FOREWORD

Against the backdrop of globalisation and rapidly increasing international trade, multinational enterprises have become more sophisticated in how they plan their business operations across various jurisdictions. Indeed, transfer pricing is often seen as a mechanism for a multinational group to move profits into a low tax jurisdiction and costs into a higher taxed jurisdiction as a means of achieving a lower overall taxation result. Consequently, with countries experiencing reduced tax bases and declining tax revenues the pressure has never been higher on Governments and tax authorities to ensure the transfer prices between domestic and foreign related parties reflect arm’s length values and domestic tax revenues are protected.

To provide guidance to countries in regulating and monitoring the transfer prices between large taxpayers and their overseas related parties, an area of focus of the Organisation for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) initiative was transfer pricing. Notably, following action points 8 to 10 and 13 of BEPS (which addressed transfer pricing issues) we have seen countries introducing increased transfer pricing penalty regimes, higher compliance obligations for taxpayers, and increased documentation requirements (often following the recommended three-tier country-by-country (CbC) reporting, master file and local file approach of BEPS).

PKF has a global transfer pricing practice and provides a one-stop service for multinational groups in taking care of their transfer pricing requirements across many jurisdictions. With offices in over 350 locations, we operate in more than 150 countries across our 5 regions, and specialise in providing high quality transfer pricing services to international and domestic organisations in all our markets. We can assist you in managing your transfer pricing risks and ensuring that your transfer pricing policies and documentation are BEPS-proof. Notably, our services include:

BEPS proof transfer pricing health check
A diagnostic health check will identify inappropriate BEPS transfer pricing policies and inadequate documentation from a BEPS and local standpoint. This will provide a clear summary of potential issues.

Development of transfer pricing mechanisms and policies
We will develop your transfer pricing policies and ensure they conform to OECD and local country principles and regulations.

Preparation of transfer pricing documentation based on a functional analysis
We can help you prepare robust documentation to support the arm’s length pricing nature of your related party transactions, including supportive transfer pricing studies and reports.

Advance Pricing Agreements
We assist throughout the negotiation process with a tax authority to agree a specified transfer pricing method which can be applied to certain transactions and remove uncertainty.

Responses to transfer pricing questions from the authorities
We assist you in responding to tax authority queries, in any jurisdiction, where rational explanations of why your related party transactions comply with local regulations are required.

Representation and dispute resolution
We will assist you to defend against additional tax assessments resulting from administrative or legal challenges to your transfer pricing policies

Please visit our website at www.pkf.com/transferpricing to find more information on how PKF may help you with your transfer pricing requirements.
IMPORTANT DISCLAIMER

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PKF INTERNATIONAL LIMITED
MAY 2017

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Afghanistan

Key Points

- The administration of tax in Afghanistan is undertaken by the Revenues General Department of the Ministry of Finance (Afghanistan Revenue Department; ARD).
- Transfer pricing provisions are included under Article 97 of the Income Tax Law (ITL).
- Under Article 97 ITL: “Where any amount paid, or payable, in a transaction between connected persons is different from that which would be paid, or payable, had the transaction taken place between unconnected persons, when determining the tax liabilities of the connected persons, the ARD may substitute the amount that would be paid or payable had the transaction taken place between unconnected persons”.
- Afghanistan follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods. Unspecified Methods can also be used for transfers of tangible and intangible property. Currently, there are no plans to adopt the OECD’s Base Erosion Profit Shifting (BEPS) initiatives.
- To determine the best method, the ARD considers the similarity between the connected transactions and unconnected transactions used with respect to each method. In particular, the ARD considers the following facts and circumstances:
  - Functions: The functions performed in the connected and unconnected transaction should be similar.
  - Contractual Terms: The contract terms used in the connected and unconnected transactions should be similar relating to the economic arrangement between the parties.
  - Risks: The risks borne by the parties in the connected and unconnected transactions should be similar.
  - Economic Conditions: Afghanistan is emerging from a conflict environment, thus, in analysing connected and unconnected transactions, the ARD is careful to consider the relevant economic conditions and circumstances.
  - Similarity of Property or Services: In ascertaining the correct transfer price, the connected and unconnected transactions should involve similar property or services.
- The ARD has the power in respect of a transaction between associates to distribute, apportion, or allocate income, deductions, or tax credits between such associates to reflect the income that would have been realised in an arm’s-length transaction.
- Cross border transactions are particularly scrutinised i.e. depending on the complexity and nature of the services performed - where an employee is paid by an entity in one jurisdiction for services performed for the benefit of an entity in another jurisdiction i.e. a cross-border benefit is provided. Contemporaneous transfer pricing documentation and pricing policies should be prepared and maintained to support the arm’s length pricing nature of the related party transactions.
- The ARD may disregard any transaction or arrangement if the intention of a legal person by entering such a transaction or arrangement was to cause a reduction in the liability to pay tax. The transaction or arrangement may also be disregarded by the ARD in the financial statements of other parties to nullify its effect i.e. as though it had never taken place.
- The ARD does not use a price comparative database to check prices and it does not maintain a secret database. However, the ARD reserves the right to determine the transfer price.
- There is no Advance Pricing Agreement (APA) procedure available in Afghanistan, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Algerian Tax Authority (ATA), and within this is a department which only deals with large-sized taxpayers, referred to as the Direction des Grandes Enterprises (DGE).

- Although Algeria is not an OECD member country, the ATA refers to the OECD Guidelines in setting transfer pricing policy and requirements. Both domestic transactions and cross-border transactions with related parties are subject to transfer pricing legislation.

- The principal legislation is Article 141 bis and Article 192 of the Algerian Direct Tax Code and Article 20 ter and Article 169 bis of the Algerian Tax Procedure Code. The requirement for transfer pricing documentation (and what the documentation should contain) was provided by Article 4 of the Decree dated 12 April 2012 – this also stated the entities which would be subject to the documentation requirement.

- Although the Algeria transfer pricing legislation does not direct any specific pricing method to be applied, the tax authority issued guidelines in 2010 referring to the OECD methods. Broadly, all OECD methods are acceptable where reasonable and relevant, however, in practice, the Algerian tax authorities apply a ‘comparability’ approach. We understand that the tax authority is strengthening its benchmarking / comparability capability by building its own internal database.

- No specific transfer pricing return is required annually, however, transfer pricing documentation must be filed by all specified ‘large entities’ at the DGE with the annual tax return (no later than 30 April each year). Even if not a ‘large entity’ it is still necessary to compile supporting documentation to demonstrate the arm’s length nature of related party transactions in case a tax authority audit is conducted. Article 4 of the Decree dated 12 April 2012 states that basic transfer pricing information that a group must provide and the specific information which a company must provide.

- Tax inspectors have the power to audit transactions between related parties which are believed to have been undertaken at values other than arm’s length i.e. at values different to those which would have applied if the transactions were made by independent (unrelated) enterprises, and, frequently conduct transfer pricing tax audits and tax reassessments for both domestic and foreign companies.

- The tax authority may send a formal notice and request transfer pricing documentation to be completed or provided within 30 days where a company provides incomplete transfer pricing documentation, or no documentation, when submitting its return.

- The penalty for not complying with the requirements of the formal notice can be DZD 500,000 (approximately USD 4,600). An additional penalty amounting to 25% of the transaction value could also apply where there has been a reassessment.

- Under certain conditions, relief for a general penalty could be available for a transfer pricing based penalty (remise conditionnelle) under the Algerian Tax Procedure Code, however, please note that there is no specific transfer pricing penalty relief specified in the legislation. The statute of limitations for transfer pricing assessments is four years following the year for which the tax is due.

- There is no provision in the Algerian tax legislation for Advance Pricing Agreements (APAs). A binding tax ruling procedure has been introduced however for DGE eligible companies (reference Algerian Tax Procedure Code) which could conceivably be used to establish APA’s in the future.
KEY POINTS

- The tax authority is the Administração Geral Tributária (General Tax Administration, or AGT), a department of the Angola Ministry of Finance.

- The transfer pricing legislation is found under Presidential Decree (Decreto Presidencial) 147/13 of 1 October 2013, Order 472/14 of 28 February 2014 and Order 599/14 of 24 March 2014:
  - Specifically, Section II and Articles 10-13 of the Presidential Decree 147/13 introduced transfer pricing regulations for “large taxpayers” and set out the rights and obligations of large taxpayers, the criteria to be classified as a “large taxpayer”, and the functions and responsibilities of the Tax Office of Large Taxpayers;
  - Order 472/14 provided a list of the companies which are subject to the Large Taxpayers Statute (the Large Taxpayers List); and,
  - Order 599/14 contained amendments to the Large Taxpayers List.

- The effective date of the transfer pricing rules is 1 January 2013.

- Angola is not an OECD member country although it refers to the OECD’s Guidelines in developing its transfer pricing policies and regulations and follows the arm’s length principle. The Angolan transfer pricing rules notably include the OECD’s “traditional transactional” pricing methods such as the cost-plus method, the resale price method and the comparable uncontrolled price (CUP) method. Profit based methods are not allowed.

- There is no specific annual transfer pricing return required, however, all taxpayers on the ‘Major Taxpayers List’, in addition to all financial, oil and gas, diamond and telecommunication companies, must submit transfer pricing documentation (a Transfer Pricing Documentation File or ‘TPDF’) to the National Directory of Taxes within six months of the fiscal year-end. All documents submitted to the tax authority must be written in, or translated to, Portuguese.

- The TPDF should be prepared annually and detail the relationship and price of each transaction of the Large Taxpayer with each of its respective associated enterprises (related parties). The TPDF should contain a summary, detail the macroeconomic environment, describe the entity, provide a functional analysis, and, provide an economic analysis of the related party’s operations.

- Failure to file transfer pricing documentation attracts a penalty ranging from AOA 10,000 to AOA 50,000 (approximately USD 60 to USD 300) and has a reputation risk of the taxpayer being considered “non-compliant” (which can have grave implications to the operations of a company including transactions with its bank). Where the Angolan tax authorities make a transfer pricing adjustment, as well as the additional tax assessed, a penalty will be levied of 35% of the additional tax, plus delay interest at the non-compounded rate of 1% per month (or 12% per year).

- The tax authorities have the power to audit (and perform transfer pricing adjustments) relating to the last five fiscal years. The statute of limitations for transfer pricing assessments is, broadly, five years from the last day of the tax year-end.

- If the AGT believes any royalty is excessive, discretionary adjustments can be made. Transfer pricing audits are likely increase as the AGT becomes more familiar with the provisions and pricing methodology.

- Angola does not currently have any double tax agreements (tax treaties).

- There is no Advance Pricing Agreement (APA) procedure available in Angola, and consequently, no APAs have been negotiated with the tax authorities.
ARGENTINA

CURRENCY: Argentine Peso (ARS)
POPULATION: 44.27 Million (2017 estimate)
CAPITAL: Buenos Aires
GDP: USD 541,748 Million

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KEY POINTS

- The tax authority is the Administración Federal de Ingresos Públicos (Internal Revenue Service, or AFIP).
- The main tax legislation in Argentina is the Income Tax Law and Regulations. For transfer pricing the relevant regulations are the AFIP Dirección General Impositiva (DGI) Regulation No. 1,122 (Published 31 October 2001), as amended by subsequent regulations.
- Although Argentina is not an OECD member country, the local transfer pricing rules are based on the main concepts of OECD Guidelines and follow the arms' length principle.
- Argentina follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.
- The tax legislation requires that the 'tested party' is always the Argentinean entity, so when documenting transfer pricing in Argentina, one should always be mindful of the tested party rule.
- Taxpayers must file a transfer pricing mid-term form (Form F742) prior to fiscal year-end.
- Within 14 days of the eighth month of a company's fiscal year-end, an annual transfer pricing return (Form F743), an annual transfer pricing study, Form 4501, audited financial statements, and the Certified Public Accountant (CPA) certification, must be filed with the tax authority. Any transfer pricing adjustments should be recognised by the date the income tax return is due (by the fifth month after the fiscal year-end).
- An annual transfer pricing study is required to be filed with the tax authorities for all transactions with related parties (and deemed related parties) and for independent parties situated in tax havens. Due to the lack of reliable, local information the tax authority has no preference, or requirement, for local comparables to be used in a benchmarking study and will accept information from the American market. The tax authority generally focuses on the interquartile range in a TNMM analysis.
- Taxpayers are expected to have prepared, and have available, supporting contemporaneous transfer pricing documentation supporting the arm's length nature of their related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within 15 days.
- The late filing penalty of a late tax return (containing international transactions) is between ARS 9,000 to ARS 20,000 (approx. USD 600 to USD 1,300). For not providing the requested information (retaining vouchers, evidence of prices in files or failing to file tax returns) the penalty is up to ARS 45,000 (approx. USD 2,900). Following the third request, if tax returns remain outstanding and the taxpayer has income over ARS 10 million (approx. USD 650,000), the fine is increased from ARS 90,000 to ARS 450,000 (approx. USD 5,800 to USD 29,000).
- Interest accrues monthly on unpaid tax balances at 3% (4% upon lawsuit filing).
- The penalty for unpaid taxes relating to international transactions is from 100% to 400% of the unpaid tax. In cases of fraud, the penalty is two to ten times of the unpaid tax. Where the unpaid tax exceeds certain limits, imprisonment can result.
- There is no Advance Pricing Agreement (APA) procedure available in Argentina, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The Australian tax authority is the Australian Taxation Office (ATO) and it is very active in policing and developing Australia’s transfer pricing rules and closely follows the OECD guidelines. Australia is an OECD member country.

- The transfer pricing rules are contained within Division 13 of Part III of the Income Tax Assessment Act 1936. Transfer pricing continued to develop and evolve in Australia and two further key Acts were introduced, namely, the International Tax Agreements Act 1953 and the Income Tax Assessment Act 1997. The development of the Australian transfer pricing rules has been further enhanced and supported by tax rulings and determinations, ATO Practice Statements (LAPS) and various ATO guides and publications.

- Australia has a self-assessment system and taxpayers have the responsibility to satisfy the ATO (and the Courts) that their related party transfer prices are at third party, arm’s length values and to correctly report this position as part of their annual income tax return submission.

- Australia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods. The most appropriate pricing method relevant to the circumstances of the specific case should be adopted.

- The Australian Government has adopted a number of the recommendations of the OECD/G20 BEPS Action Plan. Australian taxpayers with accounting periods commencing on or after 1 January 2016, where their global revenue exceeds AUD 1 billion, will be required to provide one or more of the following; a Country-By-Country (CbC) Report; a Master File; and/or, a Local File.

- The ATO prefers the use of local comparables (local Australian companies) in a benchmarking study and does not use secret comparables. No specific transfer pricing database is preferred by the ATO and it normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

- Although not required under the Australian tax legislation, a transfer pricing study is useful as supporting documentary evidence to reasonably argue the transfer pricing position of the taxpayer (and reduce the risk of an audit from the ATO).

- Australia has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. Subdivision 815-A ITA97 introduced ‘treaty-equivalent’ transfer pricing rules into Australia’s domestic tax legislation. A taxpayer may submit an adjustment to the competent authority following its proposal to the taxpayer by the ATO (normally, in a position paper). No tax payment is required before a taxpayer can apply to the competent authority.

- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The Austrian tax authority is the Bundesministerium für Finanzen (Federal Ministry of Finance, or BFF).
- The OECD’s transfer pricing guidelines were adopted into the Austrian transfer pricing guidelines (TPG) by way of administrative guidelines (BMF-GZ 010221/2522-IV/4/2010) and in the Fiscal Register of the Austrian fiscal authority (AÖF Nos. 114/1996, 122/1997, 155/1998 and 171/2000). In line with the OECD BEPS initiatives, Austria has introduced mandatory Country-By-Country reporting from 2016 for businesses with sales over EUR 750 million. Austria is an OECD member country.
- Contemporaneous transfer pricing documentation is not required to be submitted with the annual tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions. Transfer pricing documentation should be prepared based on the Federal Fiscal Code’s general provisions i.e. in accordance with the OECD Guidelines (or in German, the Code of Conduct on Transfer Pricing Documentation for Associated Enterprises in the European Union). When transfer pricing documentation is requested by the tax authority, it must be provided within one month. Country-By-Country reporting is required for businesses with sales over EUR 750 million.
- In Austria, the arm’s length principle, and the ‘substance-over-form’ principle, which is a general principle of Austrian income tax, must be strictly observed. A transaction must be assessed according to its economic effect and not according to the legal form it takes. Notably, restrictions apply to the deductibility of intra-group interest and royalty payments to related parties in low tax jurisdictions. The relationship threshold for transfer pricing rules to apply between parties is 25%.
- Austria follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.
- Broadly, assessments have a six-year statute of limitation from the end of the respective tax year (although this can be extended under certain circumstances). Transfer pricing penalties will be enforced that relate to tax fraud and wilful and abusive tax evasion according to Fiscal Penal Code (although disclosure of relevant documentation by the taxpayer can defend against such penalties).
- Austrian appeals procedures allow transfer pricing adjustments by the tax authorities to be disputed through the Mutual Agreement Procedures (MAPs) and under the EU Arbitration Convention. The Austrian tax treaty network is extensive and the competent authority frequently obtains double tax relief (a taxpayer may go to the competent authority before paying tax).
- For benchmarking purposes, the Austrian tax authorities do not insist on local comparatives due to the limited size of the Austrian market and available data. No specific transfer pricing database is preferred by the tax authority although it does use the Orbis database for comparative purposes. For benchmarking purposes, the tax authority prefers independence thresholds for comparables; EU (enlarged) comparables; multiple year average; no average loss or losses in more than two years; no start-up entities. The tax authority focuses on the interquartile range in a TNMM analysis.
- Unilateral Advance Pricing Agreements can be agreed with the tax authority. A formal advance ruling procedure became effective in January 2011. A fee is payable depending on the level of a taxpayer’s sales (between EUR 1,500 and EUR 20,000; for a group filing consolidated accounts EUR 20,000).
KEY POINTS

- The tax authority is the Ministry of Taxes of the Republic of Azerbaijan (MT).
- The main tax legislation is the current Tax Code (TC), which became effective from 1 January 2001. The transfer pricing rules are contained within Articles 14 and 142.1 TC. The effective date of the transfer pricing rules is 1 January 2001.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return. It is however recommended that contemporaneous transfer pricing documentation is prepared and maintained by a taxpayer to support the arm’s length pricing basis of their related party transactions. Notably, when transfer pricing documentation is requested by the tax authority, it must be provided within five days (so the expectation by the MT is that it is readily available at the time of the request).
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study, and notably states that comparables for the determination of the MP should be taken from “official and open” information sources, but then does not go on to define what sources are considered as “official and open”. Secret comparables are used by the tax authority by way of its own internal database which is not available to the public.
- Azerbaijan is not an OECD member country however the MT has commenced consultations with the OECD on adopting new, more detailed transfer pricing regulations and it is expected that Azerbaijan will bring new transfer pricing rules based on the OECD Guidelines into its tax legislation soon.
- Azerbaijan follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Transactional net margin (TNMM) method.
- Where a transfer pricing adjustment is made, following a tax audit by the MT, it is notified to a taxpayer by an ‘act’ summarising all the adjustments. Where an adjustment is disputed, a taxpayer can make an Appeal against the ‘act’ and, after considering the Appeal, the MT issue its Decision. If a taxpayer disagrees with the Decision, an Appeal to the higher tax authority can be made. Following this, a taxpayer can lodge an Appeal with the Appeal Committee and finally, with the Azerbaijan court system.
- Where a transfer pricing adjustment is sustained, a tax penalty applies of 50% of the unpaid tax and interest is charged at a rate of 0.1% per day for each day the tax remains unpaid (not exceeding one year).
- The statute of limitations for the assessment of transfer pricing adjustments is three years from the tax year in question. Please note, this is extended to seven years where a tax audit has been initiated due to a criminal investigation.
- Although Azerbaijan has an extensive double tax treaty network, the competent authority is inexperienced in obtaining double tax relief.
- There is no Advance Pricing Agreement (APA) procedure available in Azerbaijan, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The Bangladesh tax authority is the National Board of Revenue (NBR).
- The main tax laws in Bangladesh are the Income Tax Ordinance 1984 (ITO) and the Income Tax Rules 1984 (ITRs). Specifically relating to transfer pricing are Sections 107A to 107J of the ITO and rules 70 to 75A of ITR. Please note however that new regulations on transfer pricing were introduced for the first time through Finance Act 2012 and became effective from 1 July 2014 (corresponding assessment year 2015-2016). Transfer pricing regulations in Bangladesh are mostly directed towards international companies and their overseas related parties or overseas companies having direct or indirect transactions with related parties in Bangladesh (Bangladesh subsidiary, associates, permanent establishment) i.e. transactions between two associated entities where either one or both are non-residents.
- Bangladesh is not an OECD member country, but broadly, its transfer pricing regulations are in line with the OECD’s Guidelines and the arm’s length principle.
- Bangladesh follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price, the cost-plus, the resale price, the profit split, and, the transactional net margin pricing methods. The Bangladesh transfer pricing regulations also provide for other methods if they can yield a result which is consistent with the arm’s length price (Section 107C).
- For benchmarking, Rule 71(3) provides that data relating to the relevant fiscal year should be used (although there are circumstances where data relating to before the relevant financial year can be used). Although not specified in the transfer pricing regulations, as well as Bengali, a transfer pricing study can also be filed in English.
- There is a requirement each year to file a ‘Statement of International Transactions’ with the NBR at the same time the tax return is submitted, and, where the total value of international transactions exceeds 30 million BDT during any income year (approx. USD 370,000), to file a Chartered Accountant's report (Section 107F Finance Act, ‘FA’, requirement).
- Rule 73 provides a list of the mandatory transfer pricing information and documentation that is required to be furnished to the tax authority where the total value of international transactions during a fiscal year, as recorded in the books of accounts, exceeds BDT 30 million. The list includes a profile of the multinational group, each member of the group, and each associated enterprise. It also requires a business description, the nature and terms (including prices) of international transactions, a description of the methods considered, functions performed, risks assumed, assets employed, a record of comparability evaluation, a record of any financial estimates, the reasons for selection of method, and details of transfer pricing adjustments together with any other relevant information.
- A penalty of up to 1% of the value of the international transaction arises where a taxpayer fails to retain, maintain or provide any information or documentation (under Section 107E FA) or fails to comply with a Notice or Requisition (issued under Section 107D FA). Failure to file a ‘Statement of International Transaction’ attracts a penalty of 2% of the value of the international transaction (Section 107H FA). A penalty of up to BDT 300,000 (approx. USD 3,700) arises for failure to provide an accountant’s certificate. Currently no penalty relief provision exists in the legislation. Where a transfer pricing assessment has commenced, there is a period of three years in which the Order of Assessment is required to be issued from the end of the assessment year in which the income was first assessable.
- There is no Advance Pricing Agreement (APA) procedure available in Bangladesh, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Ministry of Taxes and Duties of the Republic of Belarus (MTD). The main tax legislation is the Tax Code of the Republic of Belarus (Tax Code). The transfer pricing rules are contained within Article 30-1 TC. Although Belarus is not an OECD member country it does follow the arm’s length principle and the Tax Code broadly follows the OECD Guidelines.

- The following transfer pricing documentation must be submitted annually to the MTD by taxpayers (where relevant):
  - Transfer pricing documentation for controlled transactions over BYN 1 million;
  - A report providing the economic justification of an applied price for real estate transactions and foreign or domestic transactions over BYN 100,000;
  - Controlled transaction notifications (taxpayers must send an electronic invoice to the tax authorities of each transaction).

- Taxpayers should prepare and maintain contemporaneous transfer pricing documentation. When transfer pricing documentation (or economic justification) is requested by the tax authority, it must be provided within 10 working days (desk tax audit request) or 5 working days (field tax audit request).

- The MTD does not insist on the use of local comparables in a benchmarking study mainly due to the lack of available comparable local data therefore foreign comparable data is acceptable. No specific transfer pricing database is preferred by the tax authority and it accepts data from commercial databases such as Amadeus, Ruslana (BvD), and the Spark (Interfax) database.

- Belarus follows the following transfer pricing methods: the comparable uncontrolled price (CUP) method; the Cost-plus method; the resale price method; the comparable profits method (CPM); and the profit split method.

- The MTD may substitute a market price where:
  - The sale transactions of immovable property or real estate are at a transaction price which is 20% lower than the market price;
  - The transaction price (price of a number of transactions with one person per year) of foreign-trade transactions between related parties or with an offshore party is greater than BYN 100,000;
  - Transactions are conducted inside the country with a related party that is exempt from paying profit tax in the tax period when the transaction took place.
  - There are other foreign-trade transactions (not mentioned in the first three bullet points) on strategic goods which are included in the list issued by the Government of the Republic of Belarus (when the transaction price (price of a number of transactions with one person per year) is greater than BYN 1 million);
  - There are other transactions (not mentioned in the first three bullet points) of organisations which are included in the List of large-scale payers (when the transaction price (price of a number of transactions with one person per year) is greater than BYN 1 million).

- Belarus has an extensive double tax treaty network. No formal rules exist which determine when a taxpayer may submit an adjustment to the competent authority or whether a tax payment is required before a taxpayer can apply to the competent authority.

- There is no Advance Pricing Agreement (APA) procedure available in Belarus, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The Belgium tax authority is the Belgian Administration of Direct Taxes (ADT), which is part of the Federal Public Service Finance.

- The Belgian Income Tax Code (ITC) did not have specific transfer pricing provisions addressing intercompany pricing until mid-2004 when, on 21 June 2004, Article 185 of the ITC was expanded and formally introduced the arm’s length principle into Belgium Law. This provided for a unilateral adjustment to the Belgian tax basis. The Articles in the ITC relating to transfer pricing include Articles 26, 49, 54, 55, 56, 79, 185 (Section 2), 207, and 344 (Section 2). In addition, several Circulars have been issued.

- A provision of 23 December 2009 denied tax deductions relating to payments to tax havens that were not reported, or were lacking underlying bona fide business purposes. Further guidance has been provided by the tax administration on several transfer pricing matters (principally, issued in 1999, 2000, 2003, July 2006 and November 2006).

- Belgium is an OECD member country and follows the OECD Guidelines. All transactions with group companies must be conducted on an at arm’s length basis. This means that the prices applied must be set as if the parties involved were genuine independent third-party companies, considering the normal market prices for similar transactions in identical or similar circumstances.

- Where a group has a presence in various countries it may have mandatory transfer pricing documentation filing requirements. Specifically, every Belgian tax resident affiliate of a multinational Group which exceeds one of the below criteria in the fiscal year preceding its most recently closed financial year, according to its BE GAAP annual accounts on a non-consolidated basis, should file both a Local File and Master File:
  - Gross operational and financial turnover (excluding one-off transactions) exceeding EUR 50 million;
  - Balance Sheet total exceeding EUR 1 billion; or,
  - Average personnel exceeding 100 full time equivalents.

- If a Group has a consolidated gross turnover of more than EUR 750 million, a Country-by-Country (CbC) report must be completed. The CbC report will include a general overview of the group’s worldwide income, its economic activities and in which countries the Group pays its taxes. In principle, the CbC report should be filed by the parent company of the Group in the country in which this parent company is a tax resident. However, in some cases, a Belgian tax resident company of the Group can be obliged to file the CbC report in Belgium. Every Belgian tax resident company of a “large” multinational Group should inform the ADT of the identity of the company that will file the CbC report before the fiscal year end of the parent company.

- The ADT uses the Amadeus database and Belfirst (a local database) and does not insist on local comparables to be used in benchmarking and will accept the use of pan-European comparables. In a transfer pricing audit however, there is a level of sensitivity for the presence or absence (rejection criteria) of Belgian comparables. The tax authority generally focusses on the interquartile range in a Transactional Net Margin Method (TNMM) analysis.

- Belgium has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief.

- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is Servicio de Impuestos Nacionales (Internal Revenue Service, or IRS).
- The main tax legislation is the Bolivian Tax Code supported by various regulations and rulings. In July 2014, Act No. 549 introduced a transfer pricing regime in Bolivia, effective from the 2015 fiscal year. As well as Act No. 549, transfer pricing legislation has been strengthened by Act No. 516, Supreme Decree No. 2227 and Normative Resolution No. 10-0008-15.
- Under the current transfer pricing regime, commercial and/or financial transactions performed between related parties must be valued using the arm’s length principle i.e. transactions must be valued as if they were performed between unrelated parties in comparable markets.
- Bolivia is not an OECD member country however its transfer pricing laws are broadly based on the OECD Guidelines although the OECD rules are not expressly accepted.
- The following methods may be used to value transactions between related parties:
  - Comparable uncontrolled price (CUP) method;
  - Resale price method;
  - Cost-plus method;
  - Profit-split method;
  - Transactional net margin (TNMM) method; and,
  - Notorious price in transparent markets (applicable to the import or export of commodities)

The IRS may verify if a transaction is valued according to the above methods and may make adjustment or re-value the transaction if the agreed value, regardless of the adopted legal form, does not conform to the economic reality, or cause lower taxation in Bolivia.

- Transfer pricing documentation must be provided (under Act No. 843 and Supreme Decree No. 2227). The Transfer Pricing Return (Form 601) includes:
  - A description of transactions with related parties and the pricing procedures between those related parties; and,
  - An overview of the taxpayer considering its commercial and industrial position and complete details of all related parties.

The transfer pricing documentation (Transfer Pricing Return) must be filed with the IRS within 120 days after the tax year end.

- Under the Bolivian transfer pricing rules, an ‘applicable’ taxpayer has the following obligations:
  - If annual operations with related parties are greater than BOB 15 million (USD 2,155,172), a transfer-pricing study and Form No. 601 must be delivered to the IRS.
  - If annual operations with related parties are between BOB 7,500,000 (USD 1,077,586) and BOB 15 million (USD 2,155,172), only Form No. 601 must be delivered to the IRS.
  - If annual operations with related parties are less than BOB 7,500,000 (USD 1,077,586), the company must retain information and documentation to demonstrate that the operations were made at market values.

- The penalty for not filing transfer pricing information, or a tax return by the due date, is USD 1,472 and the penalty for an incomplete filing is USD 736. There are currently no defined penalty relief procedures. A general statute of limitations applies in Bolivia (Article 59 of the Bolivian Tributary Code).
- There is no Advance Pricing Agreement (APA) procedure available in Bolivia, and consequently, no APAs have been negotiated with the tax authorities.
BOSSNIA AND HERZEGOVINA

CURRENCY: Convertible Mark (BAM)
POPULATION: 3.79 Million (2017 estimate)
CAPITAL: Sarajevo
GDP: USD 16,532 Million

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KEY POINTS

• Bosnia and Herzegovina consists of two key territorial and administrative bodies, namely, the Federation of Bosnia and Herzegovina (FBH) and the Republic of Srpska (RS). There is also the District of Brcko (BD).

