companies,

the relevant transfer pricing method, the activities carried out

by the companies, etc.) even if the legal entity is not subject to

the transfer pricing documentation obligation.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The transfer pricing return needs to be submitted in French

as part of the taxpayer’s annual tax return. A model of

this transfer pricing declaration has been published by the

Togolese tax administration.

> Related-party disclosures along with corporate income tax return

The documentation must be available within three months

following the filing of the annual financial statements.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

No CbCR notification requirement.

> Other information/documents to be filed

There are no other documents to be filed.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline for filing the annual financial statements is 30

April following each fiscal year.

> Other transfer pricing disclosures and return

The deadline for filing the transfer pricing return is 30 April.

> Master File

There are no filing obligations for the Master File and the Local

File.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

The deadline for preparing the transfer pricing documentation

is three months following the submission of the annual

financial statements.

Also, the transfer pricing documentation must be available

to the tax authorities at the beginning of a tax audit of the

accounting records.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

The transfer pricing documentation must be prepared within

three months as of the filing of the income tax return.

> Time period or deadline for submission upon tax authority

request

If the documentation is not available or ready at the time of

the tax audit of the accounting records, a 30-day formal notice

will be sent to the audited company.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

These OECD methods are generally accepted: CUP, resale

price, cost-plus, profit-split and TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

There is no specific requirement. However, local or west

African comparables would be preferred.

> Single-year vs. multiyear analysis for benchmarking

No specific requirement.

> Use of interquartile range

No specific requirement.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

No specific requirement.

> Simple, weighted or pooled results

No specific requirement.

> Other specific benchmarking criteria, if any

No specific requirement.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Not applicable.

> Consequences of failure to submit, late submission or

incorrect disclosures

Transfer pricing documentation:

> For each audited fiscal year, a fine of 1% based on the

amounts of the unjustified transactions after the formal

notice from the tax authorities

Or

> A fine of 10% in case of reassessed amounts

The lack of reply or a partial reply may trigger the

application of the automatic taxation procedure.

Failure to submit the transfer pricing return: XOF500,000.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Same as above.

Penalties are assessed at rates ranging from 10%, 40% or 80%

of tax due, depending on whether the taxpayer's return was

accidentally, mistakenly or fraudulently in error.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not applicable.

> Is interest charged on penalties or payable on a refund?

One percent per month.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

The limitation period is set to three years (common tax

regime).

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Medium.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Medium.

> Specific transactions, industries and situations, if any, more

likely to be audited

No specific transactions.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No specific requirement.

> Tenure

No specific requirement.

> Rollback provisions

No specific requirement.

> MAP opportunities

No specific requirement.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Togo has the following thin-capitalization rules regarding loans

by shareholders and related parties to local entities:

> The sums made available by all shareholders should not

exceed the amount of the share capital.

> The interest rate should not exceed the legal rate,

increased by 3 percentage points.

> The share capital of the local entity should be entirely paid

up.

> The interest paid to the shareholders should not exceed

30% of the profit before corporate income tax and

before deduction of such interest, and depreciation and

provisions.

Eric Nguessan

eric.nguessan@ci.ey.com

+ 2250708025038

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Ministry of Finance (Tunisia); The General Directorate of Taxes

(La Direction Générales des Impôts).1

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Finance Act for the year 2019 introduced, within the local

tax regulation, the following main articles that govern transfer

pricing aspects:

> Article 48septies of the Personal & Corporate Income

Tax Code (PCITC), which was initially added by Article

51 of the Finance Act for the year 2010 and modified

by virtue of the Article 29 of the Finance Act for the

year 2019, and then amended by virtue of the Article

15 of the Finance Act for the year 2021: governing the

transfer pricing adjustments dealing with cross-border

transactions, defining the associated enterprises, and

excluding the deduction from the tax base of amounts

charged by entities that are resident or established in

low-tax jurisdictions notwithstanding the fact that they are

qualified or not as associated enterprises.

> Article 59 paragraph II bis of the PCITC: governing the

annual transfer pricing return requirement aspects

> Article 38bis of the Code of Fiscal Rights & Procedures

(CFRP): governing the documentation supporting the

transfer pricing policy requirement aspects in case of a

comprehensive tax audit

> Article 17ter of the CFRP: governing the CbCR

requirement aspects

> Article 35bis of the CFRP: governing the APA aspects

> Article 84nonies of the CFRP: governing the sanctions and

fines that may be applicable in case of non-compliance

with the annual transfer pricing return requirement

aspects

> Article 84undecies of the CFRP: governing the sanctions

and fines that may be applicable in case of non-compliance

1 https://doc-fiscale.finances.gov.tn/cimf-internet/page/document/

fr/preview?path=/Loi%20de%20Finances/2019/Loi%20de%20Fi-

nances%202019%20Fr.pdf

with the documentation supporting the transfer pricing

policy requirements aspects in case of a comprehensive

tax audit

> Article 84decies of the CFRP: governing the sanctions and

fines that may be applicable in case of non-compliance

with the CbCR filing requirements aspects

Article 15 of the Finance Act for the year 2021 introduced

some amendments to the rules instituted by virtue of the

Finance Act for the year 2019. For example, the minimum

sales threshold requiring the preparation of documentation

supporting the transfer pricing policy and transfer pricing

return is increased (modifying Article 38bis of CFRP and

Article 59 paragraph II bis of the PCITC), a materiality

threshold is introduced (modifying Article 38bis of CFRP and

Article 59 paragraph II bis of the PCITC), and a delimitation

of the scope of transfer pricing to cross-border transactions

is established (modifying Article 48septies and Article 59

paragraph II bis of the PCITC).

All the transfer pricing rules added by virtue of the Finance

Act for the year 2021 apply to fiscal years commencing as of 1

January 2020.

In addition to the above, Tunisian tax regulation contains other

legal tax references that are in force even before the Finance

Act for the year 2019 and that are not rescinded by virtue of

this law, which are mainly the following:

> Article 6 of the CFRP: allows tax authorities to rely on

presumptions of law and fact to adjust the tax position,

notably made of comparison with data that relate to

similar exploitations, sources of incomes or operations.

> Article 38 of the CFRP: provides that the comprehensive

tax audit covers the tax position totally or partially,

and that it is processed based on the accounting of the

taxpayer who is required to keep accounting, and in all

cases based on information, documents or presumptions

of fact or of law.

> Article 94 of the CFRP: governing the sanctions and fines

that may be applicable in case of non-compliance with the

arm’s-length principle

> Article 101of the CFRP: governing the sanctions and fines

that may be applicable in case of abuse of rights (even in

terms of transfer pricing policy aspects)

> Section reference from local regulation

Please see above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Tunisia is not a member of the OECD. However, the Tunisian

newly incorporated transfer pricing regulations that are

applicable starting from 1 January 2020 are highly inspired

from the OECD Guidelines (mainly the BEPS Action 13).

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, Tunisia has adopted and implemented the substance of

the BEPS Action 13 effective from 1 January 2020.

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

The Master File, Local File and CbCR are covered.

> Effective or expected commencement date

These provisions apply to financial years starting on or after 1

January 2020, and subject to a notice of a comprehensive tax

audit notified as from 1 January 2021.

> Material differences from OECD report template or format

Pursuant to the Minister of Finance’s orders dated 16

October 2019 and the Tax Administration public joint note

n°13/2020 published on 19 June 2020, the transfer pricing

documentation template or format is highly inspired from the

OECD Guidelines and rules.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The Minister of Finance's orders on 16 October 2019 as

well as the Tax Administration public joint note n°13/2020

published on 19 June 2020 have set out the contents of the

supporting documents of transfer pricing’s policy (Master

File and Local File). Also, Tax Administration public joint note

n°14/2020 published on 24 June 2020 has set the content

of the CbC report. The aforementioned regulation sources are

highly inspired from the OECD Guidelines and rules. Entities

that are compliant with these regulation sources can avoid

the penalties for lack of compliance with transfer pricing

documentation rules.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 26 November 2019.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

According to Tunisian tax regulation, which are applicable

from 1 January 2020, the transfer pricing documentation

requirements are summarized as following:

> An annual transfer pricing return (to be filed annually):

this is required by associated enterprises as defined by

Article 48septies of the PCITC, which are undertaking

cross-border transactions, and of which the annual sales

exclusive of all taxes is greater than or equal to TND200

million. The form and the content of the annual transfer

pricing return, which should be e-filed, are fixed by Tax

Administration public joint note n°13/2020 published on

19 June 2020.

> The documentation supporting the transfer pricing policy,

i.e., the Master File and the Local File (to be submitted

to tax authorities in charge of the tax audit when this

latter occurs): this is required by associated enterprises

as defined by Article 48septies of the PCITC, which are

undertaking cross-border transactions, and of which

the annual sales exclusive of all taxes is greater than or

equal to TND200 million. The form and the content of the

documentation supporting the transfer pricing policy are

fixed by common Note 13/2020 published on 19 June

2020.

The CbCR (to be filed annually): this is required according to

the conditions detailed in the below section “CbCR notification

and CbC report submission requirement.” The form and the

content of the CbCR, which should be e-filed, are fixed by Tax

Administration public joint note n°14/2020 published on 24

June 2020.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

> The annual transfer pricing return and the CbCR (if it

applies) have to be prepared and filed annually.

> The documentation supporting the transfer pricing policy,

i.e., the Master File and the Local File, should not be

prepared annually but be submitted to tax authorities in

charge of the tax audit when the latter occurs.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Article 15 of the Finance Act for the year 2021 introduced the

following :

> Threshold above which the enterprise becomes required

to comply with the annual transfer pricing form filing

requirement and the submission of the MF & LF at the

starting of the comprehensive tax audit: annual sales

exclusive of all taxes is greater or equal to TND200 million.

> Materiality limit above which a cross-border controlled

transaction has to be reported on the annual transfer

pricing form filing requirement and to be included within

the transfer pricing documentation to submit to tax

authorities at the starting of the comprehensive tax audit:

annual amount exclusive of taxes, per each category of

transaction, is greater of equal to TND100,000.

> Master File

Article 15 of the Finance Act for the year 2021 introduced the

following :

> Threshold above which the enterprise becomes required

to comply with the annual transfer pricing form filing

requirement and the submission of the MF & LF at the

starting of the comprehensive tax audit: annual sales

exclusive of all taxes is greater or equal to TND200 million.

> Materiality limit above which a cross-border controlled

transaction has to be reported on the annual transfer

pricing form filing requirement and to be included within

the transfer pricing documentation to submit to tax

authorities at the starting of the comprehensive tax audit:

annual amount exclusive of taxes, per each category of

transaction, is greater of equal to TND100,000.

> Local File

Article 15 of the Finance Act for the year 2021 introduced the

following :

> Threshold above which the enterprise becomes required

to comply with the annual transfer pricing form filing

requirement and the submission of the MF & LF at the

starting of the comprehensive tax audit: annual sales

exclusive of all taxes is greater or equal to TND200 million.

> Materiality limit above which a cross-border controlled

transaction has to be reported on the annual transfer

pricing form filing requirement and to be included within

the transfer pricing documentation to submit to tax

authorities at the starting of the comprehensive tax audit:

annual amount exclusive of taxes, per each category of

transaction, is greater of equal to TND100,000.

> 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 country-by-country profits of the companies’

group it belongs to, and tax and accounting data, as well as

information regarding the location where the activities are

carried out:

> The company owns interests directly or indirectly in one or

many companies, which make it a requirement to prepare

consolidated financial statements in accordance with

the current accounting legislation in force, or where it is

required to do so if its stocks are listed on the Tunis Stock

Exchange.

> The company’s annual consolidated sales exclusive of

taxes is equal to or greater than TND1.636 million during

the period prior to the period concerned by the reporting.

> No other company owns direct or indirect interests in

the concerned company in accordance with the above

first point (i.e., no other entity can include it within its

consolidated financial statements).

It is also required to file the reporting within the deadlines and

in the means and form, where any company resident in Tunisia

should meet at least one of the following conditions:

> It is owned, directly or indirectly, by an enterprise resident

in a state not requiring the filing of the CbCR, but who

would be required to file that return, if it is resident in

Tunisia.

> It is held, directly or indirectly, by an enterprise resident in

a state not included in the list of states having concluded

an agreement with Tunisia authorizing the automatic

exchange of the CbCR, but with which Tunisia has

concluded a tax information exchange agreement.

> It is designated for this purpose by the group of related

companies to which it belongs and has informed the tax

administration.

The content of this reporting is fixed by a ruling of the Finance

Minister’s order on 16 October 2019.

The CbCR is subject, under reserve of reciprocity, to an

automatic exchange with the states that have concluded an

agreement with Tunisia for this purpose.

> Economic analysis

Pursuant to the Finance Minister's order on 16 October 2019,

the Local File should include, inter alia, the following elements:

> A comparability analysis and a detailed functional analysis

of the enterprise and related companies for each class

of intragroup transactions, including any changes from

previous years

> An indication of the most appropriate transfer pricing

method for each transaction and the reasons why it was

chosen

> An indication of the related undertaking that has been

selected as a tested party, if any, and an explanation of the

reasons for that choice

> A summary of the important assumptions that have been

made to apply the transfer pricing method used

> If applicable, an explanation of why a multiyear analysis of

transfer pricing methods has been applied

> A list and description of comparable open-market

transactions and independent company financial

indicators used in the transfer pricing analysis, including

a description of the comparable data search method with

the indication of the source of this information

> A description of any adjustments made — whether these

adjustments were made to the results of the tested party,

to comparable transactions on the open market or to both

> A description of the reasons for concluding that

transaction prices were established in accordance with

the arm's-length principle in accordance with the transfer

pricing method used

> A summary of the financial assumptions used to apply the

transfer pricing method

> A copy of the prior unilateral transfer pricing agreements,

bilateral and multilateral agreements as well as the

decisions of other tax authorities to which Tunisia is not

a party and which are related to intragroup transactions

described above

> In addition to the above, Tax Administration public joint

note n°11/2020 defined the comparability analysis,

related comparability factors and the five OECD transfer

pricing methods. These newly introduced rules are highly

inspired from BEPS Action 13.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions are no more covered by the transfer

pricing Documentation rules. According to Article 15 of the

Finance Act for the year 2021, the scope of transfer pricing

rules is clearly delimited to cross-border transactions.

> Local language documentation requirement

Local File has to be prepared in Arabic or in French.

Master File has to be prepared in Arabic or in French, but tax

authorities can accept it if already prepared in English.

> Safe harbor availability, including financial transactions if

applicable

The current legislation did not mention any safe harbor

availability, and this is apart from thin-capitalization rules

and rules governing the interests that should be charged on

amounts made available to shareholders.

With regard to thin-capitalization rules, interests on

shareholders loans may be deductible from the tax base in

case the remunerated amount does not exceed 50% of the

share capital (which should be already entirely paid up) and the

interest rate does not exceed 8%.

With regard to amounts made available to shareholders,

interests should be charged at an interest rate that should not

be less than 8%.

> Is aggregation or individual testing of transactions preferred

for an entity

Not specified according to the regulation in force.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Companies that are controlled by other companies or that

control other companies according to Article 48septies of

PCITC, which are undertaking cross-border transactions and of

which the annual sales exclusive of taxes greater than or equal

to TND200 million, are required to submit an annual transfer

pricing return using reliable electronic means according to a

form established by tax authorities, and this is within the same

deadlines as the corporate income tax return.

This return should provide (for indicative, but not limitative,

purposes):

> Information about the group of companies of which mainly:

> Information about the activity including changes that

occurred during the fiscal year

> Information about the companies’ group transfer pricing

policy

> List of assets owned by the group of companies and used

by the reporting company, as well as the corporate name

and the jurisdiction of tax residency of the owner

> Information about the reporting company:

> Information about the activity including changes that

occurred during the period

> A summary statement of financial and commercial

transactions with companies that are controlled by

the reporting company or that control the reporting

company according to Article 48septies of the PCITC —

this statement includes the nature and the amount of

transactions, the corporate names and the jurisdiction

of tax residency of controlled or controlling companies

concerned by the transactions, methods for setting

transfer pricing applied by the group of companies, and

the changes that occurred during the period

> Information about loans and borrowings with companies

that are controlled by the reporting company or that

control the reporting company according to Article

48septies of the PCITC

> Information about financial and commercial transactions

with companies that are controlled by the reporting

company or that control the reporting company according

to Article 48septies of the PCITC for free or for a non-

monetary counterpart

> Information about transactions with companies that are

controlled by the reporting company or that control the

reporting company according to Article 48septies of

the PCITC, which are subject to an APA or a tax ruling

concluded between the companies concerned by the

transactions and tax authorities of other states

> Related-party disclosures along with corporate income tax

return

Companies that are controlled by other companies or that

control other companies according to Article 48septies of

PCITC, which are undertaking cross-border transactions and

of which the annual sales exclusive of taxes greater than

or equal to TND200 million, are required to communicate

to the Tax Administration agents, at the starting date

of the comprehensive tax audit of their tax position, the

documentation supporting the transfer pricing policy applied

to transactions with associated enterprises according to Article

48septies of the PCITC. The content of this documentation

is fixed by a ruling of the Finance Minister's order dated

16 October 2019 and Tax Administration public joint note

n°13/2020 published on 19 June 2020.

These documents do not replace supporting documents

relevant to each transaction.

In case these documents are not presented to Tax

Administration agents, at the starting date of the

comprehensive tax audit of their tax position, or are

incomplete or inaccurate, Tax Administration agents should

send a formal notice to the concerned company in which the

concerned company is required to present or to complete the

missing information within 40 days after the notification. The

Tax Administration should specify the nature of the concerned

documents.

These provisions are effective for financial years that begin

from 1 January 2020 and that have been subject to a prior

notice starting from 1 January 2021.

> Related-party disclosures in financial statement/annual

report

There is no specific additional requirement other than those

exposed with regard to annual transfer pricing return.

> CbCR notification included in the statutory tax return

The CbCR should be filed within the 12 months after the

year-end date, but is not required to be filed within the same

deadlines as the annual statutory tax return (CIT return).

Tax Administration public joint note n°14/2020 published on

24 June 2020 sets out the contents of the CbC report.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

For companies that close the fiscal year by 31 December, the

CIT return should be filed no later than 25 March that follows

the year-end closing date. In case the company is subject to

the requirement of the appointment of a statutory auditor,

the return filed on 25 March may have a provisional statute.

Additionally, in this case, the final CIT return should be filed

no later than the 15th day that follows the annual general

shareholders ordinary meeting that approve the financial

statement without exceeding 25 June that follows the year-

end closing date.

> Other transfer pricing disclosures and return

The annual transfer pricing return should be filed within the

same deadlines as the CIT return.

The documentation supporting the transfer pricing policy, i.e.,

the Master File and the Local File, is not to be filed annually

but should be communicated to the Tax Administration agents,

at the starting date of the comprehensive tax audit, and no

later than 40 days in case it is not communicated by the

starting date of the same comprehensive tax audit.

> Master File

The documentation supporting the transfer pricing policy, i.e.,

the Master File and the Local File, is not to be filed annually

but should be communicated to the Tax Administration agents,

at the starting date of the comprehensive tax audit, and no

later than 40 days in case it is not communicated by the

starting date of the same comprehensive tax audit.

> CbCR preparation and submission

Within the 12 months after the fiscal year closing date

> CbCR notification

Within the 12 months after the fiscal year closing date

b) Transfer pricing documentation/Local File preparation

deadline

The documentation supporting the transfer pricing policy, i.e.,

the Master File and the Local File, is not to be filed annually

but should be communicated to the Tax Administration agents,

at the starting date of the comprehensive tax audit, and no

later than 40 days in case it is not communicated by the

starting date of the same comprehensive tax audit.

c) Transfer pricing documentation/Local File submission

deadline

The documentation supporting the transfer pricing policy, i.e.,

the Master File and the Local File, is not to be filed annually

but should be communicated to the Tax Administration agents,

at the starting date of the comprehensive tax audit, and no

later than 40 days in case it is not communicated by the

starting date of the same comprehensive tax audit.

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

Transfer pricing documentation requirements have to be

filed, prepared and submitted within the same deadlines (as

indicated above).

> Time period or deadline for submission upon tax authority

request

Apart from the cases of the annual transfer pricing return as

well as the CbCR that should be submitted “spontaneously”

(i.e., not upon request by tax authorities), on an annual basis,

the companies with annual sales exclusive of taxes greater

or equal to TND200 million are required to communicate

to the Tax Administration agents at the starting date of

the comprehensive tax audit of their tax position, the

documentation supporting the transfer pricing policy applied

to transactions with associated enterprises according to Article

48septies of the PCITC, i.e., the Master File and Local File. In

case these documents are not presented to Tax Administration

agents at the starting date of the comprehensive tax audit

of their tax position, or are incomplete or inaccurate, Tax

Administration agents should send a formal notice to the

concerned company in which the concerned company is

required to present or to complete the missing information

within 40 days after the notification.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes Specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

e) International transactions

Prior to the adoption of the new transfer pricing rules by virtue

of the Finance Act for the year 2019, Tunisian regulation

recognized the OECD’s traditional transaction methods (i.e.,

the CUP method, the resale-price method and cost-plus

method), and this is by virtue of the Tunisian Accounting

Standard n°39 governing the related parties. However,

according to the wording of the previous version of Article 48

septies of the PCITC, which governed the transactions between

associated enterprises, and this is before being amended by

the Finance Act for the year 2019, it can be understood that

the method that was recognized from a tax standpoint was the

CUP.