• The tax authority in the FBH is the Porezna uprava, Federalno Ministarstvo Finansija FBH (Tax Administration, Federal Ministry of Finance in the FBH). The tax authority in the RS is the Porezna uprava, Ministarstvo finansijska RS (Tax Administration, Ministry of Finance in the RS).

• The main transfer pricing provisions in the FBH are Articles 44 to 46 of the Corporate Profit Tax Law (FBH law). In the RS, the main transfer pricing provision are Articles 31 to 35 of the RS Corporate Profit Tax Law (RS law).

• The effective date for transfer pricing in FBH is 1 January 2008; in RS, the effective date is 1 January 2007.

• Transfer pricing requirements are imposed at the entity level. The FBH and RS have similar regulations in place.

• Since Bosnia and Herzegovina is not an EU or an OECD member, the local legislation does not have the same requirements with respect to transfer pricing documentation as in EU countries nor does the legislation refer to the OECD guidelines. Bosnia and Herzegovina does however follow the arm’s length principle for related party transactions.

• FBH and RS (and BD) Related Parties: FBH and RS (and BD) legislation states related parties of a legal person are considered to be physical or legal persons if those persons possess more than 25% of active shares with voting rights. A legal person can be a related party if it possesses more than 25% active shares in the other person indirectly or directly. Indirect ownership is:
  • If a legal person possesses more than 25% of a dependent company, and that dependent company possesses more than 25% in the other legal person.
  • If both legal persons have a common shareholder who possesses more than 25% active shares with voting rights in both legal persons.

• FBH and RS (and BD) prescribed pricing methods are as follows:
  • Comparable Uncontrolled Price (CUP) method (primary method);
  • Cost plus method;
  • Resale price method;
  • Profit split method; and,
  • Transactional net margin method (TNMM).

Please note, the regulations also provide that any other method may be adopted if methods listed above are not applicable.

• There is no Advance Pricing Agreement (APA) procedure available in Bosnia and Herzegovina (FBH, RS (and BD)), and consequently, no APAs have been negotiated with the tax authorities.
BRAZIL

CURRENCY: Brazil Real (BRL)
POPULATION: 211.24 Million (2017 estimate)
CAPITAL: Brasilia
GDP: USD 1,769,600 Million

PKF CONTACT INFORMATION

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KEY POINTS

- The tax authority is the Receita Federal do Brasil (Department of Federal Revenue of Brazil, or IRS)
- The main tax legislation in Brazil is the Internal Revenue Code (IRC). The transfer pricing rules are contained within Laws n. 9.430/96 and n. 12.715/12, Normative Instructions RFB 1.037/10, 1.312/12, and n. 1681/16. The effective date of the transfer pricing rules is 1 January 1997.
- Brazil deviates from the OECD Guidelines (and US transfer pricing regulations) by not adopting the internationally accepted arm’s length principle but instead providing maximum price ceilings for deductible expenses on inter-company import transactions and minimum gross income amounts for intercompany export transactions. The rules cover the import and export of products, services and rights charged between related parties, as well as all import and export transactions between Brazilian residents and residents in either a listed low-tax country or under a listed favourable tax regime. Domestic transactions are not subject to Brazil’s transfer pricing rules but follow other ‘control and tax avoidance’ rules.
- Whilst Brazil is not a member of the OECD, it is a member of the G20, and has been part of the discussions in the Base Erosion and Profit Shifting (BEPS) action plan. Notably, Brazil is taking steps towards OECD’s recommendations by promulgating domestic laws that enforce transparency in business relations e.g. the Brazilian IRS has issued Normative Instruction No. 1681 requiring certain companies to complete a Declaration-Parents-Parents report (or Country-By-Country (CBC) report).
- At difference to other countries where the arms’ length principle and comparable prices are the rule, the Brazilian rules establish fixed formulas to determine the accepted transfer price. However, Brazil does not completely ignore comparable prices or the arms' length principle, rather, it limits the application by setting accepted standards for their application.
- Under Brazilian transfer pricing rules, three pricing methods are established:
  - Comparative Independent Price (PIC);
  - Resale Price Less Profit (PRL) (or Production Cost Plus Profit (CPL));
  - Commodities Price Method (PCI).
- Pricing methods are also prescribed for exports to foreign related parties:
  - Export Revenues Method (PEx);
  - Country Destiny Price of Exports Revenue Method (PVA / PVV);
  - Cost Acquisition or Manufacture plus Tax and Profit Method (CAP);
  - Price Under Quotation on Export Method (Pecex).
- A taxpayer must disclose the transfer pricing method used in the annual tax return and prove that the corresponding costs, expenses and charges which exceed the elected transfer pricing method have been added back as taxable income. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days (a time extension may be possible depending on the complexity of documentation required). The statute of limitations for transfer pricing assessments is five years from the tax return filing due date.
- Brazil’s double tax treaty network is extensive. No formal rules exist which determine when a taxpayer may submit an adjustment to the competent authority or whether a tax payment is required before a taxpayer can apply to the competent authority. There is no Advance Pricing Agreement (APA) procedure available in Brazil, and consequently, no APAs have been negotiated with the tax authorities.
PKF Worldwide Transfer Pricing Guide 2017-18

BULGARIA

CURRENCY: Bulgarian Lev (BGN)
POPULATION: 7.05 Million (2017 estimate)
CAPITAL: Sofia
GDP: USD 50,446 Million

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KEY POINTS

- The tax authority is the National Revenue Agency, Ministry of Finance (NRA).
- The transfer pricing legislation in Bulgaria consists of Article 15 of the Corporate Income Tax Act (CITA), Article 27 VAT Act, Article 116 Tax and Social Security Procedure Code (TSSPC) and Ordinance N-9 (issued 14 August 2006, which sets out the application of acceptable transfer pricing methods).
- The Bulgarian transfer pricing rules require that taxpayers apply arm’s length prices in their related party transactions to both cross-border and domestic transactions.
- Bulgaria follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.
- A taxpayer is obliged to prove the arm’s length character of its related party transactions during a tax audit by applying one of the above pricing methods. A transfer pricing manual released by the tax authority in February 2010 provides guidance under several topics i.e. transfer pricing document content, intra-group services, specific profit mark-up ranges that have proved customary for Bulgaria, etc.
- Bulgaria is not an OECD member country, and the OECD Guidelines are not mandatory. The tax authorities however usually accept the principles outlined in the OECD Guidelines and the NRA Manual refers to the EU Transfer Pricing Code of Conduct regarding transfer pricing documentation.
- Transfer pricing matters are reviewed by the NRA during ordinary tax audits. When transfer pricing documentation is requested by the tax authority, it must be provided within 14 days (although time extensions are possible or the tax audit procedure may be suspended for up to three months). The NRA may perform its own transfer pricing analysis where documents are not provided.
- A transfer pricing disclosure (detailing the related party transactions and transactions with entities in low-tax jurisdictions) is required to be submitted to the NRA on an annual basis. The NRA provides guidance each year on the transfer pricing information which is required to be disclosed in the annual tax return.
- The NRA investigates transfer prices by:
  - Exploring comparables from internal records (internal database);
  - Requesting comparable data from the taxpayer’s competitors;
  - Reviewing all available transfer pricing documentation;
  - Using external valuation specialists.
Against the above background, it is important that a taxpayer prepares contemporaneous transfer pricing documentation and this is readily available to defend against any proposed adjustments by the NRA.
- The NRA prefers local data to be used from the Bulgarian market in benchmarking studies, however, the Amadeus database is generally accepted. The NRA focuses on the interquartile range in a TNMM analysis.
- The general statute of limitations for tax liabilities is five years from 1 January of the year following the year when the tax was payable.
- Bulgaria has an extensive double tax treaty network and the competent authority is frequently effective in obtaining double tax relief. No formal rules exist which require the payment of tax before an application may be made.
- There is no Advance Pricing Agreement (APA) procedure available in Bulgaria, and consequently, no APAs have been negotiated with the tax authorities.
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KEY POINTS

- The tax authority is the General Director of Taxation (GDT).
- The transfer pricing rules are contained within the Circular on the Finance Law by the General Director of Taxation and Article 18-3 of the New Finance Law 2014 which sets out the transfer pricing documentation requirements: "Companies falling under the Department in charge of large enterprises shall also submit within the same deadline and using the form provided by the Administration, the statement of shares which they own in other companies where such shares do not exceed 25% of their share capital. They shall attach a detailed statement of transactions with the companies which control them or which are under their control, be they in Cameroon or abroad. For the application of this provision, the notion of control must be understood as used in Article M 19 (a) (2) of the Tax Procedures Manual."
- The tax legislation is the General Tax Code (GTC) and Section 19 provides: "For the assessment of the company tax payable by companies which are controlled by, or which control an undertaking established outside Cameroon, the profits indirectly transferred to the latter by increasing or reducing the purchase or selling price, or by any other means, shall be incorporated in the results shown by their accounts. The same shall apply to undertakings which are controlled by an under-taking or group likewise in control of undertakings established outside Cameroon."
- Pricing methods based on ‘profits’ such as the division of profits method and the transactional net margin method (TNMM) are acceptable to the GDT, however, subject to the transaction, more suitable pricing methods are the comparable uncontrolled price (CUP) method, the resale price method, and the cost plus method.
- Although Cameroon is not an OECD member country, its transfer pricing legislation complies with the OECD Guidelines (2010) and it adheres to the arm’s-length principle. The transfer pricing rules not only apply to cross-border inter-company transactions but apply equally to domestic inter-company transactions.
- Related party transactions must be disclosed by taxpayers in the transfer pricing documentation submitted with the annual tax return (Article 18-3 directs a company to provide a description of transactions with other affiliates, and the nature and amount of fund flows). A specific ‘declaration of information’ form must be filed when submitting the report (and the GDT provide the template for this form to be completed).
- Transfer pricing documentation should be submitted annually with the tax return, on or before 15 March for companies under the Large Taxpayers Unit.
- The scope and number of tax audits is increasing year-on-year and the risk of an audit is generally high and equally high is the inclusion of a transfer pricing review although a challenge by the GDT to the transfer pricing methodology adopted by a company is likely low.
- No specific penalty rules exist for additional tax arising through transfer pricing adjustments, however, broadly, all tax adjustments are subject to interest and penalties (penalties are generally calculated as a percentage of the outstanding tax).
- Where transfer pricing documentation has not been provided (or partly provided) a Notice to provide the outstanding documentation will be served on the company within 30 days from the documentation submission deadline (and the penalties for continued failure are stated in the Notice).
- There is no Advance Pricing Agreement (APA) procedure available in Cameroon, and consequently, no APAs have been negotiated with the tax authorities.
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KEY POINTS

- The tax authority is the Canada Revenue Agency (CRA).
- The transfer pricing rules of Canada are contained within Section 247 of the Income Tax Act of Canada (ITA), and Chapters 1 and 2 (Fifth Supplement), as amended. Rather than setting out its views and positions in legally stated principles, with examples, the CRA outlines its views in general principles providing administrative interpretations and guidance with respect to transfer pricing matters. Guidance is provided by Transfer Pricing Memoranda (TPM), Information Circulars (ICs), and announcements at public conferences, conventions and events.
- Canada is not an OECD member country, and, whilst there is no mention of the OECD Guidelines in Section 247 ITA, the arm’s length principle is followed. Canadian statutory provisions are used to deal with transfer pricing matters although the OECD’s international principles and standards are considered.
- Documentation: If the combined reportable transactions of a taxpayer with non-residents are greater than CAD 1 million, then they must complete and file Form T106 with the CRA. Form T106 requests detailed information about the number and type of transactions with non-resident related parties (entities). It also requests details of the transfer pricing methodologies used (and any changes) and whether the prices are charged in accordance with an Advance Pricing Agreement agreed with another tax authority, and whether contemporaneous documentation is available to support the related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within three months.
- A penalty of the greater of CAD 100 and CAD 25 per day, up to a maximum of 100 days, is levied where Form T106 is filed late (after the due date). For each failure to comply, where the reporting person knowingly fails to file the T106 documentation, there is also a failure-to-file penalty which is levied from CAD 500 to CAD 12,000 (although this is reduced by any late filing penalties). Transfer pricing penalties are enforced aggressively although penalties may be reduced or eliminated under certain circumstances.
- The CRA uses the Standard and Poor’s Capital IQ transfer pricing database for benchmarking and price comparative analysis. Broadly, although the CRA accepts the use of North American comparables, it does prefer local comparables to be used in benchmarking studies. The CRA directs significant resources to transfer pricing audits and applies a risk-based approach to evaluating and selecting taxpayers for transfer pricing audits.
- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge a Notice of Objection with the Appeals division of the CRA. Failing a satisfactory outcome for the taxpayer, an Appeal may be lodged before the Tax Court of Canada.
- Canada has an extensive tax treaty network (currently 92 treaties in force) and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority broadly following the receipt of a CRA notice of reassessment.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the CRA (there is no filing fee, although CRA out-of-pocket expenses in negotiating the APA normally must be paid).
KEY POINTS

• The tax authority is the Servicio de Impuestos Internos (Internal Revenue Service, or IRS).
• The tax legislation is contained within the Income Tax Law (ITL), and annual Circulars issued by the IRS. Specifically, the transfer pricing rules are contained within Article 41E ITL (Decree Law No. 824), as amended. The effective date of the transfer pricing rules is 1 January 1998, although changes were made by the last Tax Reform Act on 27 September 2012.
• Chile is an OECD member country and although the ITL does not mention the OECD Guidelines they should be regarded as relevant for Chile transfer pricing matters.
• As well as the transfer pricing methods outlined in Chapter II of the OECD Guidelines, additional (residual) methods are accepted when none of the transactional or profit based methods are applicable, subject to the pricing method being justified due to the nature of the transaction and circumstances (the “best method rule”).
• A transfer pricing study should contain an overview of the company, an analysis of the relevant industry (or industries), a functional analysis, the basis and justification for the selected pricing method, a description of comparables, provide supporting documentation, and be completed in the Spanish language. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.
• Under Article 41E ITA an annual Statement (signed Affidavit) must be filed by a taxpayer (who is subject to the transfer pricing rules) by the last business day of June. The transfer pricing Statement (Affidavit) includes:
  ▪ Identification of the taxpayer;
  ▪ Related party information (eg. name, country, etc.) and the features of each transaction (nature, type, currency, etc.);
  ▪ The methodology used for calculating prices, profitability and returns;
  ▪ Information concerning intra-group services, financial transactions, royalties and commissions, etc.;
  ▪ Transfer pricing adjustments, if any, either in accounting records or in the taxable income determined;
  ▪ Details on the existence of a business restructuring affecting the taxpayer’s operation in Chile. Where the transfer pricing Statement is filed late, not filed at all, or is incomplete or incorrect when filed, a penalty arises from 10 to 50 Annual Tax Units (approximately USD 8.300 to USD 41.500), with a cap of 15% of the equity for tax purposes or 5% of the effective capital, whichever is higher.
• Where tax adjustments made by the tax authority are disputed, a taxpayer may first request the IRS to reconsider the determination (via the administrative process). If the reconsideration request is rejected, a taxpayer can submit a claim to the Tax Court. Where the adjustment stands and there is not an Appeal, or reconsideration, the IRS will issue a Payment Order. The Payment Order will be for the tax outstanding (a sole tax at a rate of 40%), inflation-linked adjustments, interest, and a five percent penalty over the amount adjusted. A fine of 5% will apply unless the documentation requested by the IRS during the tax audit was duly and timely delivered.
• Chile has a good double tax treaty network. With prior authorisation from the IRS on the nature and the amount of an adjustment, a taxpayer may correct the price, value or profitability of a transaction with an overseas related party where a transfer pricing adjustment has been made in the other country (which has a double tax treaty with Chile that does not prohibit such adjustments).
• Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities.
PKF CONTACT INFORMATION

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KEY POINTS

• The central tax authority in China is known as the State Administration of Taxation (SAT), which is the top tier of a multi-layer structure with state and local tax bureaus under its administration. China is not an OECD member, but as a member of the G20, it is actively involved in the OECD BEPS Action Plan.

• A circular entitled Guo Shui Fa [2009] No. 2 ('Circular 2') was issued by the SAT in 2009 and became effective from 1 January 2008; it is considered a pivotal step in the development of China’s transfer pricing regime as it adopted a systematic approach and set out detailed rules on the administration of transfer pricing. Following Circular 2, the SAT issued Public Notice [2016] No. 42 ('PN24') on 29 June 2016. PN24 made substantial changes to the Circular 2 rules and refined the reporting of related party transactions and the administration of transfer pricing documentation. It also introduced new transfer pricing compliance obligations including Country-by-Country (CbC) reporting (in line with BEPS 13), annual reporting forms for related-party transactions (RPT Forms) and transfer pricing documentation (which now includes the completion of a master file, local file, and special issue file).

• The submission of a CbC report is required if a Chinese resident company is the ultimate holding company of the group and consolidated revenue is over RMB 5.5 billion or it is nominated as the reporting entity by the group. The Local File and Special Issue File should be completed by 30 June 2018 for related party transactions carried out during the year 2017; the Master File should be completed within 12 months after the end of the same fiscal year of the group’s ultimate holding company. Taxpayers should submit a transfer pricing report within 30 days when requested by SAT. In March 2017, SAT issued Public Notice [2017] No. 6 ('PN6') to enhance the administration of the special tax investigation, adjustment and mutual agreement procedures (MAPs), which is a revision to Circular 2. PN6 clarifies the methodology and procedures for special tax audit and adjustment, its requirements on intangible assets, related party services as well as the monitoring of profit levels and general administration on MAPs.

• Where documentation is requested under an investigation it must be provided within the time stated on the ’Notice of Tax Related Issues’ (under special circumstances a time extension of 30 days is possible). If a taxpayer disagrees with SAT adjustments, a discussion (negotiation) may resolve the matter. Where no resolution is reached, a formal dispute resolution process is available (administrative appeal and litigation). The statute of limitations for transfer pricing adjustments (assessments) is ten years from the year in which the related party transaction occurs. A taxpayer is only permitted to adjust taxable income upwards through a special declaration in the annual tax return and no other year end transfer pricing adjustment is permitted.

• A transfer pricing study should follow Chapter V of the OECD Guidelines and provide additional information (and completed forms) in accordance with the Chinese transfer pricing rules. Penalties apply where a taxpayer fails to provide a required transfer pricing study. Where a taxpayer fails to provide information with respect to a special tax investigation, or provides false or incomplete information, taxable income can be determined by SAT in accordance with the law. The underpayment identified through the special tax audit and adjustment is subject to late-payment interest at the benchmarking borrowing rates.

• The tax authority follows the pricing methods outlined in Chapter II of the OECD Guidelines. For comparative analysis SAT uses the Bureau van Dijk’s Osiris database and Standard and Poor’s Research Insight database as well as possible internal information and databases. Although China has an extensive double tax treaty network, the competent authority has limited experience in obtaining double tax relief. Under certain conditions, unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Directorate of National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales, or DIAN).
- The main tax legislation, enacted in 1989, is the Colombian Tax Code (CTC). The transfer pricing rules are contained within Articles 260-1 to 260-11, and 647 CTC, Decrees 3030 of 2013 and 1966 of 2014, and an annual Decree issued at the end of each tax year.
- As a general rule, transactions between related parties must be carried out on an arm's length basis, i.e. the prices should be the same as those that would be arrived at in comparable transactions with independent parties.
- Although not an OECD member country, the OECD Council's accession discussions with Colombia prompted it to make changes to its transfer pricing rules considering the OECD Guidelines.
- A taxpayer is required to file an annual Informational Transfer Pricing Return and/or supporting transfer pricing documentation, which contains details of their related party transactions. The required transfer pricing documentation should be filed with DIAN via its electronic system, normally in July of the following calendar year (the same due date is for the transfer pricing return and transfer pricing documentation).
- The content of a transfer pricing study must comply with the requirements of the Colombian Tax Code and the Regulatory Decree, which follow Chapter V of the OECD Guidelines. It should have an executive summary, basic information on the company and its activity and other specific information, a functional analysis, industry analysis, economic analysis, and annex information. In addition, the transfer pricing study should also state the selected pricing method and why this was chosen, provide a description of comparables and conclusions, and include other pertinent and relevant information.
- Colombia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.
- There is no preference, or requirement, by the tax authority for local comparables to be used in benchmarking / comparative analysis and the tax authority has no preferred transfer pricing database. It expects a taxpayer to provide all the required information, analysis and supporting documentation (in the correct form) to evidence that their related party transactions were conducted on an arm's length basis. When transfer pricing documentation is requested by the tax authority, it must be provided within 15 days.
- The use of the interquartile range to determine if an analysed transaction satisfies the arm’s length principle is not mandatory and other statistical measures are accepted eg. the total range. For the transfer pricing analysis, the use of one-year data is acceptable (for the tested party and comparable companies), however, the use of multiple-year data should be supported by a transfer pricing report. An independent auditor must certify the financial information of the transfer pricing analysis and the study must completed in Spanish.
- A taxpayer can dispute an assessment adjustment made by the tax authority under the administrative appeal procedures and then, failing resolution, by tax litigation.
- Colombia has a good double tax treaty network and the competent authority is normally effective in obtaining double tax relief.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
COSTA RICA

CURRENCY: Costa Rican Colón (CRC)
POPULATION: 4.91 Million (2017 estimate)
CAPITAL: San José
GDP: USD 57,689 Million

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KEY POINTS

• The tax authority is the Tax Administration of Costa Rica (Dirección General de Tributación, or DGT).

• The main tax legislation is the Income Tax Law (ITL). The transfer pricing rules are contained within Executive Decree No. 37898-H, which became effective on 13 September 2013 and established the formal transfer pricing obligations to be completed annually by taxpayers, as well as requiring their intercompany transactions to be undertaken at arm’s length (in line with the OECD Guidelines).

• ‘Large taxpayers’, large territorial companies, and free trade zone incentive system companies, must file an annual informational return. The return includes information on the company (taxpayer), its operations, its group, the nature and amount of the related party (controlled) transactions, the transfer pricing methods applied, the comparable data used and conclusions, and other relevant details. When transfer pricing documentation is requested by the DGT, it must be provided within 10 days.

• A penalty equivalent to 2% of the taxpayer’s previous year’s income is levied if the return (and disclosures) are not prepared or submitted to the tax authority by the due date. The penalty is a minimum of approximately USD 7,300 (10 base salaries) and is capped at approximately USD 73,000 (100 base salaries). In the absence of the return, the DGT will determine an appropriate price for the related party transactions.

• Where a taxpayer disagrees with an adjustment made by the DGT there are dispute resolution options available.

• Costa Rica follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods. As well as these pricing methods, taxpayers may also apply other methods to analyse import and export transactions against international price quotations.

• The DGT has no preference for the use of local comparables in a benchmarking study (or comparative analysis) since there is limited public local information available and accepts comparable data from international companies. It doesn’t use secret comparables and doesn’t specify a particular commercial database to be used for comparables. The DGT mainly focusses on the interquartile range in a transactional net margin method (TNMM) analysis. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be completed in Spanish.

• The normal statute of limitations for the assessment of transfer pricing adjustments is four years. This is extended to 10 years where tax returns have not been filed, the taxpayer has not registered with the Tax Administration, or fraudulent tax returns have been deemed to have been submitted. The statute of limitations commences from 1 January of the year following the year when the tax should have been paid.

• Penalties are applied automatically each time a tax adjustment is made and there is no negotiation possible. If an adjustment is sustained, one of the following penalties may apply:
  ▪ 50% of the determined incremental tax e.g. a tax return ‘inaccuracy’;
  ▪ 100% of the determined incremental tax e.g. adjustment derives from information withheld from DGT;
  ▪ 150% of the determined incremental tax e.g. falsified supporting documentation used or identity hidden by use of intermediate persons or entities or ‘substantial’ anomalies in its accounting records.

• Unilateral Advance Pricing Agreements can be negotiated with the tax authority (there is no filing fee).
PKF CONTACT INFORMATION

For further information or advice concerning the transfer pricing rules in Croatia, please contact Stefaan De Ceulaer (PKFI Director Tax and Legal Support) on +32 468 22 3924 or email stefaan.deceulaer@pkf.com.
Alternatively, please contact Oliver Grosse-Brauckmann (International Support Director) on +44 20 3691 2523 or email oliver.grosse-brauckmann@pkf.com.

KEY POINTS

• The tax authority is the Ministarstvo Financija (Ministry of Finance, or MoF).
• The main tax legislation is the Corporate Income Tax Act (CITA) and the Corporate Income Tax Bylaw (CITB). The transfer pricing rules are contained within Article 13 CITA and Article 40 CITB. In addition, the MoF has issued a ‘Manual for Inspection of Transfer Prices’ (Manual) which provides further guidance on transfer pricing matters.
• Although Croatia is not an OECD member country its transfer pricing rules broadly follow the OECD Guidelines and the arm’s length principle. Notably, Croatia’s transfer pricing rules contain mandatory elements relating to the completion of a transfer pricing study which broadly follows Chapter V of the OECD’s Guidelines.
• There is no requirement for a taxpayer to file a specific annual transfer pricing return, unless specifically requested by the MoF. Contemporaneous transfer pricing documentation is not required to be submitted with the annual tax return or by a specific due date, however, it should be prepared and maintained by a taxpayer to support the arm’s length pricing basis of their related party transactions. It is essential that a taxpayer has contemporaneous transfer pricing documentation readily available since when it is requested by the tax authority, it must be made available immediately upon request.
• No specific transfer pricing database is preferred by the tax authority although it does use the Orbis transfer pricing database. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
• Croatia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  ▪ Comparable uncontrolled price (CUP) method;
  ▪ Cost-plus method;
  ▪ Resale price method;
  ▪ Profit split method;
  ▪ Transactional net margin (TNMM) method.
• Although the MoF has not expressed a preference towards the use of local comparables in a benchmarking study, it is recommended to use local data if available and reliable notably so that local industrial and economic trends are reflected in the results. The MoF prefers the use of multiple year averages in a study.
• Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge an Appeal with an independent second-degree body within the MoF. Failing that, a taxpayer can lodge an Appeal with the Administrative Court but before this can happen the taxpayer must first pay the corporate profits tax assessed, the penalty interest and any fixed penalties. Where a transfer pricing adjustment is sustained, tax penalties prescribed under the CITA will apply.
• The statute of limitations for the assessment of transfer pricing adjustments is three years following the end of the relevant tax year (in which the tax liability should have been assessed). The statute of limitations is extended to six years under certain conditions.
• Although Croatia has an extensive double tax treaty network, the competent authority is not experienced in obtaining double tax relief. There is no Advance Pricing Agreement (APA) procedure available in Croatia, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

• For companies with a turnover higher than CZK 2 billion (approximately USD 82 million), and financial institutions, the tax authority is the Specializovaný finanční úřad (Specialized Tax Authority, or STA). For other entities, the tax authority is the Finanční úřad (Tax Authority, or TA).

• The main tax legislation is the Czech Income Tax Act (ITA). The transfer pricing rules are contained within Section 23(7) ITA, Directives D-332, D-333, and D-334, and General Financial Directorate Decree D–10.

• The Czech Republic is an OECD member country and the OECD Guidelines and the Code of Conduct are generally accepted (Directive D-334). The Czech Republic follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. A related party is said to exist under the tax legislation where one party owns greater than 25% of the other (based on voting power, share capital, or common control). There is no limit where a business relationship exists predominantly for tax evasion purposes.

• A taxpayer is required to file an annual transfer pricing disclosure (Form 5404/Ea). Form 5404/Ea summaries a taxpayer’s transactions with each related party (separate forms for each overseas related party having transactions with the taxpayer in the year are required to be filed electronically). Failure to submit Form 5404/Ea to the tax authority is likely to result in a transfer pricing focussed tax audit.

• Taxpayers must also file a separate income tax return attachment to declare selected transactions with related persons. The filing of transfer pricing documentation is not mandatorily but it is recommended. Transfer pricing documentation “should be sufficient” for substantiating the method of calculating the arm’s length price (Code of Conduct). When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.

• When a transfer pricing study is prepared, its content should follow Chapter V of the OECD Guidelines; with an emphasis on demonstrating that related party services invoiced were actually received (a ‘benefits and proof’ test).

• The tax authority doesn’t insist on the use of local comparables in a benchmarking study or comparative analysis (although local comparables can support regional analyses). It uses the Amadeus database, and develops and maintains its own internal comparables. The tax authority focusses on the interquartile range in a transactional net margin method (TNMM) analysis and it typically accepts comparables providing averaging results covering multiple years (three or five years).

• Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge an appeal with the Appeal Financial Directorate. If unsuccessful, a taxpayer can then lodge an appeal with a regional court.

• The statute of limitations for the assessment of transfer pricing adjustments is generally three years from the tax return filing date. This extends to 10 years in cases of repeated tax audits (and further extensions may apply to companies with tax incentives and/or tax losses).

• The Czech Republic’s double tax treaty network is extensive, and the competent authority is effective in obtaining double tax relief.

• Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs)can be negotiated with the tax authorities. There is a filing fee of CZK 10,000 (approximately USD 400).
PKF CONTACT INFORMATION

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KEY POINTS

- The tax authority is the Skatteministeriet (Danish Customs and Tax Administration, or SKAT).
- The main tax legislation is the Danish Corporation Tax Act (DCA), the Danish Tax Assessment Act (DTAA) and the Danish Tax Control Act (DTCA). The transfer pricing rules are contained within Section 2 DTAA, Sections 3B, 14(4), 17(3) and 17(4) DTCA, Section 11 DTA, Regulation Number 401 of 28 April 2016 (which set out minimum documentation requirements), Guidelines on Transfer Pricing Documentation (updated 30 January 2015), and, Guidelines issued by SKAT in 2009 (which covered various transfer pricing topics including the valuation of goodwill, other intangible rights, and business enterprises).
- Denmark is an OECD member country and Denmark’s transfer pricing rules generally meet the 2010 OECD Transfer Pricing Guidelines. With respect to the OECD’s BEPS initiatives, Denmark has implemented legislation in line with BEPS Action Point 13 requiring relevant taxpayers to file a Local File, Master File, and additionally, for multinational entities, a Country-by-Country Report (CbC Report).
- Taxpayers who have ‘controlled transactions’ (related party transactions) in a year exceeding DKK 5 million (approximately USD 725,000) must provide details of those transactions (and the related parties) as part of their corporate income tax return in Form 05.021 (Form 05.022 is the English version). The documents are submitted with the income tax return under the Danish electronic filing system. Danish transfer pricing methods follow the transfer pricing methods outlined in Chapter II of the OECD.
- Penalties apply where there has been misrepresentation with respect to the obligation to provide transfer pricing documentation as well as misrepresentation in the reported information. Notably:
  - The defective performance in the transfer pricing documentation is assessed from a holistic and proportionality point of view e.g. the significance of the transactions, both economical and factual;
  - Penalties can be issued regardless of any increase in income cf. DCA Section 17(3) and 17(4);
  - The penalty consists of a basic amount of DKK 250,000. The penalty can be reduced by half if the documentation is composed subsequently in a satisfactory manor (no later than 60 days upon the request from SKAT). The penalty is increased by 10% of the increase in income, if the increase in income is due to the arm's length principle not being observed.
- SKAT prefers the use of local comparables in benchmarking and comparative analysis (although there is no requirement to only use local comparables, in fact, European comparables are accepted where local comparables have been limited). No specific transfer pricing database is preferred by the tax authority and internally it uses Amadeus, Orbis and RoyaltyStat databases. For financial transactions, it uses Moody's RiskCalc, Thompson Reuters LPC LoanConnector and Bloomberg databases. The tax authority focuses on the interquartile range in a transactional net margin method (TNMM) analysis.
- A taxpayer must comply with the very specific minimum requirements set out by the Danish transfer pricing legislation with respect to completing transfer pricing studies (which are more specific than Chapter V of the OECD Guidelines, placing greater emphasis on content descriptions and analysis and ensuring the substance is adequately presented). A transfer pricing study should be filed in Danish, English, Norwegian or Swedish.
- Denmark has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. There is no filing fee.
**DOMINICAN REPUBLIC**

CURRENCY: Dominican Republic Peso (DOP)
POPULATION: 10.77 Million (2017 estimate)
CAPITAL: Santo Domingo
GDP: USD 71,457 Million

**PKF CONTACT INFORMATION**

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**KEY POINTS**

- The tax authority is the Dirección General de Impuestos Internos (Tax Administration of the Dominican Republic, or DGII).

- The main tax legislation is Law No. 11–92, the Dominican Tax Code (DTC). The transfer pricing rules are contained within Article 281 DTC (which was amended in January 2007 and introduced the arm’s length principle and allowed the DGII to adjust related party pricing not meeting this standard). In addition, General Standard 04–2011 (which provided the transfer pricing rules) was introduced but later, on 9 November 2012, the enactment of Law 253-12 incorporated these rules into Article 281 DTC (and General Standard 04–2011 was subsequently revoked by Executive Decree No. 78-14).

- An annual transfer pricing return (Informative Return for Transactions with Related Parties or, DIOR) must be filed electronically no later than 180 days after the fiscal closing due date (which is 60 days after the due date for filing the corporate income tax return). The information requested includes details of a taxpayer’s transfer pricing methodology and conclusions, information on the related party transactions for the year and details of the respective related parties. All supporting documentation, including invoices, must also accompany the DIOR.

- If a DIOR (or transfer pricing study) is not submitted by the due date then a penalty is levied from DOR 85,000 to DOP154,740 (approximately from USD 1,800 to USD 3,300). Further penalties and interest apply to adjustments made by the DGII where related party transactions have not complied with the arm’s length principle.

- When transfer pricing documentation is requested by the DGII, although the law does not stipulate a deadline, normally it is provided within a reasonable time (within 30 days).

- A transaction by transaction analysis must be included in a transfer pricing study and its content should follow Chapter V of the OECD Guidelines. All transfer pricing studies must be completed in Spanish.

- In the Dominican Republic, the transfer pricing methods under the DTC follow Chapter II of the OECD Guidelines, although some exceptions can apply depending on circumstances. A taxpayer must maintain contemporaneous transfer pricing documentation for their domestic and cross-border related party transactions.

- The tax authority has not expressed a preference towards the use of local comparables and accepts foreign comparables due to the limited local market. No specific transfer pricing database is preferred by the DGII and it normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can submit a resolution to the Administrative Area within the DGII (which is effectively an objection to the adjustment). Failing a satisfactory resolution, a taxpayer can then make an appeal to the tax court. If an adjustment is sustained, general tax penalties, interest and surcharges will apply.

- Transfer pricing adjustments are only made by the DGII where the related party transaction either results in a reduction of taxable income or a tax deferral. The DGII will assume that one of both of these has happened when the related party transaction results in erosion of the tax base in favour of another jurisdiction, arbitrage of tax rates among residents, or compensation for carry forward losses.

- The Dominican Republic has a minimal double tax treaty network (only Canada and Spain).

- Unilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Servicio de Rentas Internas (Internal Revenue Service, or SRI).
- The main tax legislation is the Ley Orgánica de Régimen Tributario Interno (Internal Tax Regime Organic Law, or LORTI) and its regulations. The transfer pricing rules are contained within LORTI (under the corporate income tax sections) and the SRI Resolution NACDGERCGC15-00000455 of 27 May 2015. The effective date of the transfer pricing rules is 1 January 2005.
- Ecuador is not an OECD member country however its transfer pricing legislation mentions the OECD Guidelines as a reference for analysing transactions between related parties. Notably, its approved transfer pricing methods follow Chapter II of the OECD Guidelines, although some exceptions can apply depending on circumstances.
- The following transfer pricing disclosures apply:
  - Transfer Pricing Annex: Taxpayers who have transactions exceeding USD 3 million (cumulatively in a fiscal year) with domestic or overseas related parties are required to submit a Transfer Pricing Annex to the SRI.
  - Transfer Pricing Report: If the accumulated annual amount in a fiscal year exceeds USD 15 million, the taxpayer must additionally submit a Transfer Pricing Report.
  - Income tax return disclosure: The total amount of transactions with overseas related parties should be disclosed in a taxpayer's annual income tax return, analysed between tax haven and other regimes, and each total further analysed between assets, liabilities, income, and expenses.
  - Compliance tax report disclosure: The amount of transactions with foreign related parties and, under certain conditions, local related parties, must be disclosed in the compliance tax report. Where the required transfer pricing annex or transfer pricing report is not filed with the SRI, under the LORTI, a penalty of USD 15,000 will be levied.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be completed in Spanish.
- When transfer pricing documentation is requested by the SRI, it must be provided within 60 days. Where a taxpayer disagrees with an adjustment made by the SRI, it can be challenged in the respective fiscal court (penalties apply if the adjustment is sustained).
- To eliminate the exposure of transfer pricing adjustments, there are safe harbour limits, as follows:
  - The tax liability should exceed 3% of total taxable income;
  - No transactions should be undertaken with residents in tax havens or preferential tax regimes
  - No agreement should be maintained with the State for the exploration or exploitation of non-renewable resources.
- The tax authority has not expressed a preference towards the use of local comparables and accepts foreign comparables due to the lack of local information. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis. No specific transfer pricing database is preferred by the tax authority although it does use the Compustat North America and other global databases.
- Ecuador has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief.
- Unilateral Advance Pricing Agreements can be negotiated with the tax authorities.
**KEY POINTS**

- The tax authority is the Egyptian Tax Authority (ETA).
- The main tax legislation is the Income Tax Law No. 91 of 2005 (ITL), as amended, and the transfer pricing rules are contained in Article 30 ITL and Articles 38, 39 and 40 of its Executive Regulation. ETA also issued transfer pricing guidelines in 2010.
- Article 30 ITL states: “If the associated persons set conditions in their commercial or financial dealings different from the conditions taking place between non-associated persons, which are liable to reduce the tax base or transfer its burden from a taxable person to another tax-exempt or non-taxable person, the Administration may determine the taxable profit on basis of the arm’s-length pricing.”
- Egypt is not an OECD member country although the Egyptian transfer pricing guidelines are consistent with the OECD Guidelines. It is therefore suggested that Chapter V of the OECD Guidelines should be followed for a transfer pricing study.
- Details of the transactions with the related parties must be disclosed in the annual tax return. The information should include the nature and amount of each related party transaction (and the name of the respective related party), and the transfer pricing method used. If the information is omitted from the tax return, the ETA may reject the tax return completely or consider it an incomplete submission.
- The transfer pricing methods outlined in Chapter II of the OECD Guidelines should be followed, notably, Article 39 ITL directs that the fair market price should be determined according to the comparable uncontrolled price (CUP), cost-plus or the resale price methods. Article 40 ITL provides further guidance by directing that the neutral price should be established with the CUP method, but if the necessary data is unavailable, it should be established with either the cost-plus or the resale price methods. If unable to apply any of these three methods, any other method specified under the OECD Guidelines should be used (or any other appropriate method, which includes the transactional net margin (TNMM) method, subject to the method being justified against the inability to use any of the three prescribed methods, and an explanation provided as to why the other methods were not appropriate).
- The tax authority has not expressed a preference towards the use of local comparables and accepts foreign comparables due to the limited local market. No specific transfer pricing database is preferred by the tax authority (there is not an Egyptian-specific database available).
- When transfer pricing documentation is requested by the tax authority, it must be provided within 45 days. Where a taxpayer disagrees with an adjustment made by the ETA, an appeal to the Internal Committee may be made. If the adjustment remains disputed, the taxpayer can make an appeal to the High Committee. Failing this, the taxpayer can then bring the matter more formally before a Court. If an adjustment is sustained, general tax penalties and delay fines will apply (for the outstanding tax).
- The statute of limitations for the assessment of transfer pricing adjustments is five years and four months following the financial year end (or five years from the corporate tax return filing due date).
- Egypt has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority within five years following the adjustment year, subject to a tax authority inspection. Formal rules exist with respect to the payment of tax before an application may be made.
- Unilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

• The tax authority is the Ministerio de Hacienda de El Salvador – Dirección General de Impuestos Internos (Ministry of Finance of El Salvador - General Directorate of Internal Taxes, or DGII).

• The main tax legislation is the Salvadorian Tax Code (TC). The transfer pricing rules are contained within Articles 62-A, 124-A, 147 e), 135 f), 199-A, 199-B, 199-C, and 199-D TC, Orientation Guide DG-001/2012 (Guía de Orientación), and Decree No. 763 of 31 July 2014.

• Taxpayers must file a Transfer Pricing Information Return as well as provide specific information in a transfer pricing study. The Transfer Pricing Information Return provides details of the taxpayer and details of domestic and overseas related party transactions (and the respective related parties), and the transfer pricing methodology (and attached documentation) to support the transfer prices used and the arm's length nature of them.

• El Salvador is not an OECD member country however reference is made to the OECD Guidelines (and definitions) in both the Orientation Guide DG-001/2012 and Decree 763. Consequently, the DGII accepts transfer pricing methodology and analysis in accordance with OECD Guidelines, and notably, the content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be completed in Spanish.

• When transfer pricing documentation is requested by the DGII, it must be provided within 5 days, however, in practice a time extension of 20 days can be requested.

• If a taxpayer does not have a transfer pricing study (or supporting contemporaneous documentation) in support of the arm’s length nature of its related party transactions, the DGII will determine the difference between the value of the related party transaction and that of a deemed transaction conducted with an independent party. If there is a difference, and an adjustment is made by the DGII, it will not be deductible for income tax purposes and a 25% or 30% tax liability will arise.

• Where a taxpayer disagrees with an adjustment made by the DGII, an objection can be made by submitting a resolution to the Administrative Area within the Ministry of Finance. Failing a satisfactory outcome, a taxpayer can then lodge an Appeal to the tax court. Where the adjustment is sustained, general tax penalties will apply, which are enforced in full by the Commissioner General.

• El Salvador follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.

• No specific transfer pricing database is preferred by the tax authority. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

• The tax authority has not expressed a preference towards the use of local comparables and accepts foreign comparables in a transfer pricing study or price analysis. Secret comparables are not used by the tax authority.

• The statute of limitations for the assessment of transfer pricing adjustments is three years from the filing due date of the tax return (however please note that transfer pricing documentation is required to be maintained for ten years).

• El Salvador has a minimal double tax treaty network (only with Spain).

• There is no Advance Pricing Agreement (APA) procedure available in El Salvador, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Eesti Maksu ja Tolliamet (Estonian Tax and Customs Board, or EMT).
- The main tax legislation is the Estonian Income Tax Act (ITA). The transfer pricing rules are contained within Articles 8, 14 (section 7), 50 (sections 4 to 8), and 53 (section 46). In addition, Regulation No. 53 (effective from 1 January 2007) sets out increased documentary obligations for a taxpayer and provides additional guidance on determining the arm’s length price of transactions with related parties.
- Currently, there is no requirement under the tax legislation of Estonian for a taxpayer to file a separate transfer pricing return for related party transactions (although there is a requirement for all transactions with related parties to be conducted on an arm’s length basis).
- Estonia, as an OECD member country, follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. Consequently, the tax authority accepts the following transfer pricing methods:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method; and,
  - Transactional net margin (TNMM) method.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be completed in the Estonian language or English (if English, sometimes a copy translated to Estonian is requested).
- The tax authority prefers the use of Estonian comparables in a transfer pricing study, however, if local data is not available foreign comparables will be accepted. No specific transfer pricing database is preferred by the tax authority and it doesn’t use secret comparables. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- Where a taxpayer disagrees with an adjustment made by the tax authority, normally, a resolution can be reached by discussion and negotiation. If agreement cannot be reached, the taxpayer can then bring the matter before the Administrative Court for resolution. Where the adjustment is sustained, general penalty rules apply (there is no special penalty regime for transfer pricing).
- When transfer pricing documentation is requested by the tax authority, it must be provided within 60 days. If a taxpayer fails to submit transfer pricing documentation, a penalty up to EUR 3,200 may be levied.
- Transfer pricing audits are increasing with the tax authority focussing on finance transactions (loans and deposits) between the taxpayer and its related parties.
- The statute of limitations for the assessment of transfer pricing adjustments is three years from the filing due date of the tax return. However, this is extended to five years where there is an intentional failure to pay or withhold an amount of tax.
- Estonia has an extensive double tax treaty network (with 56 negotiated tax treaties) and the competent authority is effective in obtaining double tax relief. There are no formal rules as to when a taxpayer may submit an adjustment to the competent authority, although in practice, it is normally accepted to be within three years from the submission date of the relevant tax return. No tax payment is currently required before an application can be filed (no formal rules exist).
- There is no Advance Pricing Agreement (APA) procedure available in Estonia, and consequently, no APAs have been negotiated with the tax authorities.)
PKF CONTACT INFORMATION

For further information or advice concerning the transfer pricing rules in Finland, please contact Stefaan De Ceulaer (PKFI Director Tax and Legal Support) on +32 468 22 3924 or email stefaan.deceulaer@pkf.com.
Alternatively, please contact Oliver Grosse-Brauckmann (International Support Director) on +44 20 3691 2523 or email oliver.grosse-brauckmann@pkf.com.

KEY POINTS

- The tax authority is the Finnish Tax Administration (FTA) and within the FTA is the Konserniverokeskus (Large Taxpayers’ Office, or KOVE). From January 2012, all transfer pricing issues were centralised and handled by KOVE.

- The main tax legislation dealing with transfer pricing is contained within sections 14 a-c, 31, and 32 of the Finnish Tax Act on Assessment Procedure (TAAP). The effective date of the transfer pricing rules is 1 January 2007 (although the arm’s length principle was effective before then).

- Finland is an OECD member country and its transfer pricing rules, regulations and practice broadly follow the OECD Guidelines. Related party transactions are usually accepted if they are at arm’s length. Arm’s length pricing applies to transactions of all types including the purchasing of inventory and the provision of services and financial facilities.

- All companies must notify the tax authority of their obligation to prepare transfer pricing documentation (under Section 14a TAAP), and, if required, they must submit a specific annual transfer pricing explanation form detailing the main functions and profitability of the entity and its group, and the amount of related party transactions analysed between transaction types. The transfer pricing explanation form must be submitted together with the annual corporate tax return. Failure to submit the documentation can attract penalties.

- The tax authority has not expressed a preference towards the use of local comparables and frequently accepts European comparables. Secret comparables are not used by the tax authority. No specific transfer pricing database is preferred by the tax authority.

- Finland follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The tax authority normally focusses on the interquartile range in a transactional net margin method analysis.

- The content of a transfer pricing study should broadly follow Chapter V of the OECD Guidelines. The documentation should be based on OECD Guidelines; however, the FTA has published more prescriptive guidelines on certain parts. If the annual related party transactions with a counter-party are less than EUR 500,000, a functional analysis and comparables analysis will not be required.

- When transfer pricing documentation is requested by the tax authority, it must be provided within 60 days, however, in practice, the tax authorities allow up to six months from the fiscal year end to respond. Where a taxpayer disagrees with an adjustment made by the tax authority, an Appeal can be made to the Adjustment Assessment Board. Failing a satisfactory outcome for the taxpayer, an Appeal to the Administrative Court and Supreme Administrative Court may be made.

- The statute of limitations for the assessment of transfer pricing adjustments is five years from the relevant tax return’s year end.

- Finland has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority when it has been made by the tax authorities. No tax payment is required before an application is filed.

- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. There is no filing fee for bilateral and multilateral APAs, however, for advance rulings (unilateral APAs) the fee is based upon the complexity and actual time to conclude the advance ruling, normally ranging from approximately EUR 1,500 to EUR 2,500.
KEY POINTS


- Taxpayers are required to prepare contemporaneous formal and compulsory transfer pricing documentation. Abridged transfer pricing documentation is required to be filed by Section L13AA FPTC companies in the form of an annual transfer pricing statement within a six-month period after the filing deadline of the tax return. Under Section L13AB, where a French company has transactions with a related party (associated entity) in a non-cooperative state or territory, additional transfer pricing documentation requirements apply. When transfer pricing documentation is requested by the tax authority, normally it must be provided within 30 days.

- Documentation under Action Point 13 OECD BEPS:
  - All French entities with a turnover or gross assets on the Balance Sheet exceeding EUR 50 million, or with a greater than 50% direct or indirect subsidiary meeting this threshold, are subject to the updated French transfer pricing documentation requirements by filing a specific form (Form 2257). [This threshold was EUR 400 million until 8 November 2016]. For a group with a turnover or gross assets on the Balance Sheet exceeding EUR 400 million, more detailed documentation is required.
  - Parent companies of multinational groups with an annual revenue exceeding EUR 750 million are required to file a Country-by-Country (CbC) report within 12 months following the end of the fiscal year. Failure to file this report may incur a EUR 100,000 penalty. The FTA will transmit CbC reports to other countries where the group has its operations, via an information exchange mechanism provided for by the tax treaties, under the condition of reciprocity.
  - The CbC reporting requirement will also apply to French subsidiaries of MNE’s whose “head company” is established in a country or territory that does not share CbC reports with France.

- France is an OECD member country and follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The content of a transfer pricing study should broadly follow Chapter V of the OECD Guidelines however the FTC is prescriptive in certain areas and specifies the required content of a transfer pricing study, notably in Article L13AA FTC and Article L13AB FTC.

- If available, the FTA prefers the use of local French comparables in a transfer pricing study but accepts pan European comparables. No specific transfer pricing database is preferred by the FTA although it does use the French Diane database. The FTA normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

- The statute of limitations for the assessment of transfer pricing adjustments is three years, based on a calendar year end. This is extended to five years when the FTA demonstrates the existence of tax fraud (and may be extended even further in certain cases with tax loss carry forwards, with respect to their use).

- France has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
GEORGIA
CURRENCY: Georgian Lari (GEL)
POPULATION: 3.97 Million (2017 estimate)
CAPITAL: Tbilisi
GDP: USD 14,463 Million

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KEY POINTS
- The tax authority is the Revenue Service of Georgia (RS).
- The main tax legislation is the Georgian Tax Code (GTC). The transfer pricing rules are contained within Articles 126 to 129-1 GTC and Decree N423 'Instructions on Pricing International Controlled Transactions' (Instructions). Under the Instructions is a definition of "related parties" which includes a list of criteria of what constitutes a related party and which companies and individuals fall into this category for Georgia tax purposes.
- Georgian is not an OECD member country although its transfer pricing rules broadly follow the OECD Guidelines and the Instructions make direct reference to them. Georgia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Transactional net margin (TNMM) method.
- No specific transfer pricing return is required to be filed however, in the annual corporate income tax return a taxpayer must indicate if transactions have occurred with related parties or persons in "offshore" countries, and if so, the taxpayer is expected to have prepared contemporaneous transfer pricing documentation supporting the arm’s length nature of such transactions. A general penalty of GEL 100 (approx. USD 40) may be levied if the disclosure is not made or is incomplete.
- When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days. Where a taxpayer disagrees with an adjustment made by the RS, it is normally resolved within the dispute resolution system of the Ministry of Finance, however, failing that, a taxpayer can pursue a remedy through Court action.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines. A transfer pricing study should be filed in Georgian however, English is often accepted (or a translated copy in Georgian may be requested by the RS).
- The tax authority has not expressed a preference towards the use of local comparables and accepts foreign comparables (meeting the standard of comparability) due to the difficulties associated with obtaining comparable data for uncontrolled transactions in Georgia. Secret comparables are not allowed to be used by the tax authority.
- No specific transfer pricing database is preferred by the tax authority. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- The statute of limitations for the assessment of transfer pricing adjustments, is three years under the general GTC provisions, however, for certain years transitional provisions apply from four to five years.
- Georgia has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. There are no formal rules for when a taxpayer may submit an adjustment to the competent authority or whether tax is required to be paid before the application is filed.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee). In practice, however only unilateral APAs will be concluded where the value of related party transactions is expected to exceed GEL 50 million (approx. USD 20 million).
**KEY POINTS**

- In most cases, the competent tax authority is the Bundeszentralamt für Steuern (Federal Central Tax Office, or BZSt). The transfer pricing rules are contained within Section 1, German Foreign Transactions Tax Act (Außensteuergesetz, or FTTA), Section 90 (paragraph 3) and Section 162 (paragraphs 3 and 4) General Tax Code (Abgabenordnung, or GTC), Section 8 (paragraph 3) Corporate Income Tax Act (Körperschaftsteuergesetz, or CITA), and various Ordinances issued by the authorities. Country-by-country reporting (CbCR) rules are contained in Section 138a GTC.

- Germany is an OECD member country and it follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. If inter-company pricing between affiliated companies is not on an arm's length basis, generally the income of both companies is adjusted for tax purposes. The content of a transfer pricing study should be consistent with Section 90(3) GTC, and broadly follow Chapter V of the OECD Guidelines. The tax authorities often focus on the interquartile range in a transactional net margin method analysis.

- There is no specific annual transfer pricing return or similar disclosures required to be submitted to the tax authority (either on its own or with the corporate income tax return). Generally, however, contemporaneous transfer pricing documentation must be prepared and provided to the tax authorities upon request. Notably, transfer pricing documentation with respect to ‘extraordinary transactions’ must be prepared on a timely basis, which is assumed if it is prepared and available within six months following the company’s year-end. From 2017 onwards, information on CbCR must be disclosed in the annual tax return. When transfer pricing documentation is requested by the tax authority, it must be provided within 60 days (30 days for ‘extraordinary transactions’). The statute of limitations for the assessment of transfer pricing adjustments is, in general, four years from the tax filing year end.

- Germany has an extensive double tax treaty network and the authorities are effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority normally when the audit report is issued by the auditor and the double tax issue becomes evident (no tax payment is required). Bilateral and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (an application fee applies of either EUR 10,000 or EUR 20,000).
KEY POINTS

- The tax authority is the Ghana Revenue Authority (GRA). The main tax legislation is the Income Tax Act 2015 (Act 896, or ITA) and the Revenue Administration Act 2016 (Act 915, or RAA) as amended. The transfer pricing rules are contained within the Transfer Pricing Regulations 2012 (LI 2188).

- Although Ghana is not an OECD member country, its transfer pricing rules broadly follow the OECD Guidelines. Notably, contemporaneous transfer pricing documentation must be prepared and maintained each year for any controlled relationship transaction i.e. a transaction between a taxpayer and a related party, to support the arm’s length nature of each ‘controlled’ transaction.

- Taxpayers are required to file an annual transfer pricing form with the GRA. The annual Transfer Pricing Transactions Form (Return Form) contains information on the company, its related parties, the related party transactions (and amounts) and details on the transfer pricing methods used and reasons for their use. If the Return Form is not submitted, or it is incomplete, a penalty of GHS 500 is levied and a daily penalty of GHS 10 applies if the failure continues.

- When transfer pricing documentation is requested by the tax authority, it must be provided by the deadline stipulated in the GRA Notice. There is no annual requirement for contemporaneous documentation reports or transfer pricing study reports; they are only required when requested by the GRA. No specific transfer pricing database is preferred by the tax authority. The tax authority normally focuses on the interquartile range in a transactional net margin method (TNMM) analysis. The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study or transfer price analysis. Secret comparables are not used by the tax authority.

- When requested by the Commissioner-General (GRA), the content of a transfer pricing study should follow Chapter V of the OECD Guidelines. Notably, it should disclose details of each related party transaction (and the respective related party, and their relationship with the taxpayer), a comparability analysis, a financial analysis, an economic analysis, and details of the transfer pricing methodology adopted and why it was the most appropriate transfer pricing method to be selected.

- Ghana follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Transactional net margin (TNMM) method.

Any other method approved by the Commissioner-General (Regulation 3(3) of LI 2188) also applies.

- Where a taxpayer disagrees with an adjustment made by the GRA, an objection can be made through the GRA’s internal administrative process or through the Courts. Where the adjustment is sustained, tax interest will apply at the minimum prevailing bank rate on the tax payable from the date the taxpayer pays the amount on Objection or on Appeal.

- There is a statute of limitation for the assessment of transfer pricing adjustments in Ghana. The power of the Commissioner-General to make an adjusted assessment expires 6 years from the due date for filing the return that gives rise to the assessment or, if later, the date the tax return is filed.

- Although Ghana has a minimal double tax treaty network, its competent authority is effective in obtaining double tax relief. No tax payment is required before a taxpayer can apply to the competent authority. There is no Advance Pricing Agreement (APA) procedure available in Ghana.
KEY POINTS

- The tax authority is the Commissioner of Income Tax.
- The main tax legislation of Gibraltar is the Income Tax Act 2010 (ITA). The transfer pricing rules are contained within Section 40 ITA which broadly provides the Commissioner of Income Tax with powers to counter tax avoidance in such a manner as best secures consistency between:
  - The rules contained in Article 9 of the OECD Model Tax Convention on Income and on Capital (at 1 January 2011) and all OECD documents published before 1 January 2011, as part of its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations;
  - The powers granted in Section 40(1); and,
  - All OECD transfer pricing documents issued on or after 1 January 2011 (designated by the Minister and published in the Gibraltar Gazette).
- The 2010 Income Tax Act introduced several anti-avoidance clauses which can be invoked to set aside arrangements that can be seen to be fictitious or artificial. In addition, the promoters of a tax planning scheme must notify the Commissioner of Income Tax within 30 days of any schemes which result in the payment of less tax. There are several clauses that specifically consider and address anti avoidance arrangements that can lead to the reduction or elimination of tax payable.
- Although there is no annual transfer pricing documentation or return filing requirement in Gibraltar, taxpayers should maintain contemporaneous transfer pricing documentation to support the arm’s length nature of their related party transactions.
- When it appears that business transactions with connected persons are arranged with a view to make no profit, or reduce profits, or increase losses, any excess will be deemed to be a dividend paid and not deductible on the company in computing the profits for the period. When expenses are incurred in favour of a connected person, the allowed expense will be the lower of 5% of the gross turnover of the person for the accounting period or 75% of the pre-expense net of profit of the person for the accounting period.
- Transfer pricing methods are not specifically set out in the ITA or the Gibraltar regulations.
- There are no specific transfer pricing penalties, however, where tax is paid late, or underpaid, a surcharge of 10% of the underpaid amount is due. If the tax remains unpaid 90 days after the payment due date, a further surcharge of 20% applies. No specific surcharge relief provision exists in the ITA or its regulations, however, penalties may be removed at the discretion of the Commissioner of Income Tax.
- Unilateral relief is provided for foreign taxes paid that are also subject to tax in Gibraltar.
- Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (as well as advance rulings). Normally there is no expiry time but an overriding condition is that an APA or advance ruling is granted specifically on the facts, circumstances and law at the time and may not be guaranteed if these change.
KEY POINTS

- The tax authority is the General Secretary of Public Revenues (GSPR). Large entities are dealt with by the ‘Tax Audit Centre of Large Incorporations’.
- The main tax legislation is the Income Tax Code (L. 4172/2013, or ITC) and the Tax Procedures Code (4174/2013, or TPC) which introduced the OECD Transfer Pricing Guidelines as the application tool and interpretation framework. With Ministerial Decisions POL 1097/2014 and POL 1144/2014 (amended by POL1142/2015) guidance has been provided on several implementation issues.
- Greece is an OECD member country. On January 2016, the competent authority signed-up, together with 31 other countries, to the OECD’s Multilateral Competent Authority Agreement (MCAA) for the implementation of the OECD’s BEPS Action Point 13 (transfer pricing documentation). The current tax legislation requires full transfer pricing documentation and increased disclosure requirements not only for multi-national enterprises (MNEs) but also for domestic groups.
- Greek companies must prepare a Transfer Pricing Documentation File (TPDF) using a mandatory content together with a Summary Information Table (SIT) which contains related party (inter-company) information. Both these documents should be available at the time of submission of the annual tax return i.e. within six months from the end of a company’s fiscal year. The TPDF consists of both a local file and a master file. The master file part provides basic, standard information on the international group, its subsidiaries and branches. The local file part (Greek file) provides additional information on the local company or companies. Documentation requirements apply to a taxpayer when its related party transactions (controlled transactions) exceed EUR 200,000 annually. If the controlled transactions are below EUR 100,000 annually and the total revenue of the tested entity does not exceed EUR 5 million then the entity is exempted from the transfer pricing documentation obligations.
- No specific transfer pricing database is preferred by the tax authority and it normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis. Benchmarking studies must follow certain rules with regard to the period covered and data handling.
- Greece follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines.
- The statute of limitations for the assessment of transfer pricing adjustments is five years from the tax year end in which the annual corporate income tax return was filed (containing the adjustment). Please note, under certain circumstances it is 20 years.
- Although Greece has an extensive double tax treaty network, the competent authority has limited experience with using the Mutual Agreement Procedures (MAP). A revised (supplementary) income tax return, containing an adjustment, may be submitted at any time before a tax audit of the respective year is undertaken by the GSPR. There are no formal rules stating whether tax is to be paid before going to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. APA applications are concluded or rejected by the tax authority normally within three months. Concluded APAs are valid for a period of four years. Fees are payable under Ministerial Circular POL. 1284/2013 at each stage of the process:
  - EUR 1,000 fee when submitting the Preliminary Consultation Application;
  - EUR 5,000 fee when submitting the APA application (or revising it); and,
  - EUR 10,000 fee if collaboration with the foreign tax authority in each state is requested.
GUATEMALA
CURRENCY: Guatemalan Quetzal (GTQ)
POPULATION: 17.01 Million (2017 estimate)
CAPITAL: Guatemala City
GDP: USD 68,389 Million

PKF CONTACT INFORMATION

<table>
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KEY POINTS

- The tax authority is the Superintendencia de Administración Tributaria (Tax Administration Superintendence, or SAT).
- The main tax legislation is the Tax Legislation Update Law (TLUL). The transfer pricing rules are contained within Chapter VI TLUL and Decree No.10-2012 (as amended by Decree No.19-2013).
- Guatemala is not an OECD member country, and although the TLUL does not specifically mention the OECD Guidelines, the Guatemalan transfer pricing provisions are based on them. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and must be filed in the Spanish language.
- By the due date of the annual income tax return contemporaneous transfer pricing documentation must be prepared and retained as part of the company’s accounting books and records. When transfer pricing documentation is requested by the tax authority, it must be provided within 20 days.
- Where a taxpayer disagrees with an adjustment made by the tax authority, an objection can be made by submitting a resolution to the Administrative Area within the tax authority. Failing a satisfactory outcome, a taxpayer can then lodge an Appeal to the tax court. Where the adjustment is sustained, general tax penalties will apply.
- Guatemala follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines and the following traditional methods are acceptable:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method.
- The above traditional methods should be considered before the following transaction methods:
  - Profit split method; and,
  - Transactional net margin (TNMM) method.