Currently, the tax legislator has recognized the five OECD

methods by virtue of Tax Administration public joint note

n°11/2020 issued on 17 June 2020. It introduced additional

guidelines that harmonize Tunisian tax legislation with

international transfer pricing standards.

f) Domestic transactions

Prior to the adoption of the new transfer pricing rules by virtue

of the Finance Act for the year 2019, Tunisian regulation

recognized the OECD’s traditional transaction methods (i.e.,

the CUP method, the resale-price method and cost-plus

method), and this is by virtue of the Tunisian Accounting

Standard n°39 governing the related parties. However,

according to the wording of the previous version of Article 48

septies of the PCITC, which governed the transactions between

associated enterprises, and this is before being amended by

the Finance Act for the year 2019, it can be understood that

the method that was recognized from a tax standpoint was the

CUP.

Currently, the tax legislator has recognized the five OECD

methods by virtue of Tax Administration public joint note

n°11/2020 issued on 17 June 2020. It introduced additional

guidelines that harmonize Tunisian tax legislation with

international transfer pricing standards.

b) Priority and preference of methods

Prior to the adoption of the new transfer pricing rules by

virtue of the Finance Act for the year 2019, the CUP was the

preferred method.

Currently, the tax legislator has recognized the five OECD

methods by virtue of Tax Administration public joint note

n°11/2020 issued on 17 June 2020. However, the current

transfer pricing regulation does not present any specified

preferred or prioritized methods. Instead, it states explicitly

that what is important is that the selected transfer pricing

method be the base that reflects as fairly as possible the arm's

length principle, i.e., any other method other than the OCED 5

methods that may lead to a better compliance with the arm’s-

length principle may be accepted by Tunisian tax authorities.

8. Benchmarking requirements

> Local vs. regional comparables

No applicable.

> Single-year vs. multiyear analysis

The current provision considers single year testing as the most

preferred method.

> Use of interquartile range

Not applicable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

The current legislation prefers Fresh benchmarking search

every year.

> Simple, weighted or pooled results

Not applicable.

> Other specific benchmarking criteria, if any

Not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

A tax fine equal to 0.5% of the amount of the concerned

transactions for the missing or inaccurate documents with a

minimum of TND50,000 per year covered by the tax audit.

> Consequences of failure to submit, late submission or

incorrect disclosures

> Annual transfer pricing return: any company that has

not filed the annual transfer pricing return within the

legal deadlines is liable to an administrative tax fine

equal to TND10,000. Any missing information in the

abovementioned return or any information provided in

an incomplete or inaccurate manner gives rise to the

application of a fine equal to TND50 per information,

without exceeding TND5,000 (Article 84nonies of the

CFRP).

> The documentation supporting the transfer pricing

policy: any company that did not communicate the

documentation supporting the transfer pricing policy to

tax authorities or that presents incomplete or inaccurate

documents within 40 days after the notification is exposed

to a tax fine equal to 0.5% of the amount of the concerned

transactions for the missing or inaccurate documents with

a minimum of TND50,000 per year covered by the tax

audit (Article 84undecies of the CFRP).

> The CbCR: any company that has not filed the CbCR within

the legal deadlines is punished by an administrative tax

fine equal to TND50,000. Any information not provided in

the reporting or provided in an incomplete or inaccurate

manner, gives rise to the application of a fine equal to

TND100 per information, without exceeding TND10,000

(Article 84decies of the CFRP).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Same as above.

> Is interest charged on penalties or payable on a refund?

b) Penalty relief

Article 78 of the CFRP allows tax authorities to grant a relief

for criminal tax offenses of which finding, or prosecution is

incumbent on them, before a final judgment relating thereto

is pronounced, and this is excluding the offenses referred to

in Article 102 of the CFRP and Articles 180 and 181 of the

Penal Code. Therefore, the offenses provided for in Articles 94

of the CFRP, which may be applicable to the non-compliance

with transfer pricing rules, are liable to the said transaction.

Article 79 of the CFRP provides that the transaction is based

on a tariff fixed by a ruling of the Minister of Finance, after

adjustment by the offender of his tax position.

10. Statute of limitations on transfer pricing

assessments

In case of compliance with the tax returns filing requirements:

the current considered year and the four previous years (can

be extended to the six previous years for the case of back

burner enterprises)

In case of non-compliance with the tax returns filing

requirements (failure to file tax returns): the current

considered year and the 10 previous years

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

High.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

High.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

High.

> Specific transactions, industries and situations, if any, more

likely to be audited

No specifications: tax authorities may challenge all transfer

pricing transactions, industries and situations.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Companies with dependency or control relationships, within

the meaning of the fourth paragraph of Article 48septies of

the PCITC, with companies established outside Tunisia can

request from tax authorities to conclude an APA in terms of

transfer pricing on the method to be applied in the future, with

associated enterprises established outside Tunisia.

The procedure for concluding an APA and the associated

obligations are set by the Minister of Finance’s order dated

6 August 2019, and clarified by virtue of Tax Administration

public joint note n°12/2020 published on 17 June 2020.

It also requires the taxpayer to provide the Tunisian tax

authorities with a report detailing the transactions covered

by the APA within 6 months from the end of each fiscal year

covered by the APA.

These provisions are effective for financial years beginning

from 1 January 2020.

> Tenure

The APA is concluded for a term that may vary from three to

five years. Parties cannot end the agreement before the expiry

of the period fixed in the agreement.

> Rollback provisions

This is not applicable as the APA may cover only future

transactions and, so, cannot have a retroactive effect.

> MAP opportunities

MAP remains possible by virtue of double taxation treaties.

On 12 September 2019, tax authorities published a guidance

to set out the practical arrangements for implementing the

MAP provided for in the double taxation treaties concluded by

Tunisia.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Pursuant to Article 48 of PCITC, the interests on shareholders’

loans can be deductible from the tax base in case the

remunerated amount does not exceed 50% of the share capital

(which should be already entirely paid up) and the interest rate

does not exceed 8%.

With regard to amounts made available to shareholders,

interests should be charged at an interest rate that should not

be less than 8%.

Faez Choyakh

faez.choyakh@tn.ey.com

+ 21629629001

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Turkish Ministry of Finance and Turkish state authorities.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and effective

date of applicability

Transfer pricing is regulated by Article 13 of the Corporate Tax

Code No. 5520, published 21 June 2006.

> Section reference from local regulation

Article 13 of the Corporate Tax Code states: “Income shall

be considered to have been wholly or partially distributed in

a disguised manner through transfer pricing, if the company

engages in purchase of goods and services with related parties

at prices or at amounts which they determine do not comply

with the arm’s-length principle.”

Transfer pricing provisions have been effective since January

2007. There are two relevant Cabinet decrees, published in

December 2007 and April 2008. Further, three communiqués

have been issued by the Ministry of Finance: the General

Communiqué on Disguised Profit Distribution by Means of

Transfer Pricing Serial Nos. 1, 2, 3 and 4.

Additionally, the Turkish Revenue Administration (TRA), under

the Ministry of Finance, issued guidance in 2009 regarding

MAPs and in 2010 regarding disguised profit distribution

through transfer pricing.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Turkey is a member of the OECD.

The preamble to the law covering transfer pricing states that

the provisions of international regulations, especially the

OECD Guidelines, are taken as a reference. However, there

is no particular reference to the OECD Guidelines in the

actual content of the regulations, including Article 13 of the

Corporate Tax Code, the related decrees and communiqués.

In addition, the law diverges from the OECD approach on two

major points: the term “related party” is broadly defined, and

it also applies to domestic related-party transactions.

In local transfer pricing rules, business restructurings are not

referenced. However, there are strict provisions in local tax

codes regarding anti-abuse rules and the substance-over-form

principle.

In general, transfer pricing rules place significant

documentation and disclosure requirements on Turkish

taxpayers, and with the latest changes, having appropriate

and on-time transfer documentation provide 50% penalty

protection to taxpayers. On the other hand, the tax inspectors

are still not fully aligned with the OECD Guidelines, and there

is a very strong tendency toward using the CUP method

despite the difficulties in comparability and the fact that the

regulations endorse all of the transfer pricing methods listed in

the OECD Guidelines.

b) BEPS Action 13 implementation

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, the existing documentation requirement has been

expanded by Turkey’s Presidential Decision No. 2151,

published in the Official Gazette dated and effective from 25

February 2020 to include OECD documentation, that is, the

Master File, annual transfer pricing report and CbCR for the

2019 accounting period.

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

Master File: the multinational taxpayers that have

net sales and assets greater than TRY500 million are

required to prepare a Master File. The first Master File

will be related to the period 2019 and has to be prepared

until following year-end and shall be submitted to tax

authorities upon request.

Local File: the requirement is the same as the former

annual transfer pricing report and all taxpayers that

have cross-border transactions (for large corporation

taxpayers, both domestic and cross-border intercompany

transactions) have to prepare a local transfer pricing

report. In addition, companies operating in free trade

zones are required to prepare a transfer pricing report for

their domestic intercompany transactions.

CbCR: for taxpayers belonging to an MNE group that has

consolidated revenue of EUR750 million or above. The

first CbCR is for the year 2019 and will be submitted by

31 December 2020.

> Effective or expected commencement date

The effective commencement date is 1 January 2019.

> Material differences from OECD report template or format

There are no material differences from the OECD report

template or format. However, there is local language

requirement.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, there are transfer pricing documentation guidelines,

rules and strict documentation requirements. Transfer pricing

documentation is required to be prepared contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

The transfer pricing documentation report (i.e. Local File) has to

be prepared annually under the local jurisdiction regulations.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is none specified.

> Master File

Corporate income taxpayers that are part of an MNE group

and have both previous year-end balance sheet assets and a

net sales revenue in income statement amounting to TRY500

million and above are required to prepare a Master File.

> Local File

There is none specified.

> CbCR

The ultimate parent company of a multinational enterprise

group that is resident of Turkey is required to electronically

submit a CbC report to the Turkish tax authority by the end

of the 12th month following the relevant fiscal period, if the

consolidated group revenue in the previous fiscal period is

EUR750 million or above.

> Economic analysis

There is none specified.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation requirement for domestic

intercompany transactions for companies registered with the

Large Taxpayers Tax Office (Büyük Mükellefler Vergi Dairesi

Başkanlığı).

> Local language documentation requirement

The transfer pricing documentation needs to be submitted in

the local language.

“If the relevant information and documents are presented in

a foreign language, their Turkish translations are required

to be submitted,” according to the General Communiqué on

Disguised Profit Distribution by Means of Transfer Pricing

(Serial No. 1).

> Safe harbor availability, including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure or compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers are required to disclose information about all

related-party transactions (domestic and cross-border)

performed with related parties, regardless of the magnitude,

on their transfer pricing form, which should also include the

following information in detail:

> Name or title of the local related party

> Taxpayer identification number

> Name of the foreign related party and the jurisdiction in

which it resides

Other required disclosures include the sale and purchase of

commodities, both in the form of raw material and finished

goods; the lease of any property; construction, R&D and

commission-based services; all related-party financial

transactions, including lending and borrowing funds,

marketable securities, insurance and other transactions; and

intragroup services. Taxpayers must also disclose the transfer

pricing methods applied in the related-party transactions.

A draft general communiqué, in compliance with Action 13,

requires that the following appendices be submitted:

> Appendix 2: if corporate taxpayers’ sales or purchases of

goods or services with related parties during a fiscal year

exceed TRY30,000, they are required to complete the

form on transfer pricing, controlled foreign corporation

and thin capitalization regarding such transactions, and

submit it to the relevant tax office in the attachment of the

corporate tax return.

> Appendix 4: if corporate taxpayers have assets on the

balance sheet of the previous year-end and net sales

revenue in the income statement of TRY100 million or

above, they are obligated to electronically submit the

transfer pricing form on transactions conducted with

related parties exceeding TRY30,000 within a fiscal

year by the end of the second month following the filing

deadline of the corporate tax return.

> Related-party disclosures along with corporate income tax

return

Same as above.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The documentation should be filed on or before 25 April.

> Other transfer pricing disclosures and return

The documentation should be filed on or before 25 April.

> Master File

The Master File should be prepared by the following year-end

and should be submitted within 15 days of the request by the

Turkish tax authority.

> CbCR preparation and submission

The CbCR should be submitted electronically within 12 months

after the end of the reporting period.

> CbCR notification

Notifications will be submitted annually by the end of June of

the relevant year.

b) Transfer pricing documentation/Local File preparation

deadline

The transfer pricing documentation should be finalized by the

time of submission of the tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Documentation reports are required to be prepared by 25

April of the following fiscal year, which is also the due date of

the corporate income tax return. The reports are submitted if/

when they are requested by the Tax Authority.

> Time period or deadline for submission upon tax authority

request

The taxpayer has to submit the transfer pricing documentation

within 15 days once requested by the tax authorities in an

audit or inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions — Yes

b) Priority and preference of methods

There is no priority among the methods. However, there

is a priority among comparables, and if there are internal

comparables, they should be analyzed first. Only if there is a

lack of internal comparables (or if these internal comparables

are not accurate or reliable enough) can external comparables

be used.

8. Benchmarking requirements

> Local vs. regional comparables

Local comparables are preferred.

> Single-year vs. multiyear analysis

A multiyear analysis is preferred.

> Use of interquartile range

The interquartile range is preferred.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Fresh benchmarking is preferred.

> Simple, weighted or pooled results

The weighted average is preferred.

> Other specific benchmarking criteria, if any

There is a preference for applying independence and

unconsolidated financials criteria.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

There are no specific transfer pricing penalties, but failure to

submit, late submission or incorrect disclosures trigger a tax

audit.

Under the Tax Procedural Code, late filing, incomplete or

inaccurate filing of reports are subject to a procedural tax

penalty. Additionally, a “Penalty Protection Regime” applies

where taxpayers may get a penalty reduction of 50% in

the case of full and timely preparation of transfer pricing

documentation. Provided that the documentation liabilities for

transfer pricing are fulfilled completely and on time, tax loss

penalty for the taxes that are not accrued on time or taxes

under-assessed concerning the profit disguisedly distributed is

applied with 50% deduction.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes

> Is interest charged on penalties or payable on refund?

Additionally, late-payment interest (1.6% monthly) and a tax

loss penalty (which is the same as the tax loss amount) are

charged to the taxpayer.

b) Penalty relief

A 50% penalty relief will be applied to residual taxes due to

disguised profit distribution, provided for taxpayers that have

submitted proper transfer pricing documentation.

It is also possible to come to a settlement regarding the tax

loss amount and the tax penalty assessed. In settlement

negotiations, taxpayers may assert a good-faith defense.

It is possible to come to a settlement regarding the tax loss

amount and the tax penalty assessed by the tax authority or

the filing of a lawsuit against the assessment. Additionally,

although not widely applied in Turkey, taxpayers can file a

request to begin an MAP with the competent authorities.

10. Statute of limitations on transfer pricing

assessments

There is no specific statute of limitations on transfer pricing

assessments. Rather, the general rule for the statute of

limitations is applicable, which is five years from the accrual of

the tax payment.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

For medium- and large-sized multinational firms, the likelihood

of an annual tax audit may be considered to be high. Most

large multinationals are handled by a specific tax office (Large

Taxpayers Tax Office) that requests information from these

taxpayers throughout the year.

In this respect, the risk of transfer pricing scrutiny during a tax

audit may be considered to be high, as tax inspectors generally

focus on related-party transactions.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of a challenge to the transfer pricing

methodology is similarly high. Among tax inspectors, there

is a strong tendency for using the CUP method, regardless

of the inherent difficulties based on comparability. It has also

been common practice to use secret comparables, which the

taxpayer can challenge if the case is taken to litigation.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

For medium- and large-sized multinational firms, the likelihood

of an annual tax audit may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

The frequency of transfer pricing audits has increased, and

these audits are mainly focused on intragroup charges, such

as management fees and cost allocations. Tax inspectors

often look to find out whether specific services or projects

were provided to the recipient under management services

(e.g., preparation of a procurement agreement, redesign of

a compensation policy or legal advice for a court case). If the

service charges are not documented with specificity about

the type of service being provided to the Turkish entity, then

they are likely to be treated as royalties (and therefore subject

to withholding tax), based on the claim that industrial or

commercial experience is used.

Also, taxpayers in sectors, such as pharmaceuticals,

telecommunications, banking and finance, and automotive,

are often continuously audited. Moreover, most of the tax

revenue in Turkey is generated through indirect taxes; thus,

companies subject to excise taxes are usually subject to closer

examination.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Companies can apply for unilateral, bilateral or multilateral

APAs for their cross-border intercompany transactions.

> Tenure

The term could be as long as five years.

> Rollback provisions

With APAs, it has been uncertain as to the actions that would

be applied for previous periods outside the scope of the

agreement. Although taxpayers with an APA have determined

their transfer pricing methods prospectively by agreeing with

the Ministry of Finance, thereby eliminating the risk in this

way, they would still be subject to the tax risks relating to

previous periods when the method in question was not applied.

The following provisions have been added to sub-article 5 of

Article 13 of Law No. 5520:

> The taxpayer and Ministry can ensure the application of

the designated method to previous taxation periods that

have not lapsed by including the periods in the scope of

the agreement, provided that it is possible to apply the

penalty and correction provisions of the Tax Procedures

Law and the conditions of the agreement are also

effective in those periods. In this case, the agreement

shall substitute for the petition on notification mentioned

in the relevant provisions, and declaration and payment

transactions shall be consummated accordingly. The taxes

paid previously shall not be rejected and refunded due

to the application of the agreement to previous taxation

periods.

> This amendment has allowed the application of the

method determined under the agreement to be applied

to the taxation periods that have not lapsed in the case

of an agreement between the taxpayer and the Ministry

of Finance. Therefore, taxpayers have been allowed to

retroactively apply the relevant APA (rollback) and hence

eliminate tax risks, provided they retroactively pay the tax

principal and interest charge.

> In connection with an application for an APA with a

rollback that results in a transfer pricing adjustment,

there will neither be the imposition of a deemed dividend

(arising as a result of the transfer pricing adjustment) nor

an associated withholding tax on such deemed dividend if

the following conditions are met:

> Any corporate income tax difference related to the

amount is paid on time.

> In the framework of general accounting principles, the

amount is added to the earnings of the related year and

amended within the books of the related year.

> An amount is booked as an account receivable from the

related party resident abroad or as paid in cash to the

entity in Turkey.

> MAP opportunities

Applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

According to local thin-capitalization regulation, if the ratio of

the borrowings from shareholders or from people related to

the shareholders exceeds three times the shareholders' equity

of the borrower company at any time within the relevant year,

the exceeding portion of the borrowing will be considered thin

capital and the corresponding interest will not be deductible.

Accordingly, the ratio of loans received from related parties

to shareholders' equity must be no more than 3:1 in order to

eliminate Turkish thin-capitalization issues.

Akif Tunc

akif.tunc@tr.ey.com

+ 905307744523

Contact

Serdar Sumay

serdar.sumay@tr.ey.com

+ 905336904247

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Federal Tax Authority (FTA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and effective

date of applicability

There are currently no local transfer pricing regulations in

place, except the requirement around submission of country

by country reports (CbCR) by multinational companies which is

effective from January 1, 2019.

> Section reference from local regulation

Refer to the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The United Arab Emirates (UAE) is not a member of the OECD.

However, it has joined the BEPS Inclusive Framework.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

No. However, the UAE has issued legislation around CbCR

requirements.

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

At present, the UAE has only issued CbCR obligations as

part of BEPS Action 13 requirements.

> Effective or expected commencement date

January 1, 2019.

> 

Material differences from OECD report template or format

No material differences in the CbCR format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Not applicable.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, 24 June 2018.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

No.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

No. The CbCR requirements are only applicable to the UAE-

headquartered MNE groups and there are no additional

documentation requirements (such as Master File or Local File)

at this stage.

> Does transfer pricing documentation have to be prepared

annually?

Yes, CbCR is an annual requirement.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

This is not applicable.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The requirements are applicable to the UAE headquartered

MNE groups with consolidated group revenue exceeding

AED3.15 billion (approx. USD850 million) in previous financial

year.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

This is not applicable.

> Local language documentation requirement

This is not applicable.

> Safe harbor availability, including financial transactions if

applicable

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

This is in accordance with accounting standards. As for now,

there are no requirements from a TP perspective in the UAE to

include such disclosure in the financial statement.

> CbCR notification included in the statutory tax return

No, CbCR notification is a separate submission.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

This is not applicable.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

The ultimate parent entities of the MNE groups headquartered

in the UAE (i.e., UPE) must file its CbCR no later than 12

months after the last day of the reporting fiscal year of the

MNE group.

> CbCR notification

Only ultimate parent entities of the MNE groups headquartered

in the UAE are required to submit a notification no later than

the last day of the reporting fiscal year of MNE group.

b) Transfer pricing documentation/Local File preparation

deadline

This is not applicable.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

This is not applicable.

> Time period or deadline for submission upon tax authority

request

This is not applicable.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

This is not applicable.

b) Priority and preference of methods

This is not applicable.

8. Benchmarking requirements

> Local vs. regional comparables

Not applicable

> Single-year vs. multiyear analysis

This is not applicable.

> Use of interquartile range

This is not applicable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Not applicable.

> Simple, weighted or pooled results

Not applicable.