However, under Guatemalan tax law, the following methods should be considered before any of the OECD Chapter II methods, where relevant:
- The market value in transferring goods or services overseas: The price used by other entities (unrelated independent party) which sells the same products, or provides the same services, from Guatemala to the same foreign country.
- Import market price: The price established between third parties (within the acquisition country) for the same goods or services including freight charges if applicable.
- Secret comparables are not used by the tax authority. The tax authority has not expressed a preference towards the use of local comparables and accepts North American comparable companies for benchmarking purposes. Currently, no specific transfer pricing database is preferred by the tax authority.
- The statute of limitations for the assessment of transfer pricing adjustments is four years from the tax return filing date.
- Guatemala does not have any tax treaties in force. Mutual agreement procedures (MAPs) are not available.
- Bilateral and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

• The tax authority is the Servicio de Administración de Rentas (Revenue Administration Service of Honduras, or SAR). The transfer pricing rules are contained within Decree No. 232-2011 and Articles 1 to 40 of Executive Decree No. 027-2015 (Honduran Tax Code). The effective date of the transfer pricing rules is 1 January 2014.

• Honduras follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. When considering goods with an international quote however, which are exported to transparent markets, the taxpayer must first consider the following two methods:
  ▪ A comparable uncontrolled price (CUP) method using information from third parties of similar or identical goods under similar conditions; or,
  ▪ A price similar to those agreed with independent third parties in similar conditions (the current market price for the goods),

• The required content, format and structure of a transfer pricing study is documented in the Honduran Tax Code and no specific reference is made to Chapter V of the OECD Guidelines. It is, however, beneficial to prepare a transfer pricing study because in the absence of a study supporting the arm’s length pricing nature of a company’s related party transactions, the tax authority is entitled to determine pricing differences between the related party transactions, and a transaction undertaken by independent parties. If a difference is detected, this would not be deductible for income tax purposes and a 15% or 30% tax would be levied on the adjustment (difference).

• A specific annual transfer pricing return is not required. Taxpayers must however prepare and maintain mandatory contemporaneous transfer pricing documentation except where the value of related party transactions is less than USD 1 million, in which case, a taxpayer is not required to submit a sworn study or documentation of transfer prices (except if the transactions are with companies related to exemptions from special regimes). Related parties classified as small taxpayers should not submit transfer pricing statements. When transfer pricing documentation is requested by the tax authority, it must be provided immediately, within a few days (as it should be available at the time of the request).

• The SAR has not expressed a preference towards the use of local comparables in a benchmarking study and it does not prefer a particular transfer pricing database.

• A USD 10,000 penalty applies where, following a request from SAR, a taxpayer fails to provide the information, or provides false, incomplete or inaccurate information. A penalty of 15% applies to the corresponding adjustment where a taxpayer reports a taxable income less than it should have been under arm’s length conditions. A general penalty of USD 5,000 applies where a taxpayer fails to comply with any provision of the transfer pricing law which has not been covered by the specific penalty provisions. Where a transfer pricing adjustment is proposed by SAR and the taxpayer disagrees, an Appeal may be lodged. The statute of limitations for the assessment of transfer pricing adjustments is five years from the income tax return filing due date, and ten years where tax fraud is determined by the SAR.

• Honduras does not have any tax treaties in force. Mutual agreement procedures (MAPs) are not available. The SAR, under the Honduran domestic tax rules, can provide relief for double taxation suffered where a foreign jurisdiction has adjusted the value of a transaction of a foreign related party (resident in their jurisdiction) with a Honduras resident company, subject to an examination of the circumstances and facts.

• Bilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Hong Kong Inland Revenue Department (IRD).
- The main tax legislation is the Inland Revenue Ordinance (IRO). The transfer pricing rules are contained within sections 16, 17, 20, 61, and 61A IRO, and, in addition, Departmental Interpretation Practice Notes (DIPNs) 45, 46, and 48.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year, however, details of related party transactions are required to be disclosed in the annual tax return. Normally, transfer pricing documentation is only required to be submitted upon request by the IRD. When transfer pricing documentation is requested by the tax authority, it must be submitted to the IRD by the time stipulated. Any document submitted to the IRD should be written in either English or Chinese. A time extension for filing the requested information can normally be granted upon requested.
- As stipulated in DIPN 46, the IRD generally seeks to apply the principles in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
- The HKSAR Government might propose codifying the international transfer pricing standard into Hong Kong’s domestic legislation, requiring enterprises operating in Hong Kong to transact with their associated enterprises at arm’s length. The IRD has stated it will treat transfer pricing as a high priority and is expected to introduce relevant amendment bills and practice notes going forward.
- OECD BEPS 13: Subject to necessary legislative amendments, multinational enterprise groups will be required to file country-by-country (CbC) reports in Hong Kong for accounting period commencing on or after 1 January 2018.
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study and it does not use secret comparables. Benchmarking studies, which are generally consistent with the OECD Guidelines, are normally acceptable to the IRD. No specific transfer pricing database is preferred by the IRD. The use of ranges, such as an inter-quartile range, would be accepted in the determination of an arm’s length price.
- Where a taxpayer disagrees with an IRD transfer pricing adjustment, an Objection can be made to the Commissioner. Failing a satisfactory outcome, an Appeal can then be made to the Board of Review. Where the adjustment is sustained, general penalties apply depending on the degree of the offence.
- The statute of limitations for the assessment of transfer pricing adjustments is six years following the end of the year of assessment.
- Hong Kong has entered into Comprehensive Double Taxation Agreements (DTA) with a number of jurisdictions. A taxpayer may submit an adjustment to the competent authority, but broadly, the IRD needs to agree on the transfer pricing adjustment made by the other jurisdiction (having a Double Tax Agreement (DTA) with Hong Kong). The process is not automatic and if the IRD does not agree that an adjustment should be made on the Hong Kong side, a taxpayer only then has the option of approaching the other competent authority through the mutual agreement procedure (MAP) to seek elimination of the double taxation – but a MAP approach is not guaranteed for transfer pricing adjustments. Currently, there is no mechanism to obtain double tax relief for transfer pricing adjustments made in a non-DTA jurisdiction.
- Bilateral and multilateral Advance Pricing Agreements (APAs) can be negotiated with Hong Kong DTA counterparty jurisdictions. A unilateral APA can be negotiated under certain circumstances. There is no APA filing fee.
KEY POINTS

- The tax authority is the Nemzeti Adó-és Vámhivatal (National Tax and Customs Administration, or NTCA).
- The main tax legislation is Act LXXXI of 1996 on Corporate Income Tax and Dividend Tax (CITDT), and Act XCII of 2003 on Rules of Taxation (ROT). The transfer pricing rules are contained within Section 4(23) and Section 18(1) to 18(9) CITDT, Sections 1(8), 23(4)(b), 132/B-C, 172(16) and 178.17 ROT, and MF Decree 22/2009.
- Hungary is an OECD member country and follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The content of a transfer pricing study should follow MF Decree 22/2009, which is based on Chapter V of the OECD Guidelines and be completed using appropriate independence criteria, etc.
- When transfer pricing documentation is requested by the tax authority, it must be provided within three days (since taxpayers must prepare contemporaneous transfer pricing documentation at the time when the corporate income tax return is completed). Completion of a Master file and Local file is optional.
- Hungary has strict transfer pricing documentation regulations, which were modified in 2015 (benchmark processes). Relevant taxpayers are required to submit Country-by-Country (CbC) reports.
- OECD BEPS 8 and intangibles: The Hungarian tax legislation is consistent with the OECD Guidelines in its treatment of intangibles. For intellectual property (IP) procured or declared or generated after 30 June 2016, only half of the profit (formerly: the revenue) can be deducted from the corporate income tax base, up to 50% of the pre-tax profit. If a related entity is also involved with the transaction (for example, R&D services ordered from related parties and intangible assets purchased or received from them), then a deduction can be endorsed on a pro-rata basis with respect to the taxpayer’s own contribution.
- The NTCA prefers the use of local, or regional, comparables in a benchmarking study and, where these are not used, it may challenge the study and produce its own data for comparative purposes. Secret comparables are not used by the tax authority. The Amadeus transfer pricing database is preferred by the NTCA.
- Where a taxpayer disagrees with a transfer pricing adjustment made by the NTCA, there are administrative procedures which can be followed to resolve the matter. Where the administrative procedures have been unsuccessful, a taxpayer can apply to the competent court (or less common, initiate a supervisory procedure with the head of the Tax Authorities and Ministry of National Economy). Where the adjustment is sustained, a (50%) default penalty on the tax arrears will apply (together with late payment penalty interest).
- The statute of limitations for the assessment of transfer pricing adjustments is five years after the last day of the calendar year in which taxes should have been declared or reported (or where there is no tax return or declaration, five years after the payment date).
- Although Hungary has an extensive double tax treaty network, the competent authority is not experienced in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority at any time (no tax payment is required).
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (a filing fee applies depending on the APA sought and can range from HUF 500,000 (approximately USD 1,700) for a basic unilateral APA to HUF 10 million (approximately USD 34,000) for a multilateral APA.
PKF Worldwide Transfer Pricing Guide 2017-18

ICELAND

CURRENCY: Icelandic Króna (ISK)
POPULATION: 0.33 Million (2017 estimate)
CAPITAL: Reykjavik
GDP: USD 19,444 Million

PKF CONTACT INFORMATION

For further information or advice concerning the transfer pricing rules in Iceland, please contact Stefaan De Ceulaer (PKFI Director Tax and Legal Support) on +32 468 22 3924 or email stefaan.deceulaer@pkf.com. Alternatively, please contact Oliver Grosse-Brauckmann (International Support Director) on +44 20 3691 2523 or email oliver.grosse-brauckmann@pkf.com.

KEY POINTS

• The tax authority is the Ríkisskattstjóri (Directorate of Internal Revenue, or DIR).
• The main tax legislation is the Income Tax Act (ITA). The transfer pricing rules are contained within Article 57 ITA and Regulation No. 1180/2014.
• A taxpayer has to file a specific annual transfer pricing return with the tax return. Failure to submit the form could deem the tax return submission incomplete and penalties could be levied. Contemporaneous transfer pricing documentation is not required to be submitted with the annual corporate tax return, however, it should be prepared and maintained by a taxpayer to support the arm’s length pricing basis of their related party transactions. Notably, when transfer pricing documentation is requested by the tax authority, it must be provided within 45 days.
• Iceland is an OECD member country and follows the arm’s length principle and the OECD Guidelines (which are referenced in the newly implemented Icelandic transfer pricing provisions).
• Iceland follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  ▪ Comparable uncontrolled price (CUP) method;
  ▪ Cost-plus method;
  ▪ Resale price method;
  ▪ Profit split method;
  ▪ Transactional net margin (TNMM) method.
• The content of a transfer pricing study should follow Chapter V of the OECD’s Guidelines, albeit the Icelandic transfer pricing rules are very prescriptive on the content requirements, and the study should be completed in either Icelandic or English.
• The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study and in practice pan-European comparables are accepted. Secret comparables are not used by the tax authority. No specific transfer pricing database is preferred by the tax authority although it does use the Amadeus database.
• Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge an Appeal with the Director of Internal Revenue. The DIR will consider the Appeal and issue a Decision. Failing a satisfactory Decision, a taxpayer can then lodge an Appeal with the State Internal Revenue Board or pursue the matter with the District Courts.
• Where a transfer pricing adjustment is sustained, general tax penalties will apply of up to 25% of the adjustment (unpaid tax). The penalties can be mitigated by demonstrating that sufficient and correct transfer pricing information had been submitted and the taxpayer had complied with these requirements.
• The statute of limitations for the assessment of transfer pricing adjustments is six years from the end of the relevant tax year.
• Although Iceland has a good double tax treaty network, the competent authority is not experienced in obtaining double tax relief.
• There is no Advance Pricing Agreement (APA) procedure available in Iceland, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Central Board of Direct Taxes (CBDT).
- The main tax legislation is the Income Tax Act, 1961 (ITA) and the Income Tax Rules, 1962 (ITR). The transfer pricing rules are contained within Sections 92 to 92F ITA and Rules 10A to 10TF ITR. The effective date of the transfer pricing rules is 1 April 2001.
- India follows the transfer pricing methods outlined in the Indian Transfer Pricing Regulations which are similar to Chapter II of the OECD Guidelines except the rules also permit the CBDT to prescribe “any other method”. In this context ‘any other method’ is explained as “any method which considers the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts”.
- OECD BEPS 13 (documentation): Transfer pricing documentation is mandatory for all taxpayers having transactions with associated enterprises. A three-tier approach to transfer pricing documentation exists in India, with a Local File, a Master File, and Country-by-Country (CbC) reporting requirements for taxpayers.
- An Accountant’s Report (Form No. 3CEB) must be filed with the tax authority each year. The report certifies that a taxpayer’s international transactions (and specified domestic transactions) with associated enterprises have been conducted on an arm’s length basis, that appropriate documentation has been maintained, and that the disclosed information is true and correct. The report is required from a chartered accountant and must be submitted to the tax authority by 30 November following the relevant financial year. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.
- A transfer pricing study, or transfer pricing documentation, which supports the Accountant’s Report, should also be prepared to support the arm’s length nature of the taxpayer’s transactions with associated enterprises (and held in readiness should the tax authority select the taxpayer for a detailed audit). A transfer pricing study can be completed in the local language (Hindi) or English.
- Secret comparables are used by the tax authority, especially in audits (although judicial rulings have disagreed with their use and their unavailability to taxpayers when setting transfer prices). The tax authority has consistently expressed a preference towards the use of Indian comparables and in accepting the corresponding economic analysis (especially in transfer pricing audits). Local comparables are preferred in benchmarking analysis and foreign comparables are often rejected due to geographical differences or lack of data availability. The Prowess and the CapitalinePlus transfer pricing databases are preferred by the tax authority (and many taxpayers in India also use these databases). The tax authority does not focus on the interquartile range in a transactional net margin method (TNMM) analysis.
- Although India has an extensive double tax treaty network, the competent authority is not experienced in obtaining double tax relief for transfer pricing adjustments, although this is improving. No formal rules exist which determine when a taxpayer may submit an adjustment to the competent authority or whether a tax payment is required before a taxpayer can apply to the competent authority (however, please note, a bank guarantee may have to be lodged with the tax authority in some cases for the tax demand amount).
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (a filing fee applies based on the transaction value of the APA and ranges from INR1 million (approximately USD 15,500) to INR2 million (approximately USD 31,000)).
KEY POINTS

• The tax authority is the Indonesian Tax Office (ITO), and its head is the Director General of Tax (DGT).

• The main tax legislation is the Income Tax Law (ITL). The transfer pricing rules are contained within Article 18 ITL and Regulation PER43/2010 (as amended by PER32/2011).

• Although Indonesia is not an OECD member country, its transfer pricing rules are broadly in line with the OECD Guidelines and follow the arm’s length principle. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be completed in either the Indonesian or English language.

• A taxpayer must complete an annual declaration stating whether transfer pricing documentation is available covering 15 specific areas. The declaration provides information on the transactions undertaken during the year with related parties including amounts, pricing methodologies and the reasons for the adoption of a particular pricing method. Taxpayers are expected to prepare and maintain contemporaneous transfer pricing documentation in support of the declaration.

• When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days, however, in practice questionnaires are issued by the tax authority and expected to be completed and returned with seven days (although there is flexibility and normally the deadlines can be extended). Where a taxpayer disagrees with a transfer pricing adjustment made by the tax authority, an Objection can be lodged with the tax authority. Failing a satisfactory outcome, a taxpayer may further lodge an Appeal.

• Where a transfer pricing adjustment is sustained, a 2% per month penalty is levied on the outstanding tax from the payment due date until paid. Further, if an assessment Objection is unsuccessful a 50% surcharge is levied (if a subsequent Appeal is also unsuccessful the surcharge increases to 100%). Penalties are always enforced by the tax authority.

• Indonesia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  ▪ Comparable uncontrolled price (CUP) method;
  ▪ Cost-plus method;
  ▪ Resale price method;
  ▪ Profit split method; and,
  ▪ Transactional net margin (TNMM) method.

• The tax authority has not expressed a preference towards the use of local comparables due to the limitation of available local data and, in practice, Pan-Asian comparables are accepted. Secret comparables are used by the tax authority (although not used in Court cases).

• No specific transfer pricing database is preferred by the tax authority although it does use the Osiris and Oriana commercial transfer pricing databases, in addition to independently conducting internet searches to seek comparable uncontrolled pricing information. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

• The statute of limitations for the assessment of transfer pricing adjustments is five years from the tax year end filing date.

• Although Indonesia has an extensive double tax treaty network, the competent authority has limited experience in obtaining double tax relief.

• Unilateral and bilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Office of the Revenue Commissioners (ORC).
- The main tax legislation is the Taxes Consolidation Act, 1997 (TCA). The transfer pricing rules are contained within Part 35A, Sections 835A to 835H TCA.
- Ireland is an OECD member country and follows the OECD Guidelines and the arm’s length principle. Notably, Ireland follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year. Contemporaneous transfer pricing documentation is not required to be submitted with the annual tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions and be available for the tax authority on request.
- When transfer pricing documentation is requested by the tax authority, it must be provided within 21 days. Where a transfer pricing adjustment is made by the tax authority, it may be challenged by following the standard tax appeal procedures. Where an adjustment is sustained, general tax penalties will apply.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines although it should be adapted to the facts and circumstances of the transactions and the costs involved in completing the study. A transfer pricing study can be filed in the Irish or English language.
- OECD BEPS 8 (intangibles): Ireland’s intellectual property (IP) tax regime is in line with arm’s length principle (Patent Box / Knowledge Development Box). The definition of intangibles has expanded and there have been significant changes governing which group company is entitled to the income from intangibles. Income on intangibles is determined based on where the developing, enhancing, maintaining, protecting and exploiting activities are carried out. Ireland continues to adapt its transfer pricing rules to ensure they meet the standards set out in the OECD Guidelines.
- OECD BEPS 13 (documentation): Country-by-Country (CbC) reporting is mandatory for multinationals and Ireland shares the reports with other tax authorities under a signed a Multilateral Competent Authority Agreement. Ireland has adopted the Commission’s fourth AML Directive which provides for greater transparency on beneficial ownership of companies and trusts.
- The ORC has not expressed a preference towards the use of local comparables in a benchmarking study and it does not use secret comparables. No particular transfer pricing database is preferred by the ORC.
- Ireland’s Companies Act 2014 places greater responsibility on Directors over the tax compliance of certain companies. Ireland has agreed to adopt the European Commission’s Anti-Tax Avoidance Directive.
- There is no specific statute of limitations for the assessment of transfer pricing adjustments however the general rule is four years from the end of the year in which the tax return is filed.
- Ireland has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. There is no timing deadline by when a taxpayer must submit an adjustment to the competent authority although the counterparty jurisdiction may require the claim to be made within a certain timeframe. The tax is required to be paid before a taxpayer can apply to the competent authority.
- Unilateral and bilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Israeli Tax Authority (ITA).
- The main tax legislation is the Income Tax Act, 1961 (ITA). The transfer pricing rules are contained within Section 85A Israel Tax Ordinance and the Israel Tax Regulations (Market Conditions Determination), 2006.
- The transfer pricing rules apply to all international intercompany transactions and are a mix of the OECD Guidelines and the US transfer pricing regulations.
- The effective date of the transfer pricing rules is 29 November 2006.
- Taxpayers that undertake cross-border controlled transactions must include with their annual tax return submission, a specific transfer pricing form (Form 1385). Form 1385 provides details of each related party transaction (including its nature, value, terms and conditions, etc.) and details of the related party. It should be signed to declare that the related party transactions were conducted at arm’s length i.e. under ‘market conditions’ as described in Section 85A of the Israel Tax Ordinance. It is not uncommon, that upon receipt of Form 1385, the tax authority formally requests the transfer pricing documentation in support of the arm’s length position of the related party transactions (giving the taxpayer 60 days to respond).
- When transfer pricing documentation is requested by the tax authority, it must be provided within 60 days. Where a transfer pricing adjustment is made by the tax authority, it may be disputed by lodging an Appeal. If unsuccessful, the matter may be pursued through the Courts.
- Where a transfer pricing adjustment is sustained, general tax penalties will apply and the ITA will look more closely at the entity with a view to assessing secondary adjustments.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines. A transfer pricing study must be completed in the Arabic, Hebrew or English language.
- Israel is an OECD member country and follows the arm’s length principle.
- The tax authority has not expressed a preference towards the use of local comparables and has accepted European and United States comparables in benchmarking studies. Secret comparables are not used by the tax authority.
- Israel follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. In practice, the comparable uncontrolled price (CUP) method is preferred over the cost plus and resale price methods, however, these are all preferred to the transactional net margin (TNMM) method.
- No specific transfer pricing database is preferred by the tax authority although it does use the Osiris and Amadeus databases. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- The statute of limitations for the assessment of transfer pricing adjustments is four years from the end of the year in which the tax return is submitted. However, for special cases, the statute of limitations may be extended.
- Israel has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. There are no formal rules when a taxpayer may submit an adjustment to the competent authority (although the timing may be set by reference to the respective tax treaty MAP).
- Unilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
ITALY
CURRENCY: Euro (EUR)
POPULATION: 59.80 Million (2017 estimate)
CAPITAL: Rome
GDP: USD 1,852,500 Million

PKF CONTACT INFORMATION

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KEY POINTS

- The tax authority, within the Ministero dell’Economia e delle Finanze (Italian Ministry of Economy and Finance), is the Amministrazione Finanziaria (Administration of Finance and Revenue Authority, or AFRA).

- The main tax legislation is Decree 917 of 22 December 1986 (Consolidated Corporate Income Tax Code, or CCITC), Decree 600 of 29 September 1973 and Article 31-ter introduced by Decree 147 of 14 September 2015. The transfer pricing rules are contained within Article 110 paragraph 7 CCITC, Article 1, paragraph 6 Law Decree 471 (ratified by Decree 122 of 30 July 2010), the Italian Revenue Agency Commissioner’s Decision of 29 September 2010, Circular letter no. 58/E of 15 December 2010, and Circular letter 21/E of 5 June 2012.

- Italy is an OECD member country and follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines albeit the more robust provisions of Article 26 (now Law 122 of 30 July 2010) on format, content and structure apply and follow the “master file / country specific documentation” concept definition of the EU Code of Conduct on Transfer Pricing Documentation, where relevant.

- Companies conducting cross-border operations with controlled foreign companies should prepare contemporaneous transfer pricing documentation which details the related party transactions and demonstrates their compliance with the arm's length principle. Italy enforced an optional regime for this documentation. By making it available to the tax authorities, a company is afforded a level of penalty protection where an increase in taxable income results from an adjustment to a transfer price required by tax authorities. Italy does not require the documentation to be filed with the tax return; however, taxpayers must check a box in the tax return to inform the tax authorities whether the taxpayer has opted to prepare transfer pricing documentation for penalty protection purposes. The documentation itself must be kept at the taxpayer’s premises and handed over to the tax auditors within 10 days upon request.

- Mandatory Country-by-Country (CbC) reporting applies in Italy for taxpayers with a consolidated turnover of EUR 750 million or more.

- No specific transfer pricing database is preferred by the tax authority; normally the Aida database is used for local comparables and the Amadeus or Orbis databases are used for European and international comparables. The AFRA normally focusses on the interquartile range in a transactional net margin method analysis.

- The statute of limitations for the assessment of transfer pricing adjustments is five years from the filing date of the relevant tax return.

- Italy has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief, especially under the EU Arbitration Convention (for EU entities). A taxpayer may submit an adjustment to the competent authority in accordance with the procedure set out in the respective tax treaty (for EU countries the Arbitration Convention will apply). Generally, no tax payment is required before a taxpayer applies to the competent authority.

- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

• The Japanese tax authority is the Kokuzei-cho (National Tax Agency, or NTA).

• The transfer pricing rules are contained within Articles 66-4/66-4-2 and 68-88/66-88-2 Special Taxation Measures Law (STML), STML Enforcement Orders 39-12, 39-12-2/39-112, and 39-112-2, STML Enforcement Regulation Articles 22-10, 22-10-2/22-74 and 22-75, and, STML Circulars 66-4-(1)-1 to 66-4-(9)-2, 68-88(1)-1 to 68-88(9)-2. In addition, several Commissioner Directives have been issued providing further guidance.

• Japan is an OECD member country and follows a three-tier transfer pricing documentation approach in line with the OECD BEPS recommendations. Japan’s transfer pricing documentation rules require a Country-by-Country (CbC) Report, a Master file, and a Local file to be completed by relevant taxpayers.

• In addition, a ‘Notification for Ultimate Parent Entity’ form (Notification) must also be submitted to the NTA by a relevant taxpayer by the last day of the ultimate parent's fiscal year. This form provides basic information about the ultimate or surrogate parent entity.

• The NTA provides transfer pricing administrative guidelines for the completion of documents and on its website, it provides instructions on how to submit the Notification electronically.

• The content of a transfer pricing study should broadly follow Chapter V of the OECD Guidelines, and further, it should be completed by reference to Article 22–10 of the STML Enforcement Regulations Order, which specifies certain additional requirements. A transfer pricing study must be completed in the Japanese language.

• The tax authority prefers the use of local (Japanese) comparables in a benchmarking analysis, notably where the Japanese company is the tested party. Secret comparables are rarely used by the tax authority.

• Japan broadly follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines (although some exceptions apply):
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method; and,
  - Transactional net margin (TNMM) method.

• Intangibles are defined by tax law. There are transfer pricing administrative guidelines for intangible properties, contributions to the formation, maintenance or development of intangible properties, the licensing of intangible property and cost contribution arrangements. There are also transfer pricing administrative guidelines for the treatment of intra-group services.

• No specific transfer pricing database is preferred by the tax authority although it does use Compustat, ORBIS, and other such commercial databases. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

• Japan has an extensive double tax treaty network. The competent authority is effective in obtaining double tax relief. A tax payment is normally required before an application to the competent authority can be made although under certain conditions a grace period can be requested.

• Unilateral and bilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

• The tax authority is the State Revenue Committee of the Ministry of Finance (SRC).


• Kazakhstan is not an OECD member country and whilst in the main it follows the OECD Guidelines there are some major deviations. One notable difference is that Kazakhstan transfer pricing legislation does not only focus on related party transactions but focusses on all international business transactions.

• There is no requirement for a taxpayer to file a specific transfer pricing return each year. However, there are documentary requirements that fall into two categories:
  ▪ Transactions with goods (services and work) that are subject to transfer pricing control (which applies to all goods except for transactions with goods that are subject to monitoring). Goods subject to transfer pricing control must have contemporaneous transfer pricing prepared and maintained to support the arm’s length nature of the prices.
  ▪ Transactions subject to monitoring which require monitoring reports to be prepared and submitted annually (which include details of the transfer pricing methodology used, functional and risk analysis, relationships of the parties, etc.). The monitoring reports are required to be submitted to the SRC on or before 15 May of the year following the reporting year.

• Kazakhstan follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  ▪ Comparable uncontrolled price (CUP) method;
  ▪ Cost-plus method;
  ▪ Resale price method;
  ▪ Profit split method;
  ▪ Transactional net margin (TNMM) method.

Please note however that although they may have the same names as the Chapter II pricing methods, their application may be different.

• When transfer pricing documentation is requested by the tax authority, it must be provided within 90 days. Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge an Appeal against the assessment with the higher-level tax authority, up to the Tax Committee of the Kazakhstan Ministry of Finance. Failing a satisfactory outcome for the taxpayer with the Appeal, a further Appeal may be lodged in the Kazakhstan courts.

• The SRC has not expressed a preference towards the use of local comparables and will accept foreign comparables that reflect comparable economic conditions. The SRC officially recognises certain sources of market price information for benchmarking. No specific transfer pricing database is preferred by SRC.

• There is not a specific statute of limitations for the assessment of transfer pricing adjustments, however, the general statute of limitations for the understatement of income or overstatement of an expense is four years from the date of the relevant event.

• Although Kazakhstan has an extensive double tax treaty network, the competent authority has had limited success in obtaining double tax relief.

• Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities and are normally concluded for a term of three years from the date of signing (there is no filing fee).
KEY POINTS

- The tax authority is the Kenya Revenue Authority (KRA).
- The main tax legislation is the Income Tax Act (ITA). The transfer pricing rules are contained within Section 18(3) ITA and Legal Notice no. 67 of 2006 (the Income Tax (Transfer Pricing) Rules, as amended in 2012). The effective date of the transfer pricing rules is 1 July 2006.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year, however, a taxpayer must disclose the names and addresses of related parties outside of Kenya in the annual corporate tax return. Contemporaneous transfer pricing documentation should be prepared by a taxpayer to support the arm’s length pricing basis of the related party transactions since the KRA can request transfer pricing documentation at any time, and therefore it must be readily available.
- When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days. Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can make an Appeal with the Local Committee (first level). If the assessed adjustment still remains contested a taxpayer may lodge an Appeal with the High Court of Kenya (second level). If still contested, a taxpayer may lodge a further Appeal with the (Court of Appeal), and failing that, with the Supreme Court of Kenya (fourth level).
- Where a transfer pricing adjustment is sustained, general tax penalties will apply of 20% on the unpaid tax, and in addition, a further 2% per month accrues on the tax outstanding until paid plus interest (a maximum cap applies).
- Kenya is not an OECD member country and although it follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, the KRA can apply other methods if the Chapter II methods do not produce the best arm’s length price. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines. A transfer pricing study should be completed in the English language.
- The KRA prefers the use of local comparables in a benchmarking analysis (especially where there is comparable uncontrolled price information readily available). Secret comparables are not used by the tax authority. Where foreign comparables are used from different geographical locations, the tax authority may use country risk adjustments.
- No specific transfer pricing database is preferred by the tax authority, although it does use the Orbis commercial database. The KRA normally focusses on the interquartile range in a transactional net margin method analysis although it advocates for the use of the median as it believes this produces a better result closer to the arm’s length price. The KRA has specialist transfer pricing audit teams and each has an expert in functional analysis, economic analysis, risk analysis, etc. Transfer pricing documentation requested by the KRA, but not provided, will likely trigger an audit.
- The statute of limitations for the assessment of transfer pricing adjustments is seven years from the year to which the income relates.
- Kenya has a minimal double tax treaty network and the competent authority is normally successful in obtaining double tax relief. No tax payment is required before a taxpayer can apply to the competent authority.
- There is no Advance Pricing Agreement (APA) procedure available in Kenya, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the National Tax Service (NTS), under the Ministry of Strategy and Finance.
- The main tax legislation is the Corporate Income Tax Law. The transfer pricing rules are contained within the Law for the Coordination of International Tax Affairs (LCITA), the Presidential Enforcement Decree which supplemented the LCITA announced 30 December 1995 (LCITAPED), the Enforcement Regulation announced on 30 March 1996 (ER), and various basic rulings issued on 15 June 2004. The effective date of the transfer pricing rules is 1 January 1996.
- Korea is an OECD member country and its transfer pricing rules are broadly consistent with the OECD Guidelines and based upon the arm's length standard. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and must be completed in the Korean language.
- All domestic corporations and foreign corporations in Korea with international related party transactions exceeding KRW 50 billion, and sales revenue exceeding KRW 100 billion, are required to annually submit a Combined Report of International Transactions (“CRIT”). This is equivalent to a combined “Master File”, “Local File”, and “CbC Report” recommended by the OECD in its BEPS Action Point 13. Please note, that a CbC report is also required to be submitted by domestic corporations (ultimate parent company) when the prior year’s consolidated sales revenue exceeds KRW 1 trillion. The CRIT must be filed with the head of the tax office having jurisdiction over the place where the tax payment is remitted, within 12 months from the fiscal year-end (i.e. for FY2017, the due date for submission is 31 December 2018).
- Multi-national entities (MNEs) operating in Korea must submit a “reporting entity notification form” in advance, which specifies what entity, and in what jurisdiction, the CbC report will be submitted. While the final CbC report is due within 12 months of the fiscal year-end, the reporting entity notification form is required to be filed within six months of the fiscal year-end (i.e., for fiscal years ending 31 December, the deadline would be 30 June of the following year) by the “ultimate parent company” located in Korea (outbound) and a domestic entity or branch whose parent company resides in a foreign country (inbound).
- Korea broadly follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The transfer pricing methods specified in the LCITA and LCITAPED are the: Comparable Uncontrolled Price (CUP) method; Resale Price Method (RPM); Cost Plus Method (CPM); Profit Split Method (PSM); Transactional Net Margin Method (TNMM); and, other unspecified methods. With respect to the ‘other unspecified methods’, these relate to pricing methods which are the most reasonable under the circumstances and facts. When transfer pricing documentation is requested by the NTS, it must be provided within 60 days (a one-time extension of 60 days can be requested).
- The NTS will only accept the use of local comparables in a benchmarking study when the tested party is a Korean entity. The tax authority prefers to use the KIS-Line commercial transfer pricing database and normally focusses on the interquartile range in a transactional net margin method analysis.
- The general statute of limitations for the assessment of transfer pricing adjustments is five years from the annual tax return filing due date.
- Korea has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority within three years from the date of receipt of the income tax Assessment Notice. Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

• The tax authority is the Department of Income Taxes (DIT) within the Ministry of Finance.

• The main tax legislation is the Kuwait Income Tax Decree. The transfer pricing rules are contained within the Executive Rules and Instructions of Kuwait Income Tax Decree 3 of 1955, as amended by Law No. 2/2008, and the Executive Bylaws of Law No. 2/2008. Kuwait is not an OECD member country.

• There is no requirement for a taxpayer to file a specific transfer pricing return each year. However, a specific transfer pricing template (which provides details on selected related and non-related party transactions) must be completed and submitted with the annual tax return. Although not mandatory, we suggest taxpayers prepare and maintain contemporaneous transfer pricing documentation to reduce the likelihood of future transfer pricing audits and assessments.

• By prescribing a limit on certain costs (as a percentage of revenue), the cost incurred abroad for material, design, and consultancy is restricted. The tax authorities deem a profit margin on transactions as follows:
  - Materials and services from outside Kuwait through a Head Office:
    - Materials 15% of revenue;
    - Design 25% of revenue; and,
    - Consultancy 30% of revenue.
  - Materials and services from outside Kuwait through related parties:
    - Materials 10% of revenue;
    - Design 20% of revenue; and,
    - Consulting 25% of revenue.
  - Materials and services from outside Kuwait through third parties:
    - Materials 5% of revenue;
    - Design 15% of revenue; and,
    - Consulting 20% of revenue.

• Related companies are not specifically defined in any Tax Decree, or under the main Law or the Executive ByLaws. Executive Rule No. 49 however considers those companies associated with each other legally or financially, and thus creating a common interest, to be related companies, and prescribes the tax treatment for those companies.

• Kuwait does not have specific transfer pricing penalties and does not have a general penalty regime which addresses failure to submit transfer pricing documentation. Penalty interest however applies to the additional assessed (transfer pricing adjustment) tax liability at a rate of 1% per month on the assessed additional tax liability until paid.

• There is an implication under the Kuwaiti tax system that every tax return, and the respective related party transactions, will be audited by the DIT since the system is based on an initial self-assessment by the taxpayer followed by a mandatory audit by the DIT.

• The statute of limitations for the assessment of transfer pricing adjustments is broadly five years from the annual tax return filing date (unless a tolling or discovery rule is applicable).

• Kuwait has a very good double tax treaty network and the competent authority is normally effective in obtaining double tax relief.

• There is no Advance Pricing Agreement (APA) procedure available in Kuwait, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Valsts ienemumu Dienests (State Revenue Service, or SRS).

- The main transfer pricing tax legislation is contained within the Law on Corporate Income Tax (LCIT) and Law on Taxes and Duties (LTD). The LCIT provides the general transfer pricing framework to undertake related party transactions at arm’s length prices and the LTD provides the documentation requirements for taxpayers and the content required for such documentation. In addition, Cabinet Regulation 556 of 4 July 2006, provides the methods to be used when determining arm’s length prices. Other Cabinet Regulations have also been issued which deal with other aspects of transfer pricing in Latvia, including Advance Pricing Agreements (APAs).

- Latvia is an OECD member country and the Latvian transfer pricing legislation specifically refers to the OECD Guidelines in applying the transfer pricing methods. Notably, Latvia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines and all five methods are acceptable.

- There is no requirement for a taxpayer to file a specific transfer pricing return each year, however, there are related party transaction disclosures required in the annual corporate income tax return. The disclosures include details on each related party and their respective related party transactions, and how much, if any, the Latvian related party has increased the taxpayers taxable income (due to non-compliance with the arm’s length principle).

- The tax authority prefers the use of local comparables, if available, but failing this they accept European benchmarking studies or analysis. Please note, where local comparables are available, but the taxpayer has chosen to use European data, the tax authority could use this as an argument to challenge the benchmarking results and methodology. Secret comparables are not used by the tax authority.

- No specific transfer pricing database is preferred by the tax authority although it does use the Amadeus commercial database. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines as, notably, the Latvian transfer pricing legislation is based on the OECD Guidelines. A transfer pricing study must be completed in the Latvian language.

- When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days. Where a taxpayer disagrees with a transfer pricing assessment (adjustment) made by the tax authority, an Appeal may be made to the General Director. Failing a satisfactory outcome for the taxpayer, a further Appeal may be made to the Court. Where a transfer pricing adjustment is sustained, a tax penalty of 20% or 30% will apply (although, this may be mitigated to 10% or 15% depending on the circumstances). Where a taxpayer is in a loss position, and no additional tax is assessed, there is no penalty levied.

- The statute of limitations for the assessment of transfer pricing adjustments with respect to foreign related party transactions is five years from the corporate income tax payment due date (and with respect to local related party transactions it is three years from the corporate income tax payment due date).

- Latvia has an extensive double tax treaty network however no formal rules exist with respect to when a taxpayer may apply to the competent authority to seek double tax (tax treaty) relief. No tax payment is required before a taxpayer can apply to the competent authority.

- Unilateral Advance Pricing Agreements can be negotiated with the tax authorities (a filing fee applies of EUR 7,114).
KEY POINTS

- The tax authority is the Ministry of Finance (MoF).
- The main tax legislation is the Tax Procedure Law (TPL) No.44, which became effective on 1 January 2009. Lebanon does not have specific standalone transfer pricing legislation therefore the transfer pricing rules are contained within the TPL and its supporting regulations.
- Parties are related where one of the parties has the power to determine the other party's financial, economic and organisational activities.
- Although Lebanon is not an OECD member country, and does not adopt the OECD Guidelines, it does acknowledge them as an international standard and best practice and adheres to the arm's-length principle.
- The tax authorities have the right to modify the amount and conditions of transactions carried out between related parties based on the amount and conditions that would have prevailed in similar transactions between two independent parties and within competitive conditions, notably, in the following cases:
  - A transaction that is legal in its form but lacks the necessary economic substance.
  - A transaction where the value of a transaction differs by 20% (less or more) from the fair market value.
- The Lebanese tax system is based on self-assessment with the tax authorities auditing the tax return submissions, requesting additional information when required and raising subsequent assessments, which may attract penalties and interest.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year and there are no specific transfer pricing documentation requirements. In saying this, during a tax audit the tax inspector may ask whether transfer pricing documentation has been prepared and available. The existence of transfer pricing documentation to support the arm's length nature of international transactions with related parties can help reduce transfer pricing audits, assessments and penalties. Therefore, although not mandatory, it is advisable for taxpayers to prepare and maintain transfer pricing documentation (and be able to demonstrate that their ‘group’, if applicable, has a transfer pricing policy).
- The content of a transfer pricing study does not have to follow Chapter V of the OECD Guidelines, however, it’s content should be sufficient to show that the related party transaction or transactions fall within an acceptable arm’s length range. A transfer pricing study can be filed in another approved language and not necessarily in Lebanese.
- There is no specific statute of limitations for the assessment of transfer pricing adjustments, however, broadly, the statute of limitations applying to tax assessments (for the tax administration to ‘collect its rights’) is four years from the end of year that follows the current fiscal year. The statute of limitations can exceed four years under a court direction (and therefore a taxpayer must retain documentation for ten years).
- Lebanon has a good double tax treaty network, with over 30 double tax treaties concluded, and others in negotiation.
- There is no Advance Pricing Agreement (APA) procedure available under the TPL in Lebanon, and consequently, no APAs have been negotiated with the tax authorities. There is however the possibility to receive an advance ruling on transactions or operations depending on certain cumulative conditions (and a fixed fee is payable).
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KEY POINTS

- The tax authority is the Valstybine mokesciu inspekcija (the State Tax Inspectorate, or STI) of the Ministry of Finance of the Republic of Lithuania.

- The main tax legislation is the Law on Corporate Income Tax of Lithuania (LCIT). The transfer pricing rules are contained within Article 40 LCIT, Order No. 1K-123 of the Minister of Finance (9 April 2004) and Order of the Head of the State Tax Inspectorate No. VA-27 (22 March 2005). The effective date of the transfer pricing rules is 22 April 2004.

- There is no requirement for a taxpayer to file a specific transfer pricing return each year, however, a transfer pricing form (Form FR0528) must be filed and accompany the annual corporate income tax return. Form FR0528, an annual statement, provides details on the respective related parties and their transactions with the taxpayer. General administrative penalties apply in the case of non-submission of Form FR0528. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.

- The STI prefers the use of local comparables in a benchmarking analysis (transfer pricing study) unless it is not appropriate to do so, for example, international scope of operations, lack of local comparables, etc. Secret comparables are used by the tax authority and it prefers the use of multiple year data.

- No specific transfer pricing database is preferred by the tax authority; however, it does use the Amadeus commercial database to analyse benchmarking studies and perform adjustments. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

- Lithuania follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.

- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines although in practice the tax authorities require specific information i.e. specific functions analysis, specific risk analysis and specific industry reviews more tailored to the specific nature of the transaction and not general business information. A transfer pricing study can be filed in any language but must be translated upon request.

- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can make a claim with the Central Tax Authority, or, failing that, with the Commission of Tax Disputes. Where a transfer pricing adjustment is sustained, tax penalties ranging from 10% to 50% will be levied on the outstanding amount of tax until paid.

- The statute of limitations for the assessment of transfer pricing adjustments is broadly five years following the fiscal year end date.

- Lithuania has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority within five years following the adjustment year (and in the adjustment year). A tax payment is required on or before the due date before a taxpayer can apply to the competent authority.

- Unilateral and bilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee). Please note, the transfer pricing methodology should be determined prior to approaching the tax authorities.
PKF CONTACT INFORMATION

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KEY POINTS

• The tax authority is the Administration des Contributions Directes (Luxembourg Tax Authority, or LTA)
• The main tax legislation is the Income Tax Law (ITL). The arm’s length criteria are defined in Article 56 ITL and Article 56bis ITL defines the key principles on how arm’s length remuneration must be determined for transactions between related parties. Additional guidance has been issued by the LTA in relation to the application of transfer pricing for companies carrying out intragroup financing activities.
• There is no requirement for a taxpayer to file a specific transfer pricing return each year with the exception of Country-by-Country (CbC) reporting requirements, if applicable. Transfer pricing documentation must be communicated to the LTA only upon request. It is recommended however that supporting contemporaneous transfer pricing documentation evidencing the arm’s length nature of significant related party transactions is readily available upon the filing of the annual tax return, notably, in order to respond within the time imposed by the LTA and thus avoid adjustments and potentially penalties for a late, or a lack of, response.
• A Luxembourg ultimate parent entity which controls a multi-national group of companies with total consolidated group revenues exceeding EUR 750 million, must file a CbC report with the Luxembourg tax authorities (subsidiaries may also have obligations to file CbC reports in Luxembourg).
• When transfer pricing documentation is requested by the tax authority, it must be provided within the deadline set by the LTA. Luxembourg tax law does not fix a specific time for replying to requests from the tax authority, although a response is generally required within 28 days from the date of the notification.
• Where a transfer pricing adjustment made by the tax authority is disputed, a claim may be filed with the Director of the LTA under the general tax law rules. Failing a satisfactory outcome, a taxpayer may file an appeal with the Administrative Court (i.e. Tribunal Administratif) through a lawyer or an accountant. Finally, a taxpayer may appeal an unsatisfactory decision of the Administrative Court with the Administrative Court of Appeal (i.e. Cour Administrative). Where a transfer pricing adjustment is sustained, tax penalties may apply if it can be established by the LTA that the non-compliance with the arm’s length principle was to avoid taxes.
• Luxembourg follows the transfer pricing methods outlined in Chapter II of the (revised) OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.
• The content of a transfer pricing study should follow Chapter V of the (revised) OECD Guidelines. A transfer pricing study can be filed in the local language (i.e. French and German) and English.
• The tax authority has not expressed a preference towards the use of local comparables in a benchmarking analysis or a transfer pricing study. Secret comparables should not be used by the tax authority and no specific transfer pricing database is preferred by it.
• The statute of limitations for the assessment of transfer pricing adjustments is five years from the tax assessment issue date. In cases of fraud, the statute of limitations is increased to 10 years.
• Luxembourg has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority following its proposal by the tax authority to the taxpayer. A tax payment may be suspended upon request when a taxpayer applies to the competent authority.
KEY POINTS

- The tax authority is the Lembaga Hasil Dalam Negeri (Inland Revenue Board, or IRB).
- The main tax legislation is the Income Tax Act, 1967 (ITA). The transfer pricing rules are contained within Sections 140A and 138C ITA, the Income Tax (Transfer Pricing) Rules 2012 (Malaysian transfer pricing rules), and, the Income Tax (Advance Pricing Arrangement) Rules 2012.
- Although Malaysia is not an OECD member country, the Malaysian transfer pricing rules are based on the OECD Guidelines and follow the arm’s length principle. Notably, Malaysia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines although its transfer pricing rules specify that the OECD traditional transactional methods should be used in priority to the transactional profit methods.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year, however, an annual declaration is required to be made in the annual tax return forms. The declaration confirms whether (or not) transfer pricing information and documents have been prepared in respect of the respective year of assessment, as well as providing details on the related party transactions (and the related parties). In addition, certain selected taxpayers are also issued Form 4/2015 (previously Form MNE [2/2012]), which requires a far greater level of detail to be disclosed concerning their related party transactions and the respective related parties. Certain Malaysia taxpayers must also file annual Country-by-Country (CbC) Reports and have other documentary requirements in line with the OECD’s BEPS Action Plan 13.
- When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days from the date of request. Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can approach the Dispute Resolution Panel (DRP). Failing a satisfactory outcome with the DRP, a taxpayer can make an appeal to the Special Commissioner of Income Tax (using Form Q). Where a transfer pricing adjustment is sustained, a general tax penalty of 35% will apply to the additional tax liability (mitigation is possible subject to supporting transfer pricing documentation and timeliness).
- The tax authority prefers the use of local comparables in a transfer pricing or benchmarking analysis. No specific transfer pricing database is preferred by the tax authority, and, it currently conducts local benchmarking exercises manually by reference to publicly available directories and extracting financial information from the financial statements of companies lodged with the Companies Commission of Malaysia. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis - in an audit, it often uses the median of the range to initially review whether related party transactions are broadly at an arm’s length price. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and can be filed in the Bahasa Malaysia or English language.
- The statute of limitations for the assessment of transfer pricing adjustments is seven years from the end of a year of assessment. The statute of limitations is extended beyond seven years for cases of negligence, fraud, or wilful default.
- Malaysia has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority, broadly, following the issue of a Notice of Additional Assessment and paying the tax due within 30 days of the issue date.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Commissioner for the Inland Revenue (CIR).
- The main tax legislation is the Income Tax Act (ITA) and Income Tax Management Act (ITMA). The general transfer pricing rules are contained within the ITA and ITMA, and notably, Articles 5(6) and 5(7) ITMA.
- The Malta transfer pricing legislation is general and, in essence, a collection of general anti-avoidance provisions which provide the CIR with the right to disregard any artificial or fictitious scheme that reduces the amount of tax payable by the taxpayer. Additionally, where the sole or main purpose of the taxpayer is to obtain any advantage which has the effect of avoiding, reducing or postponing liability to tax, the CIR may determine the liability to tax.
- When considering a related party relationship, Article 5(6) ITMA refers to a “close connection between the resident person and the non-resident person and to the substantial control exercised by the non-resident person over the resident person.”
- Although Malta is not an OECD member country, it follows the requirements of the arm’s length principle for transactions between associated enterprises.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year, however, certain information concerning related party transactions is to be included within the annual income tax return. With the exception of these disclosures, there are no further transfer pricing documentation requirements for a taxpayer.
- Although there is no requirement in the Maltese transfer pricing legislation for Malta to follow the transfer pricing methods outlined in Chapter II of the OECD Guidelines, generally, the cost-plus method is an acceptable pricing method.
- The CIR has not expressed a preference towards the use of local comparables in a benchmarking study. Secret comparables are not used by the CIR and it does not prefer a specific transfer pricing database.
- Tax audits are not common, and, even when a tax audit is conducted, it is unlikely that transfer pricing aspects such as the related parties, the related party transaction prices or a taxpayer’s transfer pricing methodology will be subject to review or challenge.
- The statute of limitations for the assessment of transfer pricing adjustments is six years. The statute of limitations is, however, open-ended in cases of fraud or tax evasion and an assessment under these circumstances can be raised at any time.
- Malta has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. Where double taxation is suffered on income received from a country with no Double Tax Agreement (Tax Treaty) with Malta, unilateral relief is provided and any tax suffered outside Malta, is, limitedly to the Malta tax charge on the foreign income, allowed as a credit against tax chargeable in Malta.
- There is no Advance Pricing Agreement (APA) procedure available in Malta, and consequently, no APAs have been negotiated with the tax authorities. Please note however that Maltese tax law allows a tax payer to apply for an Advance Revenue Ruling (ARR). The Ruling binds the tax position for five years and is renewable for a further five-year period unless there is a change in the law. If the law relating to the subject matter changes during the operation of a Ruling, that Ruling remains binding either until the end of the relative five-year period or for two years following the amendment, whichever is the shorter.
KEY POINTS

- The tax authority is the Servicio de Administracion Tributaria (Tax Administration Service, or SAT). Specifically, with respect to transfer pricing, within the SAT is the Central Transfer Pricing (Audits) Administration. The main tax legislation is the Income Tax Law (ITL). The transfer pricing rules are contained within Articles 27-V, 28 (XVII, XVIII, XXVII and XXIX), 32-H, 76 (IX, X and XII), 76-A, 179, 180, 182, and 184 ITL. In addition, Articles 21, 26 (Sec XV), 31-A, 32A, 32F, 34-A, 81 (Sec XVII, XL), 82 (Sec XVII, XXXVII), 83, 84 (Sec XIII, XV), and 146-B (Sec I) Federal Fiscal Code and Articles 9, 138, 285, and 302 of the Income Tax Law Regulations.

- A transfer-pricing-specific information return must be filed annually disclosing a taxpayer’s related parties and their corresponding transactions; including the method applied for analysis, whether the entity has a transfer pricing study, whether it is applying any regulation or treaty, the interquartile range and results, and the number of observations used for the analysis. Two annual questionnaires must also be completed regarding intercompany transactions and documentation. In addition, certain other transfer pricing related returns and disclosures may have to be completed depending on the circumstances of the taxpayer.

- A country-by-country report, master file, and local file are also required, where relevant, and, under Articles 32-H and 76-A ITL, Mexican taxpayers must have available the multinational enterprise’s master file and country-by-country report, which must be filed with the tax authority. An annual contemporaneous transfer pricing study must also be completed on a transaction-by-transaction basis and broadly follow Chapter V of the OECD Guidelines (where consistent with the ITL).

- Taxpayers are required to prepare supporting contemporaneous transfer pricing documentation and provide this to the SAT when requested within 15 days (a time extension is possible). The statute of limitations for the assessment of transfer pricing adjustments is five years from the filing due date of the tax return.

- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a claim may be made by submitting a resolution to the Administrative Area within the Ministry of Finance. Failing a satisfactory outcome, an Appeal may be lodged with the Tax Court. Where a transfer pricing adjustment is sustained, general tax penalties will apply.

- The following pricing methods apply in Mexico; the comparable uncontrolled price (CUP), the resale price, the cost-plus, the profit split, the residual profit split, and the transactional net margin (TNMM) pricing methods. The CUP is considered the preferred method, followed by the cost plus and resale price methods, and if these are not available, profit-based methods are to be applied. The tax authority accepts local and North American comparables and uses the Compustat and RoyaltyStat databases for benchmarking analysis, normally focussing on the interquartile range in a TNMM analysis.

- Mexico has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority at any time within the timeframe requirements of the respective tax treaty. Unilateral and bilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities under Federal Fiscal Code Article 34-A and miscellaneous tax rules provide for APAs regarding intra-Mexico related-party transactions. Mexican maquiladoras can elect to request an APA to comply with transfer pricing and permanent establishment exemption requirements.
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KEY POINTS

- The tax authority is the Tax Administration of Montenegro (TAM).
- The main tax legislation is the Corporate Income Tax Law (CITL). The transfer pricing rules are contained within Articles 19, 20 and 38 CITL. The effective date of the transfer pricing rules is 1 January 2002.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year, however, the income and expenses of related party transactions are required to be disclosed separately in the annual corporate income tax return. Further, under Article 38 CITL, the corporate income tax return should also disclose a comparison between the income and expenses of the related party transactions and those of similar goods which could be purchased on an arm’s length basis from unconnected (independent) parties – any difference should be an adjustment to taxable profit.
- Although not mandatory, it is advisable for taxpayers to prepare and maintain contemporaneous transfer pricing documentation so that it is readily available when requested by the TAM (although in practice, where the documentation is not readily available some time is granted for its preparation). Tax audits often result in a request for transfer pricing documentation.
- Although Montenegro is not an OECD member country it does follow the ‘traditional’ transfer pricing methods outlined in Chapter II of the OECD Guidelines:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method; and,
  - Resale price method.
- The Montenegro transfer pricing regulations do not recognise transactional profit-based methods such as the following:
  - Profit split method; or,
  - Transactional net margin (TNMM) method.
- The tax authority has not expressed a preference towards the use of local comparables, and it does not use secret comparables. No specific transfer pricing database is preferred by the tax authority.
- Where a transfer pricing study is prepared, it is preferable that its content and structure broadly follows Chapter V of the OECD Guidelines.
- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, the adjustment is first applied and then a taxpayer can appeal under a prescribed dispute procedure. Failing that, a taxpayer can then lodge an appeal with the Administrative Court. There are no specific penalties under the Montenegro transfer pricing regulations which apply when a transfer pricing adjustment is sustained.
- There is no specific statute of limitations relating to the assessment of transfer pricing adjustments, however, broadly, the statute of limitations for tax assessments is five years from the end of the tax year which the adjustment relates. In cases of fraud, etc. the statute of limitations is 10 years.
- Montenegro has a minimal double tax treaty network. There are no formal rules as to when a taxpayer may submit an adjustment to the competent authority or whether any tax is required to be paid.
- There is no Advance Pricing Agreement (APA) procedure available in Montenegro, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is known as the ‘Direction Générale des Impôts’ (DGI).
- The main tax legislation is the Moroccan Tax Code (MTC). The transfer pricing rules are contained within Articles 213-II and 214-III MTC. Please note that there are no current specific tax rulings or tax regulations that deal with transfer pricing although the Exchange Control Regulation allows the Control Exchange Office to challenge the transfer of excessive and unsubstantiated payments overseas.
- Morocco is not an OECD member country however it does follow the arm’s length principle and broadly accepts references to the OECD Guidelines; notably, all intercompany transactions must be conducted at arm’s length.
- Morocco acknowledges the transfer pricing methods outlined in the OECD Guidelines although specific pricing methodologies are not detailed in the MTC, the DGI determines an arm’s length price through either the Comparable Uncontrolled Price (CUP) method or by direct assessment based on available information.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year and no provision currently exists under the MTC requiring a taxpayer to file transfer pricing documentation. It is advisable however for taxpayers to prepare and maintain contemporaneous transfer pricing documentation because when it is requested by the tax authority, it must be provided within 30 days.
- There is no specific Moroccan transfer pricing regulation dealing with the attribution of profits to permanent establishments or business restructuring.
- A tax audit would normally investigate the relationship between a taxpayer and its related parties. Under Article 214-III MTC a taxpayer has an obligation to disclose such relationships and details about the related party transactions.
- The tax authority has not expressed a preference towards the use of local comparables in a transfer pricing or benchmarking study. It should be noted however that the DGI normally does not require a transfer pricing study to be completed in support of the arm’s length pricing nature of the related party transactions, it only requires reasonable proof to be provided to justify the method used for determining the related party transfer prices.
- There is no specific statute of limitations for the assessment of transfer pricing adjustments, however, generally, the statute of limitations to raise an assessment for such adjustments is four years from the year in which the tax is due.
- There are no specific transfer pricing penalties under the MTC (however, general tax penalties and surcharges will be applicable).
- Morocco has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief.
- The Advance Pricing Agreement (APA) procedure was introduced on 1 January 2015 (under Articles 234 bis and 234 ter MTC). Typically, an APA can take up to 12 months to conclude and it is normally for a term of four years.
- The DGI cannot challenge the transfer pricing method agreed under an APA, however, there are circumstances where an APA can be declared null and void during a tax audit.
KEY POINTS

- The tax authority is the Directorate Inland Revenue (DIR).
- The main tax legislation is the Income Tax Act, 24 of 1981 (ITA). The transfer pricing rules are contained within Section 95A ITA and Practice Note 2 of 2006. The effective date of the transfer pricing rules is 14 May 2005.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year. In addition, no requirement exists for taxpayers to separately disclose related party transactions (or related parties) in the annual Income Tax Return. In saying that however Practice Note 2 refers to the OECD Guidelines and a taxpayer does have an obligation to ensure that a necessary level of documentation is retained which is sufficient to support the position that the related party transactions were conducted at arm’s length prices.
- When transfer pricing documentation is requested by the tax authority, there is no time limit specified by the ITA indicating when the documentation is to be furnished. Practice Note 2 however does place an obligation on the taxpayer to prepare and maintain ‘sufficient’ contemporaneous transfer pricing documentation and Section 64 ITA creates a power for the Commissioner to require any person to produce documentation as required by the Minister.
- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge an Objection to the Assessment within 90 days. Failing a satisfactory outcome, an Appeal may be lodged with a special income tax appeals court (or a tax tribunal if certain conditions are met).
- Although Namibia is not an OECD member country, it follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method; and,
  - Transactional net margin (TNMM) method.
In terms of the most appropriate method, Practice Note 2 provides the following direction: "The suitability and reliability of a method will depend on the facts and circumstances of each case."
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking analysis or a transfer pricing study. As far as we are aware, secret comparables are not used by the tax authority. No specific transfer pricing database is preferred by the tax authority for benchmarking purposes or arm’s length analysis.
- The content of a transfer pricing study should broadly follow Chapter V of the OECD Guidelines, however, Practice Note 2 states that taxpayers are required to demonstrate that they have: "…developed a sound transfer pricing policy in terms of which transfer prices are determined in accordance with the arm’s length principle by documenting the policies and procedures for determining those prices”.
- There is no statute of limitations for the assessment of adjustments generally (including transfer pricing adjustments) in terms of Section 69 ITA and the Commissioner may issue additional assessments without time restriction, although please note that when an Assessment is issued, a taxpayer has 90 days in which to formally object in writing (Section 71 ITA).
- There is no Advance Pricing Agreement (APA) procedure available in Namibia, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

• The tax authority is the Belastingdienst (Dutch Tax Administration, or DTA). The main tax legislation is the Dutch Income Tax Act 2001 (DITA) and the Dutch Corporate Income Tax Act 1969 (DCITA). The transfer pricing rules are contained within Articles 3.8 and 3.25 DITA, and, Articles 8 and 8b DCITA. In addition, the following Decrees are relevant: Decree DGB2004/1337M, DGB2004/1339M, IFZ2008/248M, IFZ2010/457M, IFZ/2013/184M, DGB2014/296M, DGB2014/3101, DGB2014/3102, DGB 2014/3098, and, DGB2014/3099. The effective date of the transfer pricing rules is 1 January 2002.

• The Netherlands is an OECD member country and follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be completed in the Dutch or English language.

• There is no requirement for a taxpayer to file a specific transfer pricing return each year. In the Dutch annual corporate income tax return however, a taxpayer must disclose whether there have been any transactions with related parties, and answer certain substance related questions with respect to intra-group financing and licensing and similar activities.

• Taxpayers are expected to prepare and maintain contemporaneous transfer pricing documentation and when requested by the DTA, it must be provided within 30 days (although a time extension may be possible). The statute of limitations for the assessment of transfer pricing adjustments is five years from the end of the respective tax year (or five years from an agreed filing extension date if beyond this). Please also note that in certain international cases the statute of limitations may be extended to twelve years.