> Other specific benchmarking criteria, if any

Not applicable.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences of failure to submit, late submission or

incorrect disclosures

Regarding CbCR requirements, failure to comply with the

obligations may result in penalties as follows:

> Penalty of AED100,000 (USD27,400) for failure to retain

supporting documentation and information

> Penalty of AED100,000 for failure to provide the

competent authority with requested information

> Initial penalty of AED1 million (USD274,000), and

AED10,000 (USD2,740) to be applied daily until a

maximum of AED250,000 (USD68,500) for failure to file

the CbCR notification or CbC report

> Minimum penalty of AED50,000 (USD13,700) to a

maximum of AED500,000 (USD137,000) for failure to

report complete and accurate information

Apart from the additional penalty provided under the third

point above, total penalties shall not exceed AED1 million.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

An administrative penalty shall be imposed if the Reporting

Entity fails to provide the information required to be reported

in a complete and accurate manner of a minimum of AED

50,000 and with a maximum of AED 500,000

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

This is not applicable.

> Is interest charged on penalties or payable on a refund?

This is not applicable.

b) Penalty relief

This is not applicable.

10. Statute of limitations on transfer pricing

assessments

This is not applicable.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

Low.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

Low.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

Low.

> Specific transactions, industries and situations, if any, more

likely to be audited

Not applicable.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Not available at this stage.

> Tenure

Not applicable.

> Rollback provisions

Not applicable.

> MAP opportunities

Limited at this stage.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

There is none specified.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

This is not applicable.

Guy Taylor

guy.taylor@ae.ey.com

+ 971501812093

Contact

Adil Rao

adil.rao@ae.ey.com

+ 971565479922

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

Uganda Revenue Authority (URA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Uganda’s TP legislation is contained in the Income Tax

Regulations 2011, under Sections 90 and 164 of the Income

Tax Act, Cap 340, and became effective since 1 July 2011.

> Section reference from local regulation

Section 3 of the Ugandan Income Tax Act.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Uganda is not a member of the OECD.

Ugandan regulations adopt the arm’s-length standard and

recognize the OECD Guidelines. However, where the OECD

Guidelines conflict with the Domestic Taxing Acts, the

provisions in the Domestic Taxing Acts take precedence.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Since the tax authority follows the OECD Guidelines, Action

13, with respect to having a local TP file, is applied. However,

the other aspects of requiring the taxpayer to have a master

file and CbCR may not apply.

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

Only the Local File is required.

> Effective or expected commencement date

There’s none specified.

> Material differences from OECD report template or format

There is no difference; the local TP rules are a replica of

the OECD Guidelines.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Yes, and only the Local File is required.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

The branch and its head office are considered to be associated

parties whose transactions must be structured at arm’s length

in conformity with Uganda’s Income Tax (Transfer Pricing)

Regulations, 2011.

The branch is expected to maintain TP documentation in

Uganda that verifies that transactions with its head office as

well as other associated parties conform with the arm’s-length

principle. The TP documentation for a year of income should

be in place prior to the due date of filing the corporate income

tax (CIT) return for that year.

> Does transfer pricing documentation have to be prepared

annually?

No.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each subsidiary is expected to maintain TP documentation

in Uganda that verifies that its transactions with associated

parties are in conformity with the arm’s-length principle. The

TP documentation for a year of income should be in place prior

to the due date of filing the CIT return for that year.

b) Materiality limit or thresholds

> Transfer pricing documentation

For in-jurisdiction transactions between related entities, the

threshold is UGX500 million in aggregate for the transaction

during the year.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

Economic analysis requires taking into account the five

comparability factors, i.e., the characteristics of the property

or services transferred or supplied; the functions undertaken

by the person entering the transaction, taking into account

assets used and risks assumed; the contractual terms of

the transactions; the economic circumstances in which the

transaction takes place; and the business strategies pursued

by the associate to the controlled transaction.

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

Transactions between two domestic entities should be included

in the TP documentation.

> Local language documentation requirement

The TP documentation does not need submitted in the local

language, and English documentation is acceptable.

> Safe harbor availability including financial transactions if

applicable

There’s none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

There’s none specified.

> Any other disclosure/compliance requirement

No

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There are no specific TP returns required to be filed with the

tax authority. However, most recently, the tax authorities

have come up with a related-party disclosure form that has

been circulated to most MNEs as part of the initial TP audit

procedure.

> Related-party disclosures along with corporate income tax

return

The related-party disclosure form is not filed with the

corporate income tax return.

> Related-party disclosures in financial statement/annual

report

Yes, the audited financial statements would have a disclosure

on related-party transactions. However, the TP rules don’t

specify the level details to be reported in financial statement

and annual report.

The following TP information needs to be disclosed:

> The group organization structure of the entity

> The details of the transaction under consideration

> The TP method, including the reasons for its selection

> The assumptions, strategies and policies applied in

selecting the method

> The application of the method, the calculations made and

the price adjustment factors considered

> The TP policy agreement

> Such other background information as may be necessary

> CbCR notification included in the statutory tax return

This is not applicable

> Other information/documents to be filed

This is not applicable; the local TP regulations state that

documents pertaining to TP are not to be physically submitted

with return forms, but must be in place prior to the due

date for filing the income tax return for the relevant year,

and must be in the English language or translated into the

English language, prepared at the time the transfer price is

established.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

For entities with a year-end of 30 June, the corporate income

tax return (CITR) becomes due within six months of the year-

end, i.e., by 31 December. For entities with a year-end of 31

December, the CITR becomes due by 30 June of the following

year.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

TP documentation must be typically finalized by the time of

submitting the income tax self-assessment return or upon

request by the tax authority within 30 days.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No

> Time period or deadline for submission upon tax authority

request

The taxpayer has to submit TP documentation within 30 days

of the tax authority’s request.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions — Yes

> Domestic transactions — Yes

b) Priority and preference of methods

Uganda accepts the five methods specified in the OECD

Guidelines:

> CUP

> Resale price

> Cost plus

> TNMM

> Transactional profit split

The most appropriate method is selected based on the

circumstances and data available.

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement for local jurisdiction

comparables, and a search conducted in regions with economic

indicators that are similar to the local jurisdiction is accepted.

> Single-year vs. multiyear analysis for benchmarking

Multiple-year (three-year) analysis, as per common practice

> Use of interquartile range

Interquartile range calculation using spreadsheet quartile

formulae is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year, unless the legal and economic circumstances of

transactions being analyzed have changed.

> Simple, weighted or pooled results

There is no reference prescribed in the local TP regulations

but, in practice, the weighted average is used.

> Other specific benchmarking criteria, if any

A well-laid-out search process, as provided for in the OECD

Guidelines, has to be followed. It includes:

> Determination of the years to be covered

> Broad-based analysis

> Understanding of the controlled transactions

> Selection of the most appropriate method

> Existing internal comparable data

> Sources of external comparables

> Identification of potential comparables

> Comparability adjustments

> Interpretation and use of the data collected

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

TP documentation being the first line of defence by the

taxpayer, any incomplete information or inconsistencies within

the TP documentation are to the detriment of the taxpayer.

The Tax Authority, therefore, may either disregard the facts

presented in the “incomplete documentation” or rely on them

while making conclusions on the arm’s-length nature of the

transactions.

> Consequences of failure to submit, late submission or

incorrect disclosures

Specific TP penalties apply for failure to comply with TP

documentation requirements. Where one fails to put in place

documentation under the TP regulations, the person is liable,

upon conviction, to imprisonment for a term not exceeding six

months or a fine not exceeding 25 currency points (currently,

UGX500,000) or both.

The penalty for late payment is 2% per month of the shortfall

and 2% of the gross tax liability for the year for which the

return is filed late. Other civil and criminal penalties may apply

under specific circumstances.

Furthermore, the domestic tax laws introduced penalties in

which a person who, upon request by the Commissioner, fails

to provide records on TP within 30 days after the request is

liable to a penal tax equivalent to UGX50 million (effective

from 1 July 2017).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In the event that the URA raises an upward TP adjustment, a

20% penalty on the shortfall will be imposed if the provisional

tax paid is less than 90% of the actual tax liability.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not specified within the TP rules. We note however, that if the

URA raises an upward TP adjustment, a 20% penalty on the

shortfall will be imposed if the provisional tax paid is less than

90% of the actual tax liability.

> Is interest charged on penalties or payable on a refund?

Interest on outstanding tax payable is 2% per month (simple

interest) but capped to a maximum of the aggregate of

principal tax and penalty tax (i.e., interest should not exceed

the sum of principal tax and penalty tax).

b) Penalty relief

There is no specific penalty relief. However, penalties may be

reversed in case of successful objection to a tax assessment

before the tax authority or appeals of tax decisions made

before the Tax Appeals Tribunal or the courts of law.

10. Statute of limitations on transfer pricing

assessments

It is three years, but it may be open if new information is

obtained by the tax authority. Considering that TP regulations

came into force in July 2011, the period before this date

would be outside TP review. However, other income tax

provisions regarding recharacterizing of the transaction may

apply.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

As a temporary measure and response to COVID-19, the

tax authority at one point suspended interaction with the

taxpayers (in the form of in-person meetings), hence only

focused on the online issue audits.

However, with ongoing mass vaccination drive, this measure

has been relaxed and the tax authority resumed physical

interactions with taxpayers.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

It’s medium. The rationale of the selected scale is such that TP

audits take a long time to close. Therefore, the tax authority

may not conduct many reviews in the TP space.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

It’s medium, though the focus by the tax authority is mainly on

the analysis of the relevant costs upon which the TP method

has been premised.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

If disputes on a particular methodology arise, there is a high

likelihood of adverse TP adjustments.

> Specific transactions, industries and situations, if any, more

likely to be audited

Management fees and royalties: The general focus by the

tax authority is on MNEs, irrespective of the sector, with

significant related-party transactions.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Uganda. Applications

for multilateral APAs are allowed. The tax authority may enter

into an APA with the person either alone or together with the

competent authorities of the jurisdiction or countries of the

person’s associate or associates.

> Tenure

The APAs must specify the years of income to which the

agreement applies. Although the regulations provide that the

APA is for a fixed period of time, the exact number of years

covered by APAs is not mentioned.

> Rollback provisions

There’s none specified.

> MAP opportunities

There’s none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest on loans received by the subsidiary from its parent

company is a deductible expense for CIT purposes, subject to

interest capping rule as clarified below:

The amount of deductible interest in respect of all debts owed

by a taxpayer who is a member of a group shall not exceed

30% of the tax earnings before interest, taxes depreciation and

amortization.

A taxpayer who exceeds 30% of the tax earnings before

interest, tax depreciation and amortization may carry forward

the excess interest for not more than three years, and the

excess interest shall be treated as incurred during the next

year of income.

Tax earnings before interest, tax and depreciation means the

sum of gross income less allowable deductions, except interest,

depreciation and amortization.

Group, in this context, means people other than individuals

with common underlying ownership

Allan B Mugisha

allan.mugisha@ug.ey.com

+ 256772403551

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

State Tax Service of Ukraine.

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 39, subparagraph 14.1.159, paragraph 120.3, 201.4

of the Ukrainian Tax Code (the TCU) regulates transfer pricing

in Ukraine. Generally, the provisions of the law are in line with

the OECD Guidelines.

A number of rules and provisions related to transfer pricing are

also established by other laws and decrees, as follows:

> Decree of the Cabinet of Ministers of Ukraine No.

381 (4 June 2015) defines the new algorithm for the

interquartile range calculation.

> Decree of the Cabinet of Ministers of Ukraine No. 191 (29

March 2017) defines an approval of the procedure for the

weighted-average profit-level indicator (PLI) calculation of

the comparable party for transfer pricing purposes.

> Decree of the Cabinet of Ministers of Ukraine No. 480 (4

July 2017) provides a list of organizational legal forms of

non residents, which do not pay income tax (corporate tax)

in the jurisdiction of registration, that match the criteria

specified by subparagraph 39.2.1.1 of Article 39 of the

Tax Code of Ukraine.

> Decree of the Cabinet of Ministers of Ukraine No. 1045

(27 December 2017) provides the list of countries

(territories) that match the criteria specified by

subparagraph 39.2.1.2 of Article 39 of the Tax Code of

Ukraine.

> Decree of the Cabinet of Ministers of Ukraine No. 1221 (9

December 2020) provides the list of goods traded on the

commodity exchanges and the list of world commodity

exchanges for the purpose of CUP method application to

improve tax control over transfer pricing.

> Order of the Cabinet of Ministers of Ukraine No. 8 (18

January 2016) defines the forms and procedure for

preparation of a report on controlled transactions.

> Order of the Cabinet of Ministers of Ukraine No. 839 (31

1 https://tax.gov.ua/en/

December 2020), defines the forms and procedure for

preparation of a notification on participation in a MNE

group.

The tax authorities provide administrative interpretation and

guidance on applying the transfer pricing rules, the release

of unified and individual tax rulings, orders, and opinions

expressed in the official press and public media.

Local accounting standards: These are the Ukrainian GAAP or

International Financial Reporting Standards (IFRS).

Ukraine is not an OECD member; however, it has joined to the

BEPS minimal standards in terms of transfer pricing global

reporting format: Local File, Master File, CbCR notification and

CbCR.

> Section reference from local regulation

Provided in the section above.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Yes, according to paragraph 521 of the section on transitional

provisions to the TCU, violations in the tax sphere (including

transfer pricing) are subject to penalties relief due to COVID 19

(up to the end of official quarantine measures).

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Notwithstanding that Ukraine has incorporated the main

standards of the OECD Guidelines, direct connection

between national transfer pricing rules and the OECD is not

prescribed. The Ukrainian tax authorities are not obliged

to follow the OECD Guidelines, as Ukraine is not an OECD

member jurisdiction. However, the tax authorities follow the

OECD standards and recommendations in practice. Ukrainian

legislation that does not address the wide pool of practical

issues arising during an arm’s-length analysis although OECD

principles usually help.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

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

Yes — all the above.

> Effective or expected commencement date

The first reporting year for Master File is the group’s financial

year that ends in 2021. The first year for the CbCR notification

is 2020. The first reporting year for the CbCR is the group’s

financial year that ends in 2021.

> Material differences from OECD report template or format

Ukraine has local transfer pricing documentation requirements

(Local File) that provide for more extensive requirements to

the content of the file. The following additional information

must be included:

> Detailed description of goods (works, services), including

their physical characteristics, market reputation, origin

jurisdiction, trademarks, etc.

> Supply chain and creation of added value in a controlled

transaction

> Payments made within the controlled transaction

> Factors influencing the pricing and business strategies

applied

> Amount of a controlled transaction and its profitability

calculated based on actual financial data of the tested

party to the controlled transaction (no planned/policy

indicator can be used)

> Description and justification of the profitability calculation

including provision of algorithm for allocation of operation

expenses and income pertained to the specific controlled

transaction

> Applicable transfer pricing adjustments

> Justification of the business purpose performing a

controlled transaction

Moreover, the transfer pricing rules in Ukraine cover not only

the transactions with related parties but also transactions

with:

> Counterparties registered in low-tax jurisdictions: Decree

of the Cabinet of Ministers of Ukraine No. 1045 (27

December 2017) provides the list of countries (territories)

that match the criteria specified by subparagraph

39.2.1.2 of Article 39 of the Tax Code of Ukraine.

> Tax-transparent legal entities: Decree of the Cabinet of

Ministers of Ukraine No. 480 (4 July 2017) provides a

list of organizational legal forms of non residents, which

do not pay income tax (corporate tax) in the jurisdiction

of registration, that match the criteria specified by

subparagraph 39.2.1.1 of Article 39 of the Tax Code of

Ukraine.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The TCU does not include such concept.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, Article 39 of the TCU includes specific requirements

regarding the content of Local File; these differences are

described above. Local transfer pricing documentation should

be prepared annually and submitted upon the request of tax

authorities within 30 days after receiving such request.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a permanent establishment of a non resident in Ukraine

determines its taxable income at arm’s length and prepares

the transfer pricing documentation for each reporting period

according to the requirements specified in Article 39 of the

TCU if the transaction volume with the non resident exceeds

UAH10 million (approx. USD370,000).

> Does transfer pricing documentation have to be prepared

annually?

Yes.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each legal entity with annual revenue exceeding UAH150

million (approx. USD5.5 million) should file the report on the

controlled transaction (specific local transfer pricing reporting

form) and the transfer pricing documentation (Local File) on

a separate basis. The Master File may be requested from one

legal entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

Transactions are recognized as controlled if both of the

following conditions are met:

> The taxpayer’s revenue exceeds UAH150 million

(excluding indirect taxes) for the corresponding reporting

year.

> The volume of transactions with each separate

counterparty exceeds UAH10 million (excluding indirect

taxes) for the corresponding reporting year.

> Master File

It applies to MNEs with annual consolidated group revenue

equal to or exceeding EUR50 million in the previous financial

year.

> Local File

It is expected to be prepared for each separate transaction

that falls under the transfer pricing control.

> CbCR

It applies to MNEs with annual consolidated group revenue

equal to or exceeding EUR750 million in the previous financial

year.

> Economic analysis

Must be prepared for each separate type of the controlled

transactions that fall under the transfer pricing control.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The transfer pricing documentation and all supporting

documents must be prepared and submitted only in Ukrainian.

> Safe harbor availability, including financial transactions if

applicable

Safe harbor concept is not prescribed in the TCU.

> Is aggregation or individual testing of transactions preferred

for an entity

The TCU provides conditions under which the separate

transactions may be analyzed on an aggregated basis. Namely,

aggregation is possible if such transactions are closely related

or are a continuation of each other or are continuous or

regular in nature.

> Any other disclosure/compliance requirement

The annual preparation and submission of the local transfer

pricing form, the report on controlled transactions, which

contains an item-by-item disclosure of all controlled

transactions indicating the transfer pricing testing parameters:

tested party, method, profit-level indicator and its numeric

value, and the database used.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

As mentioned above, Ukrainian transfer pricing rules require

submitting the report on controlled transactions disclosing

all the controlled transactions of a taxpayer for the reporting

period, indicating the transfer pricing testing parameters:

tested party, method, profit-level indicator and its numeric

value, and the database used.

> Related-party disclosures along with corporate income tax

return

Taxpayers must report self-adjustments of tax liabilities arising

due to the application of transfer pricing rules in a special

transfer pricing annex to the corporate profit tax (CPT) return.

> Related-party disclosures in financial statement/annual

report

No.

CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

No.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Must be submitted during 60 calendar days after the end of

the calendar year.

> Other transfer pricing disclosures and return

The report on controlled transactions must be submitted

before 1 October of the year following the reporting one.

The transfer pricing documentation (Local File) must be

submitted within 30 calendar days upon the tax authorities’

request.

> Master File

Should be submitted upon the receipt of the request made by

the Ukrainian tax authorities within 90 days from such receipt.

> CbCR preparation and submission

Must be filed no later than 12 months following the reporting

year.

> CbCR notification

The notification should be submitted before 1 October of the

year following the reporting (calendar) year.

b) Transfer pricing documentation/Local File preparation

deadline

There is no statutory deadline for the submission of transfer

pricing documentation; however, it needs to be submitted

within 30 calendar days upon the tax authorities’ request.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No.

> Time period or deadline for submission upon tax authority

request

The taxpayer has 30 calendar days to submit the transfer

pricing documentation once requested by the tax authorities.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

The Ukrainian transfer pricing rules provide for the five

methods similar to those specified by the OECD Guidelines.

The CUP method is given priority. In cases when the resale-

price method, cost-plus method, net-margin or profit-split

methods may be applied by the taxpayer with the same

reliability, the resale-price or cost-plus method should be used.

Profit-based transfer pricing methods may be used without

specific restrictions.

For controlled transactions involving the export and import

of goods from the list approved by Decree of the Cabinet of

Ministers of Ukraine No.1221 (9 December 2020), the CUP

method based on information from commodity exchanges

applies. To apply other methods in such situations, a taxpayer

in the transfer pricing documentation must provide data on

Profit level indicator (PLI) of all related parties of the taxpayer

that took part in the purchase and sale of the goods in the

supply chain (up to the first not-related counteragent).

8. Benchmarking requirements

> Local vs. regional comparables

A local benchmarking study (Ukrainian comparables) must be

used if the tested party is a Ukrainian entity.

> Single-year vs. multiyear analysis for benchmarking

Both are possible. However, the best practice is to use single-

year (similar to the year of the controlled transaction); the

selection of multiyear analysis should be substantiated in the

transfer pricing documentation file.

> Use of interquartile range

The interquartile range must be used.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is required every year. According

to paragraphs 39.3.3.3, 39.2.2.1 and 39.3.2.8 of the Tax

Code of Ukraine, new benchmarking studies must be prepared.

This position is supported by the local tax authorities, as well.

> Simple, weighted or pooled results

The weighted average must be used.

> Other specific benchmarking criteria, if any

Paragraph 39.3.2.9 of the Tax Code of Ukraine prescribes the

list of three mandatory criteria that must be used:

1. Establishing comparability using activity code (NACE Rev.2)

2. Financial criteria, no losses in more than one year in the

period selected for arm’s-length calculation

3. Twenty-five-percent independence criteria

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Potentially, the transfer pricing documentation that does not

satisfy the requirements prescribed by TCU may be regarded

as non-submitted, which implies a penalty at 3% of transaction

volume, for which documentation has not been submitted, but

no more than 200 subsistence minimums per year.

Subsistence minimum: 2022 — UAH 2 481.