• Transactions between related parties that are not concluded on an arm's length basis may be disregarded or may be adjusted appropriately. Special conditions exist for tax-free mergers between companies and for the tax-free incorporation of a sole proprietorship.

• The DTA has not expressed a preference towards the use of local comparables in a benchmarking study and accepts pan-European data where it meets comparable search strategy standards set by the DTA.

• In line with the OECD’s BEPS Action Plan 13, the Netherlands implemented additional transfer pricing documentation requirements from 1 January 2016 and now adopts a standardised three-tiered approach and requires a Country-by-Country (CbC) report, a Master file and a Local file to be prepared where applicable. CbC reporting is required for companies which are a member of a group that has greater than EUR 750 million in revenue, and, a Master file and Local file are required for companies which are a member of a group that has greater than EUR 50 million in revenue.

• The Amadeus database is preferred by the tax authority and it normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

• The Netherlands has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. No tax payment is required before a taxpayer can apply to the competent authority. The Netherlands has three distinct mutual agreement procedures (MAPs), “ordinary”, “accelerated” and “extra-accelerated”, which seek to eliminate double taxation as efficiently as possible.

• Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Inland Revenue Department (IRD).
- The main tax legislation is the Income Tax Act 2007 (ITA). The transfer pricing rules are contained within Sections YD5, GB2, and GC6 to GC14 ITA, the Tax Administration Act 1994, and IRD Guidelines.
- New Zealand is an OECD member country and broadly follows the OECD transfer pricing Guidelines in administering its transfer pricing rules. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year. There are however certain disclosures required in a company’s income tax return, notably, whether it is controlled or owned by non-residents or whether it holds an interest in a controlled foreign company (CFC). Apart from this, the New Zealand’s transfer pricing legislation does not contain any other explicit transfer pricing requirements. Please note however that under Section GC 13 ITA, there is a requirement (for tax return purposes) for taxpayers to select and apply an appropriate transfer pricing method.
- New Zealand follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines i.e. the IRD accept the most reliable method (or methods) from the comparable uncontrolled price (CUP) method, the resale price method, cost-plus method, profit split method and the transactional net margin method.
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking analysis due to the limited quantity and quality of local information. The IRD use secret comparables for the purposes of pre-audit transfer pricing risk assessment.
- A taxpayer is expected to prepare and maintain contemporaneous transfer pricing documentation since the IRD Guidelines state that such documentation should be readily available and able to demonstrate to the IRD that the transfer pricing method used is relevant and consistent with the arm’s length principle and thereby support the arm’s length pricing nature of the related party transactions.
- When transfer pricing documentation is requested by the tax authority, it must be provided within 28 days (a time extension is possible). Where a transfer pricing assessment (adjustment) is disputed, a taxpayer can follow a prescribed dispute resolution process with the IRD for its resolution. Failing this, a taxpayer may seek a resolution formally through the Courts. Where a transfer pricing adjustment is sustained, general tax penalties will apply of between 20% and 40%.
- No specific transfer pricing database is preferred by the tax authority. The IRD normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis and prefers multiple year averages (for five years) to be used in benchmarking analysis.
- The statute of limitations for the assessment of transfer pricing adjustments is four years from the end of year in which the tax return is filed.
- New Zealand has a good double tax treaty network and the competent authority is normally effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority depending on the timeframe specified in the mutual agreement provisions (MAP) of the relevant double tax agreement. No tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities. A filing fee of NZD 322 (approximately USD 225) applies.
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KEY POINTS

- The tax authority is the Federal Inland Revenue Service (FIRS).
- Nigeria is not an OECD member country however its transfer pricing regulations follow the OECD Guidelines and explicitly recognise the five transfer pricing methods.
- The transfer pricing rules are new in Nigeria, and consequently, it is not yet known whether the FIRS has a preference towards the use of local comparables in a transfer pricing study or benchmarking analysis or will accept wider comparative information. As far as we know, secret comparables are not used by the tax authority.
- Under Nigeria's transfer pricing regulations, a taxpayer is required to file (with the annual income tax return) annual statutory transfer pricing forms (Disclosure and Declaration Forms) which provide full information concerning a taxpayer's related party transactions. This includes details of the respective related parties, their relationship with the taxpayer, the transfer pricing methodology, and why the pricing method adopted was selected. Failure to complete and provide the annual statutory transfer pricing forms will give rise to penalties (which are the same penalties as for failure to submit an income tax return) and, in addition, this may trigger an audit from the FIRS.
- A transfer pricing study must be filed in English and it is preferable that its content follows Chapter V of the OECD Guidelines.
- Nigeria follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method; and the,
  - Transactional net margin (TNMM) method.
  If, however, based on the circumstances and facts, there is a more appropriate transfer pricing method which reflects more closely the arm's length price relating to the intercompany transactions being analysed, then it may be used by the taxpayer.
- The tax authority subscribes to the Orbis transfer pricing database and normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- There is no specific statute of limitations for the assessment of transfer pricing adjustments, however, generally, for assessments it is six years from the end of the respective tax year (please note however that there is no statute of limitations in cases of fraud, wilful default, or neglect with respect to any tax payable).
- Although Nigeria has a minimal double tax treaty network, the competent authority is normally effective in obtaining double tax relief. No formal rules exist which direct when a taxpayer may submit an adjustment to the competent authority (although, in practice, it is likely to follow the tax return amendment time period of six years following the accounting year end date). No tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Skatteetaten (Norwegian Tax Authority, or NTA).
- The main tax legislation is the Taxation Act 1999 (TA) and the Tax Administration Act 2016 (TAA), the later effective starting 1 January 2017. The transfer pricing rules are contained within the Sections 13-1 and 6-41 TA, Section 8-11 and 8-12 TAA for transfer pricing and country-by-country reporting respectively, and the NTA Guidelines. The effective date of the transfer pricing rules is 1 January 2008, when formal transfer pricing documentation requirements commenced.
- Norway is an OECD member country and the Norwegian regulations follow the OECD Guidelines and the arm’s length principle. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and must comply with the requirements set out in the Norwegian transfer pricing regulations. It is advisable to include the results of a database search within a transfer pricing study, especially if a net margin method is applied (the NTA can request such an analysis if not included and it must be provided by a taxpayer within 60 to 90 days of the request). Norway follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The Norwegian transfer pricing rules also permit the use of other transfer pricing methods in addition to the Chapter II methods if they are more appropriate and produce more reliable arm’s length results.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year. An attachment to the annual tax return (Form RF-1123) is required however which lists all the related party (intercompany) transactions (it is advisable for taxpayers to also provide a description of any significant intercompany transactions with the annual tax return). When transfer pricing documentation is requested by the tax authority, it must be provided within 45 days.
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study and appreciates the lack of reliable information when just considering the Norwegian market. Secret comparables are used by the tax authority. No specific transfer pricing database is preferred by the tax authority as it uses several, including the Amadeus database. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- The statute of limitations for the assessment of transfer pricing adjustments is 5 years from the end of the tax year in which the transfer pricing appendix to the tax return contains insufficient information. Where sufficient information is included within the Appendix, the statute of limitations is two years from the end of the tax year. The statute of limitations is 10 years in severe circumstances (i.e. if the taxpayer is taxed with the strictest level of penalty tax or is convicted for fraudulent tax evasion.
- Norway has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief, notably, the NTA has a dedicated team that deal exclusively with Mutual Agreement Procedures (MAPs) and Advance Pricing Agreement (APA) cases. There are no formal rules detailing when a taxpayer may submit an adjustment to the competent authority, however, it must be in line with the respective tax treaty provisions, where applicable. In practice, general taxes must be paid before a taxpayer can apply to the competent authority (note: payment can be postponed by the submission of a parent or bank guarantee).
- Unilateral and bilateral APAs can be negotiated with the tax authorities (there is no filing fee). Norway however does not have a formal APA procedure so APAs are negotiated based on the respective tax treaty provisions.
KEY POINTS

• The tax authority is the Secretariat General for Taxation (referred to as the ‘Tax Department’, or ‘SGT’), a part of the Ministry of Finance.

• The main tax legislation is the Income Tax Law (ITL) issued by Royal Decree 28/2009 and the subsequently issued Executive Regulations to the ITL (ERs). The transfer pricing rules are contained within Part Four, Chapter Two, Section One, and Articles 125 to 128 ITL. The effective date of the current transfer pricing rules is 1 January 2010.

• There is no requirement for a taxpayer to file a specific transfer pricing return each year. Details of related party transactions are however disclosed in the annual income tax return, although there is no prescribed format for these disclosures in the ITL or ERs. A copy of the signed, audited financial statements must be included with the income tax return when filed with the Tax Department, and typically, if the financial statements contain a related party note, the Tax Department will issue a standard ‘related party transactions’ enquiry letter requesting further details.

• The Tax Department is becoming more and more focused on transfer pricing and, because of the level of enquiries, taxpayers are advised to always prepare and maintain contemporaneous transfer pricing documentation. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days (a time extension is possible).

• The ITL and its ERs do not provide any specific requirements with respect to the format, content and structure of a transfer pricing study, however, the Tax Department refers to the OECD Guidelines as a reference source and so it is advisable to follow Chapter V of the OECD Guidelines in the preparation of a transfer pricing study. The Tax Department will often request supporting documentation so this should either be submitted with the study or be readily available for inspection by the Tax Department. A transfer pricing study should be completed in English or Arabic. (although tax assessment Objections, and subsequent Appeals, must be filed in Arabic).

• The ITL and ERs support the position that a transfer pricing method should ensure that, as far as possible, a related party transaction is charged at an arm’s length price. Against this background, the transfer pricing methods outlined in Chapter II of the OECD Guidelines are often used and reference is frequently made to them by the Tax Department.

• No specific transfer pricing database is preferred by the Tax Department and it has not expressed a preference towards the use of local comparables due to the limited availability of Oman market information. It does however compare a taxpayer’s business margins with those of other similar local businesses.

• The statute of limitations for the assessment of transfer pricing adjustments is five years from the end of the tax year in which the income tax return is filed. The statute of limitations is extended to 10 years where no income tax return is filed or there has been fraud or deception.

• Oman has an extensive double tax treaty network. A taxpayer should initially discuss an application with the competent authority to understand the procedure, the form of such an application, any fees payable, and, any filing deadlines (in practice, the procedure may be led by the provisions of the respective double tax agreement).

• There is no formal Advance Pricing Agreement (APA) procedure available in Oman, and consequently, no APAs have been negotiated with the tax authorities. The Tax Department, however, may provide an Advance Ruling based on the specific facts and circumstances of a particular case.
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KEY POINTS

- The tax authority is the Federal Board of Revenue (FBR).
- The main tax legislation is the Income Tax Ordinance, 2001 (ITO) and Income Tax Rules, 2002 (ITR). The transfer pricing rules are contained within the Section 108 and 109 ITO and FBR Circulars.
- Pakistan is not an OECD member country however it will follow a three-tier transfer pricing documentation approach in accordance with the OECD BEPS 13 initiative and require taxpayers to maintain a “master” file and a “local” file containing information with respect to their related party transactions. In addition, Pakistan has also introduced country-by-country (CbC) reporting requirements for large groups (although the specific details are still awaited). Notably, Pakistan has signed an agreement for mutual administrative assistance in tax matters to exchange country-by-country (CbC) reports in the future.
- Transfer pricing transactions however are normally identified by the FBR from the related party note in a copy of the signed, audited financial statements, which must be prepared in accordance with the International Financial Reporting Standards (IFRS), and submitted with the annual tax return.
- Once related party transactions have been identified by the FBR, normally an enquiry letter and documentation request follows. It is therefore advisable for taxpayers to prepare and maintain contemporaneous transfer pricing documentation to support the arm’s length pricing nature of the related party transactions.
- The Income Tax Rules of 2002 state the following transfer pricing methods, outlined in Chapter II of the OECD Guidelines, may be used to establish the arm’s length price of a related party transaction:
  - Comparable uncontrolled price (CUP) method;
  - Cost-Plus method;
  - Resale Price method; and,
  - Profit Split method.
  The Profit Split method should, in the opinion of the FBR, only be applied where the first three methods are unable to be applied.
- No specific transfer pricing database is preferred by the tax authority although it is developing a database for comparative analyses and audit methodology. We are not aware of any secret comparables currently being used by the tax authority.
- The FBR’s approach to a tax audit is mainly manual and focusses on key documentation. A tax audit normally commences with a letter requesting supplementary analysis, information and key documents. Typically, tax audits (of which a transfer pricing audit is a part) can last up to one year. The FBR has an internal Transfer Pricing Division which specialises in transfer pricing.
- The statute of limitations for the assessment of a transfer pricing adjustment (regular tax assessment / audit of a tax return) is generally five years from the end of the financial year in which the return is filed.
- Pakistan has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief.
- There is no Advance Pricing Agreement (APA) procedure available in Pakistan, and consequently, no APAs have been negotiated with the tax authorities.
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KEY POINTS

- The tax authority is the Dirección General de Ingresos (Tax Administration of Panama, or DGI). The main tax legislation is the Panama Tax Code (TC). The transfer pricing rules are contained within the Chapter IX of Title I of the Fourth Book, Articles 762-A to 762-K TC (enacted by Law 33 and Law 52, and Executive Decree No. 958).
- Panama is not an OECD member country however the OECD Guidelines are followed to the extent that they do not contradict the TC or Panama’s international tax treaties. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and it must be completed in the Spanish language.
- There is a requirement for a taxpayer to file a specific transfer pricing return (Form 930) each year, within six months of the end of the respective fiscal year. The transfer pricing return discloses details of the related parties, respective related party transactions, the pricing methodology adopted and the reasons why it was used and other relevant information. Failure to submit Form 930 carries a penalty of 1% of the total related party transactions (operations), capped at USD 1 million.
- We are not aware of a specific transfer pricing database that is preferred by the tax authority. Normally it focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- When transfer pricing documentation is requested by the tax authority, it must be provided within 45 days. Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can file a resolution with the DGI Administrative Review, or failing that, an Appeal may be lodged with a Tax Court. If the matter is still not resolved, a taxpayer can submit the case for judicial review before the Supreme Court of Justice (Third Chamber). The statute of limitations for the assessment of transfer pricing adjustments is three years from the filing date of the income tax return.
- Where a transfer pricing adjustment is sustained, a surcharge of 10% applies to the tax unpaid on the upheld adjustment and an interest penalty is also levied at 1% per month until the amount is paid.
- Panama follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method; and,
  - Transactional net margin (TNMM) method.
- The tax authority has not expressed a preference towards the use of local comparables; notably, the Panama transfer pricing rules expressly state that international (external) comparables can be used if the data is from a reliable commercial database which is created by a public information company. Secret comparables are not used by the tax authority.
- Panama has a minimal double tax treaty network and applies the exemption method for the elimination of double taxation. No formal rules exist with respect to when a taxpayer may submit an adjustment to the competent authority and no payment is required (an assessment can be paid after an application has been made).
- There is no Advance Pricing Agreement (APA) procedure available in Panama, and consequently, no APAs have been negotiated with the tax authorities.
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KEY POINTS

- The tax authority is the Superintendencia Nacional de Administración Tributaria (National Superintendency of Tax Administration, or SUNAT).
- The main tax legislation is the Peruvian Income Tax Law (ITL) and Income Tax Regulation (ITR). The transfer pricing rules are contained within Chapter V Articles 32 and 32-A of ITL, and Chapter VI (Article 24) and Chapter XIX (Articles 108 to 119) of ITR. In addition, further guidance is provided in Articles 176 (numbers 2 and 4), 177 (number 27) and 178 (number 1) of the Tax Code.
- In accordance with the OECD’s BEPS 13 action plan (transfer pricing documentation):
  - Commencing in 2017, taxpayers with an income of more than USD 2.8 million (approximately) must submit a Local Report to the Peru tax authorities;
  - Commencing in 2018, taxpayers with an income of more than USD 24 million (approximately) must submit the Master File to the Peru tax authorities;
  - In addition, also commencing in 2018, taxpayers which belong to a multinational economic group must submit a Country-by-Country (CbC) Report.
- Peru follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, however, seven methods are considered (not five) since the Peruvian tax legislation treats the profit split method and the residual profit split method as separate independent methods, as follows:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Residual profit split method; and,
  - Transactional net margin (TNMM) method; and,
  - Other Method: If another pricing method is more appropriate than the above methods.
- Differences also exist in how the CUP method is applied when the transaction involves commodities by reference to the international price (market value is assessed with respect to the listed value based on the date of shipment (for imports) and with respect to the listed value based on the date of landing (for exports).
- A ‘benefit test’ for services received from related companies must be completed by relevant taxpayers. The test considers the feasibility and reasonableness of such costs, their allocation, margin and arm’s length nature. Notably, The margin of the non-value added services must not exceed 5% of the operative costs; any excess will not be accepted as a deductible expense for tax purpose.
- The tax authority prefers the use of local comparables in a benchmarking study, however, it will accept international comparables of any database if local comparables are not available. Secret comparables may be initially used by the SUNAT to evaluate a taxpayer. The tax authority expects a transaction to be tested against same-year data.
- Peru has a minimal double tax treaty network. The competent authority is not experienced in obtaining double tax relief.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

• The tax authority is the Bureau of Internal Revenue (BIR).

• The main tax legislation is the National Internal Revenue Code of 1997, as amended (Tax Code). The transfer pricing rules are contained within Section 50 Tax Code, Revenue Memorandum Circular 26-08, and Regulation 02-2013 of 23 January 2013. The effective date of the transfer pricing rules is 9 February 2013.

• Although the Philippines is not an OECD member country, its transfer pricing rules are mostly based on the OECD Guidelines and they are often referred to as a source of guidance.

• There is no requirement for a taxpayer to file a specific transfer pricing return each year. A disclosure is however required in the annual corporate income tax return which details a corporation’s top 20 stockholders (including their capital contribution and the percentage of their respective ownership). In addition, related party disclosures are required in the Notes to the audited financial statements, which are filed together with the annual income tax return.

• In terms of documentation, the BIR expects taxpayers to prepare and maintain contemporaneous transfer pricing documentation which is readily available to support the arm’s length nature of prices charged with their related parties. Although not specified under the Philippines tax legislation, when transfer pricing documentation is requested by the tax authority, it is normally expected to be provided within 15 to 30 days of the request (time extensions are possible).

• No specific transfer pricing database is preferred by the tax authority. The BIR normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.

• Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can raise a protest or appeal with the BIR. Failing resolution with the BIR, a taxpayer may seek a more formal legal remedy through the Courts.

• The content of a transfer pricing study should follow Regulation 02-2013, which is similar to Chapter V of the OECD Guidelines. A transfer pricing study can be filed in the Filipino or English language.

• The Philippines follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines:
  ▪ Comparable uncontrolled price (CUP) method;
  ▪ Cost-plus method;
  ▪ Resale price method;
  ▪ Profit split method;
  ▪ Transactional net margin (TNMM) method.

• There is no specific statute of limitations for the assessment of transfer pricing adjustments, however, the statute of limitations generally for raising an assessment is three years from the filing date of the tax return (or it’s due date if not filed). Under cases of fraud and similar cases the statute of limitations may be 10 years.

• The Philippines has a minimal double tax treaty network. No formal rules exist which direct when a taxpayer may submit an adjustment to the competent authority or whether a fee is payable before an application can be made.

• There is no Advance Pricing Agreement (APA) procedure available in the Philippines, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Tax Inspection Department (TID), Ministry of Finance and the Income Tax Department (ITD), Ministry of Finance. The TID supervises and coordinates the local tax bureaus and tax inspection offices and the ITD deals with mutual agreement procedures and advance pricing agreements.

- The main tax legislation is the Corporate Income Tax Act (CITA) and the Tax Ordinance Act (TOA). The transfer pricing rules are contained within Articles 9a, 11, and 19(4) CITA, Articles 20a to 20q, 82, and 82a TOA, and, Ministry of Finance Decrees of 24 December 2002, 10 September 2009 and 9 April 2013.

- Poland is an OECD member country and follows a three-tier transfer pricing documentation approach. Taxpayers meeting certain criteria are required to provide a local file, a master file and a country-by-country (CbC) report. Notably:
  - A Local file provides details of a taxpayer’s related party transactions and “other events included in the accounting books” agreed with related parties which could influence a taxpayer’s taxable income. This obligation concerns taxpayers whose income or costs, pursuant to accounting regulations, exceeded EUR 2,000,000, except for any transaction with a tax haven, which must be documented if the value exceeds EUR 20,000, irrespective of the taxpayer’s revenue or costs.
  - Taxpayers with annual revenues or expenses exceeding EUR 20 million in the preceding fiscal year must provide a Master file. CbC reporting applies to Polish capital groups with consolidated revenues exceeding EUR 750 million.

- A simplified report on intragroup transactions is required to be attached to the corporate income tax return (for entities with revenues or costs greater than EUR 10 million). Statutory transfer pricing documentation must be prepared if certain thresholds are exceeded by a taxpayer. When transfer pricing documentation is requested by the tax authority, it must be provided within seven days of receiving the request. The statute of limitations for the assessment of transfer pricing adjustments is six years from the end of the tax year.

- Any taxpayer whose revenue or costs exceed EUR 10,000,000 must provide a benchmarking study to support the arm’s length nature of their related party transactions. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines (although additional requirements may be prescribed by the Polish tax legislation). The tax authority normally focusses on the interquartile range in a transactional net margin method analysis. Poland broadly follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, although some exceptions apply.

- The tax authority prefers the use of local comparables in a benchmarking study, although it often depends on the level of comparability between Poland and other markets and the availability of relevant data. On average, multiple year data for comparables is preferred covering three years (no safe harbours exist). The tax authority prefers to use local databases such as the Tegiel (Polish) database and the Monitor Polski “B” database as they provide more detail on local comparables. In addition, the tax authority also uses the Amadeus database.

- Poland has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority following its acknowledgement as giving rise to double taxation. Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (a filing fee is payable based on 1% of the transaction value, minimum and maximum fee limits apply depending on the type of APA negotiated).
KEY POINTS

- The tax authority is the Autoridade Tributária e Aduaneira (Portuguese Tax and Customs Authority, or ATA).
- The main tax legislation is the Corporate Income Tax Code (CITC). The transfer pricing rules are contained within Article 63 CITC, and Ministerial Orders 1446–C/2001 and 620–A/2008.
- Portugal is an OECD member country and follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be submitted in Portuguese (documents in another language must be translated into Portuguese).
- There is no requirement for a taxpayer to file a specific transfer pricing return each year. Transfer pricing information is however required to be disclosed annually in the transfer pricing annexes of the Annual Tax and Accounting Return (IES). The transfer pricing disclosures provide information on the related party pricing methodology and why a particular pricing method was selected and details of the related party transactions (the amount of each transaction and other respective details). The disclosures also contain a declaration which is required to be signed confirming whether or not transfer pricing documentation was prepared at the time the income tax return was submitted. A penalty between EUR 500 and EUR 10,000 is levied for the late submission of transfer pricing documentation and a penalty of up to EUR 150,000 is levied where a taxpayer refuses to provide the disclosures.
- When transfer pricing documentation is requested by the tax authority, it must be provided within 10 working days. Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can make an administrative claim, and failing a satisfactory outcome, an appeal can be lodged with the tax authority. If the matter is still not agreed, a taxpayer can take the matter to an arbitral court. Where a transfer pricing adjustment is sustained, general tax penalties will apply from EUR 750 to EUR 45,000 together with compensatory interest (which accrues at a rate of 4% per month until the tax relating to the sustained adjustment is paid).
- OECD BEPS 13 (documentation): Portuguese companies are required to maintain a local transfer pricing file. Country-by-Country (CbC) documentation must be prepared by Portuguese ultimate holding companies (and Portuguese subsidiaries or a Portuguese branch if not prepared by another group company). Portuguese subsidiaries must identify the group company and country where CbC reporting is presented. Taxpayers with a turnover of EUR 3 million or over must keep documentation to support the transfer pricing policy within the group.
- The tax authority prefers the use of local Portuguese (sometimes Spanish) comparables in a benchmarking study, however if local comparables are not available, it will consider others. The tax authority uses both the SABI (with Iberian companies) database and the Amadeus (with European companies) database. The tax authority normally focuses on the interquartile range in a transactional net margin method (TNMM) analysis (and the median values of benchmarking results).
- Portugal has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority following notification of an additional tax assessment. No tax payment is required before a taxpayer can apply to the competent authority however taxpayers must provide a guarantee or a similar undertaking.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (no fee applies when a request is submitted however a fee is levied when the proposal is submitted of between EUR 3,150 and EUR 35,000, depending on the revenue of a taxpayer).
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For further information or advice concerning the transfer pricing rules in Puerto Rico, please contact Stefaan De Ceulaer (PKFI Director Tax and Legal Support) on +32 468 22 3924 or email stefaan.deceulaer@pkf.com.
Alternatively, please contact Leo Parmegiani (NA TP Regional Representative) on +1 212 867 8000 (Ext. 426) or email lp parmegiani@pkfod.com.

KEY POINTS
• The tax authority is the Departamento de Hacienda (Treasury Department, or DDH).
• The main tax legislation is the Puerto Rico Internal Revenue Code (PRIRC) and the Puerto Rico Tax Regulation (PRTR). The transfer pricing rules are contained within Section 1040.09 PRIRC and Articles 1047-1 to 1047-4 PRTR. The effective date of the transfer pricing rules is 21 January 2001.
• Most countries which have transfer pricing adopt, to one degree or another, partially or fully the OECD’s Guidelines into their transfer pricing rules and regulations. Puerto Rico companies however deal considerably with related parties in the United States (US), which conduct transfer pricing under the guidance of Section 482 of the Federal Internal Revenue Service (IRS). Consequently, Puerto Rico’s transfer pricing rules and regulations include parts of Section 482, and also some guidelines from the OECD.
• There is no requirement for a taxpayer to file a specific transfer pricing return each year. Under the requirements of the statutory audited financial statements, a taxpayer who has related parties operating in Puerto Rico must file consolidated (combined) audited financial statements and a schedule which reconciles each entity’s results (an exception applies to the consolidated (combined) audited financial statements where the name of a related party is stated in the notes to the financial statements). When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days (time extensions are normally granted).
• The transfer pricing method adopted by a tax payer should ensure that the related party transaction is charged at an arm’s length price, notably, Puerto Rico’s transfer pricing rules and regulations adhere to the arm’s length principle. The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study and normally data from companies in the United States is accepted as comparable. Secret comparables are not used by the tax authority.
• Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can raise the matter with the DDH to resolve. Failing a satisfactory outcome for the taxpayer with the DDH, the matter can be raised more formally with the US Internal Revenue Service (IRS) where a potential double tax issue exists with a US jurisdiction. Where a transfer pricing adjustment is sustained it will be subject to a surcharge of 10% and interest will accrue on the amount at a rate of 10% until it is paid.
• There is no specific requirement that the content of a transfer pricing study should follow Chapter V of the OECD Guidelines albeit the conclusion should be consistent with applicable Puerto Rico rules and regulations. A transfer pricing study must be completed in either the Spanish or English language. No specific transfer pricing database is preferred by the tax authority.
• The statute of limitations for the assessment of transfer pricing adjustments is broadly four years from the tax return filing due date.
• Although Puerto Rico has a minimal double tax treaty network, the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority when the incidence of double taxation has been identified (no tax payment is required).
• There is no Advance Pricing Agreement (APA) procedure available in Puerto Rico, and consequently, no APAs have been negotiated with the tax authorities.
QATAR
CURRENCY: Qatari Riyal (QAR)
POPULATION: 2.34 Million (2017 estimate)
CAPITAL: Doha
GDP: USD 156,595 Million

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KEY POINTS
• Qatar has two separate tax authorities with different transfer pricing rules and regulations; the Qatar Public Revenues and Taxes Department (PRTD, or State) and the Qatar Financial Centre (QFC). The QFC is also referred to as the Tax Department or QFCA. Where an entity is registered determines its tax authority.

State tax regime:
• The main transfer pricing tax legislation of the State tax regime is found in the Income Tax Law No. 21 of 2009 (ITL) and its related Executive Regulations (ERs). Notably, the tax rules state “…where the taxpayer enters into arrangements or carries on operations or transactions and one of the main purposes of which is to avoid the payment of the tax due, the PRTD [tax authority] may counteract the tax advantage the taxpayer obtained because of such arrangements, operations or transactions, in accordance with the provisions of the Executive Regulations of the Qatar Income Tax Law”.
• Under the ERs, where insufficient data is available to apply the comparable uncontrolled price (CUP) method, a taxpayer must file an application with the PRTD to adopt another transfer pricing method approved under the OECD Guidelines.
• There is no requirement for a taxpayer to file an annual transfer pricing return under the State tax regime. The requirement to use the CUP method places an implied obligation on a taxpayer to prepare and maintain contemporaneous transfer pricing documentation to support this, or, if another transfer pricing method has been approved, both documentation and a transfer pricing study should be in place.
• The statute of limitations for transfer pricing adjustments falls under regular corporate income tax assessments (audits) and is five years following the year in which the tax return was submitted. For failing to submit a tax return or for not registering with the PRTD the statute of limitations is extended to 10 years.
• There is no Advance Pricing Agreement (APA) procedure available under the State tax regime, and consequently, no APAs have been negotiated with the tax authorities. Mutual agreement procedures (MAPs) are dealt with by the PRTD.

QFC tax regime:
• The main transfer pricing tax legislation of the QFC tax regime is the QFC Regulations and QFCA Tax Manual (TP Manual), which apply to QFC registered entities, and follow the arm’s length principle for related party transactions.
• The QFC tax regime follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP) method, the cost-plus method, the resale price method, the profit split method, and the transactional net margin (TNMM) method.
• There is no requirement for a taxpayer to file an annual transfer pricing return, however, the burden of proof rests with the taxpayer to evidence that the actual conditions are consistent with the arm’s length conditions. The evidence, could, for example, be found in tax adjusted records, primary accounting records, transaction records with an associated business and/or any evidence to support the arm’s length result eg. functional analysis, transfer pricing study. The statute of limitations for the assessment of transfer pricing adjustments is six years following the end of the respective accounting period.
• Under the advance ruling regime, a taxpayer can apply for a unilateral Advance Pricing Agreement with the tax authority to obtain certainty about a tax position. Mutual agreement procedures (MAPs) are dealt with by the PRTD.
KEY POINTS


- Although Romania is not an OECD member country, the tax authority considers the OECD Guidelines when analysing related party charges. Notably, Romania’s transfer pricing rules refer to the European Union Code of Conduct on Transfer Pricing Documentation (C176/1 of 28 July 2006). Romania follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines.

- There is no requirement for a taxpayer to file a specific transfer pricing return each year and there is no transfer pricing or related party disclosure required in the annual tax return. There are, however, related party disclosures required in the Notes to the audited financial statements.

- The NAFA’s Order on Transfer Pricing File (442/2016) divides the taxpayers/entities in three categories:
  - Large taxpayers that meet some annual thresholds on intercompany transactions (EUR 350,000 for goods, EUR 250,000 for services, and EUR 200,000 for interest). These large taxpayers are required to prepare an annual Transfer Pricing File (TPF) and following a request by ANAF, submit it within 10 days (but not earlier than 10 days of expiry of the time for submitting the profit tax return).
  - Large taxpayers that do not meet the first thresholds, and medium taxpayers, which meet other thresholds (EUR 100,000 for goods, EUR 50,000 for services and EUR 50,000 for interest). These large and medium taxpayers are required to prepare a TPF on the request of the fiscal authorities. The TPF should be submitted to the tax authorities between 30 and 60 calendar days, with a one-off option, upon a request in writing, to extend the submission time by a maximum of 30 calendar days.
  - All other taxpayers. These taxpayers do not have to prepare a TPF but they are required to demonstrate that the transactions with their related parties were priced at market value (arm’s length value).

- The tax authority uses public information for benchmarking analysis and prefers the use of local (Romanian) comparables in a benchmarking study. If Romanian market data is not used it has to be justified to avoid rejection (note: a local market benchmark study must be undertaken first). Where local information is not available, pan-European data may be accepted (although the search criteria used to select comparable companies will be scrutinised by ANAF to confirm its consistency with Romanian legal requirements and a separate benchmarking analysis will be performed if not consistent). A benchmarking study should exclude loss-making companies.

- No specific transfer pricing database is preferred by the tax authority although it does use the Orbis database. The content of a transfer pricing file should follow Chapter V of the OECD Guidelines subject to additional documentation requirements under Romanian legislation. The statute of limitations for the assessment of transfer pricing adjustments is five years from filing date of the tax return (in cases of fraud or tax evasion, the statute of limitations is extended to 10 years).

- Romania has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. An APA completion fee is charged from EUR 10,000 to EUR 20,000 (and a fee is charged to amend an already issued APA from EUR 6,000 to EUR 15,000).
KEY POINTS

• The tax authority is the Federal Tax Service (FTS).

• The main tax legislation is the Russian Tax Code (RTC). The transfer pricing rules are contained within Articles 105.1 to 105.25 (Chapter 14), 129.3 to 129.4, 269, 280, and Chapter 25 RTC. The effective date of the transfer pricing rules is 1 January 2012.

• There is requirement for a taxpayer to file a specific transfer pricing return each year which discloses a taxpayer’s transactions with related parties and other types of third-party transactions which remain subject to transfer pricing control. The transfer pricing return must be filed with the FTS by 20 May of the following year (normally electronically). A penalty of RUB 5,000 (approximately USD 90) applies where a taxpayer fails to provide notification to the tax authorities concerning controlled transactions or provides incorrect data (failure may prompt a transfer pricing audit).

• Transfer pricing documentation should be prepared by reference to the RTC rather than the OECD Guidelines. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.

• The RTC takes priority over the transfer pricing methods outlined in Chapter II of the OECD Guidelines. Notably, under the RTC, the resale price method takes priority for goods (purchased in a controlled transaction and resold to an independent party). Where transfer pricing methods do not accurately reflect the arm’s length price, for example, the value of a trade mark being sold, then the price may be determined using an independent appraisal report.

• The tax authority prefers the use of local comparables in a benchmarking study. If Russian comparative data is not used in a transfer pricing study, it is important that the search strategy is in line with the requirements of the RTC (loss-making companies must be rejected from a study).

• The tax authority prefers the use of local transfer pricing databases such as SPARK and RUSLANA when testing the arm’s length nature of prices and margins of Russian companies. To test the prices and margins of European companies, the Amadeus database is acceptable. Although the tax authority focusses on the interquartile range in a transactional net margin method (TNMM) analysis, the RTC contains a special formula for calculating the arm’s length range (which is slightly different to the interquartile Range).

• The content of a transfer pricing study does not have to follow Chapter V of the OECD Guidelines; it is important however that a study follows the FTS published Guidelines on preparing transfer pricing documentation and, in particular, includes the content stated by the RTC.

• The statute of limitations for the assessment of transfer pricing adjustments is broadly three calendar years from the year of the adjustment giving rise to the assessment.

• The Russian Federation has an extensive double tax treaty network however the competent authority has limited experience in obtaining double tax relief. No formal rules exist that determine when a taxpayer may submit an adjustment to the competent authority or whether a tax payment is required before a taxpayer can apply to the competent authority.

• Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities normally by ‘large taxpayers’ only. APAs are normally concluded for not more than three years. A filing fee of RUB 2 million (approximately USD 35,000) is levied for concluding a unilateral APA.
KEY POINTS

- The tax authority is the General Authority of Zakat and Tax (GAZT).
- The main tax legislation is the Income Tax Regulations issued by Royal Decree dated Muharram 15, 1425 [6 March 2004] (Saudi tax law, or ITR).
- Although Saudi Arabia is not an OECD member country, and is not bound by the OECD Guidelines, its tax laws do expect related party transactions to be conducted in accordance with the arm's length principle.
- There is no requirement for a taxpayer to file a specific transfer pricing return each year or submit any transfer pricing documentation when filing tax declarations. It is recommended however that a taxpayer prepare and maintain contemporaneous transfer pricing documentation to support the arm's length nature of related party transactions. When transfer pricing documentation is requested by the tax authority (under Article 61 ITR), it must be provided within 30 days, although time extensions are possible.
- Where a transfer pricing Assessment Order (adjustment) made by the tax authority is disputed, a taxpayer may lodge an Appeal with the Preliminary Appeal Committee (First Appellate Authority). Failing this, an Appeal may be made to the Higher Appeal Committee (Second Appellate Authority), and finally, if the matter is not agreed, an Appeal can be made to the Board of Grievance (the last Appellate Authority). Where a transfer pricing adjustment is sustained (the result of misrepresentation), a penalty applies of 25% to the tax due together with a 1% penalty for every 30 days that the amount of tax remains unpaid.
- The GAZT may challenge any transaction not at arm’s length, and notably:
  - Disregard a transaction that has no economic effect;
  - Reclassify a transaction where its form does not reflect its substance;
  - Reallocate income and expenses between related parties (or parties) under common control to reflect the income that would have resulted from a transaction between independent and unrelated parties; and,
  - Estimate the appropriate tax base and impose penalties.
- The ITR does not prescribe any specific transfer pricing methods, however, in practice, to reduce exposure to transfer pricing adjustments being made by the GAZT, it is recommended that a taxpayer follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines and, where possible, documents their global transfer pricing policy.
- Although Saudi tax law has limited transfer pricing guidelines with respect to transfer pricing studies or benchmarking, it is recommended that the content of a transfer pricing study follows Chapter V of the OECD Guidelines to mitigate the potential exposure of the GAZT applying the ITR anti-avoidance provisions. A transfer pricing study must be completed in the Arabic language.
- The is no specific statute of limitations for the assessment of transfer pricing adjustments, however, there is a general statute of limitations of five years which would apply. Where a tax return is not filed or is found to be incomplete or incorrect, the statute of limitations is extended to 10 years (and in certain case may be extended past this).
- Although Saudi Arabia has an extensive double tax treaty network, the competent authority has limited experience in obtaining double tax relief. No formal rules exist which direct when a taxpayer may submit an adjustment to the competent authority or whether a filing fee is applicable.
- There is no Advance Pricing Agreement (APA) procedure available in Saudi Arabia, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Tax Administration (TA), Serbian Ministry of Finance.
- The main tax legislation is the Corporate Income Tax Law (CITL). The transfer pricing rules are contained within Articles 59, 60, 61, 61a, and 62 CITL, the Rule Book (on transfer prices and methods applied for determining prices in related party transactions in accordance with the arm’s length principle) (Rule Book).
- Although Serbia is not an OECD member country, its transfer pricing rules broadly follow the OECD Guidelines. Serbia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines.
- There is a requirement for a taxpayer to file an annual transfer pricing return, together with their annual tax return, 180 days from the end of the reporting period end date. The annual transfer pricing return comprises of a Tax Balance Sheet (TBS) and a transfer pricing study. The TBS should disclose the value (and volume) of related party transactions and the amount of the tax base adjustment relating to transfer pricing (if any). The transfer pricing study should disclose an ‘arm’s length’ assessment of the related party transactions and information on the group, the industry, an economic analysis, and a functional analysis. Where an assessment shows that the price of a related party transaction was not at ‘arm’s length’, an adjustment will be required. Failure to submit a TBS or a transfer pricing study incurs a penalty of between RSD 100,000 to RSD 2 million (approximately USD 900 to USD 18,000). If a transfer pricing study is submitted after the deadline, a penalty of RSD 100,000 (approximately USD 900) may apply.
- Although transfer pricing documentation is required to be submitted at the time the annual tax return is filed, when transfer pricing documentation is additionally requested by the tax authority, it must be provided within 30 days (although in some cases this deadline can be extended up to 90 days). Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can appeal to the TA. Failing that, a more formal TA procedure can be followed. If still disputed, a taxpayer may bring the matter before the Administrative Court.
- The tax authority prefers the use of local comparables in a benchmarking study, and notably, the Rule Book states that all searches must first commence with looking at local companies and, only when there is insufficient data or the local information is not reliable, should a taxpayer widen the search criteria to include other jurisdictions. The TA publishes annual ‘arm’s length’ interest rate information which it also uses to review the arm’s length position of a taxpayer’s interest rates. Secret comparables are not used by the tax authority. No specific transfer pricing database is preferred by the TA and it normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and the additional guidance provided by the Rule Book (which should take priority).
- The statute of limitations for the assessment of transfer pricing adjustments is five years from 1 January of the year following the year when the tax liability became due (the statute of limitations increases to 10 years in cases of fraud, etc.).
- Serbia has a minimal double tax treaty network and the competent authority is not experienced in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority, broadly, when provided for under the mutual agreement procedure (MAP) of the relevant concluded double tax agreement. No formal rules exist which require the payment of tax before an application may be made.
- There is no Advance Pricing Agreement (APA) procedure available in Serbia, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Inland Revenue Authority of Singapore (IRAS).
- The main tax legislation is the Singapore Income Tax Act (ITA). The transfer pricing rules are contained within Section 34D ITA and the IRAS e-Tax Guide 'Transfer Pricing Guidelines (2nd Edition), 2015'.
- Although Singapore is not an OECD member country, its transfer pricing rules are broadly consistent with the OECD Guidelines, although differences exist.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return, however, please note that in line with OECD’s BEPS action plan 13, Singapore has adopted a two-tier local file and master file approach requiring taxpayers to file entity-level and group-level transfer pricing information (currently, there are no requirements for country-by-country (CbC) reporting).
- Taxpayers should prepare and maintain contemporaneous transfer pricing documentation to support the arm’s length pricing nature of their related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days from the date of request (a time extension is possible however, in making such a request, a taxpayer’s compliance rating may decrease which would increase the risk of a future tax audit). Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer may lodge an Objection with the tax authority, and if unsuccessful, an Appeal.
- Singapore follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines; the pricing method which produces the most reliable results should be selected and applied. The Singapore transfer pricing rules suggest a three-step approach to applying the arm’s length principle: first, undertake a comparability analysis, then identify the most appropriate transfer pricing method and tested party, and finally, determine the arm’s length results.
- The content of a transfer pricing study should follow Singapore transfer pricing guidelines in priority to Chapter V of the OECD Guidelines and be completed in the English language.
- The tax authority prefers the use of local comparables in a benchmarking study due to the high level of comparability in terms of economic and market circumstances. Loss making companies should be excluded from the comparability data and comparable multiple-year data is preferred. Secret comparables are not used by the tax authority. No specific transfer pricing database is preferred by the tax authority. The IRAS normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- The statute of limitations for the assessment of transfer pricing adjustments is five years from the fiscal year in which the transaction occurred.
- Singapore has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority within the time limit specified in the relevant double tax agreement’s mutual agreement procedure (MAP), although the preference is to initially contact IRAS to first submit an adjustment to the competent authority before submitting an adjustment to the overseas authority to settle the case. A tax payment is required before a taxpayer can apply to the competent authority and any late payment attracts penalties.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. No fee is payable in respect of bilateral, and multilateral APAs, however, a fee is payable with respect to a unilateral APA concluded with a jurisdiction having no double tax agreement with Singapore.
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KEY POINTS

• The tax authority is the Slovak Financial Directorate (SFD), Ministry of Finance and local tax authorities.
• The main tax legislation is the Income Tax Act (ITA) and the Act on Tax Administration (ATA). The transfer pricing rules are contained within Sections 2, 17(5), 17(6), 17(7) and 18 ITA, Ministry of Finance Guidelines MF/8288/2009-72, MF/8120/2014-721 and MF/014283/2016-724, and the relevant sections of the ATA.
• The Slovak Republic is an OECD member country and normally follows the OECD Guidelines and the arm’s length principle.
• There is no requirement for a taxpayer to file a specific transfer pricing return each year however country-by-country (CbC) reporting has been required by law in Slovakia since 1 March 2017 as a result of an amendment to the Act on International Assistance and Cooperation in Tax Administration. Related party disclosures are also required in the annual corporate tax return, notably, the volume, type and amount of related party transactions and the difference (if any) between related party prices and the arm’s length prices that decreased the tax base. If differences exist, an adjustment must be made.
• Contemporaneous transfer pricing documentation is not required to be submitted with the annual corporate tax return, however, it should be prepared and maintained by a taxpayer and available should it be requested by the SFD. When transfer pricing documentation is requested by the tax authority, it must be provided within 15 days under Article 18(6) ITA.
• The SFD has not expressed a preference towards the use of local comparables in a benchmarking study. Secret comparables are sometimes used by the tax authority. No specific transfer pricing database is preferred by the tax authority although it does use the Amadeus database. The SFD normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
• Disclosed in MF/014283/2016-724, the Slovak Republic follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price method; the cost-plus method; the resale price method; the profit split method; and, the transactional net margin method. A combination of methods are acceptable and other methods are permitted if they comply with the arm’s length principle.
• The content of a transfer pricing study should follow requirements of the European Union (EU) Code of Conduct on Transfer Pricing Documentation, which are similar to Chapter V of the OECD Guidelines i.e. a local file should be maintained for the taxpayer (country specific transfer pricing documentation) and a master file maintained for the group (of related parties). Reduced reporting requirements exist under certain conditions.
• The statute of limitations for the assessment of transfer pricing adjustments is five years from the calendar year end of the filing date (seven years if the taxpayer has carried forward tax losses). The statute of limitations is extended to 10 years for international (tax treaty) transactions.
• The Slovak Republic has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. No formal rules exist that determine when a taxpayer may submit an adjustment to the competent authority. No tax payment is required before a taxpayer can apply to the competent authority.
• Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities, normally for a five-year term. A filing fee applies of EUR 10,000 (unilateral APA) and EUR 30,000 (bilateral and multilateral APA).
The tax authority is the Finančna Uprava Republike Slovenije (Financial Administration of the Republic of Slovenia, or FURS).

The main tax legislation is the Corporate Income Tax Act (CITA), the Regulation on Transfer Prices (RTP), the Regulation on the Acknowledged Interest Rate (RAIR), and the Tax Procedure Act (TPA). The transfer pricing rules are contained within Articles 16, 17, 18 and 19 CITA, the RTP, and Articles 382, 397 and 398 TPA. The effective date of the transfer pricing rules is 1 January 2007.

Slovenia is an OECD member country and broadly follows the OECD Guidelines, for example, only the five transfer pricing methods outlined in Chapter II of the OECD Guidelines are defined by the CITA. The content of a transfer pricing study should follow the domestic TPA (which broadly follows the code of conduct on transfer pricing documentation for associated enterprises in the European Union) and is similar to Chapter V of the OECD Guidelines. A transfer pricing study must be completed in the Slovene language.

There is no requirement for a taxpayer to file a specific annual transfer pricing return. However, related party transactions must be reported within the annual corporate income tax return and, if certain conditions are satisfied, specifically prescribed transfer pricing attachments must be submitted with the annual corporate income tax return. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.

Transactions of Slovenian resident companies with non-resident companies must be carried out on an arm's length basis or adjustments are required for tax purposes. The rules also apply to transactions between Slovenian resident companies with which they are related (where one is in a tax advantageous position e.g. through losses brought forward from an earlier period). Companies are related by a 25% participation of one in the other or a common 25% participation by a third company.

The tax authority prefers the use of local comparables in a benchmarking study, if local information is available, comparable and reliable. Secret comparables are used by the tax authority (but not to calculate adjustments). Loss making companies should be excluded from the transfer pricing study data and the use of multiple-year financial data is preferred.

The tax authority prefers to use the Amadeus, ktMine, and Orbis transfer pricing databases and normally focusses on the interquartile range in a transactional net margin method analysis.

The statute of limitations for the assessment of transfer pricing adjustments is broadly five years (which can be extended under certain circumstances). The maximum statute of limitations for the assessment and collection of tax is 10 years (transfer pricing documentation must be retained for 10 years).

Although Slovenia has an extensive double tax treaty network, the competent authority is not experienced in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority when it is announced by the tax authority. No tax payment is required before a taxpayer can apply to the competent authority (however it must be paid when an assessment decision is issued and it consequently falls due).

Slovenia has signed a Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of country-by-country (CbC) reports with other competent authorities.

The Advance Pricing Agreement (APA) procedures are administered by the tax authority (FURS) however, no APAs have yet been negotiated.
KEY POINTS

- The tax authority is the Commissioner of the South African Revenue Services (SARS).
- The main tax legislation is the Income Tax Act 58 of 1962 (ITA). The transfer pricing rules are contained within Section 31 ITA and Practice Note 7. The effective year of the transfer pricing rules is 1995. South Africa is not an OECD member country but has observer status.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return. The annual income tax return however requires the disclosure of specific information (and confirmations) regarding cross-border related party transactions and whether there is any supporting transfer pricing documentation.
- Although not required to be submitted with the annual income tax return, to support that the related party transactions were conducted on an arm’s length basis, it is recommended that a taxpayer prepare and maintain contemporaneous transfer pricing documentation. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days (time extensions may be possible).
- South Africa follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. The comparable uncontrolled price method (CUP) is preferred (if available) but broadly all OECD pricing methods are accepted.
- The SARS has not expressed a preference towards the use of local comparables in a benchmarking study and it does not use secret comparables.
- No specific transfer pricing database is preferred by the tax authority.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines.
- OECD BEPS 8 (intangibles): General transfer pricing anti-avoidance provisions exist to ensure intellectual property (IP) prices are at arm’s length. Specific anti-avoidance provisions exist which deny the deduction of royalty payments where the IP is licensed in South Africa but has been exported. Exchange control regulations also limit the exporting of IP and require the approval of royalty rates payable abroad.
- OECD BEPS 13 (documentation): Currently it is not mandatory for transfer pricing policy documentation to be maintained except where related party transactions exceed, or are reasonably expected to exceed, ZAR 100 million (approximately USD 7.45 million). Where the value of a specific transaction exceeds ZAR 5 million (approximately USD 375,000), detailed records of the transaction must be maintained. The South Africa tax resident ultimate parent company of a multinational enterprise group (with a consolidated turnover of at least ZAR 10 billion (approximately USD 745 million) in the fiscal year prior to the year in which the report must be submitted) is required to file a country-by-country (CbC) report with SARS.
- The statute of limitations is three years from the assessment date (although the self-assessment provisions have a five-year extended statute of limitations which could apply). In cases of fraud, misrepresentation or non-disclosure of material facts, the statute of limitations may be extended or not apply.
- Although South Africa has an extensive double tax treaty network, the competent authority is not experienced in obtaining double tax relief. No formal rules exist to determine when a taxpayer may submit an adjustment or whether a payment is required.
- There is currently no Advance Pricing Agreement (APA) procedure available in South Africa, and consequently, no APAs have been negotiated with the SARS.
KEY POINTS


- Transfer pricing specific documentation (Master file and Local File) is not required to be filed with AEAT but must be retained and provided on request. The CbC report should be filed within 12 months of the end of every tax period. Documentation requirements have been simplified for groups with a global turnover below EUR 45 million. CbC reporting is mandatory for groups with a global turnover exceeding EUR 750 million. Spain has signed a Multilateral Competent Authority Agreement (MCAA) for the automatic exchange of CbC reports. Any Reporting Entity of a multinational enterprise group that is tax resident in Spain must notify the Spanish Tax Administration of its identity and tax residence before the end of the fiscal year for which the information will be prepared (Form 231).

- There is no requirement for a taxpayer to file a specific annual transfer pricing return. The annual corporate tax return however requires the disclosure of information relating to the related party transactions which were undertaken during the fiscal year (including the relationship of each related party with the taxpayer and the transfer pricing methodology applied to test the related party prices applied). For tax periods starting on and after 1 January 2016 this information will be presented in a separate form (Form 232).

- Contemporaneous transfer pricing documentation is not required to be submitted with the annual corporate tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions and be available for the tax authority on request. When transfer pricing documentation is requested by the tax authority, normally the submission deadline is notified on a case-by-case basis (with a minimum period of 10 working business days). The statute of limitations for the assessment of transfer pricing adjustments is four years from the tax return’s filing due date.

- Spain is an OECD member country and follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines; the comparable uncontrolled price (CUP); the cost-plus; the resale price; the profit split; and, the transactional net margin pricing methods. Transfer pricing study content should follow Chapter V of the OECD Guidelines. AEAT has not expressed a preference towards the use of local comparables in a benchmarking study and accepts Spanish or pan-European comparables. It uses pan-European Amadeus / Catalyst transfer pricing databases and external comparatives in analysing transfer prices.

- Spain has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. Royal Decree 1794/2008 regulates the mutual agreement and arbitration procedures for taxpayers and determines when a taxpayer may submit an adjustment to the competent authority. No tax payment is required before a taxpayer can apply to the competent authority, however, if a taxpayer applies to suspend the collection of taxes, a guarantee is required. Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
PKF CONTACT INFORMATION

For further information or advice concerning the transfer pricing rules in Sri Lanka, please contact Stefaan De Ceulaer (PKFI Director Tax and Legal Support) on +32 468 22 3924 or email stefaan.deceulaer@pkf.com.

Alternatively, please contact Oliver Grosse-Brauckmann (International Support Director) on +44 20 3691 2523 or email oliver.grosse-brauckmann@pkf.com.

KEY POINTS

- The tax authority is the Department of Inland Revenue (IRD).
- The main tax legislation is the Inland Revenue Act (IRA). The transfer pricing rules are contained within Sections 104 and 104A IRA and Gazette Notification No. 1823/5.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return or to submit any transfer pricing documentation with the annual tax return. Contemporaneous transfer pricing documentation should be prepared and maintained by a taxpayer to support the arm’s length pricing basis of their related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days. Records under the transfer pricing regulations must be retained for five years.
- Although Sri Lanka is not an OECD member country, it does follow the arm’s length principle and the OECD Guidelines.
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study and permits multiple year data for the two prior years. The Sri Lankan transfer pricing regulations prescribe the use of the arithmetic mean for benchmarking purposes and also provide a safe harbour 3% tolerance level above or below the arm’s length price (no secret comparables are used by the IRD). No specific transfer pricing database is preferred by the tax authority.
- Sri Lanka follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Transactional net margin (TNMM) method.
- The content of a transfer pricing study should broadly follow Chapter V of the OECD's Guidelines and comply with the required information prescribed by the Sri Lankan transfer pricing regulations. A transfer pricing study can be completed in the Sinhala, Tamil or English language.
- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can follow an IRA prescribed appeal procedure. This involves initially lodging a written Appeal with the Commissioner General of Inland Revenue (CGIR). If the result of the Appeal with the CGIR is not favourable, a taxpayer can pursue the matter through the Tax Appeals Commission, the Appeal Court and finally, if it is a substantial question of law, through the Supreme Court.
- The statute of limitations for the assessment of transfer pricing adjustments is 18 months from the relevant tax year end if the tax return was filed on time. In cases of evasion, fraud, or wilful default there is no statute of limitations.
- Sri Lanka has an extensive double tax treaty network and the competent authority is normally effective in obtaining double tax relief. No formal rules exist that determine when a taxpayer may submit an adjustment to the competent authority.
- Unilateral, bilateral or multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Skatteverket (Swedish Tax Agency, or STA).
- The main tax legislation is the Swedish Income Tax Act (ITA), the Tax Procedures Act (TPA), and the Advance Pricing Agreements Act (APAA). The transfer pricing rules are contained within Sections 19 to 20 (Chapter 14) ITA, Sections 15 to 16 (Chapter 39) TPA, STA Regulations (SKVFS 2007:1), and the APAA. In addition, the STA publishes various guidelines and opinions.
- Sweden is an OECD member country, adheres to the arm’s length principle, and its transfer pricing rules refer to the OECD Guidelines. Notably, the STA has significantly increased its focus on transfer pricing and business restructuring referring to Chapter IX of the OECD Guidelines.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return. No transfer pricing disclosures are required in the annual tax return except for information relating to any concluded Advance Pricing Agreements (APAs).
- There is a statutory requirement that contemporaneous transfer pricing documentation should be prepared and maintained annually to support the arm’s length pricing basis of the respective related party transactions, and, if submitted with the annual tax return, it reduces the possibility of penalties being levied by the STA if an adjustment is made. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days. The statute of limitations for the assessment of transfer pricing adjustments is six years from tax year end.
- No specific transfer pricing database is preferred by the tax authority although it does use the Amadeus and Orbis transfer pricing databases. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- Sweden follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price, the cost-plus, the resale price, the profit split, and, the transactional net margin pricing methods. The tax authority prefers the use of local (Swedish) comparables in a benchmarking study, however, pan-European comparables are accepted. The STA insists on strict independence for the comparables and multi-year data is preferred over single-year data.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and provide information on any Advance Pricing Agreements (APAs), intra-group agreements, Mutual Agreement Procedures (MAPs), and any relevant rulings. A transfer pricing study can be completed in English, Danish, Norwegian, or Swedish.
- Sweden has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority within three years of the decision (adjustment) giving rise to double taxation. No tax payment may be required before a taxpayer can apply to the competent authority (as it is possible to obtain an extension of time relating to the tax payment under certain circumstances).
- Bilateral and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. A filing fee of SEK 150,000 (approximately USD 17,000) is payable for each country included within the APA (and a fee of SEK 100,000 (approximately USD 11,300) applies for the renewal of an APA).
PKF CONTACT INFORMATION

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KEY POINTS

- The tax authority is the Eidgenössische Steuerverwaltung (Swiss Federal Tax Administration, or SFTA) and the Cantonal Tax Administrations (which assesses direct corporate income tax).
- The main tax legislation is the Federal Direct Tax Act (FDTA) and Federal Law on the Harmonization of the Cantonal and Communal Taxes (FLHCCT). The transfer pricing rules are contained within Article 58 FDTA, Article 24 FLHCCT, and Circular Letters 1 from 4 March 1997, 6 from 6 June 1997, 8 from 18 December 2001, 4 from 19 March 2004, and 1 from 12 February 2015.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return. Contemporaneous transfer pricing documentation is not required to be submitted with the annual tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions. There is little guidance on the structure of transfer pricing documentation and what is required, however, if the documentation is compliant with the OECD Guidelines it is normally accepted by the SFTA. When transfer pricing documentation is requested by the tax authority, it must be provided within 60 days (time extensions are possible).
- Switzerland is an OECD member country and, in 1997, the SFTA instructed the Cantonal Tax Administrations by a Circular Letter to unconditionally adhere to the OECD Guidelines for transfer pricing matters. The content of a transfer pricing study should therefore follow Chapter V of the OECD Guidelines and may be completed in English, French, German, Italian, or Rhaeto-Romantic.
- The SFTA has not expressed a preference towards the use of local comparables in a benchmarking study, and due to the lack of sufficient independent comparable data from the Swiss market, pan-European comparables are normally accepted. Secret comparables are not used by the tax authority.
- No specific transfer pricing database is preferred by the tax authority although it does use the Amadeus database which is widely accepted and applied. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- Switzerland follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price method (CUP), the cost-plus method, the resale price method, the profit split method, and the transactional net margin method (TNMM).
- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can pursue a legal remedy. Where a transfer pricing adjustment is sustained, general tax penalties will apply.
- The statute of limitations for the assessment of transfer pricing adjustments is 10 years from tax year end.
- Switzerland has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority following receipt of an adjustment notice. No tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the National Tax Bureau (NTB), Ministry of Finance (MOF).
- The main tax legislation is the Income Tax Act (ITA), Financial Holding Company Act (FHCA), and the Business Mergers and Acquisitions Act (BMAA). The transfer pricing rules are contained within Articles 43-1 ITA, Article 50 FHCA, Article 42 BMAA, and the Regulations governing the assessment of profit-seeking enterprise income tax on non-arm’s-length transfer pricing which became effective on 30 December 2004 (Taiwan transfer pricing assessment rules).
- There are no requirements for a specific annual transfer pricing return to be filed. Forms filed with the annual tax return however require the disclosure of information relating to controlled transactions. The forms provide details about the controlled transactions (related party transactions) and their pricing, details about the respective related parties, the relationship of each related party with the taxpayer (legal structure), whether a transfer pricing study has been prepared, and details of any Advance Pricing Agreements concluded with Taiwan or foreign jurisdictions.
- Contemporaneous transfer pricing documentation is not required to be submitted with the annual corporate tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days from the date of receipt of the notification (in certain circumstances taxpayers may be granted a one-time extension of a further 30 days).
- Taiwan follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, with one notable exception; Taiwan adopts the comparable profits method (CPM) in place of the transactional net margin method (TNMM). The CPM is however very similar to the TNMM outlined in the OECD Guidelines. If a transfer pricing method is to be used which is not specified in the Taiwan transfer pricing assessment rules, advance approval must be obtained from the MOF. Taiwan follows the best method rule. The adoption of the most appropriate arm’s length method should be applied based on different transaction types, quality of data and assumption, and degree of comparability.
- The tax authority prefers the use of local comparables in a benchmarking study when the tested party is a company in Taiwan. If, however, local comparables are insufficient or unreliable, foreign comparables will be accepted, subject to relevance and comparability. Secret comparables are not used by the tax authority. The NTB prefers a benchmarking analysis to be based on multiple-year averages.
- No specific transfer pricing database is preferred by the tax authority and it normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis. The content of a transfer pricing study must follow the Taiwan transfer pricing assessment rules which set out minimum content requirements (and are prescriptive and similar to Chapter V of the OECD Guidelines).
- The statute of limitations for the assessment of transfer pricing adjustments is five years from the tax return filing due date. Please note that the statute of limitations is extended to seven years in cases of fraud, tax avoidance, or where a taxpayer fails to file an annual tax return.
- Taiwan has a good double tax treaty network although the competent authority has limited experience in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority by reference to the mutual agreement procedure (MAP) of the relevant double tax agreement. No tax payment is required before a taxpayer can apply to the competent authority. Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Tanzania Revenue Authority (TRA).
- The main tax legislation is the Income Tax Act, 2004 (ITA) and subsequent amendments. The transfer pricing rules are contained within Section 33 ITA 2004, the Income Tax (Transfer Pricing) Regulations 2014 (TPR) issued 7 February 2014, and the TRA Transfer Pricing Guidelines (TPG) published May 2014.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return. The annual tax return however requires the disclosure of information relating to the related party transactions which were undertaken during the year (including the amount of sales, purchases and loans made to, or received from, related parties).
- Contemporaneous transfer pricing documentation is not required to be submitted with the annual tax return, however, it is required to be prepared and maintained before the due date of filing the final tax return. The documentation should be sufficient to support the arm’s length pricing basis of the respective related party transactions. When transfer pricing documentation is requested by the Commissioner (TRA), it must be provided within 30 days.
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study rather its focus is to ensure the information used is sufficient, reliable and verifiable. Secret comparables may be used by the tax authority, which can consist of information obtained from other taxpayers.
- The Tanzania transfer pricing regulations state that the comparable uncontrolled price (CUP) method, the cost-plus method, and the resale price method (the ‘traditional’ pricing methods mentioned in Chapter II of the OECD Guidelines) should be considered before ‘transactional’ methods such as the profit split method and the transactional net margin method. The most appropriate method should be used based on various criteria such as the nature or class of the transaction, functions performed, etc.
- The Tanzanian transfer pricing regulations are based on the OECD Guidelines, and notably, the content of a transfer pricing study should follow Chapter V of the OECD Guidelines. No specific transfer pricing database is preferred by the tax authority and it normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can negotiate with the TRA for a resolution. If this fails, an Appeal can be made to the Tax Revenue Appeals Board. Failing a satisfactory outcome for the taxpayer, a further Appeal can be lodged with the Tax Revenue Appeals Tribunal. Finally, if the matter is still not resolved, a taxpayer can bring the matter before the Court of Appeal.
- The statute of limitations for the assessment of transfer pricing adjustments is five years from the tax return filing due date.
- Tanzania has a minimal double tax treaty network and the competent authority has limited experience in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority by reference to the mutual agreement procedure (MAP) of the relevant double tax agreement. Under certain circumstances, no tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. APAs are concluded for a period not exceeding five years.
**THAILAND**