> Consequences of failure to submit, late submission or

incorrect disclosures

Violation of the legislation on submission of the report on

controlled transaction (local form)

Non-submission of the

transfer pricing report

> 300 times the subsistence

minimum for an able-bodied

person, as of 1 January of

the reporting year (further —

subsistence minimum)

Late submission of the

transfer pricing report

> 1 subsistence minimum per

calendar day of late submission

(up to 300 times the subsistence

minimum)

Non-inclusion of

transactions into the

transfer pricing report

> 1% of the amount of the undeclared

transactions in the submitted

report (up to 300 times the

subsistence minimum, for all

transactions)

Late declaration of the

controlled transactions

in the submitted transfer

pricing report (in case

of the adjusted transfer

pricing report submission)

> 1 subsistence minimum per

calendar day of late declaring of

transaction in the submitted report

(up to 300 times the subsistence

minimum)

Non-submission of the

transfer pricing report

after 30 calendar days

upon expiry of the term for

penalty payment for non-

submission

> 5 times the subsistence minimum,

for each calendar day of non-

submission of the transfer pricing

report (up to 300 times the

subsistence minimum)

Non-submission of the

adjusted transfer pricing

report after 30 calendar

days upon expiry of the

term for penalty payment

for non-submission

> 1 subsistence minimum per

calendar day of non-submission of

the adjusted transfer pricing report

(up to 300 times the subsistence

minimum)

Violation of the legislation on submission of transfer pricing

documentation (Local File)

Non-submission of

the transfer pricing

documentation

> 3% of the amount of the controlled

transactions (up to 200 times

the subsistence minimum, for all

transactions)

Non-submission of

the transfer pricing

documentation after

30 calendar days upon

expiry of the term for

penalty payment for non-

submission

> 5 times the subsistence minimum

per calendar day of non-

submission of the transfer pricing

documentation (up to 300 times

the subsistence minimum)

Late submission of

the transfer pricing

documentation

> 2 times the subsistence minimum

per calendar day of late submission

(up to 200 times the subsistence

minimum)

Violation of the legislation on submission of Master File

Non-submission of the

Master File

> 300 times the subsistence

minimum as of 1 January of the

reporting year

Non-submission of the

Master File after 30

calendar days upon

expiry of the term for

penalty payment for non-

submission

> 5 times the subsistence minimum

per calendar day of non-submission

of the Master File (up to 300 times

the subsistence minimum)

Late submission of the

Master File

> 3 times the subsistence minimum

per calendar day of late submission

(up to 300 times the subsistence

minimum)

Violation of the legislation on submission of CbCR

Non-submission of the

CbCR

> 1,000 times the subsistence

minimum as of 1 January of the

reporting year

Non-submission of the

CbCR after 30 calendar

days upon expiry of the

term for penalty payment

for non-submission

> 5 times the subsistence minimum

per calendar day of non-submission

of the CbCR (up to 300 times the

subsistence minimum)

Non-inclusion of

information about a

member of an MNE group

into the CbCR

> 1% of the amount of income

(revenue) of a member of an MNE

group, information about which

is not included in the CbCR (up

to 1,000 times the subsistence

minimum)

Providing untrusted

information

> 200 times the subsistence

minimum as of 1 January of the

reporting year

Late submission of the

CbCR

> 10 times the subsistence minimum

per calendar day of late submission

(up to 1,000 times the subsistence

minimum)

Violation of the legislation on submission of notification on

participation in an MNE group

Non-submission of the

notification

> 50 times the subsistence minimum

as of 1 January of the reporting

year

Non-submission of the

notification after 30

calendar days upon

expiry of the term for

penalty payment for non-

submission

> 5 times the subsistence minimum

per calendar day of non-submission

of the notification (up to 300 times

the subsistence minimum)

Providing untrusted

information

> 50 times the subsistence minimum

as of 1 January of the reporting

year

Late submission of the

notification

> 1 time the subsistence minimum

per calendar day of late submission

(up to 100 times the subsistence

minimum)

Constructive dividends concept

Profit withdrawal in controlled transactions in the amount

exceeding the arm’s-length prices (i.e. the amount of

understated income/overstated expenses of an entity in the

controlled transaction) is equivalent to payment of dividends

and further withholding tax implications.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

The amount of tax understatement is subject to late-

payment interest at a rate of 100%/120% of the discount

rate established by the NBU, which is 10% per year as of 21

January 2022.

b) Penalty relief

Penalty relief is provided for the transition period starting

1 September 2013 until the end of 2014, during which the

penalty for the understatement of tax liabilities will be UAH1.

Additionally, there is penalty relief for all understatements of

corporate tax liabilities in 2015. No penalty relief is provided

for periods after 1 January 2016.

According to paragraph 521 of the Section on Transitional

provisions to the TCU, violations in the tax sphere (including

transfer pricing) are subject to penalties relief due to

COVID-19 (up to the end of official quarantine measures).

10. Statute of limitations on transfer pricing

assessments

The statute of limitations for transfer pricing assessments is

seven years (2,555 days, as specified by the TCU) from the

last date for filing the CPT, or from the actual day the CPT

return was filed if it was later than the due date. Statute of

limitation is currently suspended on the basis of COVID-19

measures.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of Transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be high. According

to the TCU, transfer pricing audits should be performed

independently from other tax audits. The tax authorities

shall not have the right to conduct more than one audit of

a controlled transaction of the taxpayer during a calendar

year. In general, the likelihood of an annual tax audit may be

assessed as high, and so is the likelihood of a transfer pricing

review.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the transfer pricing methodology will be

challenged during the course of an audit may be considered to

be high if the method selection is not duly formalized and/or

inconsistent with the transfer pricing requirements.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Changing the methodology itself does not lead to the transfer

pricing adjustment. However an adjustment is possible if

application of a new methodology reveals failure to comply

with the arm’s length principle.

> Specific transactions, industries and situations, if any, more

likely to be audited

No industry preference; any company can be selected for

transfer pricing audit based on risk analysis.

13. Advanced Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Decree of the Cabinet of Ministers of Ukraine No. 504 (17

July 2015) defines the procedures and requirements for

APAs between the tax authorities and the taxpayer (unilateral,

bilateral and multilateral APAs are permissible).

Decree of the Cabinet of Ministers of Ukraine No. 518 (04

July 2018) features amendments to the procedures and

requirements for APAs between the tax authorities and

the taxpayer (unilateral, bilateral and multilateral APAs are

permissible). At the time of this publication, there were no

APAs signed by the tax authorities.

> Tenure

It is up to five years.

> Rollback provisions

It is available, although the number of years is not specified.

> MAP opportunities

Yes, MAP opportunities are available. Most of Ukraine’s double

taxation treaties provide a three-year limitation period for

filing MAP applications.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Thin-capitalization rules apply to all loans received by resident

companies from non resident persons where the debt is

greater than 3.5 times the company’s equity. Deductions for

interest paid on such loans is limited to 50% of profits before

tax (plus the amount of financing expenses and depreciation)

for the relevant tax period. Non deductible interest may

be carried forward to future periods, but the carry forward

amount is reduced by 5% annually.

Igor O Chufarov

igor.chufarov@ua.ey.com

+ 380 67 246 3751

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Her Majesty’s Revenue and Customs (HMRC).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The United Kingdom’s transfer pricing legislation is set out

in Part 4 of the Taxation (International and Other Provisions)

Act 2010 (TIOPA 2010) - were enacted in February 2010 and

took effect for all accounting periods ending on or after 1 April

2010. This covers cross-border and UK-to-UK transactions

between related parties.

> Section reference from local regulation

For accounting periods beginning on or after 1 April 2018,

the UK transfer pricing legislation operates by reference to

the version of the Transfer Pricing Guidelines for Multinational

Enterprises and Tax Administrations published by the OECD on

10 July 2017 (the OECD 2017 Guidelines) by Treasury Order

in SI 2018.266 in exercise of powers conferred in TIOPA 2010,

Section 164(4)(b).

Related parties are defined by the “participation condition”

in Section 148 TIOPA 2010 and the related interpretative

sections.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The UK is a member of the OECD and the OECD Guidelines are

effectively imported into the UK transfer pricing rules because

the guidelines are required to be used in interpreting the rules.

Section 164 of the TIOPA 2010 confirms that the UK’s transfer

1 https://www.legislation.gov.uk/ukpga/2010/8/contents

pricing provisions are to be construed in alignment with

Article 9 of the OECD Model Tax Convention and its associated

transfer pricing guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Currently there is no prescribed format of the Local File in the

UK so an OECD Guidelines Chapter V approach should be

acceptable as long as all key transfer pricing risks are covered.

However, following the public consultation on transfer pricing

documentation in 2021, the UK Government has decided that

it will legislate to require the largest businesses to maintain

a Master File and Local File in line with Chapter V of the OECD

Guidelines, together with a supporting summary audit trail, to

take effect from April 2023.

It is noted that the following comments relate to the current

period (October 2021).

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

As noted above, a Master File and Local File in a specific

format are currently not prescribed within the UK transfer

pricing legislation. A CbCR report is to be filed where the

ultimate parent entity (UPE) is located in the UK in line

with OECD guidelines — this is applicable from 1 January

2016.

> Effective or expected commencement date

Following the public consultation on transfer pricing

documentation in 2021, the UK Government has decided

that it will legislate to require the largest businesses to

maintain a Master File and Local File and a supporting

summary audit trail, to take effect from 1 April 2023.

A CbCR report is to be filed where the ultimate parent

entity is located in the UK — this is applicable from 1

January 2016.

> 

Material differences from OECD report template or format

With effect from April 2023, it is intended that the master

file and Local File will require a supporting summary audit

trail. There are no material differences from OECD format

for CbCR.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Existence or otherwise of a documentation does not give

a taxpayer a penalty protection. See below paragraph on

penalty.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, as of 27 January 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, transfer pricing documentation, which sets out the

evidence of compliance with Part IV TIOPA, needs to be

prepared contemporaneously.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, transfer pricing rules are applicable by proxy for UK

branches and permanent establishments (PEs) of non-UK

companies in respect of hypothesised dealings between the PE

and the enterprise of which it is part on the basis of a separate

and independent enterprise, in addition to group transactions

attributed to the PE. The analysis will depend on the applicable

double taxation agreement.

> Should transfer pricing documentation be prepared

annually?

Yes, taxpayers should maintain appropriate evidence that

transactions meet the arm’s-length standard having regard to

the UK law in Part IV TIOPA and showing that this position has

been considered for each relevant accounting period.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

No, it is not required by law to have stand-alone transfer

pricing reports for each UK entity.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is an exemption from the application of transfer pricing

rules for small- and medium-sized enterprises (SMEs). For the

calculation of profits, the legislation provides an exemption

from transfer pricing rules for transactions carried out by a

business that is a small- or medium-sized enterprise. However,

the exemption only applies to transactions with territories

for which there is a full non-discrimination article in the

relevant treaty. What constitutes an SME for this purpose is a

modification of the European recommendation (2003/361/

EC).

An entity qualifies as either small- or medium-sized if it meets

the staff headcount ceiling for that class (i.e., 50 or 250, for

small- or medium-sized, respectively) and one (or both) of

either the annual turnover limit or the balance sheet total

limit. The annual turnover limit for small enterprises is GBP10

million; for medium-sized entities, it is GBP50 million. The

balance sheet limit is GBP10 million for small-sized enterprises

and GBP43 million for medium-sized enterprises. Reference

is to the characteristics of the whole group of associated

enterprises, and not the UK entity on its own, to determine

whether the SME exemption applies.

> Master File

There is no requirement to produce documentation aligned

with BEPS Action 13, although documents so prepared will

be regarded as meeting the UK compliance requirements,

provided they are full and complete. Following the public

consultation on transfer pricing documentation in 2021, the

UK Government has decided that it will legislate to require the

largest businesses to maintain a Master File and Local File and a

supporting summary audit trail, to take effect from April 2023.

> Local File

There is no requirement to produce documentation aligned

with BEPS Action 13, although documents so prepared will

be regarded as meeting the UK compliance requirements,

provided they are full and complete. HMRC places particular

importance on ensuring documentation reflects local facts

as confirmed by the business locally. Following the public

consultation on transfer pricing documentation in 2021, the

UK Government has decided that it will legislate to require the

largest businesses to maintain a Master File and Local File and a

supporting summary audit trail, to take effect from April 2023.

> CbCR

The UK follows the OECD threshold limit of EUR750 million.

> Economic analysis

There is no specific requirement in this regard except that

there should be evidence of compliance with the arm’s-

length principle and Part IV Taxation (International and Other

Provisions) Act (TIOPA) must be construed as best aligned with

the OECD Transfer Pricing Guidelines, and this extends to the

methods set out therein.

c) Specific requirements

> Treatment of domestic transactions

Domestic transactions have the same transfer pricing

obligations as cross-border transactions under the law. In

practice, HMRC may take a risk-weighted approach to the level

of documentation produced to support compliance with the

arm’s-length principle.

> Local language documentation requirement

There is no specific language requirement. In practice, it

would be highly unusual not to present transfer pricing

documentation in English, and in any case, English translations

would be requested.

> Safe harbor availability including financial transactions if

applicable

There are no specified safe harbors in UK law except for SME

exemptions.

Transactions that are taxed under UK chargeable gains rules

are not subject to transfer pricing, and special rules will apply

for them.

> Is aggregation or individual testing of transactions preferred

for an entity

Not specified.

> Any other disclosure/compliance requirement

No.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

There is none specified. There are no return disclosure

requirements (save for confirmation, where applicable, that

an entity is an SME) and except those required in statutory

accounts and in annual reports filed in compliance with any

current APAs. The absence of specific requirements may

leave prior years open to discovery assessments. This is

because, in many cases, there may not be sufficient disclosure

in tax returns for HMRC to arrive at a fully informed view on

compliance with the arm’s-length principle.

> Related-party disclosures along with corporate income tax

return

No.

> Related-party disclosures in financial statement/annual

report

As required under the applicable accounting standard.

> CbCR notification included in the statutory tax return

There is a separate process to be followed where a CbCR

notification is required.

> Other information/documents to be filed

There is none specified.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is 12 months after the end of the accounting

period.

> Other transfer pricing disclosures and return

This is not applicable.

> Master File

This is not applicable.

> CbCR preparation and submission

CbCR submission must be done by 12 months after the end of

the accounting period. UK filing is required where a UK entity

is the ultimate parent entity. UK filing is also required for the

top UK entity of an MNE when it is not the UPE of the MNE and

the UPE is resident in a jurisdiction that either does not require

CbCR or does not exchange CbCR information with HMRC

(unless the report is filed by a surrogate entity in a different

jurisdiction with an effective exchange mechanism in place

with the UK).

> CbCR notification

There is a CbCR notification requirement in the UK.

Notifications must be made by the last day of the accounting

period for periods commencing on or after 1 January 2016 (or

30 September 2017, if later).

b) Transfer pricing documentation/Local File preparation

deadline

There is no specific statutory deadline for the preparation

of transfer pricing documentation; however, the evidence in

support of compliance with the arm’s-length principle to all

“provisions” needs to exist when the relevant tax return is

submitted, even if not in a form that could immediately be

submitted.

Given the prescriptive rules in other territories applying the

Action 13 guidance on Master Files and Local Files, HMRC will

expect multinational companies to have their documentation

compliant with those rules available on request.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

There is no statutory deadline for the submission of transfer

pricing documentation.

> Time period or deadline for submission upon tax authority

request

Evidence to demonstrate compliance with the arm’s-length

principle for the pricing of provisions should be made

available to HMRC in response to a legitimate and reasonable

request related to a tax return. If such a request is made, it is

reasonable to assume that 30 days will be allowed to respond

to it or such other time as mutually agreed upon.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

HMRC has not issued any specific guidance in relation to

transfer pricing matters and there has not been any leniency

expressed in relation to transfer pricing documentation

deadlines although, in practice, there has been flexibility

from HMRC case teams in progressing enquiries and setting

timetables to respond to information requests.

HMRC has, as of 13 May 2020, included CbCR in the list of

reporting obligations for which COVID-19 will be accepted as a

reasonable excuse for late filing.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

The OECD Guidelines are followed with regard to pricing

methods. HMRC’s publicly available transfer pricing guidance is

based on adherence to the OECD Guidelines.

8. Benchmarking requirements

There are no specific benchmarking requirements, provided

that the approach is consistent with the OECD Guidelines.

> Local vs. regional comparables

This is not specified in the legislation, but HMRC accepts

regional comparables.

> Single-year vs. multiyear analysis

It is not specified in the legislation, but HMRC generally

expects single year for the tested party comparing to multiyear

comparable data.

> Use of interquartile range

Legislation does not specify full versus interquartile range but

in practice the interquartile range is accepted by HMRC.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Generally, a fresh benchmarking search is not needed every

year, although it should always be considered if there are

specific factors that may render prior searches unreliable.

> Simple, weighted or pooled results

It is not specified in either legislation or guidance, and in

practice, HMRC has accepted both.

> Other specific benchmarking criteria, if any

There is none specified in the legislation, but there is extensive

commentary in the HMRC publicly available guidance on best

practices in selecting comparables.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Refer to below.

> Consequences of failure to submit, late submission or

incorrect disclosures

The level of penalty is generally tax geared and varies

according to a number of factors based mainly on the taxpayer

behaviors that led to the incomplete/untimely filing, including

whether this was due to careless or deliberate behavior.

There is a penalty of GBP300 plus GBP60 per day for non-

filing of CbCR and CbCR notification after notification of failure

to file by HMRC. If no CbCR is filed after the MNE has been

notified of the failure, HMRC may apply to the tax tribunal

to give an order for an increased daily penalty, which can be

up to GBP1,000 per day. The penalty for filing inaccurate

or incomplete CbCR information when due to careless or

negligent behavior is up to GBP3,000 per day.

Under the UK’s corporation self-assessment regime, a UK

company is obliged to self-assess its liability to UK corporation

tax (CT), including its compliance with all aspects of the UK’s

transfer pricing legislation. There is a penalty regime in UK law

that applies in cases, including inaccuracies in tax returns and

failure to notify HMRC of an underassessment to tax.

For accounting periods ending on or after 1 April 2008, the

provisions for penalties are set out in Schedule 24 of the

Finance Act 2007. These provisions are couched in terms of

careless or deliberate inaccuracies. They are tax-geared at up

to 100% of the potential lost revenue. However, this is now

calculated without adjustment for the availability of loss relief,

and when the adjustment affects losses only, the lost revenue

figure to which the penalty percentage is applied is calculated

at 10% of the loss adjustment.

Under this regime, the level of any penalty will reflect the

behaviours that led to the inaccuracy. For an error despite

taking reasonable care, there is no penalty. For a careless

error, there can be a lower tax-geared penalty (up to 30%),

and for deliberate inaccuracies, the penalty will be higher (up

to 70%). For a deliberate misstatement that is then concealed,

the penalty can be up to 100% of the tax lost.

Examples of careless inaccuracies include:

> No attempt to price the transaction

> Shared service center overseas; cost-based, allocation key

applied, turnover; modest markup; but no consideration of

benefits test for UK entity

> Policy, otherwise arm’s length, not properly applied in

practice

Examples of deliberate inaccuracies include:

> A clear internal CUP omitted with no reasonable technical

analysis to support why it has been disregarded

> A cost-plus return to a company that has in reality

controlled the development of valuable intangibles — not

demonstrable as a subcontractor to group members

> Material factual inaccuracies in the functional analysis

upon which the pricing analysis has been based

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Penalties can be assessed for transfer pricing adjustments;

refer to the section above. It is currently HMRC’s practice to

consider penalties for any transfer pricing adjustment that

results in increased taxable profits in the UK, with the level of

penalty reflecting the facts and circumstances of the case.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Not specified.

> Is interest charged on penalties or payable on a refund?

Interest is charged on overdue tax, set at the UK base rate plus

2.5% (3.25% from 5 April 2022). Interest is also payable on

overpaid tax at UK base rate minus 1%, with a lower limit of

0.5% (currently 0.5%).

b) Penalty relief

Penalty protection can apply where the taxpayer is able to

demonstrate sufficient due diligence around compliance. This

is best shown through transfer pricing documentation that

shows that the application of the arm’s-length principle was

fully considered, following a two-sided functional and factual

analysis (at a local level), in preparing the relevant tax return

and applied to each intragroup provision included therein.

Normally, adjustments are mutually agreed in the course

of an enquiry. Transfer pricing settlements are required to

be reviewed by the HMRC Transfer Pricing Board to achieve

consistency across the department. There is a similar board-

level review for transfer pricing penalties.

As part of the penalty process, HMRC is obliged to consider

suspending the penalty if certain terms and conditions apply.

Taxpayers may appeal to the First-tier Tribunal and subsequent

appeals courts, and the process would be as for any other

tax appeal. It is currently rare for transfer pricing cases to be

taken to a tribunal or court in the UK.

10. Statute of limitations on transfer pricing

assessments

Effective from 1 April 2010, discovery assessments may

be made four years following the end of the relevant

accounting period, for otherwise closed periods. For instances

of carelessness, this can be extended to six years, and

this is extended to 20 years if there have been deliberate

understatements. This is on the basis that the error was

not fully disclosed in the body of the tax return or other

documents submitted.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

This is not applicable.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

In general, across the taxpayer population, the likelihood of a

tax audit is characterised as low. There is no system for annual

tax audits, as HMRC takes a risk assessment approach to tax

audits. The likelihood that transfer pricing will be reviewed

as part of a wider audit is characterised as medium. Most

multinational companies will have transfer pricing considered

as part of their overall risk assessment, but only those seen

as high risk in this area will typically then be subjected to an

audit.

Companies with low- or no-tax entities in their supply chain

may find themselves within the Diverted Profits Tax (DPT)

regime and, for which, there will be a requirement to notify.

DPT is currently levied at 25% rather than the CT rate of 19%

(from 1 April 2023 DPT will be levied at 31% and the CT rate

will increase to 25%).

HMRC launched a Profit Diversion Compliance Facility (PDCF)

in 2019, under which companies may elect to use the PDCF,

and come forward with detailed analysis to support a position

or arrive at an adjustment. HMRC is increasingly using the

PDCF as a tool to conduct the equivalent of taxpayer-led

audits, freeing up HMRC resources to initiate coverage across

more taxpayers.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood of a challenge to the transfer pricing

methodology may be considered to be high. Most risk

assessments have, at their core, a challenge regarding the

methods and the appropriateness of their application.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high; not all audits or

PDCF submissions will result in an adjustment, but equally,

given HMRC’s risk assessment approach, the expectation is

that tax authorities will have selected the appropriate cases

for enquiry.

> Specific transactions, industries and situations, if any, more

likely to be audited

There are no industries that are specifically identified by HMRC

as being higher-risk ones. In practice, situations in which there

is material activity in the UK but the returns are low and where

intellectual property is kept offshore with material, base-

eroding payments are likely subject to greater scrutiny.

As noted above, the UK has an additional tax that is potentially

chargeable, the DPT. A full discussion of the tax is beyond the

scope of this guide, but it is a good practice that its application

be carefully considered in any transfer pricing case.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Bilateral APA opportunities are available, including, now,

for financial transactions, and there has been an uptick in

acceptances. There are complexity thresholds to be satisfied

to gain admission to the program, but HMRC also considers

whether double taxation is likely without an APA and whether

it is worthwhile to admit an APA to the program. There is no

automatic admission or fees. HMRC has stated in its Statement

of Practice a strong preference for bilateral and multilateral

APAs, although unilateral APAs remain potentially available

but in very limited circumstances (such as for a UK-based

group finance company).

> Tenure

APAs typically do not exceed five years.

> Rollback provisions

Rollbacks may be available, subject to appropriate fact

patterns.

> MAP opportunities

A MAP request can be made when a taxpayer considers that

the actions of one or both contracting states’ tax authorities

result, or may result, in taxation not in accordance with the

relevant double taxation agreement (DTA). The UK resolved

82 transfer pricing MAP applications in 2020 but admitted 82

new applications. The average time needed to close MAP cases

is currently 23.9 months.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No, HMRC has not communicated any changes to its guidance

in relation to APAs and rulings.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

The UK’s thin-capitalization rules are based on the arm’s-

length principle, and there are no safe harbors. In this regard,

HMRC considers whether at arm’s length (a) the loan would

have been lent at all, (b) whether the loan would have been

lent in that amount, and (c) whether the loan would have been

lent on those terms. Outside of transfer pricing rules, there

are a number of other domestic rules that may limit interest

deductions and should be considered separately.

Mikael Hall

mikael.hall@se.ey.com

+ 46 70 3189235

Contact

1. Tax authority and relevant transfer pricing

regulations or rulings

a) Name of tax authority

Internal Revenue Service (IRS).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The following are the transfer pricing regulations or rulings:

> Treasury Regulations (Treas. Regs.):

> Treas. Reg. § 1.482

> Treas. Reg. § 1.6662

> Revenue Procedures (Rev. Procs.) include Rev. Procs.

99-32, 2015-40, 2015-41, 2007-13 and 2005-46.

> The Tax Cuts and Jobs Act of 2017 (TCJA), effective

from 1 January 2018,2 made significant changes to the

US Internal Revenue Code (“IRC”), including lowering

the US corporate income tax rate to 21% and introducing

a number of new provisions with transfer pricing

implications.

Key provisions of the TCJA with transfer pricing

implications:

> Base Erosion and Anti-Abuse Tax (“BEAT”): The BEAT

minimum tax, detailed in the new Internal Revenue Code

Section 59A, is the excess (if any) of 10% (5% for tax

years beginning in calendar-year 2018) of an applicable

taxpayer’s3 “modified taxable income”4 over an adjusted

1 https://www.irs.gov/ (last visited 23 February 2022).

2 An Act to provide for reconciliation pursuant to Titles II and V of the

concurrent resolution on the budget for fiscal year 2018, P.L. 115-97.

3 In general, the BEAT applies to a corporation (other than a RIC, REIT or

S corporation) that is subject to US net income tax and has (i) average

annual gross receipts of at least USD5,002 million for the three-year

period ending with the preceding tax year (the gross receipts test)

and (ii) a “base erosion percentage” of 3% (2% for a taxpayer that is a

member of an affiliated group with a domestic bank or registered secu-

rities dealer) or more (the base erosion percentage test). A corporation

subject to the BEAT is an “applicable taxpayer.”

4 An applicable taxpayer’s modified taxable income equals its taxable

income for the year, determined without regard to (i) any deductions

allowed (or certain reductions to gross receipts) (a base erosion tax

benefit) with respect to a “base erosion payment” and (ii) the base

erosion percentage of any net operating loss (NOL) deduction allowed

regular tax liability amount for the tax year.

> Foreign Derived Intangible Income (“FDII”): Section

250 of the IRC provides a special deduction for a US

corporation’s FDII. This new section provides a lower

rate of tax on a portion of profits in connection with (i)

property sold to any non-US person for foreign use or (ii)

services provided to a person, or with respect to property,

not located within the US. Section 250 generally allows a

domestic corporation an annual deduction for its Global

Intangible Low-Taxed Income (“GILTI”) inclusion under

Section 951A and FDII. For tax years beginning after 31

December 2017, but on or before 31 December 2025,

the Section 250 deduction generally is the sum of (i) 50%

of the corporation’s GILTI inclusion amount (and Section

78 “gross-up” for associated deemed-paid foreign

income taxes) and (ii) 37.5% of its FDII. If the sum of the

taxpayer’s GILTI and FDII amounts exceeds the taxpayer’s

taxable income, however, the Section 250 deduction is

reduced proportionately to those two amounts.

> GILTI: The GILTI regime is detailed in the new Internal

Revenue Code Sections 250 and 951A and in revised

Sections 960 and 904. Generally, under Section 951A,

a corporation can deduct 50% of its GILTI and claim a

foreign tax credit (FTC) for 80% of foreign taxes paid or

accrued on GILTI.

> The TCJA moved the definition of intangibles from

Section 936 to Section 367(d)(4) and expanded the

definition. Section 367(d)(4) inter alia includes goodwill,

going concern value and workforce in place.

> Transfer pricing examination process:

> Publication 5300 (2018) Issued by the IRS in 2018.

This publication provides a guide to best practices

and processes to assist with the planning, execution

and resolution of transfer pricing examinations. The

publication, which must be shared with taxpayers at the

start of an examination, is intended to be consistent with

the Large Business & International (LB&I) Examination

Process (LEP) (Publication 5125).

> Please refer to the (1) Instructions for LB&I on Transfer

Pricing Selection and Scope Analysis – Best Method

Selection Memorandum (January 2018) LB&I-04-0118-

0065, (2) Instructions for Examiners on Transfer Pricing

under Section 172.

5https://www.irs.gov/businesses/corporations/instructions-for-ex-

aminers-on-transfer-pricing-issue-examination-scope-appropri-

ate-application-of-irc-ss6662e-penalties (last visited 23 March

Issue Examination Scope - Appropriate Application of

IRC §6662(e) Penalties(January 12, 2018) LB&I-04-

0118-0036, and (3) FAQs on TP Documentation (April

14, 2020)7 See EY tax alert at https://www.ey.com/

en\_gl/tax-alerts/us-irs-releases-faqs-on-transfer-pricing-

documentation-best-practices

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

Yes, the Internal Revenue Service is extending the ability

to electronically sign a number of different tax forms and

compliance documents through 31 October 2023. This

includes advance pricing agreements and requests for

competent authority assistance under Rev. Procs. 2015-40

and 2015-41, respectively.

In response to the COVID-19 situation and stakeholder

requests, the IRS will (i) accept images of signatures and

digital signatures on documents related to the determination

or collection of tax liability and (ii) send or receive documents

to or from taxpayers using email with encrypted attachments

when no other approved electronic alternative is available.

These deviations apply to any statement or form traditionally

exchanged between IRS personnel and taxpayers during a

compliance interaction outside of standard filing procedures.8

3. OECD Guidelines treatment and BEPS

Implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

The US is an OECD member jurisdiction.

The IRS considers its transfer pricing laws and regulations

to be wholly consistent with OECD Guidelines. For domestic

2022).

6https://www.irs.gov/businesses/corporations/instructions-for-ex-

aminers-on-transfer-pricing-issue-examination-scope-appropri-

ate-application-of-irc-ss6662e-penalties (last visited 23 March

2022).

7https://www.irs.gov/businesses/international-businesses/trans-

fer-pricing-documentation-best-practices-frequently-asked-ques-

tions-faqs (last visited 23 March 2022).

8IRS APMA Announcement, 11 May 2020 at https://www.irs.gov/

businesses/competent-authority-filing-modifications-and-ap-

ma-apa-consultations (last visited April 12, 2022).

purposes, OECD Guidelines may provide support in certain

instances when addressed by the IRS (e.g., APA and MAP)

but would not be directly relevant to the application of any

US transfer pricing methods. However, if taxpayers pursue

competent authority relief from double taxation or a bilateral

APA, the OECD Guidelines are relevant and may be used to

demonstrate compliance with international principles.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The US has adopted BEPS Action 13 (limited to CbCR) in the

local regulations.

> Coverage in terms of Master File, Local File and CbCR

The master and Local Files are not covered.

> Effective or expected commencement date

The law is applicable for taxable years beginning on or

after 30 June 2017.

> Material differences from OECD report template or format

The CbCR template is consistent with the BEPS Action 13

template. The Local File documentation template for the

US should be consistent with Treas. Reg. §§ 1.482 and

1.6662.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

The Local File documentation template for the US should

be consistent with Treas. Reg. §§ 1.482 and 1.6662. The

specific requirements for penalty protection are listed in

the “Applicability” section above.

c) Is the jurisdiction part of the OECD/G20 Inclusive Frame-

work on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, although transfer pricing documentation is not required

by domestic law, in practice, it is recommended that taxpayers

maintain contemporaneous documentation to avoid tax

penalties. The existence of documentation need not be either

disclosed in, or provided with, the domestic return. Generally,

the transfer pricing documentation must be in existence when

the return is filed. To obtain penalty protection it must be in

existence when the return is filed.

For penalty avoidance purposes, a taxpayer is considered to

have satisfied the documentation requirement if it maintained

certain documentation (further described below). The

documentation must substantiate the taxpayer’s assertion

that its choice of method and the method’s application were

reasonable, given the available data and the applicable pricing

methods, and that the method provided the most reliable

measure of an arm’s-length result under the principles of the

best-method rule.

The principal documents required by the regulations are:

> An overview of the taxpayer’s business and an analysis of

the legal and economic factors that affect the pricing of its

pricing or services

> A description of the organizational structure (including an

organization chart) covering all related parties engaged

in transactions potentially relevant under section 482,

including foreign affiliates whose transactions directly or

indirectly affect the pricing of property or services in the

United States

> Any documents explicitly required by regulations under

section 482 e.g., cost-sharing arrangement documents

> A description of the pricing method selected and reasons

the method was selected (a best-method analysis)

> A description of alternative methods that were considered

and why they were not selected

> A description of controlled transactions and any internal

data used to analyze those transactions

> A description of the comparables used, how comparability

was evaluated, and any adjustments that were made

> An explanation of any economic analysis and any

projections relied upon to develop the pricing method

> Any material data discovered after the close of the tax

year but before the filing of the tax return, which would

help to determine if a taxpayer selected and applied a

method in a reasonable manner

> A general index of the principal and background

documents and a description of the record-keeping system

used for cataloging and accessing those documents

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, section 482 applies to US taxpayers, whether or not

incorporated, whether or not organized in the US, and whether

or not affiliated.

> Does transfer pricing documentation have to be prepared

annually?

Yes, for penalty avoidance purposes, a taxpayer is considered

to have satisfied the documentation requirement if it

maintained certain documentation.9 To the extent that there

are changes from the previous year, the changes need to be

reflected.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Treas. Reg. § 1.6038-4 requires US MNE groups to provide

aggregated data on the CbCR. Note, however, that revenue

does not include payments received from other constituent

entities in the MNE group that are treated as dividends in the

9https://www.irs.gov/businesses/international-businesses/trans-

fer-pricing-documentation-best-practices-frequently-asked-ques-

tions-faqs (last visited January 29, 2022). Treas. Reg. § 1.6662-6(d)

(2)(ii)(A) requires a taxpayer to select and apply a specified method in

a reasonable manner. Treas. Reg. § 1.6662-6(d)(2) provides the docu-

mentation requirements when a specified method is used. Treas. Reg.

§ 1.6662-6(d)(3) provides similar, but not identical, rules in cases when

an unspecified method is used. Treas. Reg. § 1.6662-6(d)(2)(iii)(A)

requires a taxpayer to maintain sufficient documentation “to establish

that the taxpayer reasonably concluded that, given the available data

and the applicable pricing methods, the method (and its application of

that method) provided the most reliable measure of an arm’s-length

result under the principles of the best method rule in Treas. Reg. §

1.482-1(c).” In addition, the regulations require a taxpayer to provide

the documentation to the IRS within 30 days of a request for it in con-

nection with an examination of the taxable year to which the documen-

tation relates. With certain exceptions, the transfer pricing documenta-

tion must be in existence when the return is filed. In combination, the

requirements to select and apply a method in a reasonable manner,

maintain sufficient documentation thereof and promptly provide such

documentation to the IRS are commonly referred to as the “6662(e)

documentation” requirements.

payer's tax jurisdiction of residence. Additionally, distributions

and remittances from constituent entities in the MNE group

that are partnerships, other fiscally transparent entities or

permanent establishments are not considered revenue of the

recipient owner.

b) Materiality limit or thresholds

> Transfer pricing documentation

There is no materiality limit.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

The limit is USD850 million (approximately EUR

700 million).

There is no CbCR notification requirement in the US.

> Economic analysis

There is no materiality limit.

c) Specific requirements

> Treatment of domestic transactions

There is no US federal documentation obligation for domestic

transactions between related parties who are part of the same

consolidated US federal tax return.

> Local language documentation requirement

English is the accepted language for all documentation

requirements.

> Safe harbor availability including financial transactions if

applicable

There are no safe harbors per se. However, Treas. Reg. §

1.482 provides taxpayers the opportunity to use applicable

federal interest rates (AFRs) for intercompany loans and

advances.10

10Treas. Reg. § 1.482-2 provides “[s]afe haven interest rate based on

applicable Federal rate. Except as otherwise provided in this paragraph

(a)(2), in the case of a loan or advance between members of a group

of controlled entities, an arm’s-length rate of interest referred to in

paragraph (a)(2)(i) of this section shall be for purposes of chapter 1 of

the Internal Revenue Code:

(1) The rate of interest actually charged if that rate is:

> Is aggregation or individual testing of transactions preferred

for an entity

Treas. Reg. § 1.6038-4 requires US MNE groups to provide

aggregated data on the CbCr. However, revenue does not

include payments received from other constituent entities in

the MNE group that are treated as dividends in the payer’s tax

jurisdiction of residence. Further, distributions and remittances

from constituent entities in the MNE group that are

partnerships, other fiscally transparent entities or permanent

establishments are not considered revenue of the recipient

owner.

> Any other disclosure/compliance requirement

There are no additional requirements.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Taxpayers are required to file Forms 5471, 5472 and 8865

regarding transactions with related parties.

> Related-party disclosures along with corporate income tax

return

The file has no “related-party disclosures in the financial

statement/annual report” section. Under regulations issued

in 2010, certain taxpayers must disclose their uncertain tax

positions (UTPs) on Schedule UTP (Form 1120) and provide

information, such as the ranking of the positions by the size

(i) Not less than 100 percent of the applicable Federal rate (lower limit)

and

(ii) Not greater than 130 percent of the applicable Federal rate (upper

limit) or

(2) If either no interest is charged or if the rate of interest charged is

less than the lower limit, then an arm’s-length rate of interest shall be

equal to the lower limit, compounded semiannually, or

(3) If the rate of interest charged is greater than the upper limit,

then an arm’s-length rate of interest shall be equal to the upper limit,

compounded semiannually, unless the taxpayer establishes a more

appropriate compound rate of interest under paragraph (a)(2)(i) of this

section. However, if the compound rate of interest actually charged is

greater than the upper limit and less than the rate determined under

paragraph (a)(2)(i) of this section, or if the compound rate actually

charged is less than the lower limit and greater than the rate deter-

mined under paragraph (a)(2)(i) of this section, then the compound

rate actually charged shall be deemed to be an arm’s-length rate under

paragraph (a)(2)(i). In the case of any sale-leaseback described in

section 1274(e), the lower limit shall be 110 percent of the applicable

Federal rate, compounded semiannually.”

of their reserves and concise descriptions of the tax positions.

There is a phase-in period so that as of 2014, the UTP

disclosures are required by corporations with assets of USD10

million or more.

> Related-party disclosures in financial

> CbCR notification included in the statutory tax return

This is not applicable.

> Other information/documents to be filed

Form 8975 and Schedule A (Form 8975) are used by filers

described under “Who Must File” to annually report certain

information with respect to the filer’s US MNE group on a

CbCR basis. US MNEs filing Form 8975 and Schedule A (Form

8975) should file a separate Schedule A (Form 8975) for each

tax jurisdiction where the MNE group operates and list all of

the constituent entities resident in the tax jurisdiction. A US

MNE group with only fiscally transparent US business entities

would not provide a Schedule A for the US, but would provide

a Schedule A for “stateless” entities.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The deadline is the 15th day of the 4th month following the end

of the corporation’s tax year.

> Other transfer pricing disclosures and return

The deadline is 15 March.

> Master File

This is not applicable.

> CbCR preparation and submission

Filing is due with the tax return for the respective year.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

If the documentation is prepared to help protect against

penalties, then it must be in existence by the filing date of a US

tax return that has been filed in a timely manner.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

The submission is based on the request of tax authorities.

> Time period or deadline for submission upon tax authority

request

Taxpayers must provide the documentation to the IRS within

30 days of an examiner’s request.

> Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

Transfer pricing documentation: Yes, if documentation is

prepared for penalty protection, then it must be in existence by

the filing date of the US federal tax return, as noted previously.

There are no new submission deadlines for 2022 relating to

COVID-19 specific measures.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

Yes, there is applicability for both domestic international and

domestic transactions. Domestic transactions IRC 482 applies

to domestic transactions as well as international transactions.

Pursuant to Treas. Reg. § 1.482-1(i)(2), a “trade or business

includes a trade or business activity of any kind, regardless of

whether or where organized, whether owned individually or

otherwise, and regardless of the place of operation.”

b) Priority and preference of methods

For tangible goods, the IRS accepts the CUP, resale-price,

cost-plus, CPM, profit-split and unspecified methods. For

intangible goods, the IRS accepts the comparable uncontrolled

transaction (CUT), CPM, profit-split and unspecified methods.

For services, the IRS accepts the services cost, comparable

uncontrolled services price, gross services margin, cost of

services plus, CPM, profit-split and unspecified methods. For

CSA buy-ins, the IRS accepts the CUT, income, acquisition

price, market capitalization, residual profit split and

unspecified methods.

The regulations provide a best-method rule for determining

the appropriate method to be applied by the taxpayer for each

intercompany transaction.

8. Benchmarking requirements

> Local vs. regional comparables

There is no such requirement regarding local comparables, as

foreign and regional comparables are generally acceptable to

local tax authorities, provided the comparability requirements

are met.

> Single-year vs. multiyear analysis for benchmarking

The results of a controlled transaction ordinarily will be

compared with the results of uncontrolled comparables

occurring in the taxable year under review. It may be

appropriate, however, to consider data related to the

uncontrolled comparables or the controlled taxpayer for one

or more years before or after the year under review. If data

related to uncontrolled comparables from multiple years is

used, data related to the controlled taxpayer for the same

years ordinarily must be considered.

The extent to which it is appropriate to consider multiple

years’ data depends on the method being applied and the

transactions addressed. Circumstances that may warrant the

consideration of data from multiple years include the extent

to which complete and accurate data is available for the

taxable year under review, the effect of business cycles in the

controlled taxpayer’s industry, and the effects of life cycles of

the product or intangible property being examined.

> Use of interquartile range

Yes, interquartile range is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no legal requirement for a fresh benchmarking search

every year, as rollforward and financial updates are acceptable

for up to two to three years (if the fact pattern has remained

the same).

> Simple, weighted or pooled results

No stipulated requirement; the choice will have to depend on

facts and circumstances and comparability.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Pursuant to Internal Revenue Code section 6662, taxpayers

may be liable for either a 20% or 40% penalty for an

underpayment of tax attributable to a substantial or gross

valuation misstatement. Refer to section 6662 and Treas. Reg.

§ 1.6662-6.

> Consequences of failure to submit, late submission or

incorrect disclosures

There is no penalty for failure to provide transfer pricing

documentation; however, documentation may help avoid a

penalty.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, as noted above.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, as noted above.

> Is interest charged on penalties or payable on refund?

Yes, interest is charged using AFRs.

b) Penalty relief

Penalties may be avoided by establishing reasonable cause

and good faith through taxpayer-provided documentation,

demonstrating the taxpayer’s application of Internal Revenue

Code Section 482.

10. Statute of limitations on transfer pricing

assessments

A general statute of limitations applies in the US — three years

from the later of either the tax return due date or the date

the return was actually filed. The statute is extended to six

years for substantial understatements of income.11 There is no

11Sections 6511(a) and 6501(a).

statute of limitations for fraud-related adjustments.