**CURRENCY:** Thai Baht (THB)

**POPULATION:** 68.30 Million (2017 estimate)

**CAPITAL:** Bangkok

**GDP:** USD 390,592 Million

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**PKF CONTACT INFORMATION**

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**KEY POINTS**

- The tax authority is the Krom Sumpakorn (Thai Revenue Department or, TRD).
- The main tax legislation is the Thai Revenue Code (TRC). The transfer pricing rules are contained within Sections 65bis (4), 65bis (7), 65ter (13), 65ter (14), 65ter (15), 65ter (19), 70ter, and 79/3 TRC, the Thai Accounting Standards numbers 18 and 24, the Departmental Instruction No. Paw. 113/2545 (DI 113), and the Guidance on the Advance Pricing Agreement (APA) Process (April 2010).
- There is no requirement for a taxpayer to file a specific annual transfer pricing return. There are however questions which require a ‘yes’ or ‘no’ response in the annual corporate income tax return which focus on transactions (involving products, services or property (sale, purchase or lease), assets or loans) which have not been undertaken at market value.
- Contemporaneous transfer pricing documentation is not required to be submitted with the annual corporate tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions and be available for the tax authority on request. When transfer pricing documentation is requested by the tax authority, it must be provided within 7 to 15 days (although time extensions are possible).
- The tax authority prefers the use of local comparables in a benchmarking study, and, if a taxpayer fails use a set of local comparable companies, the TRD will conduct its own search for local comparables, and use these as a starting point to lodge a possible challenge against a taxpayer’s results. Secret comparables may be used by the tax authority.
- No specific transfer pricing database is preferred by the TRD although it does use the Business Online transfer pricing database. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- Thailand follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Transactional net margin (TNMM) method.
- Although Thailand is not an OECD member country, its transfer pricing rules are based on the arm’s length principle and the OECD Guidelines. Notably, the content of a transfer pricing study should follow Chapter V of the OECD Guidelines for certain transactions, with an emphasis toward the TNMM. A transfer pricing study can be completed in Thai or English (with a Thai translation).
- The statute of limitations for the assessment of transfer pricing adjustments under Section 19 TRC is two years from the filing due date of the annual income tax return. Where fraud or tax evasion is suspected (or an income tax return is not filed) the statute of limitations increases to five years.
- Although Thailand has an extensive double tax treaty network, the competent authority has limited experience in obtaining double tax relief. No formal rules exist which determine when a taxpayer may submit an adjustment to the competent authority or whether a tax payment is required before a taxpayer can apply to the competent authority. Bilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee). Bilateral APA guidelines were issued in April 2010.
KEY POINTS

- The tax authority is the Revenue Administration (RA), Ministry of Finance.
- The effective date of the transfer pricing rules is 1 January 2007.
- Transfer pricing is regulated by Article 13 CTC which states: “Income shall be considered to have been wholly or partially distributed in a disguised manner through transfer pricing, if the company engages in the 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.”
- Although Turkey is an OECD member country, and follows the arm’s length principle and the OECD Guidelines, its transfer pricing rules are not up to date with Chapter II of the OECD Guidelines (albeit the comparable uncontrolled price (CUP) method has priority over the other pricing methods).
- A specific annual transfer pricing return form (TP Form) must be submitted to the RA at the same time as the corporate income tax return is filed (strictly, as an attachment to the corporate income tax return). The TP Form discloses information about a taxpayer's related party transactions (the respective amounts, their nature i.e. services, goods, financing, etc.), details about the respective related parties and a summary of the transfer pricing methodology applied to test the prices applied to the related party transactions.
- Contemporaneous transfer pricing documentation is not required to be submitted with the annual corporate tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within 15 days.
- The tax authority prefers the use of local comparables in a benchmarking study and uses secret comparables due to limited database information concerning Turkey local companies. No specific transfer pricing database is preferred by the tax authority, and notably, although it uses the Amadeus and Thomson Reuters databases, there is a limited number of local (Turkey) comparables in the Amadeus database. The RA normally focusses on the interquartile range in a transactional net margin method analysis.
- There is no specific statute of limitations for the assessment of transfer pricing adjustments, however the general statute of limitations relating to assessments is five years from the end of the relevant fiscal period.
- Although Turkey has an extensive double tax treaty network, its competent authority is not experienced in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority by reference to the mutual agreement procedure (MAP) of the relevant double tax agreement. Where the MAP (normally does not specify a time, the timing will be determined by the relevant law in Turkey, which is one year. A tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities. The APA application fee is TRY 50,202 (approximately USD 14,000) and to renew an APA, the fee is TRY 40,162 (approximately USD 11,300). The term of an APA is three years, with a possible extension period of three years.
KEY POINTS

- The tax authority is the Uganda Revenue Authority (URA).

- The main tax legislation is the Income Tax Act (ITA) and Income Tax (transfer pricing) Regulations, 2011 (Transfer Pricing Regulations, or ITR). The transfer pricing rules are contained within Sections 90, 91, and 164 ITA, the Transfer Pricing Regulations, and the Transfer Pricing Practice Note, 2012 (Practice Note).

- Although Uganda is not an OECD member country, it does follow the arm’s length principle, and it also follows the OECD Guidelines to the extent that they are consistent with its own transfer pricing regulations, policies and guidelines. Uganda follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines. No specific transfer pricing database is preferred by the URA and it normally focuses on the interquartile range in a transactional net margin method analysis.

- There is no requirement for a taxpayer to file a specific annual transfer pricing return and there are no transfer pricing attachments or schedules required to be submitted with, or as part of, the annual income tax return.

- Contemporaneous transfer pricing documentation is not required to be submitted with the annual corporate tax return, however, it must be prepared by the time the annual income tax return is filed with the URA (by the return filing due date) and maintained to support the arm’s length pricing basis of the respective related party transactions, and be readily available to be provided to the URA on request. Failure to prepare contemporaneous transfer pricing documentation by this deadline could result in a commercial penalty or imprisonment or both. Notably, with effect from 1 July 2017, the following penal provisions for transfer pricing non-compliance are expected to become law (Budget June 2017):
  - The amendment bill proposes a penal tax of UGX 50,000,000 where a person fails to provide records in respect of transfer pricing within 30 days upon request by the Commissioner.
  - Where any information is requested by the Commissioner and the person fails to furnish it, then they are liable to pay a penal tax of UGX 20,000,000.

- The URA Practice Note provides guidance on the minimum information that should be included in transfer pricing documentation. When transfer pricing documentation is requested by the tax authority, it must be provided within a couple of days on the basis that a taxpayer has the documentation prepared and readily available (the Transfer Pricing Regulations state that the transfer pricing documentation / policy must be ‘submitted upon request’ without specifying a time, albeit the implication is ‘immediately’, eg. within a couple of days).

- The URA has not expressed a preference towards the use of local comparables in a benchmarking study and we believe that it does not use secret comparables. The content of a transfer pricing study must be completed in accordance with the URA transfer pricing Practice Note which specifies the required information to be included, and is consistent with Chapter V of the OECD Guidelines.

- A statute of limitations for the assessment of transfer pricing adjustments is not specified under the ITA, the Transfer Pricing Regulations or the Practice Note. The ITA provides authority for the URA Commissioner to make adjustments, but it does not specify a time limit for such adjustments.

- Uganda has a minimal double tax treaty network and the competent authority is not experienced in obtaining double tax relief. No formal rules exist which determine when a taxpayer may submit an adjustment to the competent authority or whether a tax payment is required before a taxpayer can apply to the competent authority. Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the Fiscal Service of Ukraine (FSU).
- The main tax legislation is the Ukrainian Tax Code (UTC). The transfer pricing rules are contained within Paragraph 14.1.159 and Article 39 UTC, Decrees 381 (4 June 2015) and 764 (17 October 2013) and Order 977-p (16 September 2015).
- A taxpayer must file a specific annual transfer pricing return (Report on Controlled Transactions) when:
  - Related party transactions (controlled transactions) with the same counterparty exceed UAH 5 million (approximately USD 190,000) during the reporting period; and,
  - Annual income of a taxpayer from any activity, defined in accordance with the accounting standards, exceeds UAH 150 million (net of indirect taxes) (approximately USD 5.7 million) for the reporting year. The Report on Controlled Transactions provides detailed information on controlled transactions (nature, characteristics, type, price, industry-specific code) and details of the transfer pricing method applied to test the arm’s length nature of the controlled transaction prices.
- Contemporaneous transfer pricing documentation is not required to be submitted with the annual tax return, however, it must be prepared at the time each controlled transaction is performed and be available for the tax authority on request. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days.
- Although Ukraine is not an OECD member country it applies the arm’s length principle and closely follows the OECD Guidelines. Notably, the Ministry of Finance has announced Ukraine will join the implementation of the OECD’s BEPS initiative and incorporate the necessary changes into the UTC going forward.
- The FSU prefers to use officially approved sources of information to establish the arm’s length price for a transaction (albeit, if the official source data is limited, it will use commercial transfer pricing databases such as Amadeus, Bloomberg, ktMINE, etc. The FSU uses a slightly different range in a transactional net margin method (TNMM) analysis which is prescribed under the Ukraine transfer pricing rules, albeit similar to the interquartile range. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and must be completed in the Ukrainian language only.
- Ukraine follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, however, it applies a strict hierarchy approach: first the comparable uncontrolled price (CUP) method should be used, then either the cost-plus method or resale price method, and then either the profit split method or the transactional net margin (TNMM) method. The tax authority prefers the use of local comparables in a benchmarking study where the tested party is a resident of Ukraine. Secret comparables are not allowed to be used by the tax authority.
- The statute of limitations for the assessment of transfer pricing adjustments is seven years from the last date of filing the Report on Controlled Transactions (or from the actual date of filing if later).
- Ukraine has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority when the counter-party has paid the tax resulting from the adjustment (where applicable). Supporting documentation is required to verify the payment to enable the taxpayer to claim a corresponding adjustment. A tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated by large taxpayers with the tax authorities (there are no filing fees).
KEY POINTS

- The tax authority is Her Majesty’s Revenue and Customs (HMRC). The main tax legislation in the United Kingdom (UK) is the Taxation (International and Other Provisions) Act 2010 (TIOPA 2010). The transfer pricing rules are contained within Part 4 TIOPA 2010. The effective date of the transfer pricing rules is 1 July 1999.

- The UK is an OECD member country and follows the arm’s length principle and the OECD Guidelines. Notably, Section 164 TIOPA states that the UK’s transfer pricing rules must be construed in line with Article 9 of the OECD Model Tax Convention and its associated transfer pricing guidelines.

- There is no requirement for a taxpayer to file a specific annual transfer pricing return. Related party disclosures are required in the Notes to audited financial statements, and, in addition, if a taxpayer has an Advance Pricing Agreement (APA) then annual APA reporting is required. Under self-assessment, UK companies and partnerships are required to prepare contemporaneous transfer pricing documentation to support the arm’s length pricing nature of the respective related party transactions and have this in place by the filing due date of the annual tax return. There is however an exemption for small and medium enterprises (SME’s) for most transactions. A business is a ‘small’ enterprise if it has no more than 50 staff and either an annual turnover or balance sheet total of less than EUR 10m. A business is not an SME if the turnover is over EUR 50m per annum, a gross balance sheet over EUR 43m or over 250 staff. When transfer pricing documentation is requested by the tax authority, there is no mention in the law of a time deadline for its submission, but typically, HMRC requests information to be presented within 30 days.

- The UK follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), cost-plus, resale price, profit split, and, transactional net margin (TNMM) pricing methods. The content of a transfer pricing study should follow Chapter V of the OECD Guidelines. HMRC prefers the use of local comparables in a benchmarking study (for UK based activity), although in practice European comparables are accepted when there is limited UK company information. HMRC expects taxpayers to use good economic principles in their database search criteria for benchmarking purposes. Secret comparables are not used by the UK tax authority. No specific transfer pricing database is preferred by HMRC although it does use the Fame database for UK searches and the Amadeus database for European searches.

- The UK has implemented Country-by-Country (CbC) reporting regulations. An amendment to the Finance Bill 2016 allows HMRC to issue regulations for the public disclosure in the UK of Multi-National Enterprises (MNEs) CbC reporting. Finance Act 2016 includes legislation which maintains the link between the UK tax legislation and the OECD’s updated transfer pricing guidelines.

- The UK has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority when an adjustment is proposed by the tax authority (no tax payment is required before a taxpayer can apply to the competent authority. Unilateral, bilateral, and multilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee). HMRC’s Statement of Practice on APAs enable an APA to be revisited if subsequent changes to the transfer pricing legislation, or practices, have a direct impact on it.
United States

Currency: United States Dollar (USD)
Population: 326.47 Million (2017 estimate)
Capital: Washington, D.C.
GDP: USD 18,561,930 Million

Key Points

• The tax authority is the Internal Revenue Service (IRS). The main tax rules are found in the Internal Revenue Code (IRC) and the Treasury Regulations (TRs). The transfer pricing rules are contained within Sections 482 and 6662(e) IRC and the respective regulations.

• Taxpayers are required to report annual related party transactions on certain forms such as Forms 5471 and Form 5472 which provide details about their related party transactions (goods, services, tangible and intangible assets and loans) and the respective related parties. They do not disclose the transfer pricing methodology in support of the related party amounts. Certain taxpayers must also disclose their uncertain tax positions (UTP) on a separate UTP schedule.

• Contemporaneous transfer pricing documentation must be prepared to support the arm’s length pricing basis of the related party transactions by the filing due date of the US tax return. Under US Regulations, when requested by the IRS, transfer pricing documentation must be provided within 30 days to avoid penalties. Failure to maintain contemporaneous documentation of pricing determinations can result in substantial penalties (up to 40% of the tax adjustment due). There are no exceptions to the contemporaneous documentation requirements based either on the size of the enterprise or the level of intercompany transactions involved. In practice, transfer pricing audits are skewed to large taxpayers and large transactions. The documentation requirement applies in any situation when transfer pricing adjustments equal 10% of the company’s gross receipts or USD 5 million.

• Country-by-Country (CbC) regulations have been issued in accordance with the model CbC reporting template and the OECD BEPS Action Plan 13 instructions. CbC information must be reported on Form 8975 for Ultimate Parent Entities of Multinational Enterprise groups that have, on a consolidated basis, revenue of USD 850 million or more in the immediately preceding reporting period. The IRS allow voluntary filing for an earlier period called a “parent surrogate filing” to conform with the OECD start date.

• The US broadly follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, with some differences such as applying the best-method rule for determining the appropriate method. US regulations require taxpayers to conduct transfer pricing studies to determine the ‘best method’ under the applicable circumstances.

• The IRS prefers that the tested party is the one for which the most detailed information is available and it prefers the use of local comparables in a benchmarking study for a US tested party. For a foreign tested party, other comparable information can be used if it is reliable and based upon the specific facts and circumstances. There are safe-harbour limits in the US Regulations specified for certain services and interest rates. The IRS provides guidance on the format for the presentation of benchmarking data as well as comparable search adjustments to be used. No specific transfer pricing database is preferred by the IRS although it does use Standard and Poor’s Compustat database, as well as others and it normally focusses on the interquartile range in determining comparability.

• The US has an extensive double tax treaty network and the competent authority is effective in obtaining double tax relief. For a US-initiated adjustment, a taxpayer may submit an adjustment to the competent authority following receipt of the IRS Notice of the proposed adjustment. No tax payment is required before a taxpayer can apply to the competent authority.

• Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities for a user fee.
KEY POINTS

- The tax authority is the Dirección Nacional Impositiva (General Tax Direction, or DGI).
- The main tax legislation is the Income Taxes Act (ITA) and the supporting Regulations. The transfer pricing rules are contained within Articles 38 to 46 ITA and Resolution 2.084/009 (1 December 2009). The effective date of the transfer pricing rules is 1 July 2007.
- For certain taxpayers that exceed a transaction limit (or are notified by the DGI), there is an obligation to file a specific annual transfer pricing return (Form 3001) and a transfer pricing study. Form 3001 discloses details concerning a taxpayer’s cross-border related party transactions and transactions with unrelated entities located in tax havens. The transfer pricing study (filed with Form 3001) details key elements of the transfer pricing methodology adopted to test the related party prices applied as well as providing details of the comparables, a functions analysis, the activities of the company, an economic analysis, and the risks and assets used, etc.
- Irrespective of whether a taxpayer has an obligation to file a Form 3001 and a transfer pricing study, all taxpayers who have related party transactions must prepare contemporaneous transfer pricing documentation to support the arm’s length pricing nature of their related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within 10 days.
- Currently, the tax authority has not expressed a preference towards the use of local comparables in a benchmarking study and will accept broader data which is reliable (verifiable) and presents similar circumstances and facts to the tested party. Whilst the DGI may use the information of one taxpayer in the audit of another similar taxpayer, there is no evidence that the tax authority uses secret comparables.
- Uruguay is not an OECD member country however it follows the arm’s length principle and applies its transfer pricing regulations according to the OECD model. The content of a transfer pricing study should broadly follow Chapter V of the OECD Guidelines.
- No specific transfer pricing database is preferred by the tax authority although it does use an international database. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- Uruguay generally follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods. No pricing method has priority under Uruguay’s transfer pricing rules however, where commodities are imported or exported with well-known prices in transparent markets, those prices must be used (or the price in the respective market if the transactions are performed through international intermediaries which are not the final consignee).
- The statute of limitations for the assessment of transfer pricing adjustments is five years from 1 January following the filing date of the tax return. In cases of fraud, etc., the statute of limitations is extended to 10 years.
- Although Uruguay has a good double tax treaty network, the competent authority is not experienced in obtaining double tax relief. No formal rules exist which determine when a taxpayer may submit an adjustment to the competent authority or whether a tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee).
VENEZUELA

CURRENCY: Venezuelan Bolívar Fuerte (VEF)
POPULATION: 31.93 Million (2017 estimate)
CAPITAL: Caracas
GDP: USD 333,715 Million

PKF CONTACT INFORMATION

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KEY POINTS

- The tax authority is the Servicio Nacional Integrado de Administración Aduanera y Tributaria (National Integrated Tax and Customs Service Administration, or SENIAT).
- The main tax legislation is the Venezuelan Income Tax Law (ITL). The transfer pricing rules are contained within Nr. 6.120, Chapter III Title VII ITL and the SENIAT Providence NR sNAT-2003-2424 (13 February 2004). The effective date of the transfer pricing rules is 1 January 2000.
- There is a requirement for a taxpayer to file a specific annual transfer pricing return (Form PT99). The form, which must be filed with the tax authority six months after the year end, discloses details of the overseas related party transactions conducted by a taxpayer and of the respective related party (including the relationship of each related party with the taxpayer). In addition, Form PT99 provides details of the pricing methodology applied to test the arm’s length nature of the price of each related party transaction. Failure to prepare Form PT99, or to submit an incomplete form, will attract penalties and it is also likely to trigger a tax audit.
- Contemporaneous transfer pricing documentation must be prepared annually to support the arm’s length pricing basis of a taxpayer’s related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within three working days.
- The content of a transfer pricing study should follow Chapter V of the OECD Guidelines and be completed in the Spanish language.
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study however there is a requirement that the comparable companies selected for the analysis have information publicly available. The ITL provisions restrict the deduction of interest payments to related parties to a maximum debt to equity ratio of 1:1. Secret comparables are not used by SENIAT.
- Venezuela follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Transactional net margin (TNMM) method.
- Under Venezuelan transfer pricing rules, a taxpayer must use the best pricing method and where appropriate, give priority to the CUP method over other methods.
- No specific transfer pricing database is preferred by the tax authority. The tax authority normally focusses on the interquartile range in a transactional net margin method (TNMM) analysis.
- The statute of limitations for the assessment of transfer pricing adjustments is six years from 1 January following the calendar year of the respective tax return (adjustment). Where no tax return is filed, or in cases of fraud, etc., the statute of limitations is 10 years.
- Although Venezuela has a good double tax treaty network, the competent authority is not experienced in obtaining double tax relief. No formal rules exist which specify when a taxpayer may submit an adjustment to the competent authority. No tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral and bilateral Advance Pricing Agreements (APAs) can be negotiated with the tax authorities (there is no filing fee).
KEY POINTS

- The tax authority is the General Department of Taxation (GDT), Ministry of Finance.
- The main tax legislation is the Law on Tax Administration No 78/2006/QH11 (LTA) and the Amended Law on Tax Administration No. 21/2012/QH13 (ALTA). The transfer pricing rules are contained within Article 37 LTA, Article 34 ALTA, Circulars 117/2005/TT/BTC, 66/2010/TT/BCT (Circular 66), 156/2013/TT-BTC, 201/2013/TT-BTC, and 205/2013/TT-BTC, and Decrees 83/2013/ND-CP, 91/2014/ND-CP, 12/2015/ND-CP, and 20/2017/ND-CP.
- Vietnam is not a member of the OECD and the OECD Guidelines are not formally referred to in the Vietnamese transfer pricing regulations. However, the most comprehensive transfer pricing regulation in Vietnam is regarded to be Circular 66, which is modelled on the OECD Guidelines and adopts the OECD’s arm’s length principle and transfer pricing methodologies.
- Each Vietnamese taxpayer must complete an annual Transfer Pricing Declaration Form (Form 03-7/TNDN). This form must be submitted at the same time that the annual Business Income Tax (BIT) Return is filed with the GDT, which is within 90 days from the end of their fiscal year end.
- Contemporaneous transfer pricing documentation must be prepared for all related party transactions and should be based upon the OECD’s transfer pricing guidelines. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 working days (a one-time extension of a further 30 days is permitted subject to reasonable justification).
- The tax authority follows the transfer pricing methods outlined in Chapter II of OECD guidelines. Part B, Article 5 of Circular 66 sets out five transfer pricing methods, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the comparable profit (CPM) pricing methods. Please note, the comparable profit method (CPM) is used in place of the transactional net margin (TNMM) method for Vietnamese transfer pricing purposes.
- The GDT prefers the use of local comparables in a benchmarking study, however, the Vietnam transfer pricing regulations allow broader comparables to be used if the data and information is from certified and verifiable sources. Secret comparables are used by the tax authority under certain circumstances to make presumptive assessments of tax. No specific transfer pricing database is preferred by the tax authority. The GDT normally focusses on the interquartile range in a transactional net margin method analysis.
- Tax audits and inspections are undertaken by the tax authority. Where a transfer pricing assessment (adjustment) is disputed, a taxpayer may file an Objection (Appeal) with the GDT. Failing a satisfactory Decision, an Appeal may be lodged with the Administrative Tribunal.
- The statute of limitations for the assessment of transfer pricing adjustments is ten years (although the time limit is removed in cases where an entity has failed to register with the tax authority).
- Although Vietnam has an extensive double tax treaty network, the competent authority is inexperienced in obtaining double tax relief. A taxpayer may submit an adjustment to the competent authority within three years of the first decision date (of the tax authority) relating to the adjustment. A tax payment is required before a taxpayer can apply to the competent authority.
- Unilateral, bilateral, and multilateral Advance Pricing Agreements can be negotiated with the tax authorities (there is no filing fee). An APA can be effective for up to five years (and renewed for a further five years).
PKF CONTACT INFORMATION

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KEY POINTS

- The tax authority is the Zambia Revenue Authority (ZRA).
- The main tax legislation is the Zambia Income Tax Act (ITA). The transfer pricing rules are contained within Sections 97A, 97B, 97C, and 97D ITA and the Bank of Zambia Gazette Notice No. 7171 of 2014.
- There is no requirement for a taxpayer to file a specific annual transfer pricing return. The annual tax return however requires the disclosure of information relating to transactions with related parties during the year (prices, nature, etc.). The disclosure includes details of the basis of pricing, of each respective related party, whether a functional analysis has been performed, and certain details relating to shareholders, associated companies, and interests in other businesses. In addition, it requires a taxpayer to confirm whether relevant transfer pricing documentation is available. A copy of the signed audited financial statements prepared under the International Financial Reporting Standards (IFRS) must be submitted with the annual tax return, and, where relevant, the financial statements will contain a related party Note providing details of the related party transactions (which should reconcile with the amounts disclosed by way of the annual tax return disclosures).

- Contemporaneous transfer pricing documentation is not required to be submitted with the annual tax return, however, it should be prepared and maintained to support the arm’s length pricing basis of the respective related party transactions. When transfer pricing documentation is requested by the tax authority, it must be provided within 30 days (a time extension may be granted at the Commissioner General’s discretion).
- The tax authority has not expressed a preference towards the use of local comparables in a benchmarking study. No specific transfer pricing database is preferred by the tax authority.
- When related party loans are reviewed by the tax authority, it expects the borrower’s Balance Sheet to be such that an independent lender would be willing to lend the same amount on the same terms.
- Zambia follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely; the comparable uncontrolled price (CUP), the cost-plus, the resale price, the profit split, and, the transactional net margin (TNMM) pricing methods.
- There is no requirement under the Zambian transfer pricing rules for a transfer pricing study to be completed, however, its completion is recommended to support the entries in the tax return and potentially mitigate any penalties or adjustments levied by the ZRA. The content of a transfer pricing study should broadly follow Chapter V of the OECD Guidelines and be completed in the English language.
- Where a transfer pricing assessment (adjustment) made by the tax authority is disputed, a taxpayer can lodge an Appeal with the Commissioner General. Failing a satisfactory outcome for the taxpayer, an Appeal can be further made to the Tax Appeals Tribunal. If still dissatisfied, a taxpayer can appeal to the Supreme Court of Zambia.
- Although Zambia has a good double tax treaty network, the competent authority is inexperienced in obtaining double tax relief. No formal rules exist that determine when a taxpayer may submit an adjustment to the competent authority. No tax payment is required before a taxpayer can apply to the competent authority.
- There is no Advance Pricing Agreement (APA) procedure available in Zambia, and consequently, no APAs have been negotiated with the tax authorities.
KEY POINTS

- The tax authority is the Zimbabwe Revenue Authority (ZRA).
- The main tax legislation is the Income Tax Act (ITA). The transfer pricing rules are contained within Sections 16(1)(q), 16(1)(r), 23, 24, 98, 98A, and 98B ITA. Please note, certain transfer pricing enhancements were made to the ITA which became effective on 1 January 2016 and which enable the use of the UN and OECD Guidelines with respect to related party transactions.
- Although Zimbabwe is not an OECD member country it follows the arm’s length principle and, notably, the transfer pricing framework introduced from 1 January 2016 broadly follows the OECD Guidelines (and makes reference to the UN practical manual on transfer pricing for developing countries).
- There is no requirement for a taxpayer to file a specific annual transfer pricing return or any transfer pricing disclosures with the annual tax return. Under Zimbabwe’s transfer pricing rules, contemporaneous transfer pricing documentation must be prepared and maintained to support the arm’s length pricing nature of the respective related party transactions. In line with the OECD Guidelines, the supporting documentation should include an economic analysis, a functional analysis, details on the how the most appropriate transfer pricing methodology was determined and applied, and it should be able to support the arm’s length nature of the transaction price. Therefore, the documentation must be sufficient for the Zimbabwe tax authorities to ascertain that the related party transactions were conducted on an arm’s length basis.
- The Commissioner for the ZRA is empowered under Section 98B ITA to adjust the price of a cross-border related party transaction which is not at an arm’s length value. The Commissioner can also make adjustment to the amount of interest, and similar amounts, where the rate is not at arm’s length (or the related party loans, by reference to a borrower’s Balance Sheet, would not have been made by an independent lender). The Zimbabwe transfer pricing rules cover both overseas and local related party transactions.
- Zimbabwe follows the transfer pricing methods outlined in Chapter II of the OECD Guidelines, namely:
  - Comparable uncontrolled price (CUP) method;
  - Cost-plus method;
  - Resale price method;
  - Profit split method;
  - Transactional net margin (TNMM) method.
  Under the Zimbabwean transfer pricing rules, another method can be used if it creates a more reliable comparable price than the above approved methods.
- Where a transfer pricing adjustment is sustained, general corporate tax penalties will apply up to 100% of the tax payable. It is however possible to mitigate penalties through negotiation with the ZRA. A safe harbour debt-to-equity ratio is provided under the Zimbabwe transfer pricing rules of 3.1.
- The statute of limitations for the assessment of transfer pricing adjustments is six years from the relevant year or date of the assessment.
- Zimbabwe has a minimal double tax treaty network. The competent authority is inexperienced in obtaining double tax relief. The transfer pricing rules however facilitate corresponding adjustments for both domestic and international transactions to eliminate double taxation where necessary.
- There is no Advance Pricing Agreement (APA) program currently available in Zimbabwe, and consequently, no APAs have been negotiated with the ZRA.