Most treaties with trading partners provide the IRS access to

closed years in order to provide relief from double taxation

pursuant to a MAP.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There are no COVID-19-related impacts on transfer pricing

audits in 2022.

12. Likelihood of transfer pricing scrutiny or

related audit by local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit depends on facts and

circumstances. The introduction of what the OECD refers to in

its Action Plan on BEPS as “high-risk transactions” increases

the likelihood of a tax audit.

In general, the likelihood of transfer pricing scrutiny during

a tax audit may be considered to be high. Transfer pricing

is extensively regulated in the US, and the IRS has recently

taken a number of administrative steps to increase its ability

to focus on international transactions, with a particular

emphasis on transfer pricing. New positions have been created

within the IRS’s Large Business & International Division for a

deputy commissioner (international) and a director of transfer

pricing operations, and a significant number of transfer

pricing professionals have been hired. Due to this emphasis,

documentation is requested frequently at the outset of any

examination of taxpayers transacting with foreign related

parties.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The overall likelihood that the transfer pricing methodology

will be challenged during the initial stages of any audit, where

there are international transactions, may be considered to be

high. However, experiences have shown that well-reasoned

documentation may potentially reduce the likelihood of further

scrutiny.

> Likelihood of an adjustment if transfer pricing methodology

is challenged (high/medium/low)

The likelihood may be considered to be high. Once the

IRS commits significant resources to the audit, a Notice of

Proposed Adjustment should be expected.

> Specific transactions, industries and situations, if any, more

likely to be audited

Cost sharing and other IP migration transactions are generally

challenged. Other high-risk transactions, such as those

described in the OECD BEPS Action Plan, also draw scrutiny.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Taxpayers may request unilateral, bilateral or multilateral

APAs. The APA process is administered by the IRS Advance

Pricing and Mutual Agreement Program. Guidance regarding

APAs can be found in Rev. Proc. 2015-41. The revenue

procedure has strict case management procedures, disclosure

requirements, and detailed guidance regarding the submission

and processing of APA requests. Additional competent

authority guidance is provided in Rev. Proc. 2015-40.

The IRS increased the user fees for APAs in early 2018.12

> Tenure

This is not applicable.

> Rollback provisions

Rollbacks are applicable. Because most US APAs have a

prospective five-year term, the addition of a rollback term

could allow a taxpayer to cover eight or more years of transfer

pricing issues in a single negotiation process.

> MAP opportunities

According to Rev. Proc. 2015-40, Procedures for Requesting

Competent Authority Assistance under Tax Treaties,

taxpayers may request MAP assistance, often referred to

as a ”competent authority request” or a “MAP request,” if

taxation has or is likely to occur that is not in accordance with

the provisions of a double tax treaty (DTT) to which the US is

signatory. In addition, the taxpayer must be a resident either

in the US or in the other relevant contracting state, meet the

prescribed time limits, and satisfy the prescribed conditions

for a competent authority request. Most of the US DTTs permit

12https://www.irs.gov/businesses/corporations/mitt-and-apa-fre-

quently-asked-questions#:~:text=The%20IRS%20announced%20

scheduled%20increases,and%20for%20small%20case%20AP (last

visited 23 March 2022).

taxpayers to present a case to the IRS within a prescribed

period from the first notification to the taxpayer of the

actions giving rise to taxation not in accordance with the DTT.

However, time limits may vary, and the relevant DTT should be

consulted for the applicable time limit.

14. Have there been any impacts or changes

to Advanced Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

Yes, assuming proper procedures are followed, electronic

filings are permissible during this period pursuant to

Deputy Commissioner, Services and Enforcement (DCSE)

memorandum dated 27 March 2020, Memorandum for

All Services and Enforcement Employees, and IRS APMA

announcement dated 11 May 2020 referencing the DCSE

memorandum. The US IRS has extended the date by which

APA and MAP requests may be filed electronically with digital

signatures until 31 October 2023.13

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Earnings stripping rules under Section 163(j) are intended to

prevent the erosion of the US tax base of a thinly capitalized

corporation by means of excessive deductions for certain

interest.

13https://www.irs.gov/businesses/competent-authority-filing-modi-

fications-and-apma-apa-consultations (last visited 23 March 2022),

and https://www.irs.gov/newsroom/details-on-using-e-signatures-

for-certain-forms (last visited 23 March 2022).

Ryan J Kelly

ryan.j.kelly@ey.com

+ 12023275728

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

1General Taxation Directorate (Dirección General Impositiva —

DGI).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Transfer pricing documentation requirements have been

in effect in Uruguay since 1 July 2007 (following Law No.

18.803), but they were not regulated until 26 January 2009,

with the publication of Decree No. 56/009. Decree No.

392/009 made additional modifications.

The DGI issued Resolution No. 2.084/009 on 1 December

2009 (with the modifications introduced by Resolutions No.

819/010 and No. 2.098/009), which defined concepts and

established requirements for the transfer pricing report.

Additional guidance includes:

> Chapter VII, Title 4, Corporate Income Tax Law 1996, as

amended, as per Law No. 18,083 (Title 4)

> Presidential Decree No. 56/009, dated 26 January 2009

> Presidential Decree No. 392/009, dated 24 August 2009

> DGI Resolution No. 2.084/009, dated 1 December 2009

> DGI Resolution No. 2.269/009, dated 30 December 2009

> DGI Resolution No. 818/010, dated 6 May 2010

> DGI Resolution No. 745/011, dated 6 May 2011

> DGI Resolution No. 01/020, dated 3 January 2020

> Section reference from local regulation

Relevant references include:

> Presidential Decree No. 353/018, dated 26 October 2018

> DGI Resolution No. 2.084/009, dated 1 December 2009

> DGI Resolution No. 094/2019, dated 4 January 2019

1 www.dgi.gub.uy

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

None as of 31 December 2021.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Uruguay is not a member of the OECD.

The OECD Guidelines are not mentioned in Uruguay’s Income

Tax Law and Regulations. As transfer pricing practice is

relatively new in Uruguay, there is no related background with

regard to the OECD Guidelines. However, the local regulation is

aligned with the OECD Guidelines.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes.

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

It covers both the Master File and Local File.

> Effective or expected commencement date

The law has applied to the Local File since 2009. A new law

was published on 5 January 2017 in which CbCR and the

Master File were added to the regime requirements.

The CbCR was regulated by Resolution No. 094/2019,

published on 4 January 2019, and it applies to fiscal years

(FYs) beginning on or after 1 January 2017.

The Master File is not being applied yet because further

regulation must be published.

> Material differences from OECD report template or format

Transfer pricing documentation in Uruguay presents

differences from the OECD format both for the Local File

and the country-by-country reporting. CbCR required in

Uruguay has a specific format, which may vary from the

OECD format, so local customization is required for filing of

this report. Local regulations and transfer pricing practice

include specific provisions for the completion of the local

file, which may result in variations of content and may have

an impact in the transfer pricing analysis.

The Master File has yet to be regulated in Uruguay.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Local File requirements provided in local regulations must be

met to avoid penalties.

country-by-country penalties have been applied for failure

to comply with filing (at the moment, the suspension of

the tax certificate, which has a direct impact on company

operations). Nevertheless, fines may apply according to the

gravity of the breach, which may go up to USD250,000.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

Yes.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

Yes, it is so as of 30 June 2016.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, transfer pricing documentation has to be prepared

annually under local jurisdiction regulations. The minimum

requirement is that all economic analysis information and the

transfer pricing documentation must be updated (there is a

minimum content that transfer pricing documentation must

have included, in 

DGI Resolution No. 2,084/009).

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Whenever there are transactions with related entities,

taxpayers are required to prepare and maintain an annual

transfer pricing documentation.

The documentation must be submitted to the DGI, with

a transfer pricing return, when the total amount of

intercompany transactions is equal to or greater than 50

million indexed units (as of 31 December 2021, approximately

USD5,700,000).

> Master File

Regarding the Master File, the threshold is not defined yet;

further regulation must be published to do so.

> Local File

For the Local File, there is no threshold; if a transaction with a

related entity exists, a Local File must be prepared.

> CbCR

If the local taxpayer belongs to an MNE group of which total

consolidated revenue is equal to or exceeds EUR750 million,

CbCR requirements must be met.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

Entities engaging in transactions with other entities that were

created, domiciled, based, residing or located in countries with

low or no taxation, or that are benefitted by a special low- or

no-taxation system, including local free zones, are subject

to transfer pricing regime. This means that transactions

performed by taxpayers with non residents domiciled, created

or located in low- or no-taxation countries or benefiting from

a special low- or no-taxation system that specifically sets forth

regulations shall not be considered to comply with practices or

normal market values between independent parties, including

the transactions carried out in customs exclaves and benefiting

from a low- or no-taxation system. Moreover, transactions with

non resident entities located in Uruguay, such as permanent

establishments or branches from non residents, are also

subject to transfer pricing rules.

> Local language documentation requirement

The documentation needs to be submitted in the local

language.

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Any other disclosure/compliance requirement

This is not applicable.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified in local regulations; nonetheless the

tax administration prefers individual testing of transactions if

information is available.

> Any other disclosure/compliance requirement

There is none specified.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Only those taxpayers that are obligated to file the transfer

pricing study must file the transfer pricing annual return (Form

3001) with the tax authorities.

In that annual return, the company must provide information

about the related-party transactions. In the new version of the

Form 3001, within the additional information required to be

included in the new return form are the financial information

of the local entity; list of all the related entities; and details of

the functions and activities the related entities develop, their

address, jurisdiction, number of employees, and identification

number. Moreover, the type of relations the company has with

each of them should be detailed. Regarding the controlled

transactions, a requirement is to inform all types of activity

developed by the related entities in these transactions,

such as manufacture and intermediation. A description of

in-force agreements that the company has with its related

entities should be detailed, as well as the description of all the

intangible property (IP) of the local entity and IP that is used

by the company though it is not the property of the company.

An extensive questionnaire of the company’s operating

activities with entities abroad must be completed, for example,

questions about the company and the group, if there has been

any transfer of personnel between group’s entities, or if there

has been any business restructuring in the group in the last

five years.

> Related-party disclosures along with corporate income tax

return

Taxpayers are required to file:

> The transfer pricing study, including key elements such

as the functions and activities of the company, risks and

assets used, the methods used, the interquartile range

and details of the comparables

> Audited financial statements if the company was not

entitled to submit its audited financial statements to the

tax authorities by any other applying law

> Annual transfer pricing return Form 3001 if it

corresponds:

> A new transfer pricing return has been approved that

requires significant additional information about the

multinational group and the related entities of the

company.

If the company does not meet the threshold to file the transfer

pricing report to the tax authority, but has transactions with

related entities, the Local File must still be completed and kept

by the company in case of an audit.

> Related-party disclosures in financial statement/annual

report

No specific requirements under Uruguayan TP rules. However,

Uruguayan GAAP require certain disclosures for related-party

transactions.

> CbCR notification included in the statutory tax return

CbCR notification must be submitted separately, within Form

6530.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Four months after the fiscal year-end; the deadline varies if

the local company is CEDE (Control Especial De Empresas) or

NO CEDE according to the tax authority — 22 April 2022 or 25

April 2022, respectively, for FYE December 2021.

> Other transfer pricing disclosures and return

Nine months after the fiscal year-end; the deadline varies if

the local company is CEDE or NO CEDE according to the tax

authority — 22 September 2022 or 26 September 2022,

respectively, for FYE December 2021.

> Master File

To be regulated.

> CbCR preparation and submission

The deadline is 12 months after the end of the reporting FY of

the group.

> CbCR notification

The deadline is by the end of the reporting FY of the group.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing economic analysis should be finalized by the

time of lodging the tax return to achieve penalty protection

(e.g., where there is a contemporaneous requirement).

The transfer pricing documentation must be prepared nine

months after the fiscal year-end, but the transfer pricing

preliminary analysis is due four months after the fiscal year-

end for the presentation of the income tax return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, the report must be submitted to the tax authority if

the total amount of intercompany transactions exceeds

the threshold established by local regulations with the

correspondent transfer pricing return (FY2021, approximately

USD5,7000,000). It must be submitted nine months after the

fiscal year-end. If the amount is below that limit, the company

must prepare the documentation and have it in case of a

request by the tax authority in an audit.

> Time period or deadline for submission on tax authority

request

The time the taxpayer has to submit the transfer pricing

documentation once requested by the tax authorities in an

audit or inquiry is not regulated but usually is approximately

10 days. Failure to comply with the request in the limited

amount of time may be the suspension of the tax certificate

of good standing, which is highly disruptive to the company’s

operations.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No additional request was made due to the COVID-19

pandemic during FY2021.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

There are no differences between an analysis of international

and domestic transactions; the same preferences apply for

both types of transactions.

For transactions involving imports or exports of goods with

well-known prices in transparent markets, those prices must be

used. If the transactions are performed through international

intermediaries that are not the final consignees of the goods,

the applicable price is the price in the respective market. The

price to be used is the one in the respective market on the day

of the shipment or, if it was registered in the mercantile office,

the price on the day of the contract.

Regarding the financial transactions, the most common

method used, although not stated in the regulation, is the CUP

method.

Moreover, for transactions that involve royalties, the tax

authorities have expressed preference for a specific analysis,

through the CUP-method analysis with internal comparables,

avoiding a global analysis through a TNMM.

In the same sense, the services provided by the tested party

are preferred to be analyzed through a specific analysis

instead of a global analysis through a TNMM.

8. Benchmarking requirements

> Local vs. regional comparables

The use of local comparables is preferred but not usually used

due to insufficient qualitative and quantitative information of

the databases available. Latin-American comparables should

be prioritized in the analysis according to previous experience

in audits by the tax authority.

> Single-year vs. multiyear analysis

There is a preference for single-year testing. Multiyear analysis

should be avoided.

> Use of interquartile range

Local regulations include the use of an interquartile range for

the analysis, and it must be calculated as follows: when the

first quartile is above the median value decreased by 5%, this

latter value shall replace that of the first quartile, and when

the third quartile is below the median value increased by 5%,

the resulting value shall thus replace that of the third quartile.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

A fresh benchmarking search is required every year. This is not

specified in the regulation but is commonly accepted by the

tax authority.

> Simple, weighted or pooled results

There is a preference for a simple average for arm’s-length

analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Same as below.

> Consequences of failure to submit, late submission or

incorrect disclosures

The penalty for those that breach the formal requirements

established in the transfer pricing framework (e.g., failure to

timely file a transfer pricing report, CbCR) will be applied on a

graduated scale, in accordance with the severity of the breach.

The maximum fine is approximately USD250,000.

When there is an underpayment due to transfer pricing, the

taxpayer is penalized with a tax omission fine that is 5% of the

amount of the underpayment if it is paid before five days after

the deadline, 10% if it is paid between 5 and 90 days after

the deadline, and 20% if it is paid more than 90 days past the

deadline. In each case, corresponding surcharges are added.

If the DGI requires the transfer pricing study or the CbCR and

a company does not file it, the DGI can suspend the certificate

that shows that the taxpayer fulfilled its tax obligations. The

immediate consequence is that it bars the taxpayer from being

able to import goods or obtain a bank loan.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

If a transfer pricing adjustment is calculated by the tax

administration in an audit, this adjustment could affect

the income tax paid, including fines and surcharges. If

documentation is deemed incomplete, the substance of the

analysis could be questioned, and an alternative analysis

may be imposed by the tax authority, which could lead to the

calculation of a transfer pricing adjustment.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

If documentation is deemed incomplete, the analysis may be

disregarded by the tax authority, and an alternative analysis

may be imposed, which could lead to the calculation of a

transfer pricing adjustment.

> Is interest charged on penalties or payable on a refund?

According to the law, the interest for nonpaid penalty is 5% for

delays no longer than 5 days, 10% for delays between 6 and

90 days, and 20% for delays of more than 90 days.

b) Penalty relief

There are currently no provisions for reductions in penalties.

The taxpayer can appeal in trial against the tax authorities;

however, at the moment, there are no experiences in Uruguay

in which a taxpayer has disputed any resolution of the

authorities that the general public is aware of.

10. Statute of limitations on transfer pricing

assessments

There is no specific statute of limitations for transfer pricing

adjustments; rather, the general regime applies. Assessments

can be raised five years after the company’s accounting period

ends, but this is extended to 10 years when the difference is

due to fraudulent or negligent conduct by the taxpayer.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

None were informed as of 31 December 2021.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit, in general, may be

considered to be medium, while the likelihood that transfer

pricing will be reviewed as part of that audit may be considered

to be high. Specifically, if a taxpayer is classified according to

the tax authorities as a “great taxpayer,” the experience has

shown that it will be audited at least every five years.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

If transfer pricing is reviewed as part of the audit, the

likelihood that the transfer pricing methodology will be

challenged may be considered to be high. Transfer pricing

practice is new in Uruguay; therefore, there is not a lot of

background for such audit practices. However, in the cases

known, the taxing authority has challenged the methodology

and the companies’ sets of comparables.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

Once a transfer pricing analysis methodology is challenged

or questioned by the tax authorities in a transfer pricing

audit, the likelihood of an adjustment may be considered to

be high based on EY Uruguay’s experience over the years. In

almost every case in which the tax authority suggests a new

methodology and it is applied, a transfer pricing adjustment

(significant or not) is applied.

> Specific transactions, industries and situations, if any, more

likely to be audited

The tax authority relies on a special team of professionals

who have focused on performing tax audits for the biggest

companies, known as great taxpayers. However, they have not

focused on specific industries.

The focus is mainly on:

> Functional analysis

> Segmentation criteria revision

> Comparison between the financial information of the

company considered for the transfer pricing analysis and

the financial statements, identifying internal and external

comparables

General observations pointed out in inspections are:

> Comparability adjustments made to the tested party

> Rejection of the selected comparable companies

> Observations of companies that have continuous losses

for many years

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Currently, no APA regime is published in Uruguay, but the tax

authority recently signed the first one.

Uruguayan transfer pricing rules have an APA regime.

However, there are no specific procedures defined yet.

Therefore, in case an APA process is initiated and no

agreement is finally reached, there are no rules about how the

local tax authorities should proceed with the already provided

information.

As of the time of this publication, only one APA case has been

announced publicly, and it was related to a chemical company

that was going to start conducting business in Uruguay.

> Tenure

There is no specific term set in the local regulation.

> Rollback provisions

There is none specified.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

None as of 31 December 2021.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There is none specified.

Martha Roca

martha.roca@uy.ey.com

+ 59829023147

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

National Integrated Service for the Administration of Customs

Duties and Tax (Servicio Nacional Integrado de Administración

Aduanera y Tributaria — SENIAT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Administrative Order No. SNAT/2010/0090, issued by the

SENIAT, was published in the Official Gazette No. 39,557

of 20 December 2010. It establishes the procedure for the

calculation and use of the arm’s-length range for transfer

pricing purposes. The main considerations are as follows:

> The use of the interquartile range is mentioned as the

arm’s-length range.

> In case the price or amount or profit margin is within

the interquartile range (arm’s-length range), the tax

administration will deem it as agreed to by independent

parties. If, however, it is not within the interquartile range,

the taxpayer must take the median of the range as the

arm’s-length price.

In February 2007, a partial reform of the Income Tax Law (ITL)

and rules on thin capitalization were published in the Official

Gazette No. 38.628. The thin-capitalization rules apply, as of

FY2008, to Venezuelan taxpayers or Venezuelan permanent

establishments holding debt (controlled debt) of companies or

individuals who are considered related according to Title VII,

Chapter III of the ITL. The main inclusions are as follows:

> Taxpayers will have the limited possibility of deducting

interest expenses resulting from related parties’ loans

when the average amount of debt (with related and

unrelated parties) exceeds the average amount of equity

for the respective fiscal year.

> The amount by which the debt exceeds the taxpayer’s

equity will be treated as equity for income tax purposes.

> Section reference from local regulation

1 https://www.ciat.org/bolivarian-republic-of-venezuela/?lang=en

http://declaraciones.seniat.gob.ve/portal/page/portal/PORTAL\_SE-

NIAT

The section reference is Venezuelan ITL, Articles 109 to 168.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Venezuela is not a member of the OECD.

Article 113 of the ITL states that for everything not foreseen

in it, the 1995 OECD Guidelines or their later versions

will apply, to the extent that they are consistent with the

provisions of the ITL.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Venezuela has not formally adopted or implemented BEPS

Action 13. However, Article 113 of the ITL establishes that for

everything not foreseen in the law, the provisions of the OECD

Guidelines will apply.

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

The Master File and CbCR do not apply. However,

according to Article 167, taxpayers must have the support

of the documentation for the calculation of transfer prices.

> Effective or expected commencement date

This is not applicable.

> Material differences from OECD report template or format

This is not applicable (Master File and CbCR).

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable. Locally, it is enough to have the transfer

pricing informative return and the Local File.

c) Is the jurisdiction part of the OECD/G20 Inclusive

Framework on BEPS?

No.

d) Signatory to the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Should transfer pricing documentation be prepared

annually?

Yes, transfer pricing documentation has to be prepared

annually under the local jurisdiction regulations.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

This is not applicable.

> Master File

This is not applicable.

> Local File

This is not applicable.

> CbCR

This is not applicable.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

There is no documentation obligation for domestic

transactions.

> Local language documentation requirement

The transfer pricing documentation needs to be submitted

in the local language. According to Article 167 of the

ITL: “The documentation and information related to the

calculation of the transfer prices indicated in the declaration

forms authorized by the tax administration must be kept by

the taxpayer during the lapse provided for in the law, duly

translated into Spanish if applicable.”

> Safe harbor availability including financial transactions if

applicable

There is none specified.

> Is aggregation or individual testing of transactions preferred

for an entity

No.

> Any other disclosure/compliance requirement

Yes, transfer pricing informative return (Form PT-99).

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

A controlled party’s transfer pricing informative return (Form

PT-99) must be filed during the six months immediately

following the close of each tax year of controlled party. The

Form PT-99 is available on the SENIAT’s website.

> Related-party disclosures along with corporate income tax

return

This is not applicable.

> Related-party disclosures in financial statement/annual

report

No.

> CbCR notification included in the statutory tax return

No.

> Other information/documents to be filed

All information that supports transfer pricing calculations, in

accordance with the provisions of Article 167 of the ITL.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

According to the ITL, it should be submitted within three

months after the company’s fiscal year-end.

> Other transfer pricing disclosures and return

The deadline is six months after the end of the taxpayer’s fiscal

year.

> Master File

This is not applicable.

> CbCR preparation and submission

This is not applicable.

> CbCR notification

This is not applicable.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation only needs to be finalized

by the time of submission upon request by the SENIAT. The

transfer pricing informative return (Form PT-99) must be

submitted within six months after the end of the fiscal year.

The transfer pricing study must be submitted only if the tax

authorities require it.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submitting transfer pricing

documentation or Local File?

Yes, usually, the deadline is two to five workdays after the tax

authorities require it. The documentation must comply with

Article 167 of the local income tax law. The transfer pricing

informative return must be submitted within six months after

the end of the taxpayer’s fiscal year.

> Time period or deadline for submission upon tax authority

request

The taxpayer usually has two to five working days to submit

the transfer pricing documentation once requested by the tax

authorities in an audit or inquiry.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

No.

b) Priority and preference of methods

The acceptable methods are the OECD methods: CUP, resale

price, cost plus, profit split and TNMM. In Venezuela, the CUP

method takes priority over others.

8. Benchmarking requirements

> Local vs. regional comparables

Regional comparable companies are accepted. However,

experience tells us that the tax administration prefers

comparables located in the United States and Canada.

> Single-year vs. multiyear analysis

There is a preference for both single-year and multiyear

analysis. However, Article 132 of the ITL establishes that data

from previous years may be used in determining the transfer

prices to mitigate the effects of macroeconomic variables on

the results obtained. The tax administration prefers the use of

multiple years. It is important to notice that the comparison

is between a single year of the company against three of the

comparable set.

> Use of interquartile range

Yes, interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

It can be both. But, usually, an update of the financial

information of previous comparable companies is used.

> Simple, weighted or pooled results

There is a preference for a weighted average for arm’s-length

analysis.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Filing an incomplete PT-99 will trigger a penalty of 100 times

the highest exchange rate published by the Venezuelan Central

Bank (Banco Central de Venezuela — BCV).

> Consequences of failure to submit, late submission or

incorrect disclosures

A failure to file Form PT-99 will trigger a penalty of 150 times

the highest exchange rate published by the Venezuelan Central

Bank and a company closure for 10 consecutive days. When

failing to submit the documentation upon request by the

SENIAT, the taxpayer faces a fine of 1,000 times the highest

exchange rate published by the Venezuelan Central Bank and a

company closure for 10 consecutive days. Additionally, there is

a fine ranging from 100% to 300% of the omitted tax amount.

If there is a transfer pricing assessment, late payment interest

may also be added to these amounts. The pecuniary sanctions

for formal duties will be increased by 200%, when they are

committed by subjects qualified as special by the SENIAT.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

In the case of a transfer pricing adjustment, it must be made

to the median of the interquartile range, and in the event that

said adjustment modifies the income, it must be paid from

100% to 300% of the omitted tax.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

No.

> Is interest charged on penalties or payable on a refund?

No, the interest is charged only for late payment.

b) Penalty relief

If a taxpayer applies a legally sanctioned transfer pricing

method, this could be considered a mitigating circumstance

in the determination of an assessment. This penalty relief is

based on previous tax audit procedures and assessments, but

there is no legal provision supporting it.

10. Statute of limitations on transfer pricing

assessments

According to Article 55 of the Organic Tax Code, the statute of

limitations is six years from the date of filing the return and 10

years if the taxpayer fails to comply with the filing of any tax

return, including returns for income tax. However, the transfer

pricing informative return doesn’t imply payments of any type.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood of an annual tax audit in general may be

considered to be high, as is the likelihood that transfer pricing

will be reviewed as part of the audit.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood that the transfer pricing methodology will be

challenged if transfer pricing is reviewed as part of the audit

may be considered to be medium.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high.

> Specific transactions, industries and situations, if any, more

likely to be audited

The SENIAT continues to be very active and effective in

handling transfer pricing audits. It has added transfer pricing

as a relevant topic to be reviewed during general tax audits.

Thus far, audits have been conducted on taxpayers irrespective

of industry.

Tax audits have been focused both on formal duties (i.e.,

request for contemporaneous transfer pricing documentation,

filing PT-99) and on the determination of proper taxable

income in intercompany transactions (e.g., challenge

methodology, comparables, use of multiple years’ data,

segmented financial data by transaction or activity).

The evaluation criteria to trigger a transfer pricing audit are:

> Inconsistencies among the transfer pricing report, income

tax return and transfer pricing information return

> Use of non-updated financial information from comparable

companies up to June of the fiscal year subject to the

study

> PLIs below the interquartile arm’s-length range

> Lower operating margins, compared with operating

margins from prior years or with operating losses

> Late filing of transfer pricing informative return

Currently, in the transfer pricing review process, the time

frame to submit the information requested ranges from two

to three business days, and there is a reluctance to give

extensions.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

Unilateral and bilateral APAs are available to the extent that

they are carried out with nations that have concluded double

taxation treaties with Venezuela (refer to ITL Articles 141 to

165 and Master Tax Code Chapter III, Articles 230 to 239).

Nonetheless, there are no APAs in Venezuela.

> Tenure

All specifications and terms for APAs are in Articles 141 to

165 of the ITL.

> Rollback provisions

There is none specified.

> MAP opportunities

There is none specified.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest paid directly or indirectly to persons who are

considered related parties will be deductible only to the

extent to which amount of debts agreed directly or indirectly

with related parties plus the amount of debts agreed with

independent third parties does not exceed the net equity of the

taxpayer.

Luis Benitez

luis.benitez@ve.ey.com

+ 582129056721

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority

General Department of Taxation (Tong cuc Thue — GDT).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Article 37 of the Law No. 38/2019/QH14 (Law on Tax

Administration takes effective on 01 July 2020) articulates

the arm’s-length principle, which empowers tax authorities to

adjust the value of purchases, sales, exchanges and accounting

records of goods and services of taxpayers if that value is not

in accordance with market prices.

Detailed transfer pricing regulations are included in Decree

132/2020/ND-CP (Decree 132). On 5 November 2020,

Vietnam’s government issued Decree 132 that takes effective

on 20 December 2020 and replaces Decree No. 20/2017/

ND-CP dated 24 February 2017, Circular No. 41/2017/TT-BTC

dated 28 April 2017, and Decree No. 68/2020/ND-CP dated

24 June 2020. Decree 132 is applicable for the corporate

income tax period 2020 onwards.

Article 50 of the Law on Tax Administration No. 38/2019/

QH14 articulates the arm’s-length principle, which empowers

tax authorities to adjust the value of purchases, sales,

exchanges and accounting records of goods and services of

taxpayers if that value is not in accordance with market prices.

> Section reference from local regulation

Article 5 of Decree 132 provides the definition of related

parties as follows:

> Related parties are parties having relationships where:

a. An enterprise participates directly or indirectly in at least

25% of the other enterprise’s equity.

b. Each of the two enterprises has at least 25% of its equity

held, whether directly or indirectly, by a third party.

c. An enterprise is the shareholder having the greatest

ownership interest in the other enterprise or participates

directly or indirectly in at least 10% of total share capital

of the other enterprise.

d. An enterprise guarantees or offers another enterprise

1 www.gdt.gov.vn

a loan under any form (even including third-party loans

guaranteed by financing sources of related parties and

financial transactions of same or similar nature) to the

extent that the loan amount equals at least 25% of equity

of the borrowing enterprise and makes up for more

than 50% of total medium- and long-term debts of the

borrowing enterprise.

e. An enterprise appoints a member of the executive board

responsible for the leadership or control of another

enterprise, provided the number of members appointed

by the former accounts for more than 50% of total

number of members of the executive board responsible

for the leadership or control of the latter, or a member

appointed by the former has the right to decide financial

policies or business activities of the latter.

f. Both related enterprises appoint more than 50% of

membership of the executive board or have one member

of the executive board authorized to decide financial

policies or business activities who is appointed by a third

party.

g. Both enterprises are managed or controlled in terms

of their personnel, financial and business activities by

individuals, each of whom is in one of the following

relationships with the others such as a wife, husband,

natural/foster father, natural/foster child, natural/foster

older/younger sibling, brother/sister-in-law, maternal/

paternal grandfather/grandmother, maternal/paternal

grandchild, and maternal/paternal aunt, uncle and

nibling.

h. Both business entities have transactions, either between

their head offices and permanent establishments or

between permanent establishments of overseas entities

or individuals.

i. Enterprises are put under control of one individual

through either the person’s capital participation into

that enterprise or the person’s direct involvement in the

administration of that enterprise.

j. In other cases where an enterprise has its business

activities managed, controlled or decided de facto by the

other enterprise.

k. A related enterprise performs the disposition or

acquisition transaction in at least 25% of its equity within

a tax period, the borrowing or lending transaction in

at least 10% of its equity performed at the transaction

time falling within a tax period with a person holding

the executive office or the controlling interest in the

enterprise or with a person in one of the relationships

prescribed in point (g) of this clause.

Point 21, Article 3, of the Law on Tax Administration 38,

which takes effect on 1 July 2020, also provides the definition

of related-party relationship:

“Related parties are parties directly or indirectly participating

in the management, control or equity of the other enterprise.

Or they could be parties directly or indirectly under the

management or control of an organization or individual.

They can also be parties having the investments from the

same organization or individual, or enterprises under the

management or control of the individuals with a close

relationship within the same family.”

In addition to the general definition above, Article 5 also

defines 11 specific types of related-party relationships.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Vietnam is not a member of the OECD. The OECD Guidelines

can be a reference source but are not officially accepted, while

Decree 132 adopts certain concepts of BEPS actions.

b) BEPS Action 13 implementation overview

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

Yes, it has.

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

It covers CbCR, Master File and Local File.

> Effective or expected commencement date

It is 1 May 2017.

> Material differences from OECD report template or format

The Vietnamese format is generally in line with the OECD

format.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

This is not applicable.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority

Agreement (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, a local branch needs to comply with Vietnamese transfer

pricing rules if the branch is an independent branch and

separately submits the corporate income tax (CIT) finalization

in Vietnam.

> Does transfer pricing documentation have to be prepared

annually?

Transfer pricing documentation (Local File and Master File) must

be prepared and made available by the time of submitting

the CIT finalization return of the respective year (i.e., three

months after the fiscal year-end). Regarding CbCR, Decree

132 provides detailed guidance at Point 5, Article 18 as

mentioned below.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes.

b) Materiality limit or thresholds

> Transfer pricing documentation

Taxpayers shall be exempted from the transfer pricing

documentation requirements in the following circumstances:

> Taxpayers are engaged in transactions with related parties

that must pay corporate income tax within the territory

of Vietnam, are subject to the same corporate income tax

rates as applied to these taxpayers and all of them are

not offered the corporate income tax incentive within a

specified taxable period.

> Taxpayers are engaged in transfer pricing but their total

sales arising within a specified taxable period are less than

VND50 billion, and their total values of the related-party

transactions arising within a specified taxable period do

not exceed VND30 billion.

> Taxpayers already entering into advance pricing

agreement (APA) have submitted the annual report

in accordance with legislation on advance pricing

agreements. For those related-party transactions that are

not covered by the APA, taxpayers shall be responsible

for making transfer pricing declarations as required under

Vietnamese TP regulations.

> Taxpayers perform business activities by exercising

simple functions, neither generating any revenue nor

incurring any cost from operation or use of intangible

assets, generating the sales of less than VND200 billion,

as well as applying the ratio of net operating profit

before deducting loan interest and corporate income tax

(exclusive of the difference between sales and costs of

financial activities) to net sales in the following sectors:

> Distribution: 5% or over

> Manufacturing: 10% or over

> Processing: 15% or over

> Master File

Refer to the section above (Clause 2, Article 19 of Decree

132).

> Local File

Refer to the section above (Clause 2, Article 19 of Decree

132).

> CbCR

Decree 132 provides detailed guidance on taxpayers’

obligations relating to CbCR as summarized below:

> A Vietnamese ultimate parent entity (UPE) with global

consolidated revenue in a tax period of VND18,000 billion

or more must prepare Form 04 (CbCR) and submit it to

the tax authority no later than 12 months from the fiscal

year-end of the UPE.

> For a Vietnamese taxpayer whose overseas UPE is

obliged to submit a CbCR in its jurisdiction of residence,

the Vietnamese tax authority will obtain that CbCR by

engaging on the Automatic Exchange of Information

(AEOI) in accordance with its commitment under the

International Tax Agreement of Vietnam.

> A Vietnamese taxpayer must submit a CbCR report to the

Vietnamese tax authority in the following cases:

> The jurisdiction of residence of the UPE has signed an

International Tax Agreement with Vietnam but there is

no Multilateral Competent Authority Agreement (MCAA)

for AEOI in place at the time of the CbCR submission

deadline.

> The jurisdiction of residence of the UPE has joined the

MCAA with Vietnam but suspended the AEOI or cannot

automatically provide the CbCR to the Vietnamese tax

authorities.

> If there is more than one taxpayer in Vietnam, the UPE

provides a written notification to the Vietnamese tax

authority on the appointed organization for submission of

the CbCR on its behalf no later than the financial year end

of the UPE.

> A Vietnamese taxpayer is not obligated to submit a CbCR

to the Vietnamese tax authority if the UPE appoints an

organization to submit the CbCR to the tax authority of

the host jurisdiction on its behalf (appointed organization)

no later than 12 months from the financial year end of the

UPE and the following conditions are fulfilled:

> The jurisdiction of residence of the appointed

organization has the following regulations:

> Legally requires the submission of CbCR

> Has an MCAA with Vietnam to which such jurisdiction is a

signing party at the time of the CbCR submission deadline

> Does not suspend the AEOI and can provide a CbCR to

the Vietnamese tax authorities

> The appointed organization provides a written notification

on the appointed to submit a CbCR to the jurisdiction of its

residence no later than the financial year end of the UPE.

> The Vietnamese taxpayer submits the written notification

to the Vietnamese tax authority.

Decree 123 also indicates that the Vietnamese tax authorities

will annually announce on their tax web portal the list of

foreign tax authorities that engage in the AEOI with respect to

CbCR.

> Economic analysis

Refer to the section above (Clause 2, Article 19 of Decree

132).

c) Specific requirements

> Treatment of domestic transactions

There is a documentation obligation for domestic transactions.

However, Clause 1, Article 19, of Decree 132 provides that

“Taxpayers shall be exempted from the transfer pricing

declaration requirements referred to in Section III and IV

of the Appendix I to this Decree, and the transfer pricing

documentation requirements prescribed herein only if they

are engaged in transactions with related parties that must

pay corporate income tax within the territory of Vietnam, are

subject to the same corporate income tax rates as applied to

these taxpayers and all of them are not offered the corporate

income tax incentive within a specified taxable period, but they

shall be required to clarify bases for such exemption in Section

I, II included in the Appendix I hereto.”

> Local language documentation requirement

Yes, the transfer pricing documentation needs to be submitted

in the local language. It is not clearly regulated in law, but

in Vietnam, all tax documentations submitted must be in

Vietnamese.

> Safe harbor availability including financial transactions if

applicable

There is no safe harbor available in Vietnam.

> Is aggregation or individual testing of transactions preferred

for an entity

There is none specified.

> Any other disclosure/compliance requirement

Please refer to the below.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

The disclosure forms (as mentioned above) must be submitted

together with the CIT return, which must be filed within three

months from the end of the financial year as stipulated in Point

2, Article 44, of the Law on Tax Administration 38.

> Related-party disclosures along with corporate income tax

return

Appendix I — Information on related parties and related-party

transactions (replacing Form 01).

Appendix II — Checklist of information and documents required

for Local File (replacing Form 02).

Appendix III — Checklist of information and documents required

for Master File (replacing Form 03).

Appendix IV — Report on transactional profitability results in

form of country-by-country reporting (CbCR) for a taxpayer

who has its ultimate parent in Vietnam and has global

consolidated revenue in the tax period of VND18,000 billion or

more.

> Related-party disclosures in financial statement/annual

report

This is not applicable.

> CbCR notification included in the statutory tax return

CbCR notification is required, but whether it is required in the

statutory tax return is not clearly mentioned in Decree 132.

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

Three months from the end of the fiscal year.

Point 2, Article 44, of the Law on Tax Administration 38,

which takes effect from 1 July 2020, provides that the filing

deadline is the last date of the third month since the fiscal

year-end date.

> Other transfer pricing disclosures and return

Three months from the end of the fiscal year.

Point 2, Article 44, of the Law on Tax Administration 38,

which takes effect from 1 July 2020, provides that the filing

deadline is the last date of the third month since the fiscal

year-end date.

> Master File

The Master File needs to be maintained and filed on request.

> CbCR preparation and submission

A Vietnamese ultimate parent entity with global consolidated

revenue in a tax period of VND18,000 billion or more must

prepare Appendix IV (CbCR) and submit it to the tax authority

no later than 12 months from the fiscal year-end of the UPE.

For a Vietnamese taxpayer whose overseas UPE is obliged to

submit a CbCR in its jurisdiction of residence, please refer the

details as mentioned above.

> CbCR notification

Yes, CbCR notification is required starting 20 December 2020.

b) Transfer pricing documentation/Local File preparation

deadline

Transfer pricing documentation must typically be finalized by

the time of lodging the final CIT return and forms a part of the

return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No, there is currently no statutory deadline for the submission

of transfer pricing documentation. It will need to be submitted

upon request.

> Time period or deadline for submission upon tax authority

request

In consultation phase before the official tax/transfer pricing

audit, taxpayers have to submit transfer pricing documentation

within 30 working days upon the tax authority’s written

request (possible for onetime extension with no more 15

working days).

In the official tax/transfer pricing audit, transfer pricing

documentation must be submitted upon the tax authority’s

request in a timely manner.

d) Are there any new submission deadlines per COVID-19-

specific measures? If Yes, specify which deadlines are

impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions

Yes.

> Domestic transactions

Yes.

b) Priority and preference of methods

Decree 132 permit the use of the following methods:

Comparable Uncontrolled Price (CUP) Method, Resale

Price Method (RPM), Cost Plus Method (CPM), Comparable

Profit Method (CPM) or TNMM under OECD Transfer Pricing

Guidelines, and Profit Split Method (PSM).

Taxpayers are required to select the most appropriate method

to determine whether the pricing arrangement is at arm’s

length under the prevailing regulations.

There is no hierarchy among the methods specified, but recent

practices suggest that the Vietnam tax authority has a growing

preference for the use of internal comparables, e.g., internal

CUP or internal CPM/TNMM if reliable internal information on

CUP, CPM/TNMM is available.

8. Benchmarking requirements

> Local vs. regional comparables

There is a legal requirement for local jurisdiction comparables

(preferably APAC). Where no local comparables are available,

comparables in other countries within regions that have

comparable conditions of industries and levels of economic

development are acceptable.

> Single-year vs. multiyear analysis for benchmarking

Single-year testing is acceptable. In audits, the tax authority

prefers the single-year testing.

> Use of arm’s-length range

In accordance with Decree 132, the definition of the arm’s-

length range has been changed to a set of values from the

35th percentile (previously 25th percentile under Decree 20

and Circular 41) to the 75th percentile with the median value

set at 50th percentile value. This accordingly narrows the

arm’s-length range and may impact the result of taxpayer’s

transfer pricing analysis compared to the rules of Decree 20

and Circular 41.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

There is no need to conduct a fresh benchmarking search

every year. Comparability review and financial update would be

sufficient

> Simple, weighted or pooled results

There is a preference for weighted average for arm’s-length

analysis.

> Other specific benchmarking criteria, if any

All information relating to the benchmarking analysis,

including, but not limited to, annual reports of companies,

website snapshots and any other evidence of the search

process, can be requested by the tax authority.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

Administrative penalties ranging from VND2 million up

to VND25 million are imposed for late submission of CIT

finalization return (including transfer pricing disclosure forms).

In addition, a penalty ranging from VND8 million to VND15

million is imposed for not submitting transfer pricing disclosure

forms.

> Consequences of failure to submit, late submission or

incorrect disclosures

In the event of tax/transfer pricing audit, taxpayers are subject

to a penalty of 20% of additional tax in the case of an incorrect

declaration (even having Local File regardless of whether a

self-adjustment is already made). Additional penalties of up to

three times the outstanding tax due may be imposed if there is

a finding of tax evasion or fraud.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Administrative penalties ranging from VND2 million up

to VND25 million are imposed for late submission of CIT

finalization return (including transfer pricing disclosure forms).

In addition, a penalty ranging from VND8 million to VND15

million is imposed for not submitting transfer pricing disclosure

forms.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Administrative penalties ranging from VND2 million up

to VND25 million are imposed for late submission of CIT

finalization return (including transfer pricing disclosure forms).

In addition, a penalty ranging from VND8 million to VND15

million is imposed for not submitting transfer pricing disclosure

forms.

> Is interest charged on penalties or payable on a refund?

The interest penalty of 0.03% per day, over the outstanding

tax due, may also be imposed if a transfer pricing adjustment

is made.

b) Penalty relief

Penalties may be mitigated by timely and adequate disclosure

of the related-party transactions on Appendix I, II and III

attached to Decree 132, and by the preparation and timely

production of the three-tiered transfer pricing documentation.

Taxpayers that do not agree with the decision of the tax

authority can appeal on the decision to a higher level or go to

court.

10. Statute of limitations on transfer pricing

assessments

Transfer pricing is considered as one area of tax and has

the same statute of limitations. The statute of limitations

applicable for tax collection is 10 years, counted from the

date on which the tax offenses are found. However, where

the taxpayer did not register for tax, there is no statute of

limitations for collecting the tax shortfall and late payment

interest.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

There is none specified.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The likelihood may be considered to be medium to high, as the

tax authority is currently paying more attention to transfer

pricing.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium. The tax

authority strongly prefers the internal comparables, e.g.,

internal CUP, internal CPM/TNMM method. In the case of

the application of CPM/TNMM, challenges are around the

selection of comparables and the comparability of the selected

comparables.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be high, mostly around

CUP applicability. In the case of application of CPM/TNMM, the

challenges are around the selection of comparables and the

comparability of the selected comparables.

> Specific transactions, industries and situations, if any, more

likely to be audited

Transfer pricing audits are increasing and become more

sophisticated. Some of the focus points in transfer pricing

audit are as follows:

> Situations: loss-making companies, large enterprises,

companies that have not been inspected or examined for a

long time, and companies enjoying tax incentives

> Industry: various industries

> Transaction: high-value transactions (royalty, service fee,

interest, etc.), production cost (materials, labor cost, etc.)

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

There is an APA program available in Vietnam. APA regulations

in Vietnam support unilateral, bilateral and multilateral APAs.

> Tenure

In accordance with Circular 45/2021/TT-BTC, an APA can be

effective for up to three years, with renewal for a maximum of

three years.

> Rollback provisions

Rollback provisions are not available for prior years.

> MAP opportunities

Yes, taxpayers may request a MAP if taxation has or is likely

to occur not in accordance with the provisions of a double

taxation treaty (DTT) to which Vietnam is signatory. Most of

Vietnam’s DTTs permit taxpayers to present a case to the tax

authorities within two or three years from the first notification

to the taxpayer on the actions giving rise to taxation that

are not in accordance with the DTT. However, the time limits

may vary, and the relevant DTT should be consulted for the

applicable time limit.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

No.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

There are no specific tax-driven thin-capitalization rules in

Vietnam.

Phat Tan Nguyen

phat.tan.nguyen@vn.ey.com

+ 84938364777

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority 1

Zambia Revenue Authority (ZRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

The Income Tax Act (ITA), Section 97A Draft Regulations

were published in 2017 and are more detailed than the initial

income tax legislation. The draft regulations and document

requirements took effect from FY2017.

As per amendment of transfer pricing regulations through

government gazette dated 6 April 2018, Zambia has

adopted OECD Transfer Pricing Guidelines July 2017

recommendations. The amendment seeks to enhance the

existing transfer pricing regulations by providing detailed

guidance on application of arm’s-length principle and Zambia’s

transfer pricing documentation requirement.

> Section reference from local regulation

Sections 97A to 97D.

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Zambia is a member of the OECD. The transfer pricing

regulations recognize the application of OECD Transfer Pricing

Guidelines and the United Nations practical manual on transfer

pricing for developing countries. However, the local regulations

will prevail in case of any inconsistencies.

b) BEPS Action 13 implementation overview

1https://www.zra.org.zm/

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

CbCR must be filed no later than 12 months after the last day

of the reporting accounting year of the MNE group. These

amended CbC regulations came into effect on 1 January

2021.

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

No, Zambia has not explicitly adopted BEPS Action 13 for

transfer pricing documentation in local regulations, but

there are some elements thereof. Zambia has adopted

CbCR regulation with effect from 1 January 2021.

> Effective or expected commencement date

Zambia adopted CbCR regulation with effect from 1

January 2021.

> Material differences from OECD report template or format

This is not applicable.

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

No.

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

on BEPS?

Yes.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

Yes, Zambia has transfer pricing documentation guidelines.

The documentation has to be contemporaneous. There is no

requirement to submit.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes.

> Does transfer pricing documentation have to be prepared

annually?

Yes, the transfer pricing documentation has to be prepared on

an annual basis and maintained for 10 years.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each entity needs its own transfer pricing report.

b) Materiality limit or thresholds

> Transfer pricing documentation

Local entities with an annual net turnover equal to

or exceeding ZMW50 million are required to prepare

documentation. However, the threshold does not apply to

multinational enterprises (MNEs), effectively rendering all

MNEs subject to transfer pricing requirements.

> Master File

This is not applicable.

> Local File

No threshold.

> CbCR

An ultimate parent entity that is tax resident in Zambia, with

consolidated group revenue of Zambian Kwacha (ZMW)4,795

million, approx. (EUR240 million) in the previous accounting

year must file a CbCR with the Commissioner General,

12 months after the last day of the reporting year of the

multinational enterprise with respect to that reporting

accounting year. Where no entity in the group files a CbCR,

the Zambian resident entity must file as long as the group

revenue exceeds the EUR240 threshold.

> Economic analysis

This is not applicable.

c) Specific requirements

> Treatment of domestic transactions

The transfer pricing regulations apply to domestic

transactions.

> Local language documentation requirement

The transfer pricing reports are to be prepared in the local

language (English). The Income Tax (Transfer Pricing)

(Amendment) Regulations, 2018, state that if the documents

are prepared in a language other than English, the taxpayer

will have to translate the documentation at the person’s own

expenses and have it certified by a translator before a notary

public.

> Safe harbor availability, including financial transactions if

applicable

A safe harbor of cost plus 5% is provided on the amount

charged for the provision of a low-value-added service between

associated person. No specifications have been provided for

financial transactions.

> Is aggregation or individual testing of transactions preferred

for an entity

The guidelines provide for entities to test transactions on

a transaction by transaction basis and where an aggregate

testing is done, a reasoning should be provided.

> Any other disclosure/compliance requirement

This is not applicable.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

This is not applicable.

> Related-party disclosures along with corporate income tax

return

Effective from 2018 (including FY2017), taxpayers have

to state all related-party transactions in the annual income

tax return. Taxpayers are required to disclose details of

new related companies (worldwide) within a month of the

companies becoming related. The penalty for nondisclosure is

approximately USD600 per day for the company and each of

the directors.

> Related-party disclosures in financial statement/annual

report

Companies are required to disclose related-party transactions

under the related-party notes to the financial statements.

> CbCR notification included in the statutory tax return

There is a requirement to notify the Commissioner, but no

return has been issued. Thus, there is no requirement to

include the notification in the Tax return

> Other information/documents to be filed

This is not applicable.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

For FY2021, the due date for the return filing is 21 June

2022; prior to FY2017, the due date for the corporate income

tax return filing was 30 June of the following year.

> Other transfer pricing disclosures and return

Taxpayers have to disclose all related-party transactions in

their annual returns, effective from FY2017. The regulations

state that transfer pricing documentation must be prepared by

the date of submission of the annual income tax return, but a

transfer pricing document does not need to be submitted.

> Master File

This is not applicable.

> CbCR preparation and submission

CbCR must be filed no later than 12 months after the last day

of the reporting accounting year of the MNE group.

> CbCR notification

CbCR notification must be filed no later than 12 months after

the last day of the reporting accounting year of the MNE

group.

b) Transfer pricing documentation/Local File preparation

deadline

Effective from 2018, for FY2017 and each subsequent year,

contemporaneous transfer pricing documentation must be

prepared by the date of submission of the annual income tax

return.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

No, however, the document should be in place by the time of

submission of the income tax return on 21 June.

> Time period or deadline for submission upon tax authority

request

Transfer pricing documentation should be submitted within 30

days upon written request by the ZRA Commissioner General.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

No.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The regulations state the following methods as the approved

transfer pricing methods from which an appropriate method

can be chosen:

> CUP

> Resale price

> Cost-plus

> TNMM

> Transactional profit-split

8. Benchmarking requirements

> Local vs. regional comparables

There is no legal requirement; local comparables are rarely

used because of the challenge in finding information locally.

> Single-year vs. multiyear analysis for Benchmarking

Multiyear analysis.

> Use of interquartile range

Yes, interquartile range calculation using spreadsheet quartile

formulas is acceptable.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

As a practice, fresh benchmarking search is not required every

year.

> Simple, weighted or pooled results

A weighted average is preferred, as per common practice.

> Other specific benchmarking criteria, if any

There is none specified.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

In an instance that the transfer pricing document is requested

for by the Zambia Revenue Authority and the document is

found to not align to the guidelines as per the Regulations,

the penalties that relate to non-compliance of transfer pricing

regulations of ZMW24 million may apply.

> Consequences of failure to submit, late submission or

incorrect disclosures

Non-compliance with the regulations may result in an offence

and liability on conviction to penalties specified under the ITA

(i.e., from 1 January 2018 to 31 December 2018, penalty is

ZMW3,000, and with effect from 1 January 2019, penalty of

ZMW24 million).

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes, penalties can be assessed. The rates stated in the income

tax return are the applicable rates.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes, penalties can be assessed. The rates stated in the income

tax return are the applicable rates.

> Is interest charged on penalties or payable on a refund?

The interest rates are per the ITA. The interest is linked to the

prevailing Bank of Zambia lending rates.

b) Penalty relief

Penalty relief is available through negotiations with the tax

authority.

10. Statute of limitations on transfer pricing

assessments

There is a specific statute of limitations on transfer pricing

assessments (10 years) with effect from 1 January 2019.

The normal income tax statute of limitations of six years is

applicable. With effect from 1 January 2019, taxpayers are

also required to retain transfer pricing-related records for a

period of 10 years (6 years for other tax records) with the base

year being 2012.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

No.

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

The audit program is risk-based, concentrating on thinly

capitalized MNEs and specific sectors of the economy, such as

mining-related companies and distributors.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

The likelihood may be considered to be medium; tax

authorities will usually challenge the characterization of the

entity. The methodology is not often challenged.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

The likelihood may be considered to be medium; if

methodology is challenged, then an adjustment will be made.

However, there is a possibility to object to the assessment

raised.

> Specific transactions, industries and situations, if any, more

likely to be audited

At the time of this publication, the mining industry (mining

companies and suppliers) and distributors seemed to be the

revenue authorities’ focus.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

Availability (unilateral, bilateral and multilateral)

Zambia does not have a formal APA program.

> Tenure

This is not applicable.

> Rollback provisions

This is not applicable.

> MAP opportunities

This is not applicable.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

This is not applicable.

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest exceeding 30% of tax earnings before interest,

depreciation, tax and amortization is disallowed for other

companies, with the exception of companies registered under

the Banking and Financial Services Act, the Pension Scheme

Regulation Act or the Insurance Act.

Patrick Mawire

Patrick.Mawire@zm.ey.com

+ 260211378308

Contact

1. Tax authority and relevant transfer pricing

regulation or rulings

a) Name of tax authority1

Zimbabwe Revenue Authority (ZIMRA).

b) Relevant transfer pricing section reference

> Name of transfer pricing regulations or rulings and the

effective date of applicability

Zimbabwe transfer pricing regulations: these regulations

became effective on 1 January 2016.

> Section reference from local regulation

Section 2A of the Income Tax Act (23:06) defines an

associated party as the following: “Where a person, other

than an employee, acts in accordance with the directions,

requests, suggestions or wishes of another person, whether

or not the persons are in a business relationship and whether

or not those directions, requests, suggestions or wishes are

communicated to the first-mentioned person, both persons

shall be treated as associates of each other” for the purposes

of the Income Tax Act, Chapter 23:06.

Section 98B along with the 35th schedule of the Income Tax

Act (23:06) provides specific laws on transfer pricing as well

as statutory instrument 109 of 2019(Income Tax Transfer

Pricing Documentation Regulations)2019

2. Are there changes expected to the local

transfer pricing rules due to COVID-19?

(Yes/No)

No.

3. OECD Guidelines treatment and BEPS

implementation

a) Extent of reliance on OECD Transfer Pricing Guidelines/

UN tax manual/EU Joint Transfer Pricing Forum

Zimbabwe is not a member of the OECD but references to the

OECD Guidelines and the UN tax manual as relevant sources of

interpretation and application for transfer pricing purposes.

b) BEPS Action 13 implementation overview

1https://www.zimra.co.zw/

> Has the jurisdiction adopted or implemented BEPS

Action 13 for transfer pricing documentation in the local

regulations?

The 2017 Transfer Pricing Guidelines, which Zimbabwe refers

to for interpretation, has aspects of Action 13. Our local

legislation (35th schedule of the Income Tax Act and Statutory

Instrument 109 of 219) refers to Local File requirements as

prescribed in Action 13. Our legislation does not, however,

refer specifically to Action 13.

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

TP documentation coverage is in terms of Statutory

Instrument 109 of 2019. The Statutory instrument

detail Zimbabwe TP documentation requirements without

referencing to Master File or Local File. In practice, though,

Master File or Local File coverage is in terms of the OECD

Transfer Pricing Guidelines.

> Effective or expected commencement date

It is not applicable.

> Material differences from OECD report template or format

Zimbabwe uses the OECD Guidelines and UN tax manual

for guidance. There are no material differences

> Sufficiency of BEPS Action 13 format report to achieve

penalty protection

Our Statutory instrument 109 of 2019 requirements

generally resonates with those found in the BEPs Action

13. We agree therefore that BEPS Action 13 format is

sufficient to achieve penalty protection.

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

on BEPS?

No.

d) Signatory of the Multilateral Competent Authority Agree-

ment (MCAA) on the exchange of CbCR

No.

4. Transfer pricing documentation

requirements

a) Applicability

> Does the jurisdiction have transfer pricing documentation

guidelines or rules? If Yes, does it need to be submitted or

prepared contemporaneously?

The 35th schedule of the Income Tax Act (23:06) and

Statutory Instrument 109 of 2019 provide guidance on the

documentation requirements. Further, ZIMRA has issued

transfer pricing practice notes for guidance. Documentation

for a relevant tax year is contemporaneous where it is in place

at the statutory tax return’s filing date. The documentation

must be made available upon request by the Revenue

Authority within seven days.

> Does a local branch of a foreign company need to comply

with the local transfer pricing rules?

Yes, it is required to comply.

> Does transfer pricing documentation have to be prepared

annually?

Yes, transfer pricing documentation must be prepared

annually. This involves updating transaction values, review of

any material changes from the prior year, documenting new

transactions, updating the industry analysis and updating

benchmarks if there is need.

> For an MNE with multiple entities in the jurisdiction, is it

required to have stand-alone transfer pricing reports for

each entity?

Yes, each legal entity is required to have its stand-alone

transfer pricing report.

b) Materiality limit or thresholds

> Transfer pricing documentation

Zimbabwe has no materiality thresholds. As per our legislation;

every “person” that engages in related-party transactions is

required to have transfer pricing documentation, including

small- to medium-sized enterprises.

> Master File

No minimum thresholds.

> Local File

No minimum thresholds.

> CbCR

Not yet adopted.

> Economic analysis

No minimum thresholds.

c) Specific requirements

> Treatment of domestic transactions

The legislation applies to both domestic and cross-border

transactions.

> Local language documentation requirement

The transfer pricing documentation report needs to be

submitted in English.

> Safe harbor availability, including financial transactions if

applicable

Zimbabwe does not have safe harbor rules at this stage.

> Is aggregation or individual testing of transactions preferred

for an entity

Preferred method is individual transaction by transaction

testing. However where separate transaction are so closely

linked, aggregation method may be preferred.

> Any other disclosure/compliance requirement

According to Statutory instrument 109 of 2019, the Revenue

Authority has power to request any additional information that

the Commissioner may deem necessary during the course of a

Transfer Pricing Audit.

5. Transfer pricing return and related-party

disclosures

> Transfer pricing-specific returns

Yes (ITF12C2), it must be submitted along with the year-end

return (ITF12C).

> Related-party disclosures along with corporate income tax

return

The specific related-party disclosures are detailed in the

transfer pricing return.

> Related-party disclosures in financial statement/annual

report

These must talk to both the TP documentation report and the

TP Return.

> CbCR notification included in the statutory tax return

It is not applicable in Zimbabwe yet.

> Other information/documents to be filed

Any other information that may have a material impact on the

determination of the taxpayer’s compliance with the arm’s-

length principle with respect to the controlled transactions.

6. Transfer pricing documentation and

disclosure timelines

a) Filing deadline

> Corporate income tax return

The filing deadline is 30 April of the following year or any

other month approved by the commissioner.

> Other transfer pricing disclosures and return

Transfer pricing return is submitted with the corporate income

tax return.

> Master File

Per Revenue Authority request.

> CbCR preparation and submission

Not yet adopted in imbabwe.

> CbCR notification

Not yet adopted in Zimbabwe.

b) Transfer pricing documentation/Local File preparation deadline

The transfer pricing documentation must be available on

request by the Commissioner. It must be submitted within

seven days of the written request.

c) Transfer pricing documentation/Local File submission

deadline

> Is there a statutory deadline for submission of transfer

pricing documentation or Local File?

> Yes.

> Time period or deadline for submission upon tax authority

request

Documentation shall be provided to the Commissioner within

seven days of the written request being duly issued by the

Commissioner.

d) Are there any new submission deadlines per COV-

ID-19-specific measures? If Yes, specify which deadlines

are impacted

There is none specified.

7. Transfer pricing methods

a) Applicability (for both international and domestic

transactions)

> International transactions: Yes

> Domestic transactions: Yes

b) Priority and preference of methods

The following are the approved transfer pricing methods in

Zimbabwe:

> CUP

> Resale price

> Cost-plus

> TNMM

> Transactional profit-split

When all the abovementioned methods can be applied with

equal reliability, the determination of arm’s-length conditions

shall be made using the CUP method.

8. Benchmarking requirements

> Local vs. regional comparables

A determination of whether comparables from other

geographic markets are reliable has to be made on a case-by-

case basis.

> Single-year vs. multiyear analysis

Single.

> Use of interquartile range

Yes.

> Fresh benchmarking search every year vs. rollforwards and

update of the financials

Not legislated but in practice we adopt the OECD guidelines

approach.

> Simple, weighted or pooled results

Simple.

> Other specific benchmarking criteria, if any

None.

9. Transfer pricing penalties and relief

a) Penalty exposure

> Consequences for incomplete documentation

> Consequences of failure to submit, late submission or

incorrect disclosures

Penalties for non-compliance with transfer pricing legislation

are:

> 10% of the shortfall tax liability where taxpayer transfer

pricing documentation report has been prepared in

accordance with the transfer pricing regulations and

guidelines

> 30% of shortfall tax liability where the transfer pricing

documentation prepared does not meet both the local

transfer pricing regulations and transfer pricing guidelines

> 100% of shortfall tax liability where there is evidence of

tax evasion

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed incomplete?

Yes.

> If an adjustment is sustained, can penalties be assessed if

documentation is deemed non-contemporaneous?

Yes.

> Is interest charged on penalties or payable on a refund?

Not on penalty but on principal tax payable.

b) Penalty relief

Penalties can be waived or reduced through negotiation with

ZIMRA.

10. Statute of limitations on transfer pricing

assessments

It is six years from the relevant year of the assessment except

where there is evidence of fraud then the six year limit can be

set aside.

11. Are there any COVID-19-related impacts

on transfer pricing-specific audits?

Audit Period still to be audited..

12. Likelihood of transfer pricing scrutiny and

related audit by the local authority

> Likelihood of transfer pricing-related audits (high/medium/

low)

High.

> Likelihood of transfer pricing methodology being challenged

(high/medium/low)

High.

> Likelihood of an adjustment if the transfer pricing

methodology is challenged (high/medium/low)

High.

> Specific transactions, industries and situations, if any, more

likely to be audited

a. Specific transactions likely to go under Audit- Manage-

ment fees, License Fees, Intercompany loans, Use of

intangible assets.

b. Industry likely to be audited- Mining, Tobacco, Tourism ,

Retail.

c. Situations that may Trigger Audit.- Perpetual losses,

Management fees based on percentage of Turnover,

Groups with members in low Tax Jurisdictions eg Mauri-

tius, Restructuring.

13. Advance Pricing Agreement and Mutual

Agreement Procedure opportunities

> Availability (unilateral, bilateral and multilateral)

No legislation in place.

> Tenure

This is not applicable.

> Rollback provisions

Not legislated.

> MAP opportunities

It is available to 16 countries with which it has double tax

agreements with.

14. Have there been any impacts or changes

to Advance Pricing Agreements, rulings

or other transfer pricing-related certainty

measures due to COVID-19?

None observed Yet..

15. Relevant regulations and/or rulings with

respect to thin capitalization or debt

capacity in the jurisdiction

Interest expense is disallowed on the portion that causes the

debt-to-equity ratio to exceed 3:1. This restriction does not

apply to the interest on debt with a local financial institution

which is not associated with the taxpayer. “Equity” means

issued and paid-up capital, unappropriated profits, reserves,

realized reserves and interest-free loans from shareholders.

Nigel V Forsgate

nigel.forsgate@zw.ey.com

+263772303603

Contact

##Bottom